DATE LABEL

*Call No.*_____ *Date*_____

*Acc. No.*_____

K. UNIVERSITY LIBRARY

This book should be returned on or before the last date stamped above. An over-due charge of **.06 P.** will be levied for each day if the book is kept beyond that day.

In one sense no reported case can ever be obsolete while the laws and judicial usages of English-speaking countries are what they are: that is, no man can say beforehand that any given case, however antiquated or trifling it may appear in itself to be, may not at some time have its use for the modern practitioner or text-writer. Every decision in the books is part of the history of the law, and no part of that history can be absolutely insignificant.—(Sir Frederick Pollock, Bart., LL.D., Corpus Professor of Jurisprudence in the University of Oxford.)

Accurate knowledge of the present state of the law upon any subject involves necessarily the history of the development of the law upon that subject, which can only be attained by following down the decisions touching upon it. — (Franci M. Scott, Justice, Supreme Court, New York.)

The law is the last interpretation of the law given by the last Judge.

The enunciation of the most elementary principle of law is frequently met by a demand for "an authority in support of that proposition . . . ." No time spent upon providing oneself with a precedent is ever wasted even though the book may have to be judiciously hidden from view until required.—(The Hon'ble Sir Cecil Walsh, Kt.,K.C., Ex.Offg., Chief Justice, Allahabad High Court.)

The last Judicial Interpretation of the law is the Law on which your case hangs.

decision, it
ions of its
y of exten-
hief Justice,
.).)

DONATED
By
PANDIT SHAMBOO NATH DAR.
(1901 — 1969)
ADVOCATE,
and former President
SRINAGAR MUNICIPAL COUNCIL

Use old books and lose good cases

SPECIAL FEATURES.

1. All the latest amendments, Central and State, accurately incorporated.
2. Adaptations made in the sections are given.
3. Corresponding sections of earlier Codes indicated.
4. Synopsis for each section shows where exactly to look for the point required.
5. Decisions are classified under different headings.
6. Decisions are tested on first principles.
7. Principles of law are deduced from vast mass of decisions.
8 Principles of law presented in a logical and cogent manner.
9. Commentary, a reasoned exposition of law.
10. Conflict of opinions in the decisions pointed out and discussed.
11. Copious references to cognate sections and notes are given.
12. Cases overruled or reversed pointed out in the foot-note remarks.
13. Remarks in the foot-notes amplify and illustrate the principles in the Commentary and indicate the distinguishing features of the case.
14. Any case in the Table of Cases will show where to get the entire case-law on the point.
15. The first reference in the foot-notes and reference to Official Reports are indicated in the Table of Cases.
16. Topical Index locates the exact point required.

G. N. Dar
Advocate High Court
Jammu & Kashmir
Srinagar.

Case-law is the life-blood of a law book

A. I. R. PUBLICATION

THE 50 YEARS'

CRIMINAL DIGEST

1904 TO 1953

BY

V. V. CHITALEY, B.A., LL.B.,

Senior Advocate, Supreme Court.

AND

S. APPU RAO, B.A., B.L.,

Advocate High Court, Madras, Chief Editor,
The All India Reporter.

(Authors of the A. I. R. Manual and A. I. R. Commentaries.)

Advocate High Court
Jammu & Kashmir
Srinagar.

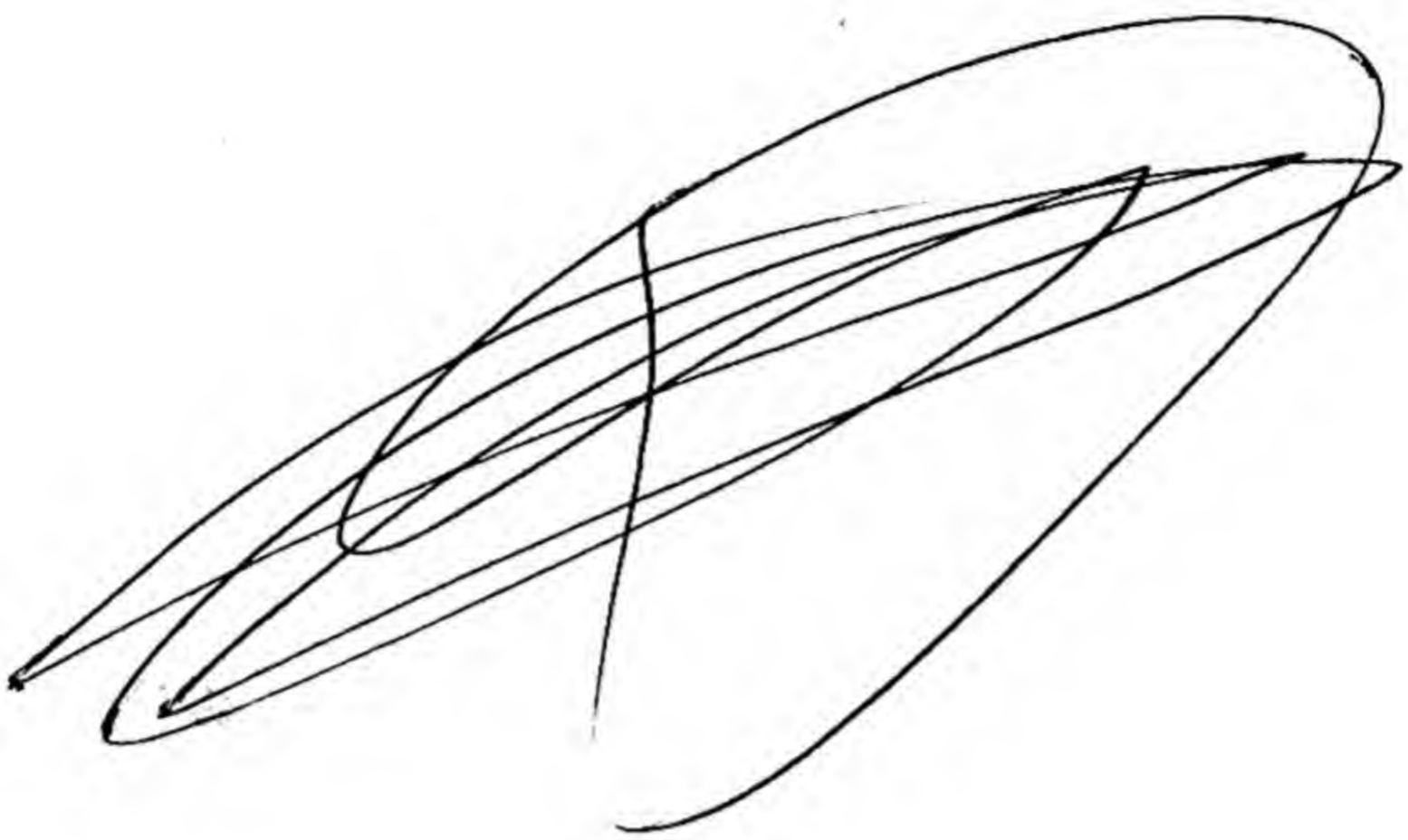
Volume 1

ABANDONMENT TO CRIMINAL P. C., S. 143.

PU

THE ALL IN

DONATED
By
PANDIT SHAMBOO NATH DAR.
(1901 — 1969)
ADVOCATE,
and former President
SRINAGAR MUNICIPAL COUNCIL



Printed by
Lala Mela Ram Khanna at the All India Reporter Press, Nagpur
and Published by D. V. Chitaley for the All India Reporter Ltd.,
at Congress Nagar, Nagpur.

K[illegible]IVERSITY L[illegible]
[illegible]ISION
Acc No 76125
Date 26.2.70

Books Checked

PREFACE

It was only the other day that Mr. Justice Mack of the Madras High Court, when replying to the farewell speeches made on the occasion of his retirement from the Madras Bench, expressed his view that undue importance should not be given to case-law so as to defeat the demands of justice. He also mentioned that the saying that hard cases make bad law does not express the proper approach in the administration of justice. A law, which is not flexible enough to enable the Court to do justice in hard cases, should be regarded, according to his Lordship, as law which is not good enough for the purpose of administration of justice. Though Mr. Justice Mack pleaded guilty to the charge of being an unorthodox type of a Judge, there can be no two opinions about the desirability of mitigating the rigidity of law and ensuring its flexibility so as to enable Courts to deal out justice in all cases without feeling unduly fettered by rules and precedents.

But this conception of ideal justice is not so easy of being translated into actual practice because of the desirability of certainty as an ideal to be aimed at in any legal system. Moreover, whatever may be said about the need of freedom and elasticity, there can be no question that Judges themselves will feel highly handicapped if they are deprived of the guidance of rules and precedents. This is proved by the fact that Judges have systematically referred to and are glad to be guided by decisions which are not *binding* on them. The law reports bear full testimony to this statement and even a cursory examination of their pages will show that only a fraction of the cases that are referred to and discussed will fall under the category of *binding* precedents so far as the particular Court is concerned. This is a perfectly natural phenomenon, as it is always a difficult task to say on which side justice lies in any case and in the performance of that task one is naturally glad to take advantage of whatever light is available in precedents. So it has been rightly observed by an eminent jurist that cases provide the life blood of the law.

This shows what an indispensable role is played by law reports in the administration of justice. For it is obvious that unless judgments are published and are made available in an easily accessible form in which they can be permanently preserved for reference at any time, the mere fact that there is a judgment full of erudition on a certain question will be absolutely of no use.

But the mere publication of judgments and making them accessible for reference will by no means suffice to make the judgments really useful as sources of light and guidance for future cases unless an effective means of reference is provided. This is also an obvious proposition. But it has to be mentioned, as otherwise the humble and unpretentious labours of the digest-maker may fail to receive the notice and recognition which they deserve. The services rendered by the law-reporter and the digest-maker are of a fundamental and indispensable nature and however unspectacular their labours may be, they have a vital function in the administration of justice.

Precedents and aids for tracing precedents are no less important on the criminal side than on the civil side. No doubt, all law is one and it is not possible to divide it into watertight compartments. Nevertheless it is customary to make a broad division of law into civil and criminal law just as we have two sets of Courts—one for civil cases and another for criminal cases. Lawyers also specialize in either branch of practice and we have in India a very large body of lawyers who devote their talents and energies wholly to practising on the criminal side.

The Criminal Law Journal has been catering to the needs of criminal Courts and criminal lawyers for more than half a century now. The Criminal Law Journal has been the first of its kind and even to-day maintains its unrivalled position in the field. It can be said without exaggeration that the pages of the Criminal Law Journal during half a century and more enshrine the bulk of Indian Criminal Case Law. So, it gives us great pleasure to launch this half a century criminal digest which covers the full period of the Criminal Law Journal till two years ago.

Although the period chosen is intended to cover the period of the Criminal Law Journal since its inception, the references are not confined to the Criminal Law Journal but also extend to the A. I. R. and other journals, as in the other digests published by the A. I. R. till now.

The system of digesting followed is the one with which the legal profession is already familiar as the A. I. R. system. It is unnecessary to elaborate on the special features of this system here. But it will not be out of place to mention that the main characteristics of this system are the adoption of a statutory basis for a heading wherever possible and secondly, the systematization of the whole matter according to a synopsis under each important section.

We are quite sure that the profession as well as the Courts will appreciate the very great convenience of having a consolidated criminal digest for a whole half century, which places at their disposal the substantial bulk of the Criminal case law of the country.

Before concluding, we wish to express our obligations to the following gentlemen for their co-operation in the preparation of the digest : Messrs. D. V. Chitaley, B. A., LL. B., Advocate, D. W. Chitaley, B. A. LL. B., M. V. Chitaley, M. W. Chitaley, V. S. Balkundi, B. A., LL. B., R. G. Dhoble, B. A., LL.B., D. H. Zadgaonkar, B. A., LL. B., K. S. Bakre, B. Sc., LL. B.; D. R. Rajandekar, B. A., LL. B., G. M. Jatar, B. A., LL. B., V. R. Buche, B. A., LL. B., M. Kuppuswami, B. A., B. L., Advocate, H. G. Pathak, B. A., LL. B. and L. S. Kale.

V. V. C.

13th May 1955.

S. A. R.

ABBREVIATIONS

REPORTS.

A. I. R. 1914 All., Bom.	...	...	All India Reporter 1914 Allahabad, Bombay and so on.
A. or All.	...	...	Indian Law Reports, Allahabad.
A. I. Cr. R.	...	...	All India Criminal Reports.
A. L. J.	...	...	Allahabad Law Journal.
All E. R.	...	...	All England Law Reports.
A. M. L. J.	...	...	Ajmer-Merwara Law Journal.
Andhra W. R.	...	...	Andhra Weekly Reporter.
Av. W. N.	...	...	Avadh Weekly Notes.
B. L. J. R.	...	...	Bihar Law Journal Reports.
B. or Bom.	...	...	Indian Law Reports, Bombay.
Bom. Cr. C.	...	...	Bombay Criminal Cases.
Bom. L. R.	...	...	Bombay Law Reporter.
B. R.	...	...	Bihar Reports.
Bur. L. J.	...	...	Burma Law Journal.
Bur. L. T.	...	...	Burma Law Times.
C. or Cal.	...	...	Indian Law Reports, Calcutta.
C. L. J.	...	...	Calcutta Law Journal.
Com. Cas.	...	...	Company Cases.
Cr. C.	...	...	Criminal Cases.
Cr. L. J.	...	...	Criminal Law Journal.
C. W. N.	...	...	Calcutta Weekly Notes.
C. W. N. (D. R.)	...	...	Calcutta Weekly Notes (Dacca Reports).
C. W. N. (F. C. R.)		...	Calcutta Weekly Notes (Federal Court Reports)
F. C. R.	...	...	Federal Court Reports.
F. L. J.	...	...	Federal Law Journal.
I. A.	...	...	Law Reports, Indian Appeals.
I. C. ...		...	Indian Cases.
I. L. R. All.	...	...	Indian Law Reports, Allahabad.
I. L. R. Assam	...	...	Indian Law Reports, Assam.
I. L. R. Bom.	...	...	Indian Law Reports, Bombay.
I. L. R. Cal.	...	...	Indian Law Reports, Calcutta.
I. L. R. Cut.	...	...	Indian Law Reports, Cuttack.
I. L. R. E. P.	...	...	Indian Law Reports, East Punjab.
I. L. R. Hyd.	...	...	Indian Law Reports, Hyderabad.
I. L. R. Lah.	...	...	Indian Law Reports, Lahore.
I. L. R. M. B.	...	...	Indian Law Reports, Madhya Bharat.
I. L. R. Mad.	...	...	Indian Law Reports, Madras.
I. L. R. Mys.	...	...	Indian Law Reports, Mysore.
I. L. R. Nag.	...	...	Indian Law Reports, Nagpur.

I. L. R. Patiala ...	...	Indian Law Reports, Patiala.
I. L. R. Punj. ...	...	Indian Law Reports, Punjab.
I. L. R. Raj. ...	...	Indian Law Reports, Rajasthan.
I. L. R. Trav-Co.	...	Indian Law Reports, Travancore-Cochin.
I. R. (1930) All. ...	...	Indian Rulings (1930) Allahabad,
I. R. (1930) Bom.	...	Indian Rulings (1930) Bombay.
I R. (1930) Cal....	...	Indian Rulings (1930) Calcutta.
I. R. (1930) Lah.	...	Indian Rulings (1930) Lahore.
I. R. (1930) Mad.	...	Indian Rulings (1930) Madras.
I. R. (1930) Nag.	...	Indian Rulings (1930) Nagpur.
I. R. (1930) Oudh	...	Indian Rulings (1930) Oudh.
I. R (1930) Pat. ...	...	Indian Rulings (1930) Patna.
I. R. (1930) P. C.	...	Indian Rulings (1932) Privy Council.
I. R (1930) Rang.	...	Indian Rulings (1930) Rangoon.
I. R. (1930) Sind	...	Indian Rulings (1930) Sind.
I. T. R. ...	...	Income-tax Reports.
J. & K. L. R. ...	...	Jammu & Kashmir Law Reports.
J. L. R. ...	...	Jaipur Law Reports.
Kar. or I. L. R. Kar.	...	Indian Law Reports, Karachi.
K. L. T. ...	...	Kerala Law Times.
L. or Lah. ...	...	Indian Law Reports, Lahore.
L. B. R. ...	...	Lower Burma Reports.
L. L. J. or Lah. L. J.	...	Lahore Law Journal.
L. R. A. ...	...	The Law Reporter, Allahabad Section.
L. R. A. (Cr.) ...	...	Law Reporter, Allahabad (Criminal).
L. R. (P. C.) ...	...	The Law Reporter, Privy Council Section.
L. R. O. ...	...	The Law Reporter, Oudh Section.
L. W. ...	...	Law Weekly (Madras).
Luck. ...	...	Indian Law Reports, Lucknow.
M. or Mad. ...	...	Indian Law Reports, Madras.
M. L. J. ...	...	Madras Law Journal.
M. L. R. ...	...	Marwar Law Reports.
M. L. T. ...	...	Madras Law Times.
M. L. W. ...	...	Madras Law Weekly.
M. W. N. ...	...	Madras Weekly Notes.
Madh. B. L. J. ...	...	Madhya Bharat Law Journal.
Madh. B. L. R. ...	...	Madhya Bharat Law Reporter.
Mal. L. J. ...	...	Malayan Law Journal.
Mys. H. C. R. ...	...	Mysore High Court Reports.
Mys. L. J. ...	...	Mysore Law Journal.
N. L. J. ...	...	Nagpur Law Journal.
N. L R. ...	...	Nagpur Law Reports.
O. & A. L. R. ...	...	Oudh & Agra Law Reporter
O. A. ...	...	Oudh Appeals.
O. C. ...	...	Oudh Cases.
O. L. J. ...	...	Oudh Law Journal.
O. L. R. ...	...	Oudh Law Reports.

P. N. Dar
Advocate High Court
Jammu & Kashmir
Srinagar.

O. W. N.	...	...	Oudh Weekly Notes.
Pak. Cas.	...	...	Pakistan Cases.
Pak. L. R. Lah.		...	Pakistan Law Reports, Lahore.
P. or Pat.	...	...	Indian Law Reports, Patna.
Pat. L. J. or P. L. J.		...	Patna Law Journal.
Pat. L. R.	...	...	Patna Law Reporter.
Pat. L T. or P. L. T.		...	Patna Law Times.
Pat. L. W. or P. L. W.		...	Patna Law Weekly.
P. H. C. C.	...	...	Patna Supplement to C. W. Notes.
Pepsu L. R.	...	...	Pepsu Law Reports.
P. L. R.	...	...	Punjab Law Reporter.
P. R.	...	...	Punjab Records.
P. W. R.	...	...	Punjab Weekly Reporter.
R. or Rang.	...	...	Indian Law Reports, Rangoon.
R. D.	...	...	Revenue Decisions.
R. L. W.	...	...	Rajasthan Law Weekly.
12 R. A.	...	...	Indian Ruling (Vol. 12), Allahabad.
12 R. B.	...	...	Indian Rulings (Vol 12), Bombay.
12 R. C.	...	...	Indian Rulings (Vol 12), Calcutta.
12 R. L.	...	...	Indian Rulings (Vol 12), Lahore.
12 R. M.	...	...	Indian Rulings (Vol 12), Madras.
12 R. N.	...	...	Indian Rulings (Vol 12), Nagpur.
12 R. O.	...	...	Indian Rulings (Vol 12), Oudh.
12 R. P.	...	...	Indian Rulings (Vol 12), Patna.
12 R. Rang.	...	...	Indian Rulings (Vol 12), Rangoon.
12 R. S.	...	...	Indian Rulings (Vol 12), Sind.
S. C. A.	...	...	Supreme Court Appeals.
S. C. J.	...	...	Supreme Court Journal.
S. C. R.	...	...	Supreme Court Reports.
S. L. R.	...	...	Sind Law Reporter.
Sau. L. R.	...	...	Saurashtra Law Reporter.
T. C. L. R.	...	...	Travancore Cochin Law Reports.
T. L. J.	...	...	Travancore Law Journal.
U. B. R.	...	...	Upper Burma Rulings.
U. P. L. R.	...	...	United Provinces Law Reporter.

OTHER ABBREVIATIONS.

Appl.	...	...	Applied.
Appr.	...	...	Approved.
Art.	...	...	Article.
Ch.	...	...	Chapter.
Cl.	...	...	Clause.
Comm.	...	...	Commented.
Cons.	...	...	Considered.
Cr.	...	...	Criminal.
Disc.	...	...	Discussed.

Diss.	...	...	Dissented from.
Dist.	...	...	Distinguished.
Doubt.	...	...	Doubted.
Expl.	...	...	Explained.
Foll.	...	...	Followed.
F. B.	...	...	Full Bench.
F. C.	...	...	Federal Court.
O.	...	...	Order.
P. C.	...	...	Privy Council.
R.	...	...	Rule.
Ref.	...	...	Referred to.
Rel. on.	...	...	Relied on.
S.	...	...	Section.
S. B.	...	...	Special Bench.
S. C.	...	...	Supreme Court.
Sch.	...	...	Schedule.

CONTENTS

Abandonment ... 1
Abatement ... 1
Abducted Females, Restoration of ... 1
Abducted Persons (Recovery and Restoration) Act (LXV of 1949) ... 1
Abduction ... 3
Abetment ... 3
Abettor ... 3
Abkari ... 3
Abolition of Privy Council Jurisdiction Act (C. A. Act V of 1949) ... 3
Abortion, Offence of, ... 3
Absconder ... 3
Absconding Offender ... 3
Absconding to evade service of summons ... 3
Absence of complaint ... 3
Absolute order ... 3
Absolute privilege ... 3
Abuse ... 3
Acceptance ... 3
Accepting instrument not duly stamped 3
Access ... 3
Access to Court ... 4
Accessory ... 4
Accident ... 4
Accomplice ... 4
Account Books ... 4
Accounts ... 4
Accused ... 4
Acquiescence ... 4
Acquittal ... 4
Act ... 4
Active Services Ordinance (X of 1941) 4
Act of State ... 5
Acts ... 5
Adaptation of Laws Order (1950) ... 5
Additional District Magistrate ... 5
Additional.Sessions Judge ... 5
Aden Civil and Criminal Justice Act (Bom. II of 1864) ... 5
Aden Civil and Criminal Justice Regulation (VI of 1933) ... 6
Aden Courts Act (Bom. Act II of 1864) 6
Adjournment ... 6
Administration of Evacuee Property Act (XXXI of 1950) ... 6
Administration of Justice and Police in Garo Hills District Rules ... 7
Administration of Justice and Police in Mikir Hills Rules ... 7
Administration of Justice and Police in the Naga Hills District Rules ... 7
Administration of Mayurbhanj State Order (1949) ... 7
Admissibility of Evidence ... 7
Admission ... 7
Adulteration ... 8
Adultery ... 8
Advocate ... 8
Advocate-General ... 8
Affairs of State ... 8
Affidavit ... 8
Affray ... 8
Age ... 8
Agency Rules (Godavari) ... 8
Agent ... 8
Aggregate sentences for purposes of Appeal ... 8
Agra and Oudh Water Works Act (1 of 1891) ... 8
Agra Tenancy Act (II of 1901) ... 8
Agra Tenancy Act (III of 1926) ... 8
Agra Village and Road Police Act (XVI of 1873) ... 9
Agriculturists' Loans Act (XII of 1884) 9
Ajmer Excise Regulation ... 9
Ajmer-Merwara Agrarian Relief Ordinance (VIII of 1949) ... 9
Ajmer-Merwara Chief Commissioner's Notification No. R/20 dated 30-6-1948 9
Ajmer-Merwara Cotton Cloth and Yarn Trade Licensing Order (1948) ... 9
Ajmer-Merwara Extension of Laws Act (III of 1947) ... 9
Ajmer-Merwara Municipalities Regulation (VI of 1925) ... 10
Alibi ... 10
Allahabad High Court (General) Rules 10
Allahabad High Court (General) Rules (Criminal) ... 10
Allahabad High Court Rules ... 10
(Allahabad) Rules of High Court, 1952 10
Alteration ... 11
Alternative Judgment ... 12
Ambiguous Language in Document ... 12
Ammunition ... 12
Amicus Curiae ... 12
Animals ... 12
Apology in Contempt Cases ... 12
Appeal ... 12
Appeals to H. E. H. the Nizam Regulation (XXI of 1358F) ... 12
Appearance, Processes to compel ... 12
Appellate Court ... 12
Apprehension ... 12
Apprentice ... 12
Apprenticeship ... 12
Approver ... 13
Arbitration ... 13
Arbitration Act (IX of 1899) ... 13
Arbitration Act (X of 1940) ... 13
Arms ... 13
Arms Act (XI of 1878) ... 13
Arms Rules (1924) ... 49
Army Act (VIII of 1911) ... 50
Army Act (English) (1881) (44 and 45 Vict. Ch. 58) ... 52
Army Rules ... 53
Arrest ... 54
Art ... 54
Articles of War, Person subject to ... 54
Artificers Act (XIII of 1859) ... 54
Artisan ... 54
Assam Cotton Cloth and Yarn Control Order (1946) ... 54

Assam Criminal Law Amendment Act (III of 1934) ... 54
Assam Food Grains Control Order (1947) 55
Assam Forest Regulation (VII of 1891) 55
Assam Frontier (Administration of Justice) Regulation (1 of 1945) ... 56
Assam Frontier Tracts Regulation (III of 1884) ... 56
Assam High Court Order (1948) ... 56
Assam Labour and Emigration Act (VI 1901) ... 56
Assam Land and Revenue Regulation (1 of 1886) ... 57
Assam Local Self-Government Act (VIII of 1926) ... 57
Assam Maintenance of Public Order Act (V of 1947) ... 58
Assam Municipal Act (1 of 1923) ... 60
Assam Opium Prohibition Act (XXIII of 1947) ... 60
Assam Pure Food Act (IV of 1932) ... 62
Assam Vegetable Oil and Oil Seeds Control Order (1944) ... 62
Assault ... 63
Assembling ... 63
Assessor ... 63
Assessors ... 63
Assistant Sessions Judge ... 63
Assisting in concealing Stolen Property 63
Attached Property ... 63
Attachment ... 63
Attempt ... 63
Attendance ... 63
Attorney ... 63
Authority ... 63
Autre Fois Acquit ... 63
Autre Fois Convict ... 63

Bail ... 63
Bailable Offence ... 63
Bail Bond ... 63
Baluchistan ... 64
(Bangalore) City of Bangalore Improvement Act (V of 1945) ... 64
Banker and Customer ... 64
Banker's Books Evidence Act (XVIII of 1891) ... 64
Banking Companies Act (X of 1949) ... 64
Banking Companies (Amendment) Act (XX of 1950) ... 64
Banking Companies (Amendment) Ordinance (23 of 1949) ... 65
Bank Notes ... 65
Bar ... 65
Bar Councils Act (XXXVIII of 1926) 65
Barrister ... 76
Basutoland Criminal Procedure and Evidence Proclamation (1938 as amended in 1944) ... 76
Being hired for unlawful assembly ... 76
Benami Transaction ... 76
Benares Regulated Town Cloth Rationing Order (U. P. Order of 1946) ... 76
Bench of Magistrates ... 77
Benefit of Doubt ... 77
Bengal, Agra and Assam Civil Courts Act (XII of 1887) ... 77
Bengal Agricultural Debtors Act (VII of 1936) ... 77
Bengal Alluvial Lands Act (V of 1920) 78
Bengal Children Act (II of 1922) ... 78
Bengal Cotton Cloth and Yarn Co trol Order (1943) ... 79
Bengal Cotton Cloth and Yarn Control Order (1945) ... 79
(Bengal) Court of Wards Act (Bengal Act IX of 1879) ... 79
Bengal Criminal Law Amendment Act (1925) ... 79
Bengal Criminal Law Amendment Act (VI of 1930) ... 80
Bengal Criminal Law Amendment Ordinance (1 of 1947) ... 82
Bengal Criminal Law Amendment (Supplementary) Act (Central Act VIII of 1932) ... 83
Bengal Cruelty to Animals Act (I of 1920) ... 83
Bengal Disorderly Houses Act (III of 1906) ... 83
Bengal Embankment Act (II of 1882) ... 84
Bengal Emergency Powers Ordinance (XI of 1931) ... 87
Bengal Emergency Powers (Supplementary) Ordinance (I of 1932) ... 88
(Bengal) Estates Partition Act (V of 1897) ... 88
Bengal Excise Act (V of 1909) ... 88
Bengal Excise and Licensing Act (VII of 1878) ... 91
Bengal Factories Rules (1940) ... 91
Bengal Ferries Act (I of 1885) ... 91
Bengal Food Adulteration Act (VI of 1919) ... 94
Bengal Food Grains Control Order (1945) 98
Bengal Food Grains (Disposal and Acquisition) Order (1947) ... 98
Bengal General Clauses Act (I of 1899) 99
Bengal Goondas Act (I of 1923) ... 99
(Bengal) High Courts Order (1947) ... 100
Bengal Highways Act (III of 1925) ... 100
Bengal Irrigation Act (III of 1876) ... 100
(Bengal) Land Registration Act (VII of 1876) ... 100
(Bengal) Land Revenue Sales Act (XI of 1859) ... 100
Bengal Land Revenue Settlement Regulation (VII of 1822) ... 101
Bengal Licensed Ware House and Fire Brigade Act (I of 1893) ... 101
Bengal Local Self-Government Act (III of 1885) ... 101
Bengal Motor Car and Cycle Act (III of 1903) ... 102
Bengal Motor Vehicles Rules (1940) ... 102
Bengal Motor Vehicles Tax Act (1 of 1932) ... 102
Bengal Municipal Act (III of 1884) ... 103
Bengal Municipal Act (XV of 1932) ... 107
Bengal Permanent Settlement Regulation (Beng. Reg. I of 1793) ... 109
Bengal Police Act (Bengal Act VII of 1869) ... 110
Bengal Police Regulation ... 110
Bengal Private Fisheries Protection Act (II of 1889) ... 111
Bengal Public Gambling Act (II of 1867) 111
Bengal Public Gambling (Amendment) Act (IV of 1913) ... 113
Bengal Rationing Order (1943) ... 114
Bengal Special Powers Ordinance (VI of 1946) ... 114

Bengal State Prisoners Regulation (III of 1818) ... 115
Bengal State Prisoners Regulation (Adaptation) Order (1947) ... 116
Bengal Sugar Licensing Order (1943)... 116
Bengal Suppression of Immoral Traffic Act (VI of 1933) ... 116
Bengal Suppression of Terrorist Outrages Act (XII of 1932) ... 117
Bengal Suppression of Terrorist Outrages (Supplementary) Act (XXIV of 1932) ... 118
Bengal Survey Act (V of 1875) ... 119
Bengal Tenancy Act (VIII of 1885) ... 119
Bengal Troops Transport Regulation (VI of 1825) ... 119
Bengal Village Chaukidari Act (VI of 1870) ... 119
Bengal Village Self-Government Act (V of 1919) ... 120
Berar Cotton Market Rules ... 120
Berar Municipal Law (1886) ... 120
Betting ... 121
Betting Act (English) (1853) (C 119) ... 121
Bhopal and Vindhya Pradesh (Courts) Act (XLI of 1950) ... 121
Bhopal Cotton Cloth Dealer's Licensing Order (XVIII of 1949) ... 121
Bigamy ... 122
Bihar Agriculturist Levy Order (1950) 122
Bihar and Orissa Co-operative Societies Act (VI of 1935) ... 122
Bihar and Orissa Excise Act (II of 1915) 122
Bihar and Orissa Food Adulteration Act (II of 1919) ... 126
Bihar and Orissa General Clauses Act (I of 1917) ... 126
Bihar and Orissa Highways Act (III of 1926) ... 126
Bihar and Orissa Local Self-Government Act (III of 1885) ... 126
Bihar and Orissa Mica Act (I of 1930)... 126
Bihar and Orissa Mining Settelments Act (IV of 1920) ... 127
Bihar and Orissa Municipal Act (VII of 1922) ... 128
Bihar and Orissa Opium Smoking Act (II of 1928) ... 132
Bihar and Orissa Prevention of Adulteration Act (II of 1919) ... 132
Bihar and Orissa Public Demands Recovery Act (IV of 1914) ... 134
Bihar and Orissa Sugar Cane Rules (1934) ... 134
Bihar and Orissa Village Administration Act (III of 1922) ... 134
Bihar Bakasht Disputes Settlement Act (XIII of 1947) ... 136
Bihar Buildings (Lease, Rent and Eviction) Control Act (III of 1947) ... 136
Bihar Cattle, Fowl, Eggs, Sheep and Goats (Movement) Control Order (1943) ... 136
Bihar Cotton Cloth and Yarn Control Order 1944 ... 137
Bihar Cotton Cloth and Yarn Control Order 1945 ... 137
Bihar Cotton Cloth and Yarn Control Order 1948 ... 137
Bihar Cotton Cloth and Yarn Dealers (Licensing and Control) Order 1948... 138
Bihar Criminal Law (Industrial Areas) Amendment Act (VII of 1943) ... 138
Bihar Cutcherry Rules 1949 ... 138
Bihar Essential Articles Control (Temporary Powers) Ordinance 1946 ... 139
Bihar Essential Food Grains (Possession and Storage) Order 1943 ... 139
Bihar Excise (Amendment) Act (VIII of 1940) ... 139
Bihar Food Grains Control Order 1947 139
Bihar Food Grains Control Order 1948 139
Bihar Food Grains Control Order 1950 140
Bihar Kerosene Oil Control Order 1948 140
Bihar Maintenance of Public Order Act (V of 1947) ... 140
Bihar Maintenance of Public Order Act (III of 1950) ... 145
Bihar Maintenance of Public Order No. 2 Ordinance (IV of 1949) ... 146
Bihar Maintenance of Public Order No. 2 (Amendment) Ordinance (V of 1949) ... 147
Bihar Maintenance of Public Order Ordinance (IV of 1946) ... 147
Bihar Maintenance of Public Order Ordinance 1949 (II of 1949) ... 147
Bihar Motor Vehicles Rules (1940) ... 147
Bihar Municipal Election Rules (1937) 148
Bihar Panchayat Raj Act 1947 (VII of 1948) ... 148
Bihar Prevention of Food Adulteration Act (V of 1948) ... 149
Bihar Preventive Detention Ordinance (II of 1950) ... 150
Bihar Private Forest Act (1947) (IX of 1948) ... 151
Bihar Private Irrigation Works Act (V of 1922) ... 151
Bihar Sugar Factories Control Act (VII of 1937) ... 152
Bihar (War Acquisition of Property) Compensation Rules 1943 ... 152
Bikaner Prevention of Eviction Order 1942 ... 152
Bikaner State Municipal Act (VI of 1923) 152
Bilaspur Sugar (Distribution and Price) Control Order 1949 ... 153
Birth ... 153
Body ... 153
Boiler Act (V of 1923) ... 153
Bomb ... 153
Bombay Abkari Act (V of 1878) ... 153
Bombay Act For Avoiding Wagers (Amendment) Act (III of 1865) ... 161
Bombay Beggars Act (XXIII of 1945)... 161
Bombay Boiler Inspection Act (II of 1891) ... 161
Bombay Borstal Schools Act (XVIII of 1929) ... 161
Bombay Building (Control on Erection) Act (XXXI of 1948) ... 162
Bombay Building (Control on Erection) Ordinance (I of 1948) ... 163
Bombay Children Act (XIII of 1924) ... 163
Bombay Children (Amendment) Act (VII of 1936) ... 164
Bombay City Land Revenue Act (II of 1876) ... 165
(Bombay) City of Bombay Municipal Act (III of 1888) ... 165
(Bombay) City of Bombay Police Act (IV of 1902) ... 174

Bombay City Rationing Regulation 1943 ... 182
Bombay Civil Medical Code ... 182
Bombay Civil Services Conduct, Discipline and Appeal Rules ... 182
Bombay Coasting Vessels Act (XIX of 1838) ... 183
Bombay Co-operative Societies Act (VII of 1925) ... 183
Bombay Court of Wards Act (I of 1905) ... 183
(Bombay) Criminal Manual 1947 ... 183
Bombay Decentralization Act (III of 1915) ... 183
Bombay District Municipal Act (III of 1901) ... 183
Bombay District Police Act (VII of 1867) ... 190
Bombay District Police Act (IV of 1890) 191
Bombay (District) Tobacco Act (II of 1933) ... 197
Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle (Control) (Enhancement of Penalties) Act (XXXVI of 1947) ... 197
Bombay General Clauses Act (III of 1886) ... 197
Bombay General Clauses Act (I of 1904) 197
Bombay Harijan (Removal of Social Disabilities) Act 1946 (X of 1947) ... 198
Bombay Harijan Temple Entry Act (XXXV of 1947) ... 198
Bombay High Court Admiralty Rules... 198
Bombay High Court (Appellate Side Rules 1950) ... 199
Bombay High Court Criminal Circulars 199
Bombay High Court Rules (O. F.) ... 199
Bombay Industrial Disputes Act (XXV 1938) ... 199
Bombay Industrial Relations Act (XI of 1947) ... 199
Bombay Irrigation Act (VII of 1879) ... 200
Bombay Jail Manual ... 200
Bombay Land Revenue Code (V of 1879) ... 200
Bombay Local Boards Act (VI of 1923) 201
Bombay Mamlatdar's Courts Act (II of 1906) ... 202
Bombay Markets and Fairs Act (IV of 1862) ... 203
Bombay Medical Act (VI of 1912) ... 203
Bombay Medical Practitioners Act (XXVI of 1938) ... 203
Bombay Money-lenders Act (XXXI of 1947). ... 203
Bombay Motor Vehicles Act (II of 1904) 204
Bombay Motor Vehicles Rules (1915)... 204
Bombay Motor Vehicles Tax Act (XXXIV of 1935) ... 204
Bombay Municipal Boroughs Act (XVIII of 1925) ... 204
Bombay Municipal Corporation Act (III of 1888) ... 207
Bombay Native Passenger Ships Act (X of 1887) ... 207
Bombay Pleader's Act (XVII of 1920)... 208
Bombay Police Act (XXII of 1951) ... 208
Bombay Police (Duties and Powers of Magistrates Regulation) (XII of 1827) 208
Bombay Prevention of Adulteration Act Act (V of 1925) ... 208
Bombay Prevention of Gambling Act (IV of 1887) ... 210
Bombay Prevention of Hindu Bigamous Marriages Act (XXV of 1946) ... 226
Bombay Prevention of Prostitution Act (XI of 1923) ... 227
Bombay Primary Education Act (IV of 1923) ... 228
Bombay Primary Education (District Municipalities) Act (I of 1918) ... 228
Bombay Prize Competition Tax Act (IX of 1939) ... 228
Bombay Probation of Offenders Act (XIX of 1938) ... 229
Bombay Prohibition Act (XXV of 1949) ... 229
Bombay Provincial Municipal Corporations Act (LIX of 1949) ... 232
Bombay Public Conveyances Act (VII of 1920) ... 233
Bombay Public Security Measures Act (VI of 1947) ... 234
Bombay Rationing Order (1943) ... 241
Bombay Rent Restriction Act (XVI of 1939) ... 242
Bombay Rents, Hotel and Lodging House Rates (Control) Act (LVII of 1947) ... 242
Bombay Rent (War Restrictions) Act (Bom. Act II of 1918) ... 242
Bombay Retail Trade Control and Licensing Order (1942) ... 248
Bombay Salt Act (II of 1890) ... 243
Bombay Shops and Establishments Act (XXIV of 1939) ... 243
Bombay Shops and Establishments Act (LXXIX of 1948) ... 244
Bombay Smoke Nuisances Act (VII of 1912) ... 244
Bombay Special (Emergency) Powers Act (XVI of 1932) ... 244
Bombay Special Tribunal (Continuance) Act (XXI of 1946) ... 244
Bombay Tolls On Roads and Bridges Act (III of 1875) ... 244
Bombay Town Planning Act (I of 1915) 244
Bombay (Town) Tobacco Duty Act (IV of 1857) ... 245
Bombay Tramways Act (I of 1874) ... 245
Bombay Village Police Act (VIII of 1867) ... 245
Bombay Weights and Measures Act (XV of 1932) ... 245
Bona fides ... 246
Bond ... 246
Bonus ... 246
Books ... 246
Books of Account ... 246
Borstal Institution ... 247
Borstal Schools ... 247
Bound by Law ... 247
Boycott ... 247
Breach of Contract ... 247
Breach of the Peace ... 247
Breach of Trust ... 247
Bribe ... 247
Bribery ... 247
British Merchant Shipping Act ... 247
Building ... 247
Burden of Proof ... 247

Burial Ground ... 247
Burma Anti-Boycott Act (V of 1922) 247
Burma Boundaries Act (V of 1880) ... 248
Burma Constitution Act ... 248
(Burma) Court (Emergency Provisions) Act (1943) ... 248
Burma Courts Act (XI of 1922) ... 248
Burma Courts Manual ... 249
Burma Criminal Law Amendment (Conditionally Released of Prisoners) Act (III of 1928) ... 249
Burma Excise Act (Bur. Act V of 1917) 249
Burma Expulsion of Offenders Act (I of 1926) ... 251
Burma Ferries Act (II of 1898) ... 251
Burma Fisheries Act (III of 1905) ... 252
Burma Forest Act (IV of 1902) ... 253
Burma (Frontier Districts) Regulation (I of 1925) ... 254
Burma Gambling Act (I of 1899) ... 254
Burma General Clauses Act (I of 1898) 258
Burma Ghee Adulteration Act (VI of 1927). ... 258
Burma Habitual Offenders' Restriction Act (Bur. Act II of 1919) ... 259
Burma Land and Revenue Act (II of 1876) ... 261
Burma Legislative Council Rules ... 261
Burma (Lower) Courts Act (Imperial Act) (VI of 1900) ... 262
Burma (Lower) Village Act (Imperial Act) (III of 1889) ... 262
Burma Military Police Act (Imperial Act) (XV of 1887) ... 262
Burma Motor Vehicles Rules ... 262
Burma Municipal Act (III of 1898) ... 262
Burma Opium Law (Amendment) Act (Burma Act VII of 1909) ... 265
Burma Opium Rules (1910) ... 266
(Burma) Penal Code (Amendment) Act (XXXIII of 1947) ... 266
Burma Prevention of Crime (Young Offenders) Act (III of 1930) ... 266
Burma Process Fees Act (I of 1910) ... 268
(Burma) Public Order (Preservation) Act (XVI of 1947) ... 268
(Burma) Public Property Protection Act (1947) ... 269
Burma Rural Self-Government Act (IV of 1921) ... 270
Burma Salt Act (II of 1917) ... 270
Burma Special Crimes (Tribunal) Act (LIII of 1947) ... 270
Burma Special Judges Act (X of 1943) 270
Burma Suppression of Brothels Act (II of 1921) ... 270
Burma Towns Act (III of 1907) ... 271
Burma Union Judiciary Act ... 271
Burma (Upper) Criminal Justice Regulation (V of 1892) ... 271
Burma (Upper) Ruby Regulation (XII of 1887) ... 271
Burma Vaccination Law (Amendment) Act (I of 1909) ... 271
Burma Village Act (Burma Act III of 1889) ... 271
Burma Village Act (VI of 1907) ... 272
Burmese Buddhist Law ... 273
ye law ... 273

Calcutta Cotton Cloth and Yarn Emergency Search Order (1945) ... 273
(Calcutta) High Court Appellate Side Rules ... 273
Calcutta High Court General Rules and Orders (Civil) ... 274
Calcutta High Court Rules and Circular Orders ... 274
Calcutta High Court Rules (Criminal)... 274
Calcutta High Court Rules (Original Side) ... 274
Calcutta House Rent Control Order (1943) ... 275
Calcutta Improvement Act (V of 1911) 275
Calcutta Industrial Area Rationing Regulations (1943) ... 275
Calcutta Municipal Act (III of 1899) ... 275
Calcutta Municipal Act (III of 1923) ... 283
Calcutta Municipal Act (XXXIII of 1951) 299
Calcutta Municipal (Amendment) Act (Bengal Act 1 of 1917) ... 299
Calcutta Pilots Act (XII of 1859) ... 299
Calcutta Police Act (IV of 1866) ... 300
Calcutta Port Act (III of 1890) ... 306
Calcutta Rent Act (III of 1923) ... 306
Calcutta Rent Ordinance (V of 1946) ... 306
Calcutta Suburban Police Act (II of 1866) ... 306
Calcutta Suppression of Immoral Traffic Act (XIII of 1923) ... 307
Calcutta Survey Act (I of 1887) ... 308
(Canada) Limitation of Hours of Work Act (1935) ... 308
(Canada) Weekly Rest in Industrial Undertakings Act (1935) ... 308
Canadian Statute (23 and 24 Geo. V. C. 53, Amending Criminal Code) ... 308
Cancellation ... 308
Cantonment ... 308
Cantonments Act (XIII of 1889) ... 308
Cantonments Act (XV of 1910) ... 308
Cantonments Act (II of 1924) ... 308
Cantonment Code (1899) ... 312
Cantonment Code (1912) ... 314
Capital Offences ... 314
Capital Sentence ... 314
Cargo Boat Rules of the Rangoon Port... 315
Carriers Act (III of 1865) ... 315
Cartridge Cases ... 315
Case Diary ... 315
Cattle ... 315
Cattle Trespass ... 315
Cattle Trespass Act (I of 1871) ... 315
Caveat Emptor ... 322
Census Act (XXIV of 1939) ... 322
C. P. and Berar Accommodation (Requisition) Act (LXIII of 1948) ... 322
C. P. and Berar Agricultural Produce Market Act (XXIX of 1935) ... 323
C. P and Berar Board of Revenue Act (XII of 1949) ... 324
C. P. and Berar Borstal Act (IX of 1928) ... 324
C. P. and Berar Cement Control Order (1947) ... 324
C. P. and Berar Children Act (10 of 1928) ... 324
C. P. and Berar Collection of Information and Letting of Houses Order (1946) ... 324
C. P. and Berar Cotton Cloth Trade Regulation Order (1948) ... 324

C. P. and Berar Criminal Procedure Code (Amendment) Ordinance (II of 1948) ... 324
C. P. and Berar Entertainments Duty Act (XXX of 1936) ... 325
C. P. and Berar Excise Act (II of 1915) ... 325
C. P. and Berar Food Grains Control Order (1945) ... 325
C. P. and Berar Food Grains Export Restrictions Order (1943) ... 326
C. P. and Berar Foreign Liquor Rules (1938) ... 326
C. P. and Berar Fundamentel Rules ... 327
C. P. and Berar House Rent Control Order (1947) ... 327
C. P. and Berar Local Self-Government Act (IV of 1920) ... 327
C. P. and Berar Maintenance and Restoration of Order and Collections of Fines (Indemnity) Act (II of 1945) ... 328
C. P. and Berar Municipalities Act (II of 1922) ... 329
C. P. and Berar Panchayats Act (I of 1947) ... 333
C. P. and Berar Prevention of Adulteration Act (II of 1919) ... 333
C. P and Berar Prohibition Act (VII of 1938) ... 333
C. P. and Berar Protection of Debtors Act (IV of 1937) ... 334
C. P. and Berar Public Safety Act (XXXVIII of 1947) ... 335
C. P. and Berar Public Safety Act (LXII of 1948) ... 336
C. P. and Berar Rationing Regulations (1943) ... 336
C. P. and Berar Regulation of Letting of Accommodation Act (XI of 1946) ... 336
C. P. and Berar Sales Tax Act (XXI of 1947) ... 337
C. P. and Berar Sugar Control Order 1949 ... 337
C. P. and Berar Temple Entry Authorization Act (XLI of 1947) ... 337
C. P. and Berar Tobacco Act (VIII of 1939) ... 337
C. P. and Berar Town Planning Act (LXVII of 1948) ... 338
C. P. and Berar Yarn Dealer's Licensing Order (1949) ... 338
C. P. Courts Act (II of 1904) ... 338
C. P. Courts Act (1 of 1917) ... 338
C. P. Criminal Circulars ... 339
C. P. Jail Manual ... 339
C. P. Land Revenue Act (XVIII of 1881) ... 339
C. P. Land Revenue Act (II of 1917) ... 339
C. P. Police Manual ... 340
C. P. Municipal Act (XVIII of 1889) ... 340
Certificate ... 341
Certified Copies ... 341
Certiorari ... 341
Cess Act (Bengal) (IX of 1880) ... 341
Ceylon Criminal Procedure Code (Ordinance No. XV of 1898) ... 341
Ceylon Penal Code ... 342
Chamba Paid Forced Labour Act (3 of 2004B) ... 342
Chandernagore (Application of Laws) Order (1950) ... 342
Character ... 342
Charge ... 342
Charitable and Religious Trusts Act (XIV of 1920) ... 343
Charter Act (1861) (24 & 25 Vict C. 104) ... 347
Chartered Accountants Act (XXXVIII of 1949) ... 347
Charts ... 347
Cheating ... 347
Chemical Examiner's Report ... 347
Child ... 347
Child Marriage Restraint Act (XIX of 1929) ... 348
Child Witness ... 353
Chin Hills Regulation (V of 1896) ... 353
Chota Nagpur Tenancy Act (VI of 1908) ... 354
Chowkidar ... 355
Christian Marrige Act (XV of 1872) ... 355
Cinematograph Act (XXXVII of 1952) ... 356
Circumstancial Evidence ... 356
City of Bangalore Improvement Act (V of 1945) ... 356
City of Bombay Municipal Act (IV of 1902) ... 356
Civil Court ... 356
Civic Guards Ordinance (VIII of 1940) ... 356
Civil Procedure Code (XIV of 1882) ... 357
Civil Procedure Code (V of 1908) ... 357
Civil Services (Classification) Control and Appeal Rules ... 368
Claim ... 368
Clerk ... 369
Co-accused ... 369
Cochin Criminal Law Amendment Act (XXVII of 1124 M. E.) ... 369
Cochin Criminal Procedure Code (II of 1086 M. E.) ... 369
Cochin Penal Code (I of 1059 M. E) ... 369
Cochin Prevention of Food Adulteration Act (XIV of 1109 M. E.) ... 369
Code of Criminal Procedure (Bombay Amendment) Act (XXX of 1946) ... 370
Cognizable ... 370
Cognizable Offence ... 370
Cognizance ... 370
Co-habitation ... 370
Coin ... 370
Collection ... 370
Collusion ... 370
Colourable ... 370
Combines Investigation Act (Canada 1927) ... 370
Commencement ... 370
Commission ... 370
Commissioner of Police ... 370
Commitment ... 371
Common Intention or object ... 371
Communal considerations ... 371
Communication ... 371
Commutation ... 371
Companies Act (VI of 1882) ... 371
Companies Act (VII of 1913) ... 371
Compensation ... 384
Competent Persons to depose as Witnesses ... 384
Complainant ... 384
Complaint ... 384
Composition of Coin ... 384
Compounding offences ... 384
Compulsion ... 384

Concealment ... 385
"Conclusive Proof" defined ... 385
Concubine ... 385
Conduct ... 385
Confession ... 385
Confidence ... 385
Confidential Communications ... 385
Confinement ... 385
Confirmation of Sentence ... 385
Confiscation ... 385
Conflict of Laws ... 385
Conjugal Rights ... 385
Connivance ... 385
Consent ... 385
Conspiracy ... 385
Constitutional Law ... 385
Constitution of Criminal Courts ... 386
Constitution of India (1950) ... 386
Construction of Statutes ... 485
Contemporaneous Agreement ... 485
Contempt ... 485
Contempt of Courts ... 485
Contempt of Courts Act (XII of 1926) ... 516
Contempt of Courts Act (XXII of 1952) ... 533
Contempt of Lawful Authority ... 533
Contents of Documents ... 533
Continuance of Right of Private Defence ... 533
Continuing Nuisance after Injunction ... 533
Continuing Offence ... 533
Contract ... 533
Contract Act (IX of 1872) ... 533
Contradictory Answers ... 536
Contradictory Statements ... 536
Controls ... 536
Conversation ... 536
Conversion ... 536
Convict ... 536
Conviction ... 536
Copy ... 536
Copyright Act (XX of 1847) ... 536
Copyright Act (III of 1914) ... 536
Coroner ... 537
Coroners' Act (IV of 1871) ... 537
Corporation ... 537
Corroboration ... 537
Corruption ... 537
Costs ... 537
Cotton Cloth and Yarn (Contracts) Ordinance (II of 1944) ... 538
Cotton Cloth and Yarn (Control) Order 1943 ... 538
Cotton Cloth and Yarn (Control) Order 1945 ... 544
Cotton Duties Act (II of 1896) ... 545
Cotton Textile (Control of Movement) Order 1946 ... 545
Cotton Textile (Control of Movement) Order 1948 ... 546
Counsel ... 546
Counter Cases ... 546
Counterfeit Coin ... 547
Counterfeiting ... 547
Counterfeiting Stamp ... 547
Counterfeiting Trade-Mark ... 547
Court ... 547
Court-fees Act (VII of 1870) ... 547
Court Hours ... 548
Court Martial ... 548
Court of Appeal ... 548
Court of Jurisdiction ... 548
Courts (Emergency Provisions) Repealing Act 1947 (Burma Act II of 1947) ... 548
Court-Witness ... 549
Covenant by Ruler ... 549
Covenants of Madhya Bharat Rules ... 549
Cows ... 549
Criminal Appeal Ordinance of Trinidad and Tobago 1931 ... 549
Criminal Appeals ... 549
Criminal breach of Contract ... 549
Criminal breach of Trust ... 549
Criminal Circulars (Burma) ... 549
Criminal Code of Canada ... 549
Criminal Conspiracy ... 549
Criminal Courts ... 550
Criminal Force ... 550
Criminal Intimidation ... 550
Criminal Jurisprudence ... 550
Criminal Law (Amendment) Act (XIV of 1908) ... 550
Criminal Law (Amendment) Act (XXIII of 1932) ... 556
Criminal Law (Amendment) Act (1935) ... 558
Criminal Law (Amendment) Act (XLVI of 1952) ... 558
Criminal Law (Amendment) Ordinance (XXIX of 1943) ... 558
Criminal Law (Amendment) Ordinance (XXXVIII of 1944) ... 560
Criminal Misappropriation ... 562
Criminal Negligence ... 562
Criminal Procedure ... 562
Criminal Procedure (Adaptation) Ordinance (XXXII of 1948) ... 562
Criminal Procedure Amendment Act (XXVI of 1943) ... 562
Criminal Procedure Code (V of 1898) ... 562

THE
50 YEARS'
CRIMINAL DIGEST
1904 to 1953

VOLUME I

ABANDONMENT
—Of children—*See* PENAL CODE S. 317.

ABATEMENT
—Abatement of nuisance—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), CH. X.
— Abatement of prosecution — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 198.
— Abatement of prosecution — Death of complainant—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 247.

ABDUCTED FEMALES, RESTORATION OF
See CRIMINAL PROCEDURE CODE (5 OF 1898), S. 552.

ABDUCTED PERSONS (RECOVERY AND RESTORATION) ACT (LXV OF 1949)
——*Validity.*
See Constitution of India, Art. 19
A I R 1952 Punj 309=
1952 Cr L J 1313 (FB)

——Validity — *See* Constitution of India, Art. 21
A I R 1952 Punj 309 =
1952 Cr L J 1313 (FB).

—Preamble.
——*Object is not deportation of citizen but restoration of abducted persons to their relatives.*

There is no question of deportation of an Indian citizen under the Abducted Persons (Recovery and Restoration) Act. The object of the Act is to restore abducted persons to their relatives. By his or her restoration to his or her family in Pakistan, an Indian citizen does not cease to be an Indian citizen, unless he or she of his or her free will wishes to give up that status. He or she is conveyed out of India, not on account of prohibition to reside in India but only for the purpose of restoring him or her to his or her relations. 'Conveyance out of India' in the Act is, therefore, not at all tantamount to 'deportation.' *(Raghubar Dayal and Agarwala JJ.)* SMT. VIMLA DEVI v. CHATURVEDI
AIR 1953 All 613=
1953 A L J 273=1953 A W R H C 287=
ILR (1953) 2 All 735=1953 Cr L J 1384.

ABDUCTED PERSONS ETC. ACT (LXV of 1949), Preamble

——Act is not inconsistent with Art. 19 (1) (d), (e) and (g) — Constitution of India. *(Raghubar Dayal and Agarwala JJ.)* SMT. BIMLA DEVI v. CHATURVEDI
A I R 1953 All 613=
1953 A L J 273=1953 A W R (HC) 287=
ILR (1953) 2 All 735=1953 Cr L J 1384.

——*Preamble, Ss. 6 and 7 — Act is not discriminatory—(Constitution of India, Art. 14).*

There can be no doubt that Muslim abducted persons constitute a well-defined class for the purpose of legislation. The fact that the Act is extended only to the several States mentioned in S. 1 (2) does not make any difference, for a classification may well be made on a geographical basis. Therefore, the inclusion of all of them in the definition of abducted persons cannot be called discriminatory. There is also nothing discriminatory in Ss. 6 and 7. *(Patanjali Sastri C. J.; B. K. Mukherjea, S. R. Das, Vivian Bose and Ghulam Hasan JJ.)* STATE OF PUNJAB v. AJAIB SINGH
A I R 1953 S C 10=1952 S C A 791=
1952 S C J 664=1953 S C R 254=
1953 M W N 355=ILR (1953) Punj 121=
1953 Cr L J 180 (SC).

——Act is not inconsistent with Art. 19 (1) (d) and (e) and Art. 21. *(Patanjali Sastri C. J., B. K. Mukherjea, S. R. Das, Vivian Bose and Ghulam Hasan JJ.)* STATE OF PUNJAB v. AJAIB SINGH
A I R 1953 S C 10=1952 S C A 791=
1952 S C J 664=1953 S C R 254=
1953 M W N 355=ILR (1953) Punj 121=
1953 Cr L J 180 (SC).

—S. 1
——*Applicability—Does not apply to Jammu and Kashmir State—Detention by officer in charge of*

ABDUCTED PERSONS ETC. ACT (LXV of 1949), S. 1

Camp in State not legal—(Criminal P. C. (1898), S. 491).

The Abducted Persons (Recovery and Restoration) Act, 1949, has no application so far as the State of Jammu and Kashmir is concerned though camps for the reception and restoration of abducted persons have been established in that State also. The result is that there is no law which can authorise the officer in charge of a Receiving Camp in the State to keep an abducted person in detention and hence any such detention is illegal. *(Kilam J.)* BARKATI v. STATE A I R 1953 J & K 12= 9 J & K L R 14=1953 Cr L J 1278.

—S. 2.

——*S. 2 (1) (a)*—Validity—Does not contravene Art. 14—*See* Constitution of India, Art. 14 A I R 1952 Punj 309 = 1952 Cr L J 1313 (FB).

——*S. 2 (1) (a)* — Validity — *See* Constitution of India, Art. 15 A I R 1952 Punj 309 = 1952 Cr L J 1313 (FB).

—S. 4.

——*Restraint on abducted person is not "arrest" within the meaning of Art 22—A. I. R. 1952 Punj 309 : 1952 Cr L J 1313 (FB), REVERSED —Constitution of India, Art. 22 (1) and (2)*

Broadly speking, arrests may be classified into two categories, namely, arrests under warrants issued by a Court and arrests otherwise than under such warrants. There can be no manner of doubt that arrests without warrants issued by a Court call for greater protection than do arrests under such warrants. The provision in Art. 22 that the arrested person should within 24 hours be produced before the nearest Magistrate is particularly desirable in the case of arrest otherwise than under a warrant issued by the Court, for it ensures the immediate application of a judicial mind to the legal authority of the person making the arrest and the regularity of the procedure adopted by him. In the case of arrest under a warrant issued by a Court, the judicial mind had already been applied to the case when the warrant was issued and, therefore, there is less reason for making such production in that case a matter of a substantive fundamental right. The requirement of Art. 22 (1) that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest indicates that the clause really contemplated an arrest without a warrant of Court, for, a person arrested under a Court's warrant is made acquainted with the grounds of his arrest before the arrest is actually effected. There can be no doubt that the right to consult a legal practitioner of his choice is to enable the arrested person to be advised about the legality or sufficiency of the grounds for his arrest. The right of the arrested person to be defended by a legal practitioner of his choice postulates that there is an accusation against him against which he has to be defended. The language of Art. 22 (1) and (2) indicates that the fundamental right conferred by it gives protection against such arrests as are effected otherwise than under a warrant issued by a Court on the allegation or accusation that the arrested person has, or is suspected to have, committed, or is about or likely to commit an act of a criminal or quasi-criminal

ABDUCTED PERSONS ETC. ACT (LXV of 1949), S. 4

nature or some activity prejudicial to the public or the State interest. In other words, there is indication in the language of Art. 22 (1) and (2) that it was designed to give protection against the act of the executive or other non-judicial authority. Whatever else may come within the purview of Art. 22 (1) and (2), the physical restraint put upon an abducted person under S. 4 of Act 65 of 1949 in the process of recovering and taking that person into custody without any allegation or accusation of any actual or suspected or apprehended commission by that person of any offence of a criminal or quasi-criminal nature or of any act prejudicial to the State or the public interest, and delivery of that person to the custody of the officer in charge of the nearest camp under S. 4 of the Act cannot be regarded as arrest and detention within the meaning of Art. 22 (1) and (2).

Consequently, S. 4 does not violate Art. 22 and is not, therefore, *ultra vires* : A. I. R. 1952 Punj 309 : 1952 Cr. L. J. 1313 (FB), REVERSED. *(Patanjali Sastri C. J; B. K. Mukherjea, S. R. Das, Vivian Bose and Ghulam Hasan JJ.)* STATE OF PUNJAB v. AJAIB SINGH A I R 1953 S C 10=1952 S C A 791= 1952 S C J 664=1953 S C R 254= 1953 M W N 355=ILR (1953) Punj 121= 1953 Cr L J 180 (SC).

——Detention under—Legality—*See* Constitution of India, Art. 19 A I R 1952 Punj 309 = 1952 Cr L J 1313 (FB).

——Validity — *See* Constitution of India, Art. 22 A I R 1952 Punj 309= 1952 Cr L J 1313 (FB).

—S. 6.

——Tribunal constituted under S. 6 to decide the question of restoration of the abducted woman, held was not properly constituted and its decision was, therefore, without jurisdiction—(Constitution of India, Art. 227). *(Patanjali Sastri C. J., B. K. Mukherjea, S. R. Das, Vivian Bose and Ghulam Hasan JJ.)* STATE OF PUNJAB v. AJAIB SINGH A I R 1953 S C 10=1952 S C A 791= 1952 S C J 664=1953 S C R 254= 1953 MWN 355=ILR (1953) Punj 121= 1953 Cr L J 180 (SC).

——There is nothing discriminatory in S. 6—*See* ibid, Preamble A I R 1953 S C 10= 1953 Cr L J 180 (SC).

——Tribunal under, is subject to general supervision by the High Court—*See* Constitution of India, Art. 227 A I R 1952 Punj 309 = 1952 Cr L J 1313 (FB).

——*Constitution of Tribunal—Validity.*

('Per *Bhandari and Khosla JJ.*') : Section 6 (1) provides that the Tribunal must be constituted by the Central Government. The Tribunal consist of two Superintendents of Police, one from India and one from Pakistan. There has been a notification appointing the Indian member. There is, however, no notification appointing the Pakistan member. It is clear that the tribunal has not been constituted by the Central Government as only one of its members has been appointed by that authority. The Tribunal is not a properly constituted Tribunal under the Act; so orders passed by it are without jurisdiction. *(Bhandari, Khosla*

ABDUCTED PERSONS ETC. ACT (LXV of 1949), S. 6.

and Harnam Singh JJ.) AJAIB SINGH LEHNA SINGH v. THE STATE OF PUNJAB
A I R 1952 Punj 309=54 P L R 260=
I L R (1950) Punj 381=
1952 Cr L J 1313 (FB)

— S. 7.

——There is nothing discriminatory in S. 7—*See* ibid, Preamble
A I R 1953 S C 10=
1953 Cr L J 180 (SC).

——Validity — *See* Constitution of India, Art. 19 (1) (d)
A I R 1952 Punj 309=
1952 Cr L J 1313 (FB).

——Validity — *See* Constitution of India Art. 22
A I R 1952 Punj 309=
1952 Cr L J 1313 (FB).

—S. 8.

——Power of High Court to issue writs to Tribunals under Art. 226 or 227 — *See* Constitution of India, Art. 226
A I R 1953 All 613=
1953 Cr L J 1384.

ABDUCTION

See PENAL CODE, SS. 359 TO 369.

—Place of trial — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 181 (4).

ABETMENT

See PENAL CODE, SS. 107, 109, 114.

— Abetment by omission — *See* PENAL CODE (1860), S. 109.

—Abetment of abetment of offence—*See* PENAL CODE, S. 108.

— Defined — *See* PENAL CODE (45 OF 1860), SS. 107, 108.

—Of bribery — *See* PENAL CODE (45 OF 1860), S. 164.

—Of counterfeiting coin—*See* PENAL CODE (45 OF 1860), S. 236.

—Of forgery—*See* PENAL CODE, S. 114.

—Of offence committed by public or persons more than ten — *See* PENAL CODE (45 OF 1860), SS. 117, 116.

—Of suicide — *See* PENAL CODE (45 OF 1860), SS. 305 AND 306.

—Of waging war against Queen — *See* PENAL CODE (45 OF 1860), S. 121.

—Punishment for, if offence committed — *See* PENAL CODE (45 OF 1860), S. 109.

—Punishment for, where abetment is of offence punishable with death or transportation for life but the act is not committed — *See* PENAL CODE (45 OF 1860), S. 115.

—Punishment for, where abettor's intention different — *See* PENAL CODE (45 OF 1860), S. 110.

—Punishment for, where different act committed—*See* PENAL CODE (45 OF 1860), SS. 111, 113.

ABETTOR

See (1) EVIDENCE ACT, S. 133.
(2) PENAL CODE, SS. 34, 107, 109, 114.

—Presence, effect of—*See* PENAL CODE (45 OF 1860), S. 114.

ABKARI

See BOMBAY ABKARI ACT, MADRAS ABKARI ACT AND LOCAL EXCISE ACTS.

ABOLITION OF PRIVY COUNCIL JURISTION ACT (C A Act V of 1949)

— S. 8.

——F. C. judgments reversed by P. C.—If binding after Constitution — *See* Constitution of India, Art. 374 (2)
A I R 1951 Mys 72=
52 Cr L J 992 (FB).

——*Construction.*

A construction which seeks to limit the application of the section to conclusions as distinguished from the reasons assigned in support thereof, to Orders in Council and not judgments of P. C. which are expressed in an advisory or recommendatory form, seems to be narrow and opposed to the spirit if not the letter of the section. *(Venkat Ramaiya, Balkrishnaiya and Mallappa JJ.)* ABDUL KHADER v. STATE OF MYSORE
A I R 1951 Mys 72=ILR (1951) Mys 284=
52 Cr L J 992 (FB).

ABORTION, OFFENCE OF

See PENAL CODE, S. 312.

ABSCONDER

—Attachment of property of — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 88.

—Claim or objection to attachment of property of—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 88 (6-A).

—Proclamation of—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 87.

ABSCONDING OFFENDER

See CRIMINAL PROCEDURE CODE, SS. 87, 89, 112 AND 512.

ABSCONDING TO EVADE SERVICE OF SUMMONS

See PENAL CODE (45 OF 1860), S. 172.

ABSENCE OF COMPLAINANT

See CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 247 AND 259.

ABSOLUTE ORDER

—For removal of public nuisance—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 140.

ABSOLUTE PRIVILEGE

See (1) EVIDENCE ACT, SS. 123 AND 129.
(2) PENAL CODE, SS. 499, 500.

ABUSE

—And abusive language — *See* PENAL CODE, SS. 294, 499—500 AND 504.

ACCEPTANCE

—Of illegal gratification — *See* PENAL CODE, S. 161.

ACCEPTING INSTRUMENT NOT DULY STAMPED

See STAMP ACT (2 OF 1899), S. 62.

ACCESS

See EVIDENCE ACT, S. 112.

ACCESS TO COURT
See CRIMINAL PROCEDURE CODE (5 OF 1898), S. 352.

ACCESSORY
See EVIDENCE ACT, S. 133.

ACCIDENT
See under (1) PENAL CODE (1860), SS. 80, 304A AND 307.
(2) WORKMEN'S COMPENSATION ACT.

—Accidental act, relevancy of — *See* EVIDENCE ACT (1 OF 1872), S. 15.

ACCOMPLICE
See (1) CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 337, 540.
(2) EVIDENCE ACT, SS. 114, ILLUS. (b), 118 AND S. 133.

—Competency of, to be a witness — *See* EVIDENCE ACT (1872), SS. 118 AND 133.

—Evidence of—Value of — *See* EVIDENCE ACT, SS. 114 (b) AND 133.

—Pardon, tender of—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 337.

ACCOUNT BOOKS
—Entries in, relevancy of — *See* EVIDENCE ACT (1 OF 1872), S. 34.

ACCOUNTS
—Falsification of—*See* PENAL CODE, SS. 465 AND 477A.

ACCUSED
—Believing himself bound by law — *See* PENAL CODE (45 OF 1860), S. 76.

—Believing himself justified by law—*See* PENAL CODE (45 OF 1860), S. 79.

—Custody of, after commitment and before trial—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 220.

—Defence by—*See* CRIMINAL PROCEDURE CODE, S. 256.

—Discharge of, by committing Magistrate—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 209.

—Discharge of, in warrant cases—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 253.

—Dispensing with personal attendance of—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 205.

—Entitled to copy of judgment—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 371.

—Evidence in absence of—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 512.

—Examination of — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 342, 343.

—Issue of process for attendance—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 204.

—Joint trial of—*See* under CRIMINAL PROCEDURE CODE (1898), S. 239.

—Recording examination of — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 364.

—Remand of, to custody — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 344.

—Right to be defended by pleader — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 340.

—Right of, to claim transfer — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 191, 526.

ACCUSED
—Right of, to copies of police Diaries — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 162 AND 172.

—Trial in absence of—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 540A.

—Who is — *See* CRIMINAL PROCEDURE CODE, S. 437.

ACQUIESCENCE
See EVIDENCE ACT, S. 115.

ACQUITTAL
See CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 259, 403, 417 AND 439.

—In summons cases—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 245.

—In warrant cases — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 258.

—On the ground of lunacy—*See* CRIMINAL PROCEDUEE CODE (5 OF 1898), S. 470.

—Revision against — *See* under CRIMINAL PROCEDURE CODE (1898), S. 439.

ACT
—Doing slight harm — *See* PENAL CODE (45 OF 1860), S. 95.

—Done by child—*See* PENAL CODE (45 OF 1860), SS. 82, 83.

—Done by consent of complainant—*See* PENAL CODE (45 OF 1860), SS. 87, 90, 91.

—Done for benefit of person injured—*See* PENAL CODE (45 OF 1860), S. 88, 89, 91, 92, 93.

—Done in official capacity—*See* CRIMINAL PROCEDURE CODE, S. 197.

—Due to intoxication — *See* PENAL CODE (45 OF 1860), S. 85, 86.

—Endangering safety—*See* PENAL CODE (45 OF 1860), S. 336.

—Insulting to women — *See* PENAL CODE (45 OF 1860), S. 509.

—Of person of unsound mind—*See* PENAL CODE (45 OF 1860), S. 84.

—Pursuant to judgment or order of Court—*See* PENAL CODE (45 OF 1860), S. 78.

ACTIVE SERVICES ORDINANCE (X of 1941)

——*Effect of Ordinance on Army Act stated.*

The effect of the Active Services Ordinance, which extends to the whole of British India, is clearly that all persons covered by the terms of sub-ss. (9) and (10) of S. 176 of the Army Act become subject to military law, if employed within British India, for, by virtue of the Ordinance, they are to be deemed to be on active service, notwithstanding the actual provision of S. 189 of the Army Act on this point. *(Roxburgh and Ellis JJ.)* EVELYN BETTY VIVIAN PERRY v. EMPEROR **I L R (1946) 1 Cal 95.**

——*Ordinance is not* ultra vires.

The Ordinance (X [10] of 1941) is not *ultra vires* the Government of India Act. By virtue of the India and Burma (Emergency) Act, 1940, the Governor-General has power by an Ordinance to affect the Army Act, (Eng.) (1881) (44 and 45 Vict.

ACTIVE SERVICES ORDINANCE (X of 1941)

c. 58). *(Roxburgh and Ellis JJ.)* EVELYN BETTY VIVIAN PERRY v. EMPEROR
I L R (1946) 1 Cal 95.

—S. 1.

——Ss. 1 (2) and 2—Army Act—Effect of Ordinance—Store-keepers attached with Army—Trial by Court-martial.

By virtue of S. 1 (2) read with S. 2 of the Ordinance X of 1941, promulgated by the Governor-General under powers given to him by an Act of Parliament (3 and 4 George VI, Chap. 63), military store-keepers engaged by the Army authorities during the continuation of the hostilities must be regarded as on active service for the purposes of the British and Indian Army Act and can be tried by the Court-martial. *(Harries C. J., Abdur Rahman and Mahajan JJ.)* KARTAR SINGH v. EMPEROR
A I R 1946 Lah 103=
I L R (1945) Lah 419=47 P L R 423=
227 I C 216=47 Cr L J 1022 (FB).

ACT OF STATE

——Internment.

The internment of a Maharaja of a native State by an order of the Government is nothing but an act of State and hence it cannot be questioned by the municipal Courts of the country. *(Abdur Rahman and Somayya JJ.)* GURU CHARAN v. PROVINCE OF MADRAS
A I R 1942 Mad 539=
(1942) 2 M L J 14=1942 M W N 602=
I L R (1942) Mad 696=15 R M 614=
203 I C 45=44 Cr L J 45.

ACTS

—And consequences, place of trial—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 179.

—Constituting more than one offence, punishment for — *See* PENAL CODE (45 OF 1860), S. 71.

—Construction of — *See* INTERPRETATION OF STATUTES.

—Done in private defence—*See* PENAL CODE (45 OF 1860), Ss. 96–106, 300 AND 304.

—Done under threat—*See* PENAL CODE (45 OF 1860), S. 94.

ADAPTATION OF LAWS ORDER (1950)

——Exclusion by, of Extradition Act to Part B States. *See* Extradition Act (1903), S. 7
A I R 1953 Raj 12=1953 Cr L J 268.

—Para. 28.

——Rule 28 does not adapt S. 123A, Criminal P. C., to make it in accord with the Constitution and is therefore of no help in determining the validity of S. 123A. *(Raghubar Dayal and P. L. Bhargava JJ.)* HARPAL SINGH v. STATE
A I R 1950 All 562=I L R (1952) 1 All 8=
52 Cr L J 1282.

——Scope of.

The purpose of paragraph 28 appears to be that the Courts shall not refuse to apply a law after the coming into force of the Constitution by reason only that by the Schedules to the Order expressions appearing in the statute have not been amended so as to be in conformity with the Constitution. The paragraph cannot empower the Courts to give a construction which on the plain language of a particular statute is not justified.

ADAPTATION OF LAWS ORDER (1950), Para 28

The paragraph does not give to the Courts authority to remodel the law so as to make good what otherwise would become void under the Constitution. *(Weston C. J. & Khosla J.)* TARA SINGH v. STATE
A I R 1951 Punj 27=
53 P L R 22=52 Cr L J 449.

——Scope—Neither adaptation of President's order under Art. 373 of the Constitution, nor making of new laws, in place of old, nor enforcement of unconstitutional laws, is contemplated. *(Ray C. J., Jagannadhadas, Panigrahi and Narasimham JJ.)* PRAHALAD JENA v. STATE
A I R 1950 Orissa 157=I L R 1950 Cut 222=
51 Cr L J 1189 (FB).

——Validity — Constitution of India, Art. 372— Bengal Criminal Law Amendment Act (VI [6] of 1930) — West Bengal Security Ordinance (1949).

Apart from the fact that the Order conflicts with all principles of judicial independence it is something which is contrary to the express provisions of Art. 372 (2) of the Constitution.

The Bengal Criminal Law Amendment Act, 1930, and the West Bengal Security Ordinance, 1949, are inconsistent with the provisions of Part III. They became, therefore, void from 12 midnight of 25th January 1950, when the Constitution came into force. That being so, even the President or the Legislature cannot make any adaptations or modifications of those laws in order to bring them in accord with the provisions of this Constitution. The Courts, therefore, cannot give effect to the Adaptation of Laws Order, 1950. *(Sen, Chunder and Lahiri JJ.)* SUNIL KUMAR BOSE v. THE CHIEF SECRETARY TO THE GOVERNMENT OF THE WEST BENGAL
A I R 1950 Cal 274=
54 C W N 394=51 Cr L J 1110 (SB).

——Rule is not intra vires of the powers of the President—President cannot delegate his delegated power of legislation to the Courts: *delegates delegare non-potest.* (Per *S. Ali Khan J.) (Naik C. J., Sripat Rao and Siadat Ali Khan JJ.)* SHOWKAT-UN-NISSA BEGUM v. STATE OF HYDERABAD
A I R 1950 Hyd 20=
I L R (1951) Hyd 237 (FB).

——Preventive detention order based on S. 2, Hyderabad Public Safety and Public Interest Regulation (8 of 1358F) — Validity after 26-1-1950 —Order, if saved by Preventive Detention (Extension of Duration) Order (1950)—*See* Hyderabad Public Safety and Public Interest Regulation (8 of 1358F), S. 2 A I R 1950 Hyd 20 (FB).

ADDITIONAL DISTRICT MAGISTRATE

See CRIMINAL PROCEDURE CODE (5 OF 1898), Ss. 10 AND 12.

ADDITIONAL SESSIONS JUDGE

See CRIMINAL PROCEDURE CODE (5 OF 1898), S. 31 (2).

ADEN CIVIL AND CRIMINAL JUSTICE ACT (Bom. Act II of 1864)

—S. 15

——Application of spirit and principles of Law.

Although S. 15 requires the Court of Aden to apply the spirit and principles of the laws in force

ADEN CIVIL AND CRIMINAL JUSTICE ACT (Bom. Act II of 1864), S. 15

in the Bombay Presidency (including the Prov. Insol. Act), this does not mean that a specific provision of an Act can be so applied by the Aden Court. *(Murphy & Nanavati JJ.)* HIRACHAND v. VENIDAS A I R 1933 Bom 194=6 R B 5=144 I C 705=35 Bom L R 271.

—S. 20.

——Resident at Aden—Power to transfer case to High Court, Bombay, under S. 449, Criminal P. C. —*See* Criminal Procedure Code (5 of 1898), Ss. 449 and 447 2 Cr L J 75 (Bom).

—S. 21.

——Resident at Aden — Power to transfer case to High Court, Bombay, under S. 449, Criminal P. C. — *See* Criminal Procedure Code (5 of 1898) — Ss. 449 and 447 2 Cr L J 75 (Bom).

—S. 22.

——Resident at Aden — Power to transfer case to High Court, Bombay, under S. 449, Criminal P. C. —*See* Criminal Procedure Code (5 of 1898), Ss. 449 and 447 2 Cr L J 75 (Bom).

—S. 29.

——*Ss. 29, 30—Scope.*

There is nothing in S. 29 or 30 of the Aden Courts Act, 1864, which can operate either by express words or by necessary implication, to limit the application of those sections to cases tried by the Resident as a Court of Session or to exclude appeals from their purview. Section 30 of the Act empowers and requires the High Court of Bombay to review the case, or such part of it as may be necessary, with reference only to the points of law specified in the certificate of the Advocate-General, and the section does not contemplate that any decision by the Resident on a point of fact should be questioned in review, save in so far as such decision may be dependent, for its validity, on the determination of a point of law mentioned in the certificate. *(Batty and Heaton JJ.)* EMPEROR v. BHAGWANDAS KANJI 9 Bom L R 331=31 Bom 335=5 Cr L J 309.

—S. 30.

——*Ss. 29 and 30*—Scope and applicability — Review of criminal case by Bombay High Court — Certificate by Advocate-General — Question of fact if can be entered into—*See* ibid, S. 29 9 Bom L R 331=31 Bom 335=5 Cr L J 309.

ADEN CIVIL AND CRIMINAL JUSTICE REGULATION (VI of 1933)

—S. 7.

——*Bombay High Court, revisional powers of.*

Under S. 7 of the Regulation, the Bombay High Court may call for the record of any case which has been decided by the District Judge and in which no appeal lies, and may make such order as therein mentioned. The section confers upon the High Court a power of revision where any case has been decided by the District Judge whether in his original jurisdiction, or in appeal or in revision, though the High Court should generally be slow to interfere with the exercise by the District Judge of his revisional powers. *(Beaumont C. J.)* AHMED ABDULLA v. AHMED ABDULLA DUBAEE A I R 1937 Bom 180=39 Bom L R 110=9 R B 374=168 I C 576.

ADEN CIVIL AND CRIMINAL JUSTICE REGULATION (VI of 1933)

—S. 15.

——*District Judge, if can take fresh evidence in revision.*

It is rather a dangerous course to admit further evidence in revision, but the District Judge at Aden has jurisdiction to admit it, the language of S. 15, Aden Civil and Criminal Justice Regulation, being extremely wide. *(Beaumont C. J.)* AHMED ABDULLA v. AHMED ABDULLA DUBAEE A I R 1937 Bom 180=39 Bom L R 110=9 R B 374=168 I C 576.

—S. 35.

——*Abuse of.*

It is extremely doubtful whether the Sessions Judge can be said to have the power under S. 35 (3), Aden Civil and Criminal Justice Regulation, to convert an acquittal into a conviction and that too, at the instance of the party who could have appealed. But assuming that the language of the section is wide enough to confer the power, the power is abused on the Sessions Judge converting in revision an acquittal into a conviction. When he does so, the High Court can interfere under its general powers of superintendence. *(Broomfield & Macklin JJ.)* L. M. MARINO v. EMPEROR A I R 1935 Bom 393=37 Bom L R 658=1935 Cr Cas 1065=8 R B 164=59 Bom 663=159 I C 90=37 Cr L J 23.

ADEN COURTS ACT (BOM. ACT II OF 1864)

—*See* under ADEN CIVIL & CRIMINAL JUSTICE ACT (BOM. ACT 2 OF 1864).

ADJOURNMENT

See CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 344 AND 526.

—Of inquiries and trial — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 344.

—Pending commission — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 508.

ADMINISTRATION OF EVACUEE PROPERTY ACT (XXXI of 1950)

—S. 2.

——*S. 2 (f)*—Property of evacuee not declared to be evacuee property under S. 7 is evacuee property —*See* ibid, S. 30 A I R 1952 All 962=1952 Cr L J 1719.

—S. 7.

——Property not declared to be evacuee property under — Offence in respect of — Conviction—*See* ibid, S. 30 A I R 1952 All 962=1952 Cr L J 1719.

—S. 30.

——*Realisation of rent in respect of evacuee property — Conviction for, on evidence of tenants — Legality—Evidence of accomplice—(Evidence Act (1872), S. 133).*

A person who had collected rent in respect of evacuee property was convicted under S. 30, Administration of Evacuee Property Act (1950), on the basis of the evidence of tenants who had paid the rent. While the accused knew or had reason to believe that the property was evacuee property

ADMINISTRATION OF EVACUEE PROPERTY ACT (XXXI of 1950), S. 30

it was by no means certain whether the tenants also were similarly situated :

Held (i) that it was by no means certain that the tenants were accomplices;

(ii) that even assuming they were, the conviction based on their evidence was not defective as the question before the Court at all times was whether those witnesses were worthy of credit or not and it having concluded affirmatively was entitled to base the conviction on that evidence. *(Desai J.)* SHUKRULLA v. STATE
A I R 1952 All 962=1952 A L J 424=
1952 A W R (H C) 375=
1952 R D (H C) 273 (2)=1952 Cr L J 1719.

——*Ss. 30, 2 (f) and 7—Offence in respect of property not declared to be evacuee property under S. 7—Conviction for.*

A property that is of an evacuee is "evacuee property" within the definition of these words contained in S. 2 (f) regardless of whether it has been declared to be so or not by the custodian under S. 7. Such a declaration is necessary only for the purpose of vesting it in the custodian and not for the purpose of giving the property that character. Therefore, a conviction under S. 30 for the offence of collecting rent in respect of such property is valid even though it had not been declared to be an evacuee property under S. 7. *(Desai J.)* SHUKRULLA v. STATE
A I R 1952 All 962=1952 A L J 424=
1952 A W R (H C) 375=
1952 R D (H C) 273 (2)=1952 Cr L J 1719.

ADMINISTRATION OF JUSTICE AND POLICE IN GARO HILLS DISTRICT RULES

—R. 22.

——*Scope — Order of expulsion of person from locality is administrative order — No petition against it lies either to Governor or to High Court.*

Rule 22 of the Rules for the Administration of Justice and Police in the Garo Hills District does not empower the Governor or the High Court to hear an appeal or revision from an order of extradition or expulsion of a person from the District of Garo Hills. The Rule relates only to cases of criminal nature where a sentence is passed on conviction. An order of expulsion is more of the nature of an administrative order for maintenance of public peace or for removal of a public nuisance rather than a sentence. Consequently a petition to the High Court against such an order is not maintainable. *(Deka J.)* DHAN BAHADUR GHORTI v. STATE A I R 1953 Assam 61=
I L R (1951) 4 Assam 320=1953 Cr L J 495.

ADMINISTRATION OF JUSTICE AND POLICE IN MIKIR HILLS RULES

—R. 10.

——*Rr. 10, 16—Scope of.*

Per *Thadani C. J.*—In view of the language of Rule 16, read with Rule 10, it is unnecessary to say whether or not the Penal Code applies to Mikir Hills area. *(Thadani C. J. and Ram Labhaya J.)* THE STATE v. BIDHU BALMIK SWEEPER
I L R (1951) 3 Assam 413.

ADMINISTRATION OF JUSTICE AND POLICE IN MIKIR HILLS RULES, R. 10

——*Sentence for murder—(Penal Code (1860), S. 302).*

Though under S. 302, Penal Code, the minimum sentence is transportation for life, the sentence of seven years is not illegal as R. 16 does not fix any minimum sentence for murder. *(Thadani C. J. and Ram Labhaya J.)* THE STATE v. BIDHU BALMIK SWEEPER
I L R (1951) 3 Assam 413.

—R. 16.

——Scope of — *See* Administration of Justice and Police in Mikir Hills Rules, R. 10
I L R (1951) 3 Assam 413.

ADMINISTRATION OF JUSTICE AND POLICE IN THE NAGA HILLS DISTRICT RULES

—R. 16.

——Power of High Court to quash proceedings — *See* Assam High Court Order (1948)
A I R 1952 Assam 1=1952 Cr L J 97.

—R. 22.

——*Transfer of Criminal case from Naga Hills district under S. 526, Criminal P. C.*

The rules do not empower the High Court to transfer a criminal case pending in one of the Courts in the Naga Hills district to a Court outside that district. *(Thadani Ag. C. J. and Ram Labhaya J.)* RAM SARAN KASHYAP v. THE KING
A I R 1950 Assam 100=51 Cr L J 957.

ADMINISTRATION OF MAYURBHANJ STATE ORDER (1949)

—Para. (v).

——Repeal of Mayurbhanj Essential Supplies (Temporary Powers) Act (11 of 1948) — Effect of— *See* Essential Supplies (Temporary Powers) Act (1946), S. 17
A I R 1952 Orissa 83=1952 Cr L J 420.

ADMISSIBILITY OF EVIDENCE

See (1) EVIDENCE ACT, SS. 5 TO 190.
(2) REGISTRATION ACT, SS. 17 AND 49.

—To be decided by Judge — *See* EVIDENCE ACT (1 OF 1872), S. 136.

ADMISSION

See
(1) EVIDENCE ACT, SS. 17 TO 33 AND 115.
(2) LEGAL PRACTITIONER.

—And confession — *See* EVIDENCE ACT (1 OF 1872), S. 24.

—Not conclusive proof — *See* EVIDENCE ACT (1 OF 1872), S. 31.

—Of guilt in cases triable by High Court or Court of Sessions — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 271 (2).

—Of guilt in summons cases—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 243.

—Of guilt in warrant cases — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 255.

—To Bail — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 498.

ADMISSION

—What amounts to — *See* EVIDENCE ACT (1 OF 1872), S. 17.

ADULTERATION

See (1) LOCAL FOOD ADULTERATION ACTS.
(2) LOCAL MUNICIPAL ACTS.
(3) PENAL CODE, 1860, SS. 272—275.

ADULTERY

See (1) CRIMINAL PROCEDURE CODE (5 OF 1898), S. 488.
(2) DIVORCE ACT, SS. 10—15.
(3) PENAL CODE, SS. 497 AND 498.

—Cognizance of offence of—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 199.

ADVOCATE

See (1) BAR COUNCILS ACT, 1926.
(2) LEGAL PRACTITIONER.
(3) LEGAL PRACTITIONERS ACT.

ADVOCATE-GENERAL

—Defined — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 4 (1) (a).

—Information by — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 194 (2).

—Permission to conduct prosecution—*See* CRIMINAL PROCEDURE CODE, (5 OF 1898), S. 495.

AFFAIRS OF STATE

—Evidence as to — *See* EVIDENCE ACT (1 OF 1872), S. 123.

AFFIDAVIT

See (1) CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 539, 539A.
(2) DEFENCE OF INDIA RULES, R. 129.

—Applicability of Evidence Act—*See* EVIDENCE ACT (1 OF 1872), S. 1.

AFFRAY

—Defined—*See* PENAL CODE (45 OF 1860), S. 159.

—Punishment for — *See* PENAL CODE (45 OF 1860), S. 160.

AGE

—Evidence of—*See* EVIDENCE ACT, 1872, S. 35.

AGENCY RULES (GODAVARI)

See GODAVARI AGENCY RULES.

AGENT

—Of land owner, duty to give information to police — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 45.

AGGREGATE SENTENCES FOR PURPOSES OF APPEAL

See CRIMINAL PROCEDURE CODE (5 OF 1898), S. 35 (3).

AGRA AND OUDH WATER WORKS ACT (I of 1891)

See U. P. WATER WORKS ACT (I OF 1891).

AGRA TENANCY ACT (II of 1901)

—S. 34.

——Landlord cannot eject tenant holding by adverse possession.

A man who has been adversely in possession for more than 12 years cannot be ejected under S. 34 by the landlord, who has lost his title by adverse possession. *(Mukerji J.)* DAULAT SINGH v. SHEO NATH. A I R 1929 All 211=114 I C 890= 10 L R A Cr 179.

—S. 51.

——S. 51 (5) — Distraint of crops by Zemindar — Suspension of rent — Offence under S. 188, I. P. C.

An order suspending or remitting arrears of rent under S. 51 of the Agra Tenancy Act is not an order prohibiting the landholder from receiving the same if tendered or from attempting to realize the same by lawful means. Its effect is simply to deprive him of his right of suit in respect of the arrear remitted or suspended during the period of suspension. A zemindar may have a right in law to distrain for the suspended arrears in which case he is not to be punished for availing himself of the right. Even if he has not got the right of distraint his only liability is to compensate the tenants inconvenienced thereby. *(Piggott J.)* EMPEROR v. RAM SARUP, AIR 1915 All 372= 30 I C 722 = 13 A L J 619 = 16 Cr L J 674.

—S. 95.

——Ejectment decree.

Where a decree passed on 16th April is executed on 24th November, the execution is not in accordance with the law, as laid down in the Act and the ejectment in pursuance of such execution is illegal. An illegal ejectment does not give the zemindar any right of re-entry and the zemindar is not entitled to possession of the land. *(Dalal J.)* NANDLAL CHAUDHRI v. EMPEROR, 112 I C 680 = 11 A I Cr R 154 = 1929 A L J 92 = 10 L R A Cr 22 = 29 Cr L J 1096.

—S. 253.

——Revision — No cause for interference arises where lower Court acts within jurisdiction.

Where the District Judge on appeal from the decision of the Assistant Collector files a complaint under S. 476B, Cr. P. Code, which the trial Court refuses to file, he acts within his jurisdiction and there is no irregularity in his procedure necessitating interference. *(Dalal J.)* NARAIN PRASAD v. EMPEROR, A I R 1929 All 898 = Ind Rul (1930) All 4=120 I C 116= 10 L R A Cr 147=13 A I Cr R 1= 1929 Cr C 490=30 Cr L J 1148.

AGRA TENANCY ACT (III of 1926)

—S. 95.

——S. 95 (1) — Ejected tenant re-entering after execution of decree without consent — Offence under S. 441, Penal Code, if made out.

Under S. 95 (1), Agra Tenancy Act, it is necessary for the ejected tenants to obtain the written consent of the persons for the time-being entitled to occupy the same. In the absence of a written consent, their re-entry after the decree had been executed would raise a presumption that they have done so with intent to intimidate or annoy

AGRA TENANCY ACT (III of 1926), S. 95

within the meaning of S. 441, Penal Code. *(Ganga Nath J.)* GARAJ SINHA v. EMPEROR,
A I R 1935 All 938=(1935) A L J 1108=
1935 R D 491=1935 Cr Cas 1184=
1935 A L R 1104=8 R A 425=
159 I C 306 = 37 Cr L J 56.

—Sch. IV, Group A.

——*Criminal Procedure Code, S. 478 — Appeals from complaints.*

Order by Collector directing complaints to be filed—Case of arrears of rent included in Group A, Sch. IV—Appeal from order lies to District Judge and not to superior Revenue Court. *(Bajpai J.)* AMANUL HAQ v. GIRDHAR GOPAL
A I R 1934 All 886=7 R A 36=
1934 A L J 867=L R 15 A 531 Rev=
18 R D 409 = 1934 Cr Cas 1116 =
L R 15 A 169 Cr = 150 I C 775=
35 Cr L J 1136.

AGRA VILLAGE AND ROAD POLICE ACT (XVI of 1873)

——A Village *chowkidar* appointed under North-Western Province Village and Road Police Act 1873 is a Police Officer within the words of S. 25, Evidence Act, and consequently a confession made to him is inadmissible in evidence. *(Sulaiman C. J., Niamatullah and Collister JJ.)* DEOKINANDAN v. EMPEROR, A I R 1936 All 753=
1936 A L J 999=9 R A 305=
1936 A W R 894=I L R (1937) All 85=
165 I C 701=(1936) Cri Cas 994=
1936 A L R 939=38 Cr L J 40 (FB).

AGRICULTURISTS' LOANS ACT (XII of 1884)

—S. 5.

——*Warrant though signed by Tahsildar is valid.*

Warrant issued under S. 5 of Act XII of 1884 (Agriculturists' Loans Act) can be signed by the Tahsildar or issued under his order, where he has the authority of the Collector to do so. *(Pullan J.)* JOWAD HUSSAIN v. EMPEROR,
A I R 1927 Oudh 296=2 Luck 503=
1 Luck C 159=103 I C 401=
8 A I Cr R 321=28 Cr L J 673.

AID

— To Magistrate and Police — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), Ss. 42-45.

—To person executing warrant — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 43.

AJMER EXCISE REGULATION

—S. 2.

——S. 2 (12) — Possession without licence — *See* ibid, S. 33 (a) and (f). A I R 1950 Ajmer 74.

—S. 33.

——*Ss. 33 (a) and (f) and 2 (12) — Possession without licence — Belief that licence was unnecessary if affects liability.*

A *Hakim* found to be in possession of certain bottles of liquor as defined by S. 2 (12) and also of an apparatus for the manufacture of alcohol without any licence commits an offence under cls. (a) and (f) of S. 33 even if he believed that, as a *Hakim* he was entitled to keep such bottles without licence for medicinal purposes. Such a belief would not affect his liability under the Regulation. *(Oak J. C.)* FATEHCHAND v. THE STATE, A I R 1950 Ajmer 74.

AJMER-MERWARA AGRARIAN RELIEF ORDINANCE (VIII of 1949)

—S. 18.

——Whether a landholder should personally enter upon land to attract the provision of S. 18 and whether the section governs the offence under S. 447/109, I. P. C. (Quaere). *(Oak J. C.)* GANPAT SINGH v. ZORA A I R 1951 Ajmer 6=
51 Cr L J 1606.

AJMER-MERWARA CHIEF COMMISSIONER'S NOTIFICATION No. R/20 dated 30-6-1948

—Cl. 4.

——*Construction — Movement of food grains within area prescribed not prohibited.*

Clause 4 of the Ajmer-Merwara Chief Commissioner's Notification No. R./20 (dated 30-6-1948), ran as follows :

"The movement of all foodgrains to areas which are situated within a radius of five miles of the border of Ajmer-Merwara, with neighbouring States . . . . shall not be permitted except under a permit" :

Held that the prohibition was in regard to the movement of all foodgrains from outside to inside the zone prohibited and not from one place to another within the zone prohibited. *(Atma Charan J. C.)* KALYAN SINGH v. THE STATE,
A I R 1952 Ajmer 6 (2) =
1951 A M L J 66=1952 Cr L J 160.

AJMER-MERWARA COTTON CLOTH AND YARN TRADE LICENSING ORDER (1948)

—Cl. 3.

——*Cls. 3, 4* — Prosecution for contravention — Person selling cloth or the person to whom it was sold not licensed importer of cloth into Province within Cl. 4 (1) (a) — Held, there was no contravention of terms of license as both were not A class dealers. *(Atma Charan J. C.)* RATANLAL v. THE STATE, A I R 1952 Ajmer 16 (1)=
1952 Cr L J 203.

—Cl. 4.

——Prosecution for contravention—*See* ibid, Cl. 3.
AIR 1952 Ajmer 16 (1)=1952 Cr L J 203.

AJMER-MERWARA EXTENSION OF LAWS ACT (III of 1947)

—S. 2.

——*Act is not ultra vires.*

All that the Central Government was empowered under S. 2 of the Act was to extend to Ajmer-Merwara a law already in force elsewhere, but if any new legislation has to be introduced in Ajmer-Merwara (not already in force in other provinces) then of course it is only the Central Legislature that could pass the necessary legislation. This

AJMER-MERWARA EXTENSION OF LAWS ACT (III of 1947), S, 2

does not amount to a delegation of legislative powers to the Central Government, and the Act is not *ultra vires* on that ground. *(Ramabhadran J. C.)* HARI DATTA v. THE DISTRICT MAGISTRATE, AJMER, A I R 1949 Ajmer 61= 1949 A M L J 49=51 Cr L J 227.

AJMER - MERWARA MUNICIPALITIES REGULATION (VI of 1925)

—S. 161.

——*S. 161 (1) (e)—Conviction under—Proof.*

Mere running a bakery would not be hit by the mischief of clause (e) of S. 161 (1). The prosecution has further to prove that the bakery gave out offensive or unwholesome smells, noises or smoke. *(Oak J. C.)* RAMCHAND v. REX, AIR 1951 Ajmer 36=52 Cr L J 270.

—S. 234.

——"Magistrate" referred in section includes Magistrate of 2nd and 3rd class — Magistrate 2nd class can realize taxes in excess of Rs. 200. *(Nigam J. C.)* HAZARIMAL v. MUNICIPAL COMMITTEE, A I R 1953 Ajmer 15 = 1953 A M L J 15=1953 Cr L J 1209.

——Application by Municipal Board for recovery of tax — Order for sale of property attached — No notice to party to show cause issued—Order of sale without such prior notice held invalid and set aside. *(Atma Charan J. C.)* CHIRANJILAL v. STATE, A I R 1952 Ajmer 27 (1) = 1952 A M L J 1=1952 Cr L J 1182.

——*Application under, dismissed for default — Second application—Maintainability — Criminal P. C. (1898), S. 403.*

Where an application under S. 234 of the Regulation for recovery of taxes is dismissed for default of appearance of the Municipality, the Magistrate is entitled to refuse to entertain a fresh application for the same relief inasmuch as the Municipality has still a remedy by way of regular suit in competent Civil Court. Section 403, Criminal P. C., has no application to such a case. *(Atma Charan J. C.)* MUNICIPAL COMMITTEE, AJMER v. DAL CHAND, A I R 1951 Ajmer 38=1951 A M L J 19= 52 Cr L J 242.

ALIBI

See EVIDENCE ACT, S. 11.

ALLAHABAD HIGH COURT (GENERAL) RULES

—Chap. I.

——*R. 8 — Application under S. 491, Criminal P. C.*

It is open to the High Court under S. 491 (2), Cr. P. C. to make special rules permitting successive identical applications for a direction under S. 491, Cr. P. C. In the absence of such special rules, R. 8 of Chap. I of High Court Rules must be considered to govern such cases, the language of the rule being wide enough to include applications under S. 491. Under this rule presentation of an application to the same effect and with the same object as a prior application which has been rejected is expressly prohibited. *(King and Collister JJ.)* HAYDARI BEGUM v. JAWAD ALI SHAH, A I R 1934 All 22 = 6 R A 573=1933 A L J 1410= L R 14A 464 Cr=(1934) Cr Cas 125= 147 I C 820=56 All 271=35 Cr L J 493.

—Chap. XXI.

——*R. 1* — The words "actually paid" in R. 1, Chap. XXI, can never be interpreted as including a payment by means of the execution of a promissory note. The rule not only requires that fees actually paid should be certified but also requires the name and address of the person who actually made the payment. The object of the rule is to check traffic in the matter of counsel's fee, in other words, to check touting. *(Mukerjee, Young and King JJ.)* S. ADVOCATE BADAUN, IN THE MATTER OF. A I R 1934 All 109=6 R A 516 (2)= 1934 A L J 333 = 147 I C 608= 35 Cr L J 421 (FB).

ALLAHABAD HIGH COURT (GENERAL) RULES (CRIMINAL)

—Chap. II.

——*R. 1* — Vakalatnama *in Appellate Court.*

Once a *vakalatnama* has been filed in the trial Court, it holds good for such Courts as the Pleader has a certificate for, provided that the *vakalatnama* authorises him to appear there on behalf of his client and consequently for appearing in the Appellate Court no new *vakalatnama* is required, *(Hamilton J.)* CHHAJJU v. EMPEROR, AIR 1941 All 336=1941 A L J 344= I L R (1941) All 633=14 R A 206= 197 I C 497=43 Cr L J 173.

—Chap. XIV.

——*Rr. 4, 6 — Copies of judgment in criminal cases.*

Any member of general public is entitled to inspect and have copies of the judgment of the subordinate Criminal Courts. *(Young J.)* LADLI-PRASAD v. EMPEROR, A I R 1931 All 364= (1931) Cr Cas 620=53 All 724= 1931 A L J 405=L R 12 All 59 Cr= Ind Rul (1931) All 487=132 I C 327= 32 Cr L J 864.

ALLAHABAD HIGH COURT RULES

—R. 1.

——*Rr. 1 (XIII) and 4* — Rules of 18-1-1898 — Revision under S. 15, High Courts Act 1861— Hearing by Division Bench — Propriety — *See* (Indian) High Courts Act (1861) (24 & 25 Vict. C. 104), S. 15 9 Cr L J 59.

—R. 2.

——Removal of Advocate — *See* Letters Patent (All), Cl. 8 5 Cr L J 152.

—R 180.

——*Rr. 180, 182 and 183* —Removal and suspension of Advocates—*See* Letters Patent (All), Cl. 8 5 Cr L J 152.

—R. 197.

——Removal and suspension of Advocates — *See* Letters Patent (All), Cl. 8 5 Cr L J 152.

—Chap. I.

——*R. 1 (14) — Jurisdiction — Single Judge has jurisdiction to dispose of an application for notice*

ALLAHABAD HIGH COURT RULES, Chap. I

to printer and publisher of newspaper to show cause why they should not be convicted for contempt of Court and if such application comes through jail authorities Judge can dispose it of in chambers.

Under Chap. 1, R. 1 (14), sub-cl. (b), a single Judge has jurisdiction to dispose of an application praying for a notice to be issued to printer or publisher of a newspaper to show cause why they should not be convicted for contempt of Court, when there is no rule expressly requiring it to be made by a Bench of two or more Judges. Further, when such an application is sent through the Superintendent of Jail, the Judge can dispose of the matter in chambers without fixing any date for its hearing. *(Sulaiman J.)* DANGE v. SHEPPARD, AIR 1930 All 483=128 I C 14=1930 A L J 665=1930 Cr C 702=Ind Rul (1931) All 14=L R 12 All 115 Cr=32 Cr L J 78.

—Chap. VI, R. 4.

——Order of Chief Justice including in or omitting a case from cause list prepared under Chap. VI, R. 4 is an administrative and not a judicial order—There is no analogy between an order of transfer or withdrawal passed under S. 24, Civil P. C., and the powers of Chief Justice to include in or omit a case from the Court's cause list. *(Misra and Kaul JJ.)* JALIL v. REX A I R 1952 All 550=1950 A W R (HC) 30=1950 All Cr C 12=ILR (1951) 1 All 568=1952 Cr L J 982.

—Chap. X.

——*R. 6*—Reference under S. 438, Criminal P. C. — Explanation from Magistrate — Duty of Magistrate — *See* Criminal P. C. (1898), S. 438.
1949 A W R 549 (1).

(ALLAHABAD) RULES OF HIGH COURT, 1952

—Chap. V, R. 2.

——*Chap. 5, Rr. 2 (1), Chap. 11, R. 9, Chap. 18, R. 2, Proviso—Motions for admission—Powers of Judge sitting alone — Power to dismiss appeal summarily — (Civil P. C., O. 41, R. 11) — (Criminal P. C., S. 421.)*

Under R. 2 (1) of Chapter 5 of the Rules of the High Court, 1952, Vol. I, every motion for the admission of a memorandum of appeal, whether civil or criminal, has to be heard by a Judge sitting alone. There is a distinction between a motion for the admission of an appeal and the hearing of an appeal after admission and issue of notice to the respondent. Certain civil appeals and certain criminal appeals can be disposed of by a Judge sitting alone vide R. 2 (ii) (VII) etc., but other civil and criminal appeals cannot be disposed of by him. These provisions have reference to those civil and criminal appeals which have been admitted and come up for disposal after the issue of notice. They have no reference to "motions for admission" which are exclusively dealt with under R. 2 (i). "Motions for admission" of appeals in case in which a sentence of death has been passed are made before a Judge sitting alone though such appeals after being admitted, can be disposed of only by a Bench of two Judges. When there is a motion for admission of an appeal before a Judge sitting alone, he has power not only to admit the appeal and order a notice to be issued, but also to refuse the motion and dismiss the appeal summarily. He can dismiss every appeal summarily regardless of whether he would be competent to dispose of it after admission and issue of notice or not. Under R. 9 of Chapter 11, a Judge sitting alone is required to admit every first appeal other than an execution first appeal and direct a notice to be issued; in other cases, he has been given the right to admit or dismiss the appeal as he thinks fit. That he can dismiss an appeal under O. 41, R. 11, Civil P. C., is made clear by R. 9 (b) (1). The proviso to R. 2 of Chapter 18 allows the Bench (which includes a Judge sitting alone) before which a motion is made for the admission of an appeal to dismiss it summarily under S. 421, Criminal P. C. There is, therefore, no doubt that a Judge sitting alone is competent to dismiss a criminal appeal summarily. *(Desai J.)* STATE v. GANGA SAHAI,
AIR 1953 All 211=1952 R D (HC) 390 (2)=1953 A W R (HC) 101=1953 A L J 166=1953 Cr L J 571.

—Chap. XI, R. 9.

——Power to dismiss appeal under O. 41, R. 11, Civil P. C. — *See* ibid, Chap. 5 R. 2 (1).
AIR 1953 All 211=1953 Cr L J 571

—Chap. XVIII, R. 2.

——*Chap. 18, R. 2, Proviso* — Motions for admission—Powers of Judge sitting alone—Power to dismiss appeal summarily. *See* ibid, Chap. 5, R. 2 (1) A I R 1953 All 211=1953 Cr L J 571.

—Chap. XXIII, R. 28.

——*Validity — (Constitution of India, Arts. 132 (1), 134 (1) (c).)*

Under Rule 28, Chapter 23, High Court Rules, application for leave to appeal has to be made before or at the time of delivery of judgment — Rule is not ultra vires. *(Agarwala and Chaturvedi JJ.)* SONEY LAL v. STATE,
A I R 1953 All 610=1953 A L J 294=1953 A W R (H C) 505=1953 Cr L J 1376.

ALTERATION

—of document etc.—*See* PENAL CODE, Ss. 192 & 193.

—of Judgment — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 369.

—in maintenance allowance of wife and children — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 489.

—of charge — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), Ss. 227—231.

—of sentence—*See* CRIMINAL PROCEDURE CODE, S. 367.

ALTERNATIVE CHARGES

See CRIMINAL PROCEDURE CODE (5 OF 1898), Ss. 235 AND 236.

ALTERNATIVE JUDGMENT

See CRIMINAL PROCEDURE CODE (5 OF 1898), S. 367 (3).

AMBIGUOUS LANGUAGE IN DOCUMENT

—Exclusion of oral evidence to explain — *See* EVIDENCE ACT (1 OF 1872), S. 93.

AMMUNITION

See ARMS ACT (11 OF 1878), Ss. 4 and 19.

AMICUS CURIAE

See CRIMINAL PROCEDURE CODE (5 OF 1898), Ss. 340, 561A.

ANIMALS

—Cruelty to

See (1) BENGAL CRUELTY TO ANIMALS ACT (1 OF 1920).

(2) PREVENTION OF CRUELTY TO ANIMALS ACT (11 OF 1890).

—Definition of — *See* PENAL CODE (45 OF 1860), S. 47.

—Trespass by (cattle) — *See* CATTLE TRESPASS ACT (1871).

APOLOGY IN CONTEMPT CASES

See (1) CONTEMPT OF COURT

(2) CONTEMPT OF COURTS ACT, 1926, S. 3.

(3) CRIMINAL PROCEDURE CODE (5 OF 1898), S. 484.

APPEAL

—Abatement of—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 431.

—Additional evidence in — *See* CRIMINAL PROCEDURE CODE (1898), S. 428.

—Against acquittal—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), Ss. 417 AND 423.

—Against order for security — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 406.

—Against rejection of surety — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 406A.

—Contempt cases — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), Ss. 476B, 486.

—Dismissal for default — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 421.

—Form of — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), Ss. 418, 419.

—From jail — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 420.

—Jurisdiction of appellate Court—*See* CRIMINAL PROCEDURE CODE (1898), S. 106.

—Letters Patent — *See* LETTERS PATENT (BOMBAY, CALCUTTA AND MADRAS), CL. 15.

—Notice of — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 422.

—Powers of appellate Court — *See* CRIMINAL PROCEDURE CODE, 1898, S. 423.

—Special leave

See (1) CONSTITUTION OF INDIA, ART. 134 AND 136.

(2) PRIVY COUNCIL—PRACTICE.

APPEAL

—Summary dismissal of — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 421.

—To Supreme Court, Federal Court and Privy Council—Certificate of fitness.

See (1) CONSTITUTION OF INDIA, ARTS. 132, 133, 134 AND 136.

(2) CRIMINAL PROCEDURE CODE, 1898, S. 411A.

(3) GOVERNMENT OF INDIA ACT, 1935, S. 205, 223.

APPEALS TO H. E. H. THE NIZAM REGULATION (XXI OF 1358F).

——*Judicial Committee—Power of Nizam to hear appeals & appoint Committee — Abolition of—Constitution of India, Art. 374 (4).*

H. E. H. the Nizam through a Firman dated 23-11-1949 has declared that the provisions of the Constitution shall, as from the date of its commencement, supersede & abrogate all other constitutional provisions inconsistent therewith which are at present in force, in the State. Thus, H. E. H. the Nizam accepted the Constitution of India as the Constitution of Hyderabad State. Therefore by virtue of Art. 374 (4) the jurisdiction of the P. C. of the Hyderabad State is abolished after the Constitution of India came into force. Thus, that body & its jurisdiction altogether ceased to exist. Further the powers of the Nizam, who is recognized by the President as a Rajpramukh, being only those of the Governor of a State, H. E. H. the Nizam has neither the power to hear appeals nor can he appoint a Judicial Committee to hear the same. *(Siddiqi and Manohar Prasad J.)* PASNURI AMBARAO v. LAKHIRAM.

A I R 1951 Hyd 96=52 Cr L J 922.

APPEARANCE, PROCESSES TO COMPEL

See CRIMINAL PROCEDURE CODE (5 OF 1898), Ss. 68—93.

APPELLATE COURT

—Further evidence in — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 428.

—Judgment of—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 424.

—Powers and duty of — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), Ss. 423 AND 528.

—Power to alter sentence—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 423.

APPREHENSION

—Omission to apprehend, by public servant—*See* PENAL CODE (45 OF 1860), S. 225A.

—Resistance to — *See* PENAL CODE (45 OF 1860), Ss. 224, 225B.

APPRENTICE

See PENAL CODE, S. 381.

APPRENTICESHIP

—Contract by minor—*See* CONTRACT ACT S. 11

APPROVER

—Evidence of — *See* EVIDENCE ACT, S. 114, ILLUS. (b) AND S. 133.

—Prosecution — Sanction for — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 339.

—Trial of — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 339.

ARBITRATION

——*Award.*

Award signed and executed by Arbitrators—Necessity for signature of parties who had already signed the submission to make award effective—*See* Stamp Act (1899), S. 62.

11 Cr L J 52 (All).

ARBITRATION ACT (IX of 1899)

—S. 19.

——*Suit not in respect of same matter agreed to be referred.*

Under S. 19, Arbitration Act, a suit can only be stayed when it is "in respect of any matter agreed to be referred" and not otherwise. If it is not in respect of the same matter which is agreed to be referred, there can be no stay of the suit, and therefore there can be no question that the arbitrators are *functus officio* until such suit is stayed. The main point therefore which the Court has to see is, whether or not the suit which has been filed and which is said to render the arbitrators *functus officio*, falls within the submission to arbitration. If it does not, the suit cannot be stayed. Hence its continuance does not render the arbitrators *functus officio* and their award void. *(Rupchand A. J. C.)* GRAHMAS TRADING CO. (INDIA) LTD. v. CHANDU LAL PARMANAND **A I R 1935 Sind 228=8 R S 102=159 I C 824=37 Cr L J 175.**

ARBITRATION ACT (X of 1940)

—S. 2.

——"Salisnama"—Agreement to refer—*See* Words and Phrases. **A I R 1950 All 501=51 Cr L J 1346.**

—S. 20.

——Matter under S. 145, Criminal P. C. — *See* Criminal P. C. (1898), S. 145.

A I R 1952 Assam 118=1952 Cr L J 1166.

ARMS

See ARMS ACT (11 OF 1878).

ARMS ACT (XI of 1878)

——*Construction.*

A penal enactment like the Arms Act must be construed in favour of the individual person where any doubt exists. *(Findlay J. C.)* BALKISHAN v. EMPEROR **A I R 1928 Nag 219=11 N L J 84=109 I C 511=10 A I Cr R 348=29 Cr L J 575.**

—S. 2.

——Delegation of powers by Provincial Government to District Magistrate is not limited by S. 2 (2)

— *See also* ibid, S. 9.

A I R 1949 Assam 50=50 Cr L J 754.

——*Commencement in Part B States (Part B States (Laws) Act (3 of 1951), S. 3) — (General Clauses Act (1897), S. 5).*

Arms Act came into force in the State of Madhya Bharat on 1-4-1951.

ARMS ACT (XI of 1878), S. 2.

Section 3 of Act 3 of 1951 amends the Acts and Ordinances specified in the Schedule to that Act as they existed at the time of the enactment of Act 3 of 1951 and if, therefore, at that time any of the Acts or Ordinances mentioned in the Schedule (Arms Act (1878), being one of them) having already come into force was in an active and not in a dormant state, then the extension of such an Act or Ordinance to a new territory or area would necessarily imply that the Act or Ordinance has been brought into force in the area or territory to which it has been extended.

The Arms Act which had already become effective at the time of the amendment in its extent clause by S. 3 of Act 3 of 1951, is effective also in the Part B States to which it has now been extended by the amendment, from 1-4-1951. No fresh notification under S. 2, Arms Act was necessary. *(Shinde C. J. and Dixit J.)* MAHENDRA BAHADUR SINGH v. STATE

AIR 1953 Madh-B 236=1953 Cr L J 1409.

——*S. 2 (7) (a)—Possession of lead — Possibility of same being used for industrial purposes—Duty of Magistrate to enquire.*

In a case under S. 19 (1), the quantity of lead found with the accused and the neighbourhood were such as to suggest that the lead was used for fishing purposes. The Magistrate merely asked each of the accused whether he admitted having the lead for sale without licence although they were not represented by counsel and on their pleading guilty convicted them :

Held, that the Magistrate should have in his examination of the accused put some questions with a view to elucidating from them whether they were *prima facie* vendors of lead for industrial, that is, fishing, purposes within the meaning of Arms Act, S. 2 (7) (a). *(Doyle J.)* ALI HOSSEIN v. EMPEROR **A I R 1930 Rang 349=128 I C 845=I R 1931 Rang 61=1930 Cr C 1177=Ind Rul (1931) Rang 61=32 Cr L J 206.**

—S. 4.

SYNOPSIS

1. Air-gun.
2. Ammunition.
3. Arms, scope of definition.
4. Arms, what are.
5. Fire-arms.
6. "Parts of arms".
7. Spear.
8. Sword.
9. Unserviceable arms.

1. Air-gun.

——*'Arms,'—Every type of air gun, if excluded.*

The definition of 'arms' in S. 4, Arms Act, is intentionally wide and the list of weapons referred to therein is not exhaustive. It cannot be said that every type of air gun or air pistol must be excluded from the definition. *(Mitter and Henderson JJ.)* ABANI MOHAN v. EMPEROR **A I R 1934 Cal 368=38 C W N 84=60 Cal 1477=6 R C 488=1934 Cr Cas 470=148 I C 925=35 Cr L J 766.**

ARMS ACT (XI of 1878), S. 4—1. Air-gun

——*'Arms' — Air-gun — Air-gun not adapted for use with explosives.*

Where the air-gun in question is similar to the 'gem' air-guns which are not adapted for use with explosive substances and which have been classed as toys by the Government for the purposes of the Tariff Act, the air-gun in question must be held to be a toy and does not come under the definition of arms within the meaning of the Arms Act. *(Hartnoll J.)* EMPEROR v. MAUNG SHWE THET
12 Bur L R 201=4 Cr L J 239.

2. Ammunition.

——*Empty cartridge.*

Empty cartridges are ammunition as defined in S. 4, though they may not be capable of being reloaded in Burma, if they are capable of being reloaded and incorporated in ammunition in some other country. *(U San Maung J.)* SOE KHIN v. UNION OF BURMA 1949 Bur L R (HC) 111.

——*Empty cartridge — Penal Code (Act XLV of 1860), S. 95*—De minimis non curat lex.

A cartridge case is undoubtedly a part of ammunition within the meaning of S. 4, Arms Act. It is an offence under the Arms Act to have an empty cartridge case in one's possession, but in the normal course where it is not suspected that the empty cartridge case is to be reloaded or to be used in future as ammunition, the matter would be of such slight importance that it would be ignored under the provisions of S. 95, Penal Code, under the maxim, *de minimis non curat lex. (Allsop and Ganga Nath JJ.)* EMPEROR v. BHOPAL SINGH A I R 1936 All 392=1936 A L J 657=
1936 A L R 515=8 R A 915=
1936 Cr Cas 504=162 I C 912=
37 Cr L J 727.

——*Empty cartridge case—Piece of lead in shape of bullet or shot.*

A piece of lead in the shape of a bullet or in the shape of shot is certainly ammunition or a part of ammunition. Lead, as such, which is not in such a shape, is excluded from the meaning of the term, although lead can be made up into cartridges. *(Allsop and Ganga Nath JJ.)* EMPEROR v. BHOPAL SINGH A I R 1936 All 392=1936 A L J 657=
1936 A L R 515=8 R A 915=
1936 Cr Cas 504=162 I C 912=
37 Cr L J 727.

——*Patakhas.*

The general words 'other explosive or fulminating material' in the definition of 'ammunition' in S. 4, Arms Act, must according to the well-recognised rule of "*ejusdem generis*" or "*noscitur a sociis*," be interpreted in the light of the foregoing examples of explosives and according to this rule of interpretation the definition includes only such explosive or fulminating material as could be used for any military purpose or in particular for fire-arms or torpedos or war-rockets, or for mining or blasting. As *patakhas* are quite useless for such purposes they are not "ammunition" within the meaning of the Act. *(King J.)* KIFAYAT ULLAH KHAN v. EMPEROR A I R 1931 All 17=
1930 A L J 1467=L R 12 A 42 Cr=
Ind Rul (1931) All 290=53 All 226=
1931 Cr Cas 33=130 I C 626=
32 Cr L J 564.

ARMS ACT (XI of 1878), S. 4—2. Ammunition.

——*Empty cartridges are ammunition.*

Empty cartridges come within the definition of ammunition in S. 4 of the Arms Act : 32 All. 152, *Foll. (Sulaiman and Ryves JJ.)* EMPEROR v. ALADIN A I R 1924 All 215=46 All 107=
81 I C 215=21 A L J 879=
5 L R A Cr 22=25 Cr L J 727.

——A lump of lead may be used for many purposes and the meaning of the Act is that lead is not to be considered ammunition. However as soon as lead is moulded into bullets of 20 to 24 bore the bullets become ammunition. (In this case the sentence of imprisonment was reduced to the term already suffered by the accused in view of the fact that his possession of the bullets in his shop without licence was without criminal intent.) *(Arthur Reid C. J. and Rattigan J.)* SANT SINGH v. CROWN 23 P W R 1910 Cr=16 P R 1910=
6 Ind Cas 952=191 P L R 1910=
11 Cr L J 421.

——*Ss. 4, 19 (a)—Empty cartridge cases, possession of.*

Empty catridge cases fall within the definition of ammunition given in S. 4 and their possession is punishable under S. 19 (a): 7 Bom. L. R. 474, *Foll.*; 20 P. R. 1890 Cr., *Not foll. (Tudball J.)* BALDEO SINGH v. EMPEROR 10 Cr L J 573 (All).

——*Ss. 4, 19, cl. (f) (a)—Empty cartridge cases.*

The expression "all parts of ammunition" as used in S. 4 of the Arms Act, includes empty cartridge cases. Possession and selling of empty cartridge cases without license is an offence under S. 19 (a) and (f). *(Batty and Batchelor JJ.)* EMPEROR v. EBRAHIM ALIBHOZ
7 Bom L R 474=2 Cr L J 449.

3. Arms, scope of definition.

——*Ss. 4, 19 (f)*—Takwas.

It is always the purpose for which an implement is primarily used which determines the question whether it does or does not fall within the definition of 'arms'. Implements or articles primarily intended for domestic or agricultural use are not arms under the Arms Act and *takwas* fall under the former category. *(Skemp J.)* UDHAM SINGH v. EMPEROR A I R 1940 Lah 468=
13 R L 311=42 P L R 815=
191 I C 323=42 Cr L J 144.

——*Ss. 4, 13 and 19 (e) — Arm — Meaning — Purpose regulates whether an implement should be deemed to be arms—Clasp-knife 5½ inches long is an arm.*

The criterion whether an implement should be deemed to be arms is the purpose for which the implement is primarily intended. A clasp knife which has a blade 5½ inches long with a pointed end and is fitted to a long handle and turns over into the handle falls within the meaning of the word "arms" : 1 L. B. R. 271; 3 L. B. R. 1 and A. I. R. 1924 Cal. 714, *Rel. on. (Mya Bu J.)* EMPEROR v. NGA LU GALE A I R 1928 Rang 49=
5 Rang 710=106 I C 707=29 Cr L J 115.

——*Ss. 4 and 19 — Arm — Meaning — Primary purpose and not use for which an implement is used is the test — Axe or knife does not become "arm" within S. 4 by merely using it for offending or defending on particular occasions.*

ARMS ACT (XI of 1878), S. 4—3. Arms, scope of definition

It is always the purpose for which an implement is primarily used which determines the question whether it does or does not fall within the definition of "arms" in S. 4. Implements of ordinary domestic use such as an axe or knife cannot fall within the definition of arms by the mere fact that they have been used as weapons of offence or defence on particular occasions. *(Jailal J.)* MEHRDIN v. EMPEROR A I R 1927 Lah 162=99 I C 935=28 Cr L J 199.

——*Arms* — Dahs — *Criterion is the intended purpose of the weapon.*

The true criterion is not whether any given *dahs* is an "u-pyat" but what was the intention of the maker as regards its purpose: 5 L. B. R. 207, *Ref. (Duckworth J.)* POME v. KING-EMPEROR A I R 1923 Rang 23 (1)=68 I C 818=11 L B R 340=1 Bur L J 238=23 Cr L J 594.

——*Ss. 4 and 20—Possession of Chhavi.*

The possession of a Chhavi is unlawful under the Arms Act. *(Shadi Lal J.)* JINDA v. EMPEROR A I R 1919 Lah 211 (1)=10 P L R 1919=52 I C 193=20 Cr L J 577.

——*Ss. 4 and 19—Arms—Definition of.*

The definition of "Arms" in the Arms Act is not exhaustive. The true meaning must be arrived at by a consideration of the circumstances in each case. Neither the length, breadth nor the form of the blade of a weapon nor the handle, affords any certain test of its classification as "arms"; whatever can be used as an instrument of attack or defence, and is not an ordinary implement of domestic purposes, falls within the Act: 34 Cal. 749, *Foll. (Scott-Smith and Broadway JJ.)* EMPEROR v. RALLA SINGH A I R 1919 Lah 472=48 I C 486=32 P R 1918 Cr=20 Cr L J 11.

——*Ss. 4 and 20—Arm—Test of.*

The mere fact that a weapon is dangerous and may cause death if used would not make it "arms" within the meaning of S. 4. *(Lindsay J. C.)* GAJJA v. EMPEROR A I R 1914 Oudh 285=1 O L J 559=26 I C 133=15 Cr L J 685.

——"*Arms*"—*Definition, if exhaustive.*

The definition of arms in the Act is neither exhaustive nor happy: 34 Cal. 749, *Rel. on. (Lindsay J. C.)* GAJJA v. EMPEROR A I R 1914 Oudh 285=1 O L J 559=26 I C 133=15 Cr L J 685.

——Dashi-upyat, *whether an arm.*

It is the intention of the manufacturer, and not of the possessor of a weapon as to the use to which it is to be put, which determines whether a weapon is an arm or not. A *dashi-upyat* of the usual type is primarily intended for domestic and agricultural purposes and is not an arm within the meaning of the Arms Act. *(Charles Fox C. J. and Parlett J.)* KING-EMPEROR v. HAMYIT 5 L B R 207=3 Bur L T 91=8 Ind Cas 972=11 Cr L J 744.

——*Cook's knife.*

The purpose for which an implement is primarily intended regulates whether it should be considered

ARMS ACT (XI of 1878), S. 4—3. Arms, scope of definition

an arm or not. A cook's knife is not an arm. The manufacturing of a sheath for the knife to enable it to be conveniently carried does not convert it into an arm, where the character of the knife has not been altered, *e.g.*, by grinding it so as to make it double edged. *(Parlett J.)* KING-EMPEROR v. AUNG BA 5 L B R 130=4 Ind Cas 1028=3 Bur L T 69=11 Cr L J 153 (1).

4. Arms, what are.

——*Arm—Meaning.*

A hunting knife sharpened on one side only is "arms" within S. 4. *(Greaves and Panton JJ.)* BISHAN SINGH v. EMPEROR A I R 1924 Cal 714=51 Cal 573=81 I C 943=25 Cr L J 1119.

5. Fire-arms.

——*Ss. 4, 14—Gun-barrel.*

A muzzle-loading gun-barrel in good condition and with the touch-hole in good order is a fire-arm within the meaning of S. 14. There is nothing in S. 14 inconsistent with S. 4. "Fire-arms" in S. 14 includes parts of fire-arms. *(Batten A. J. C.)* EMPEROR v. DHANSINGH 3 N L R 53=5 Cr L J 435.

6. "Parts of arms."

——*Ss. 4 and 14—Arms, definition of.*

The word "arms" includes also parts of arms. The word "arms" in S. 4 includes also fire arms. Therefore the words "fire arms" as used in S. 14 include also parts of fire arms. Possession of fire arms is prohibited by S. 14 read with S. 4. 27 Cal 692; 3 N L R 53 *Foll. (Fletcher and Beachcroft, JJ.)* HARSHA NATH CHATTERJEE v. EMPEROR. A I R 1915 Cal 719=42 Cal 1153=21 C L J 201=26 I C 313=19 C W N 706=16 Cr L J 9.

7. Spear.

——"Spear" is spear even if it is called by another name such as *Nishan Saheb* and is used for religious purpose. Possessor is not relieved from operation of the Act. *(Young C. J. and Ram Lall J.)* EMPEROR v. SOBHA SINGH, A I R 1941 Lah 340=I L R 1941 Lah 789=44 P L R 56=14 R L 182=196 I C 766=43 Cr L J 76.

——*Ss. 4, 19 (f)—Spear-head—U. P. Notification No. 10-N-VIII dated May 9, 1934 — Person in possession of spear-head.*

In S. 4, Arms Act, the Legislature enumerated only arms and not parts thereof. Therefore, spear-heads cannot within the meaning of that section be taken to be parts of spears:

Held, that the Notification of the U. P. Government No. 10-N-VIII, dated May 9, 1934, does not prohibit the possession of a spear-head in the District of Ghazipur. The word "spear" used in the Notification must be interpreted in the sense in which that word is used in S. 4 of the Act, and as a spear is used in that section in contra-distinction to spear-head, a spear cannot be held to include a spear-head. Consequently, a resident of Ghazipur District in possession of a spear-

ARMS ACT (XI of 1878), S. 4—7. Spear

head cannot be convicted under S. 19 *(f)*, Arms Act. *(Iqbal Ahmad J.)* RAM BRICH v. EMPEROR
A I R 1937 All 228=1937 AL R 285=
9 R A 600=1937 A L J 41= 167 I C 935=
38 Cr L J 511.

8. Sword.

——*Sword-stick if falls within definition of Arms.*

A sword-stick is a sword sheathed in a cane-stick and comes within the definition of arms in S. 4 because whatever can be used as an instrument of attack or defence and is not an ordinary implement for domestic purposes, comes within the meaning of the statute. *(Mitra and Caspersz JJ.)* EMPEROR v. SATISH CHANDRA ROY
34 Cal 749=6 C L J 751=11 C W N 971=
6 Cr L J 227

9. Unserviceable arms.

——*Ss. 4, 19 (f)* — Pistol in broken and unworkable condition—License is required for its possession — Pistol not losing its character as pistol and still usable as arm with some repairs—Possession of same without license is punishable : 6 Mad 60 (FB), *held Dissented from in* 21 Mad 360 (FB), *(Beg J.)* SWAMI DAYAL v. STATE, A I R 1953 All 353=
1952 A W R (HC) 341=1953 Cr L J 762

——*Ss. 4, 14 and 19—Rifle barrel complete with trigger and other parts but without bolt and stock —If arm.*

A rifle barrel complete with a trigger and other fixed parts but without bolt and stock, retains the specific character of the fire-arm designated as a rifle, and its possession without a license is punishable under S. 19 (f) read with S. 14. *(U San Maung and U Aung Tha Gyaw JJ.)* UNION OF BURMA v. LU KHANT, 1949 Bur L R 131

——*Ss. 4, 14, 15 and 19 (f)—Ammunition — Old, dirty and rusty cartridges considered unserviceable but some of which on cleaning likely to be serviceable—Possession without licence—Offence.*

Definition of "ammunition" in S. 4 includes not only serviceable loaded cartridges but also all parts of ammunition. Old dirty and in parts rusty, loaded and live rifle cartridges and bullets which are considered by the possessor as mere scrap and inserviceable, but some of which may likely to be found serviceable after cleaning, are ammunition within the meaning of S. 4 and its possession in contravention of S. 14 or S. 15, is an offence punishable under S. 19 (f) : 7 Bom L R 474 and 23 A I R 1936 All 392, *Ref. (Lobo and Tyabji JJ.)* GROWN v. NIRMALDAS ALUMAL
ILR (1947) Kar 49

——*Parts of arms.*

Bolts and bars of rifles are arms within S. 4, (38 P R 1889 (Cr.) *Ref.*) In order to fall within S. 4, the weapon need not be in a serviceable condition. (21 Mad 360 FB *Rel.*) *(Moti Sagar J.)* KARM DIN v. EMPEROR, AIR 1923 Lah 617=
77 I C 1003=25 Cr L J 539.

——*Ss. 4, 19 (f)—Loose parts of revolver—Test.*

Possession of loose parts of a revolver which had not so changed their original character as to have ceased to be parts of a fire-arm and with nothing

ARMS ACT (XI of 1878), S. 4 — 9. Unserviceable arms

to suggest that they could not be assembled together either with or without other parts in such a way as to be capable of being used as a fire-arm is an offence under S. 19 *(f)*, Arms Act.

In such cases the question is not so much whether the particular weapon is serviceable as a fire-arm but whether it has lost its specific character and has so ceased to be a fire-arm. *(Panckridge and Patterson JJ.)* SANTO SINGH v. EMPEROR,
A I R 1933 Cal 495=
37 C W N 234=1933 Cr Cas 770=
6 R C 80=145 I C 177=34 Cr L J 916

——*Ss. 4, 13, 19—Arm out of order—Possession without license.*

The test is not whether a particular weapon is serviceable but whether it comes within the legal definition of an arm. A revolver, even if it is out of repair, is none the less an arm, within S. 4 of the Arms Act, and a person in possession of such a weapon, without a license, is guilty of an offence under S. 19. *(Robertson and Kensington JJ.)* KING-EMPEROR v. SAMIULLAH,
6 P R 1908, Cr=14 P W R 1908, Cr=
148 P L R 1908=7 Cr L J 350

—S. 5.

——Repairer need not obtain licence. *(R. K. Chowdhry J. C.)* KANHYA v. STATE,
A I R 1951 Him P 35=52 Cr L J 187

——*Ss. 5 and 19 — Manufacturing* Kirpan *without license is an offence.*

The exemption only applies to *kirpans* actually in existence and possessed or carried by Sikhs and not to the manufacture of *kirpans* by Sikhs. A Sikh is not prevented by any provision in the Arms Act from dealing with a *kirpan* which he possesses in any way he likes. A Sikh, however, is not exempted by the entry in Schedule II from the operation of the prohibition as to manufacture contained in section 5 of the Act. *(Scott-Smith and Harrison, JJ.)* EMPEROR v. BASTA SINGH,
A I R 1923 Lah 267=3 Lah 437=
77 I C 230=25 Cr L J 342

——*Dagger—Shaped clasp knife.*

An implement whose blade was shaped and pointed as a dagger and held to a long handle with a spring, which closed and opened the blade like a pocket knife, and of the size produced in the case, was held to fall under the definition of "arm" in S. 5 of the Act. *(White C. J. and Fox J.)* EBRAHIM DAWOOJI v. EMPEROR,
2 Cr L J 372 (Lower Burma)

—S. 13.

See also ibid, S. 19.

——*Going armed.*

If a person carries an unlicensed pistol in a handbag which is locked he cannot be held guilty under S. 13. *(Desai J.)* RAM CHANDER v. REX,
A I R 1950 All 386=1950 A L J 811=
51 Cr L J 1064

——'Going armed'—Intention of using arms is necessary ingredient—Going armed and possession are not to be taken in the same sense. *See* ibid, S. 19 (e).
A I R 1948 Bom 173=49 Cr L J 208

——A man who is found going about with a pistol, gun or sword must in the absence of proof to the contrary be presumed to be carrying it with intention of using it should an opportunity arise. Section 13 itself is distinct from S. 14 as it implies the action or process of going armed. *(Grille and Gruer JJ.)* LOCAL GOVERNMENT v. GAJRAJ SINGH, A I R 1937 Nag 213=ILR (1937) Nag 488=9 R N 278=168 I C 879=38 Cr L J 639.

——*Taking blunt spear, capable of being sharpened, to parade ground for gymnastic purposes is "going armed".*

A spear would not cease to be a spear by reason of its points and edges becoming blunt if they are capable of being sharpened at any time; and taking of such spear to the parade ground for gymnastic purposes amounts to going armed within the meaning of S. 13. *(Mirza and Broomfield JJ.)* EMPEROR v. SATTEGOWDA AIR 1930 Bom 174=Ind Rul 1930 Bom 449=126 I C 881=1930 Cr C 550=32 Bom L R 571=31 Cr L J 1109.

——*Ss. 13, 14, 19 (f), 20 — Distinction — Going armed with revolver — Possession of personal arms.*

Section 20, Arms Act, is not restricted in its operation to cases of importation and exportation of arms in bulk. But, for S. 20 to apply, there must be some special indication of an intention to conceal possession of the arms from a public servant, Railway Official or public carrier.

Section 13 prohibits an unlicensed person from going armed with any kind of arms, that is to say, a person going armed with either a knife or a revolver comes within the provisions of the section. But with regard to fire-arms, a further offence may be committed, namely, having them in possession or under control, without a license. Section 14 covers this offence, and if this offence is committed with the intention referred to in S. 20, then a heavier punishment may be inflicted than for the simple offence under S. 14, the penalty for which is provided in S. 19 *(f)*. To be in possession or control of arms other than those mentioned in S. 14 is not an offence, though it is an offence to go armed with them, as provided in S. 13.

An unlicensed person going armed with a revolver may be convicted under either S. 13 or S. 14 of the Arms Act, and consequently may be convicted under S. 20. *(Lort-Williams and McNair JJ.)* SACHINDRA KAR GUPTA v. EMPEROR A I R 1933 Cal 692=1933 Cr Cas 1154=6 R C 251=60 Cal 1432=146 I C 645=35 Cr L J 125.

——*License need not be carried whenever the person has the gun with him.*

A person who holds a license for a gun or any other weapon is not obliged to carry it on his person whenever he has the gun with him. 20 Cal 444, *Foll. (Daniels A. J. C.)* EMPEROR v. MUHAMMAD IBRAHIM, A I R 1921 Oudh 149=24 O C 265=64 I C 275=22 Cr L J 755.

——*Ss. 13 to 16 and 19 — Servant carrying or using gun of master.*

The servant of a person exempted from the operation of the Arms Act commits no offence by carrying his master's gun and shooting game with it with his master's permission. *(Stuart J.)* MALUA v. EMPEROR, A I R 1919 All 160 (1)=17 A L J 758=51 IC 208=1 U P L R 61=20 Cr L J 432.

——*Ss. 13 and 16—Exemption—Privilege.*

A person who is exempted from the operation of the Act can send a servant armed with his gun to shoot for him. *(Knox J.)* GOPAL v. EMPEROR, A I R 1917 All 327=38 I C 329=18 Cr L J 297.

——*Ss. 13, 14, 19 and 22—Possession — Delivery of arm to servant for shooting.*

Throughout the Act the word "possession" must be taken to mean something different from mere "control." The transfer of possession contemplated by S. 22 is something more than the entrusting of an arm to a servant. Moreover, in Ss. 14 and 19 the Act deals with possession and control as distinct matters. A servant using a gun belonging to his master would no doubt have the weapon under his control, so long as the use continues, but the weapon would remain in the master's possession. *(Drake-Brockman J. C.)* EMPEROR v. MUKUNDA, 4 N L R 78=8 Cr L J 18.

——Arm out of order—Possession without license —*See* Arms Act, Ss. 4, 13, 19, 7 Cr L J 350 (Lah)

—S. 14.

See also ibid, Ss. 4, 13 and 19.

SYNOPSIS

1. Scope.
2. Manner and extent.
3. Fire-arms.
4. Possession and licence.

1. Scope.

——*Ss. 14, 16—Sections are not unconstitutional and void on ground that they infringe fundamental rights — (Constitution of India, Arts. 19 (1) (b), (f) and (5) and 31).*

The restriction put on the right of assembly by Art. 19 (1) (b) does not import in Art. 19 (1) (f) an unrestricted fundamental right to acquire, hold and dispose of arms. The right to hold, acquire, dispose of property is not absolute. It is subject to the limitations specified in Art. 19 (5) and to the provisions contained in Art. 31.

Reasonable restriction on the exercise of the right to acquire, hold or dispose of property can be imposed either in the interests of the general public or for the protection of the interests of any Scheduled Tribe; secondly a person may be deprived of his property by authority of law; and thirdly the State may acquire any property or take possession of it for public purposes on payment of compensation.

The question whether the restrictions imposed are reasonable or unreasonable has to be decided in the context of social, economic and political conditions in which they are imposed.

In deciding on the reasonableness or otherwise of the restrictions imposed by law, the substantive as well as the procedural provisions of law should be examined and the question whether the provisions of the Act provide reasonable safeguard, against the abuse of the power given to the execu-

ARMS ACT (XI of 1878), S. 14 — 1. Scope

tive authority to administer the law is not relevant for the true interpretation of the law.

The restrictions imposed on the possession and disposal of arms by Ss. 14 and 16, Arms Act, are reasonable restrictions necessary to the preservation of peace and prevention of danger to life, and property and permissible under cl. (5) of Art. 19 of the Constitution. Consequently, it cannot be held that these two sections in so far as they prohibit the possession of arms except under license, require a person to deposit the arms already in his possession, if his possession thereof becomes unlawful, and restrict the sale of arms to persons whose possession of the same would be unlawful constitute an infringement of Art. 19 (1) (f) of the Constitution and are, therefore, void.

Article 31 of the Constitution which is operative only when a person is deprived of his property or when his property has been acquired or taken possession of for a public purpose has no applicability here. The Article that is relevant here is Art. 19 (1) (f) which applies in cases where property has not been taken away under Art. 31. The argument that as under certain conditions such as those stated in Ss. 24 and 26, Arms Act, the arms in possession of a person can be confiscated without compensation or detained, they are repugnant to Art. 31 overlooks the fact that Art. 31 (1) implies that a person may be deprived of his property by authority of law & that in the exercise of police powers a person may be deprived of his property for the prevention of danger to life or property even without compensation.

Ss. 14 and 16, Arms Act, are not therefore void on ground of repugnancy with Art. 31. *(Shinde C. J. and Dixit J.)* MAHENDRA BAHADUR SINGH v. STATE, **A I R 1953 Madh B 236= 1953 Cr L J 1409.**

——*Is not void as delegated legislation — (Constitution of India, Art. 245.)*

Delegation of the character which S. 14 involves cannot on any view be held to be invalid. The Legislature has laid down in S. 14 itself the principle that no person shall possess fire arms except under a license. Such matters as the authority competent to issue licenses, the form in which they should be issued and the terms and conditions on which they should be granted are all matters of detail. Section 17, Arms Act, does no more than enable the Government to make rules to carry out the principle embodied in S. 14. This delegation of power to administrative bodies is permissible. *(Shinde C. J. and Dixit J.)* MAHENDRA BAHADUR SINGH v. STATE, **A I R 1953 MadhB 236= 1953 Cr L J 1409.**

——*Spear—Failure to deposit—Conviction.*

There is no provision in S. 14 requiring a person to deposit a spear. Where there is no other basis for conviction, it is illegal. *(Napier J.)* IN RE CHAGANTIPATI CHINA BASAVAPPA **AIR 1916 Mad 624=2 M L W 532= 29 I C 544=16 Cr L J 528.**

2. Manner and extent.

——*Possession of ammunition in excess of quantity permitted under licence—Offence falls under S. 14 and not under S. 21.*

The word "extent" in S. 14 includes the quantity of ammunition permitted by the license.

ARMS ACT (XI of 1878), S. 14—2. Manner and extent

Possession or control of any quantity in excess of it must be deemed an offence under S. 14 read with S. 19 (f) and therefore, not under S. 21 because it is not according to the extent permitted by the licence : 20 A I R 1933 Cal. 218, *Rel. on*; 33 A I R 1946 Oudh 124, *Dissent. (Yahya Ali J.)* A. K. M. AHMAD NAINA MARACAIR v. EMPEROR **A I R 1947 Mad 451=60 M L W 429= 1947-2 M L J 102=1947 M W N 485= 1947 A W R Sup 89=1947 O A Sup 89= 48 Cr L J 880.**

——*License for breach loading gun authorizing licensee to keep cartridges — Licensee is not debarred from possessing powder for purpose of reloading cartridges.*

The word "manner" in S. 14 must not be given a restricted meaning. It must refer back to the license which means 'according to the mode prescribed in the license.' The licence lays down the manner or mode in which it is to be used or handled. Hence a person, who has a licence for a breach loading gun and is authorised to keep cartridges, is not debarred from possessing powder for the purpose of reloading the cartridges provided he does not exceed the number of cartridges allowed to him under the license. *(Thomas C. J.)* RAM SAROMAN v. EMPEROR **A I R 1946 Oudh 124.**

——*Ss. 14, 15, 19 and 23 — Holding arm after expiry of license.*

A man who possesses an arm for which he holds an expired license does not do so "under that license and in the manner and to the extent permitted thereby." Consequently he commits an offence under S. 19 *(f)* and is not punishable under S. 23. *(Middleton J. C.)* ZAINUL ABDIN v. EMPEROR, **A I R 1937 Pesh 30=9 R Pesh 84= 167 I C 191=38 Cr L J 396.**

——The word "extent" in S. 14 is not limited in its meaning to territorial extent. *(Jack and M. C. Ghose JJ.)* MALCOLM v. EMPEROR, **A I R 1933 Cal 218=37 CWN 93= Ind Rul (1933) Cal 301=1933 Cr Cas 299= 60 Cal 445=142 I C 522 (2)= 34 Cr L J 363.**

——Arms Act Rules 1924, Sch. VII — Exemption —Reopening matter in succeeding year—*See* Arms Act Rules, 1924, Sch. VII **A I R 1932 Rang 180=34 Cr L J 112 (2).**

——*Possessing arm—License for a full-sized gun —Possessing half-barrel gun is an offence.*

Where a license granted relates to a full-sized gun, the person holding such a license cannot keep a half-barrel gun under it. *(Dalip Singh J.)* MURLI SINGH v. EMPEROR **A I R 1928 Lah 759=10 A I Cr R 206= 109 I C 120=10 L L J 302=29 Cr L J 472.**

3. Fire-arms.

——Fire-arms—Barrel of a rifle — *See* ibid, S. 4 1949 Bur L R 131.

——*"Fire-arms"—Meaning of.*

The word "fire-arms" means "arms that are fired by means of gun powder or other explosives *(Fletcher and Beachcroft JJ.)* HARSHA NATH CHATTERJEE v. EMPEROR **A I R 1915 Cal 719=42 Cal 1153= 26 I C 313=21 C L J 201=19 C W N 706— 16 Cr L J 9.**

ARMS ACT (XI of 1878), S. 14

4. Possession and licence.

——Possession of spear head without licence is no offence—*See* Hyderabad Arms Regulation (13 of 1358 F.), S. 10 **A I R 1953 Hyd 204= 1953 Cr L J 1136.**

—*Ss. 14, 19 (f)—Unlicensed possession of arms as pledge—S. 19 (f) applies.*

Possession is the essence of a pledge. The pledgee can retain his possession of the goods pledged against the pledgor and for the time being his possession is exclusive. By reason of such possession he has special property in the goods pledged. His possession is not merely temporary or accidental or on behalf of any other person but it is in his own right.

Where therefore an accused obtains possession of certain arms and ammunition as a pledgee without any license, such possession comes within the purview of S. 19 (f), Arms Act, *Case law consd. (Shah C. J. and Chhatpar J.)* STATE v. JAYANTILAL **A I R 1951 Sau 58=52 Cr L J 1038.**

——Old, dirty and rusty cartridges — Possession without license is offence — *See* Arms Act (XI of 1878), S. 4 **I L R (1947) Kar 49.**

——*Ss. 14, 15—Possession of arms in furtherance of terrorist movement.*

In a prosecution for possession of fire-arms in contravention of Ss. 14 and 15 of the Arms Act, it is incumbent on the prosecution to prove that the fire-arms were possessed in contravention of Ss. 14 and 15 of the Act, in other words, that they were possessed without license or other legal authority. It is incumbent on the prosecution to lead some evidence which would justify an inference that the possession was against the provisions of the Arms Act. The fact that the fire-arms have been possessed in furtherance of terrorist movements is not in itself an offence under the Arms Act.

It may be that there is a conspiracy to commit terrorist crimes and it may be that there is a conspiracy to possess fire-arms in contravention of the Arms Act. But the two things are not the same. From the fact of being members of an organisation the object of which is to commit terroristic offences, it would not follow in the absence of other evidence, that the accused were also parties to a criminal conspiracy for the specific and definite purpose of possessing fire-arms in contravention of the Arms Act. It is a fallacy to suppose that merely because one was a member of the larger organisation, one was also a member of the smaller organisation although the immediate objects of the two were not one and the same. *(S. K. Ghose and Henderson JJ.)* BIMAL KRISHNA BISWAS v. EMPEROR **163 I C 566 = 62 Cal 819 = 39 C W N 761=9 R C 30=37 Cr L J 840.**

——If it is established that an accused had no licence under the Act or Rules and if he could not prove himself to be exempted under the Act or Rules he would be a person within the provisions of S. 14. *(Otter and Baguley JJ.)* EMPEROR v. VERTANNES **A I R 1932 Rang 180 = 1932 Cr Cas 815= Ind Rul (1933) Rang 2 (2)=140 I C 754= 34 Cr L J 112 (2).**

——*Ss. 14 and 19 (f) — Empty cartridges—Two empty brass 405 used cartridge cases found in accused's house in a locked box—Accused was held not liable.*

While the police were searching accused's house for stolen property (which was not present) they discovered in a locked box two empty brass 405 used cartridge cases which were incapable of being re-loaded in India.

Held, that accused was not guilty. *(Stuart J.)* AMIR v. EMPEROR **A I R 1925 All 498 = 47 All 629=87 I C 927=23 A L J 455= 6 L R A Cr 127=26 Cr L J 1039.**

——*Ss. 14, 15 and 19 (f) — Possession of gun by servant—Master having license, dead.*

Where the accused a servant of a person, who had a license but who had died, was found in possession of a gun, held, the accused had possession and control of the gun in contravention of Ss. 14 and 15 of the Act and was therefore guilty of an offence under S. 19 (f). *(Batchelor and Heaton JJ.)* EMPEROR v. JAFU BABU **14 Bom L R 501=15 I C 797= 13 Cr L J 525.**

——*Ss. 14, 15 and 19 (f)—Conviction under.*

Where a person is found to have kept a gun for some time and then made it over to another to keep for him he cannot be convicted under S. 19 (f). *(Holmwood and Dass JJ.)* AKHIL NATH v. EMPEROR **15 C W N 440=10 I C 688= 12 Cr L J 197.**

——Possession—Delivery of arm to servant for shooting—*See* Arms Act Ss. 13, 14, 19, 22 **8 Cr L J 18 (Nag).**

——Temporary possession of a gun — *See* Arms Act (1878), Ss. 19 (f) and 14 **7 Cr L J 112 (Cal).**

——*Ss. 4 and 14* — Scope — Gun barrel in good condition and with touch hole in order is a fire-arm—*See* ibid, Ss. 4, 14 **5 Cr L J 435 (Nag).**

—S. 15.

——Possession of spear-head without licence is no offence—*See* Hyderabad Arms Regulation (13 of 1358F.) S. 10 **A I R 1953 Hyd 204= 1953 Cr L J 1136.**

——*Notification under section lost — Para, 92 in Orders and Rules under Act, if can be relied upon —Evidence Act (1872), Ss. 35 and 65 (c).*

When the original notification or order under S. 15 is not traceable and has been lost, Para. 92 in the Orders and Rules under the Act published under the authority of the U. P. Government, can be admitted in evidence and relied upon. *(Agarwala and Bhargawa JJ.)* AMIR KHAN v. STATE **A I R 1950 All 423=1950 A W R 326= 1950 A L J 407=51 Cr L J 1144.**

——Old, dirty and rusty cartridges — Possession without license in contravention of—Offence—*See* Arms Act (XI of 1878), S. 4 **I L R (1947) Kar 49.**

——*Ss. 15 and 17—Possessing arms— U. P. Arms Rules and Orders (1924), R. 35 — Repairer of arms in possession of guns for repairs cannot be convicted of offence of being in possession of arms without license — Length of time of possession depends upon circumstances.*

Kashmir University Library
Accession No. 7612 S.

ARMS ACT (XI of 1878), S. 15

From the provisions of the U. P. Arms Rules and Orders (1924) it is perfectly clear that a person who repairs arms and is in possession of guns made over to him for repairs cannot be convicted of an offence of being in possession of arms without license. Once it is found that a person was in possession of arms for *bona fide* purpose of repairing them the length of time during which his possession thereof is justified depends upon the circumstances of each case. *(Niamatullah J.)* MURLI v. EMPEROR
A I R 1929 All 720 = 119 I C 13=10 L R A Cr 145= 1930 A L J 201=12 A I Cr R 464= 1929 Cr C 304=52 All 92= Ind Rul (1929) All 973=30 Cr L J 984.

——*Ss. 15 and 16 — Search — Existence of fire arms—Knowledge of—Presumption in the case of occupier.*

The knowledge of the existence of fire-arms found in a hut on search should not, without further evidence, be imputed to any other than the occupier of the hut nor would that presumption operate even against him if it could be proved that it was possible, the arms might be there without his knowing it. *(Woodroffe and Beachcroft JJ.)* ROMESHCHANDRA v. EMPEROR
A I R 1914 Cal 456=41 Cal 350 = 23 I C 985=18 C W N 498=15 Cr L J 385.

——Applicability to Burma — *See* Arms Act S. 19
7 Cr L J 243 (Burma).

— S. 16.

——Validity—*See* ibid, S. 14
A I R 1953 Madh B 236= 1953 Cr L J 1409.

——Possession of spear-head without license is no offence — *See* Hyderabad Arms Regulation (13 of 1358F.), S. 10 **A I R 1953 Hyd 204 = 1953 Cr L J 1136.**

——*Possession of gun without license being renewed*

To pass an order confiscating a gun because of mere delay in renewing the license is not legal. *(Miller J.)* KATTUVA ROWTHEN In re,
A I R 1915 Mad 130 (1)=22 I C 165 = 15 Cr L J 21.

—S. 17.

——*S. 17, Rules under, R. 43.*

——Restrictions in, are reasonable and in interest of public — Refusal to grant license should not be arbitrary—*See* Constitution of India, Art. 19 (5)
A I R 1953 Mad 476=1953 Cr L J 917.

——Power to issue license for arms carries with it power to refuse to issue license — R. 43 under Act is not ultra vires. *(Subba Rao J.)* P. NARASIMHA REDDY v. DISTRICT MAGISTRATE, CUDDAPAH
A I R 1953 Mad 476=1953 Mad W N 168= 1953-1 Mad L J 418=1953 Cr L J 917.

——License-holder must apply for renewal before expiry of license — Possession of gun after expiry is offence under S. 19 (f) *(Tek Chand and Din Mohammad JJ.)* EMPEROR v. BAKSHI RAM
A I R 1942 Lah 300=44 PLR 486= I L R (1943) Lah 756=15 R L 235= 203 I C 542=44 Cr L J 101.

—S. 18.

——*S. 18 (a)—Reasons for cancellation—Failure to record that cancellation is necessary for public peace—Effect.*

ARMS ACT (XI of 1878), S. 18

The authority should clearly record in so many words that the cancellation of the license is necessary for the purposes of security of public peace. When the authority omits to record such a reason, it fails to comply with the provisions of S. 18 (a). *(Palnitkar C. J. and Siadat Alikhan J.)* ANKUSH RAO v. THE COLLECTOR
AIR 1953 Hyd 183=ILR (1953) Hyd 134= 1953 Cr L J 1120.

——*S. 18 (a)—Non-compliance with—Effect.*

Section 18 (a) requires that the authority suspending or cancelling a licence must himself record the reasons why the order has been passed; and further it should appear from the order that it was passed because it was necessary for the security of the public peace to do so. Where none of these two essential ingredients mentioned in the section is to be found in the order, it is without jurisdiction and must be quashed. *(Agarwala and Mukerji JJ.)* BENICHAND v. DISTRICT MAGISTRATE
A I R 1953 All 476=1953 All L J 183= 1953 A W R (HC) 248= 1953 Cr L J 1078.

——*S. 18 (a) and R. 175 of U. P. Arms Rules and Orders — Any Magistrate of District — Expression means District Mogistrate — R. 175 does not empower Sub-Divisional Magistrate to cancel or suspend licence — Hence City Magistrate exercising powers of Sub-Divisional Magistrate cannot suspend licence.*

The difference between the expression "Magistrate of the District" in S. 3 (2), Criminal P. C., which defines it to mean "District Magistrate" and the expression "Magistrate of a District" in S. 18 (a), Arms Act, is of no significance and therefore, the latter expression must be taken to mean "District Magistrate." The use of the word "any" before the latter expression does not at all affect the construction of the expression.

Rule 175, U. P. Arms Rules and Orders, certainly implies that a Sub-Divisional Magistrate may cancel or suspend a licence, but that provision in the rule cannot confer power on a Sub-Divisional Magistrate not empowered by S. 18 (a).

Therefore a City Magistrate exercising the powers of a Sub-Divisional Magistrate not empowered by S. 18 (a) has no power to suspend a licence under S. 18 (a). *(Sinha and Bennett JJ.)* HAKIM NAWAB ALI v. EMPEROR
A I R 1946 All 484=224 I C 456= 1946 A L J 199=1946 O W N H C 201= 1946 A W R H C 381=ILR (1946) All 689= 47 Cr L J 638.

—S. 19.

See also ibid, Ss. Ss. 4 and 13.

SYNOPSIS.

1. S. 19—General.
2. S. 19 and S. 20.
3. S. 19, Clause (a).
4. S. 19, Clause (c).
5. S. 19, Clause (d).
6. S. 19, Clause (e)—General.
7. S. 19, Clause (e)—"Goes armed."
8. S. 19, Clause (f)—Exemptions.
9. S. 19, Clause (f)—General.
10. S. 19, Clause (f)—Illustrative cases.

ARMS ACT (XI of 1878), S. 19

11. S. 19, Clause (f)—Possession by servant of a license-holder.
12. S. 19, Clause (f)—Possession of accused to be exclusive.
13. S. 19, Clause (f)—Joint occupation of premises.
14. S. 19, Clause (f)—Possibility of other persons having access.
15. S. 19, Clause (f)—Possession of arms found in a house belonging to a joint family.
16. S. 19, Clause (f) — Possession of arms in unserviceable condition.
17. S. 19, Clause (i .
18. Procedure.
19. Sanction.
2 0. Conviction and punishment.

—1. S. 19—General.

——*S. 19 (f)* — Prosecution under — Statement about place where arms hidden — Admissibility — *See* Evidence Act, S. 27

1948 Bur L R 665.

——Offence under S. 19 is complete as soon as accused is found in possession of arms and ammunition in contravention of S. 14 or S. 15. *(Fazl Ali J.)* PERSAD DAHAIT v. EMPEROR

A I R 1935 Pat 465=16 P L T 598=
(1935) Cr. Cas 1202=2 B R 88 =
8 R P 286=159 I C 487=37 Cr L J 100.

—2. S. 19 and S. 20

——*Ss. 19 (f) and 20 (as amended by Burma Act (LXIV (64) of 1947) — Charge under S. 19 (f)— Conviction under S. 20.*

Where an accused person is sent up for trial under S. 19 (f) of the Act it is competent for the Magistrate to convict him under S. 20 when the facts appearing in evidence justifies a conviction under that section : (1947) Rang L R 53, *Disting. (U San Maung J.)* NGA SAW SHWE v. THE UNION OF BURMA 1948 Bur L R 658.

—*Ss. 19 (f) and 20* — In a trial by jury accused charged under S. 19 (f)—Verdict of not guilty—On reference by Sessions Judge, High Court finding him guilty under S. 19 (f) read with S. 20:

Held, that the High Court could convict him under S. 19 (f) read with S. 20, though he was charged under S. 19 (f) only. *(Thom & Bennet JJ.)* YASHPAL v. EMPEPOR

A I R 1933 All 627=1933 Cr Cas 1006=
55 All 681=L R 14 A 233 Cr=6 R A 629=
147 I C 1193=35 Cr L J 573.

—*Ss. 19 (f) and 20*—A person cannot be convicted both under Ss. 20 and 19 (f) in respect of the same revolver. *(Rankin C. J. & Costello J.)* DHARANI KANTA CHAKRABARTY v. EMPEROR

A I R 1933 Cal 594=57 C L J 57=
6 R C 285=146 I C 1051=35 Cr L J 226.

——Mere possession of an unlicensed weapon is punishable under S. 19. But if the circumstances are such as to indicate an intention that the possession may not be known to authorities, e. g., the Police, the offence is punishable under S. 20.

ARMS ACT (XI of 1878), S. 19—2. S. 19 and S. 20

(Mallik & Patterson JJ.) JOGENDRA MOHAN GUHA v. EMPEROR A I R 1933 Cal 516=
60 Cal 545=6 R C 68=1933 Cr Cas 860=
=144 I C 957=34 Cr L J 879.

—*Ss. 19 (f), 20—Political views of accused.*

Where a person charged under Ss. 19 (f) and 20, Arms Act, pleaded guilty and finding that the possession of arms with him was connected with his political views he was awarded the maximum sentence under the section :

Held, that it was very necessary that the powers of the Court should be employed in putting down these very dangerous crimes of possession and concealment of arms, and that there was nothing calling for interference by the High Court. *(Rankin C. J. & Pearson J.)* NIL RATAN v. EMPEROR

A I R 1933 Cal 124=37 C W N 195=
1933 Cr Cas 140=Ind Rul (1933) Cal 478=
60 Cal 571=143 I C 802=34 Cr L J 633.

—*Ss. 19 (f), 20 — Applicability — Intention to conceal—Inference from circumstances.*

Whether a case falls under S. 19 (f) of the Arms Act or under S. 20 depends on the facts of each case; but for S. 20 to apply there must be some special indication of an intention to conceal the possession of the arms from a public servant, Railway Official or public carrier.

Where two revolvers, some cartridges and a pistol were recovered from a trunk which was being carried in a Railway compartment:

Held, that the accused must be presumed to have intended to conceal them from Railway Officials and the offence fell under S. 20, Arms Act. *(Currie J.)* PREM KUMAR v. EMPEROR

A I R 1931 Lah 571=32 P L R 651=
Ind Rul (1932) Lah 23=1931 Cr Cas 859=
135 I C 39=33 Cr L J 110.

——*S. 19 (f)* — Accused convicted under S. 20 — First three clauses of S. 19 not applying — Magistrate must be presumed to have held that accused committed an act mentioned in S. 19 (t) — Appellate Court can alter finding from one under S. 20 to one under S. 19 (t). *(Wild J. C. & Milne A. J. C.)* SABJHAT ULLAH SHAH v. EMPEROR

A I R 1931 Sind 9=25 S L R 1=
(1931) Cr Cas 57=130 I C 437=32 Cr L J 517.

——*S. 19 (f)*—Arms found stored in store-room— No attempt to conceal store-room itself — No conviction under S. 20 though offence fell under S. 19 (f). *(Wild J. C. & Milne A. J. C.)* SABJHAT ULLAH SHAH v. EMPEROR

A I R 1931 Sind 9=25 S L R 1=
1931 Cr Cas 57=130 I C 437=32 Cr L J 517.

—*Ss. 19 and 20 — Concealing—In order to apply S. 20, indication of intention to conceal arms from public servant must be shown.*

Each case of concealment of arms must be decided on its own facts as to whether it falls under S. 19 or S. 20, Arms Act, but for S. 20 to apply there must be some special indication of an intention to conceal the possession of the arms from a public servant, railway official or public carrier. 8 P R 1915 (Cr); A I R 1923 Lah 79; AIR 1923 Lah 434; and A I R 1926 Lah 262. Foll; 9 P R 1912 Cr and A I R 1925 Lah 395, Diss. from *(Tek Chand, J.)* KARIM BAKHSH v. EMPEROR

A I R 1928 Lah 193=9 Lah 550=
109 I C 593=10 A I Cr R 293=29 Cr L J 577.

ARMS ACT (XI of 1878), S. 19 — 2. S. 19 and S. 20

——*Ss. 19 (f) and 20 — Going armed—Intention specified in S. 20 cannot be inferred by merely carrying a small arm in pocket.*

If a person carries on his person a small weapon such as a pistol, a dagger, or a blade of a *chhavi*, he naturally puts it in his pocket or dab, and if with that weapon in his pocket or dab he is in his house or in his village or in a bazaar or in a Court compound, it cannot be inferred that he was so carrying the weapon with the intention specified in S. 20. *(Zafar Ali J.)* GHULAM MAHOMED v. EMPEROR A I R 1927 Lah 561=103 I C 207=28 Cr L J 671.

——*Ss. 19 and 20—Distinct offences.*

Offences created by and punishable under S. 20 are distinct from those under S. 19: 34 I C 321, foll. *(Fox C. J. and Parlett, Young and Twomey, JJ.)* NGA PO CHIN v. EMPEROR A I R 1916 L B 105=8 L B R 452=34 I C 321=17 Cr L J 209 (F B).

——*Ss. 19 (f) and 20—Discovery of arms.*

A discovery of arms in consequence of the information supplied by the accused that he had buried a revolver in his field fulfils the requirements of Ss. 19 (f) and 20. *(Scott-Smith and Shadilal, JJ.)* ISHER SINGH v. EMPEROR A I R 1916 Lah 228=72 P L R 1916=24 P W R 1916 Cr=33 I C 823=50 P W R 1915 Cr=17 Cr L J 183.

——*Ss. 19 (f) and 20—Revolver — Possession of one of two men sitting together—When both guilty.*

A person carrying a revolver in his pocket without a license is guilty only under S. 19 (f) of the Arms Act and not under S. 20. 8 P R (Cr) 1915, Dist. Where a revolver was found in the possession of one of two men sitting together and it was proved that at one time the revolver was possessed by the other of the two, both are guilty of possessing arms without a license. *(Leslie Jones, J.)* UDHAM SINGH v. THE CROWN A I R 1915 Lah 193=30 I C 461=27 P W R (Cr) 1915=16 Cr L J 637.

——*Ss. 19 and 20 — Arm — Concealment in loin cloth—Sentence.*

Section 20 of the Arms Act is applicable to a case of possession of arms contrary to the provisions of the Act when the accused has concealed it in his waist band of loin cloth. Having regard to the previous convictions of the accused a sentence of seven years' rigorous imprisonment was held appropriate. *(Rattigan and Scott-Smith, JJ.)* KHEM SINGH v. EMPEROR A I R 1914 Lah 591=8 P R (Cr) 1915=28 I C 796=76 P L R 1915=16 Cr L J 412.

——*Ss. 19 (b) and 20—Distinct offences under.*

An offence under S. 19 is different from an offence under S. 20. To constitute the latter offence, there should be possession of arms in such a manner as to indicate an intention to keep it from the knowledge of a public servant. The keeping of arms under S. 19 (b) must be a keeping for sale, not keeping only. *(Fletcher and Beachcroft, JJ.)* HARSHA NATH CHATTERJEE v. EMPEROR A I R 1915 Cal 719=42 Cal 1153=21 C L J 201=26 I C 313=19 C W N 706=16 Cr L J 9.

ARMS ACT (XI of 1878), S. 19 — 2. S. 19 and S. 20

——*Ss. 19 and 20—"Chhavvi"—Meaning of.*

Everything is a *chhavvi*, which has a large axe-like blade curved or otherwise with an arrangement of ring or rings for fastening it to the handle and a handle of considerable length. *(Johnstone, J.)* GAHNA v. EMPEROR A I R 1914 Lah 280 (1)=1 P W R 1914 Cr=33 P L R 1914=24 I C 594=15 Cr L J 506.

——*Ss. 19 and 20 — Possession of a chhavvi keeping it hidden.*

Being in possession of a *chhavvi* and keeping it hidden is punishable under S. 19 of the Arms Act. S. 20 applies only when the export or import of an arm is attempted. *(Johnstone, J.)* GAHNA v. EMPEROR A I R 1914 Lah 280 (1)=1 P W R 1914 Cr=33 P L R 1914=24 I C 594=15 Cr L J 506.

——*Ss. 19 (f), 20, 29*—The accused was convicted by the Sub-divisional Magistrate under S. 19 (f), Arms Act, and sentenced to one year's rigorous imprisonment. The District Magistrate had not sanctioned the prosecution under S. 29 of the Act. The Sessions Judge dismissed the appeal holding that the Magistrate intended to convict under S. 20 as he quoted certain circulars, but allowed the conviction to stand, although an offence under S. 20 would not be triable by a 1st class Magistrate

Held that the sentence as stood was illegal as the prosecution was not sanctioned. (Conviction and sentence set aside.) *(Birks J.)* SHUNSHANISA v. KING-EMPEROR 2 L B R 244=1 Cr L J 742.

3. Section 19, Clause (a).

——*S. 19 (a)—Retrospective application — Applicability in Himachal Pradesh.*

Section 19 (a), Arms Act, penalises manufacture of arms but not retrospectively. The Act was applied to Himachal Pradesh under the Himachal Pradesh (Application of Laws) Order, 1948, which came into force on 25-12-1948. Therefore where there is nothing to show that the pistol found in the possession of the accused was manufactured by him after 25-12-1948, his conviction under S. 19 (a) is unsustainable. *(R. K. Chowdhry J. C.)* KANHYA v. STATE A I R 1951 Him P 35=52 Cr L J 187.

——*S. 19 (a) and (d) — Going armed — Sikh carrying* kirpans *is not guilty.*

Sikh found in possession of *kirpans* of the length varying from nine to ten inches is not guilty of the offence under S. 19 (a) and (d) as such *kirpans* are not swords. A I R 1924 Lah 600, Dist. *(Patkar and Wild, JJ.)* DALJITSING FATTESING v. EMPEROR A I R 1930 Bom 153=32 Bom L R 106=I R 1930 Bom 339=125 I C 435=1930 Cr C 477=31 Cr L J 847.

——*S. 19 (a)—Clasp knives—Arms.*

Clasp knives are not arms within the Act and a sale of them is not punishable under S. 19 (a) of the Arms Act. *(Hartnoll, C. J. and Ormond, J.)* EMPEROR v. ME THIN A I R 1914 Low Bur 259=7 Bur L T 165=25 I C 337=15 Cr L J 585.

——*S. 19 (a)* — Empty cartridge cases, possession of—*See* Arms Act (XI of 1878), S. 4. 10 Cr L J 573 (All).

ARMS ACT (XI of 1878), S. 19 — 3. S. 19, Clause (a)

——*S. 19 (a)* — Ammunition — Empty cardridge cases—Selling of—*See* Arms Act (1878), S. 4
2 Cr L J 449 (Bom).

4. Section 19 — Clause (c).

——Person holding license in Indian State bringing by sea from Ceylon cartridges and hiding them from custom authorities — Act though not offence under S. 19 (c), is an act contemplated by S. 19 (c) and is offence under S. 20 — *See* Arms Act, S. 20
A I R 1949 Mad 166=50 Cr L J 213.

——*S. 19 (c)—Offence, when complete.*

The offence is complete the moment a person enters with the arms in his possession. No particular intention is necessary. *(Spencer, J.)* *In re* MAHOMED ISMAIL ROWTHAR 35 Mad 596=
17 I C 408=13 Cr L J 776.

5. Section 19 — Clause (d).

——*S. 19 (d) — Possession of excess quantity — Transportation at frequent intervals.*

Where a person is accused of having more cartridges in his possession than is covered by his license, it is for the prosecution to prove definitely that the number of cartridges in his actual possession on any particular date exceeded the number covered by his license. The Court cannot be called upon to draw an inference that he had in fact a larger number of cartridges in his possession on the conjectural ground that he could not have used those that he transported on the previous occasion in the meantime. *(Jailal J.)* DAULAT RAM v. EMPEROR A I R 1933 Lah 166=
Ind Rul.(1933) Lah 105 (1)=34 P L R 148=
1933 Cr Cas 311=141 I C 263=
34 Cr L J 190.

——*S. 19 (d) — Possessing arms — Ordering gun from dealer in Bombay ostensibly for another but really for himself does not amount to offence under S. 19 (d).*

Where a person orders a gun from a dealer in Bombay ostensibly for an intending purchaser but in fact upon his own account, the act does not amount to offence of transporting without license under S. 19 (d). Under R. 24, Arms Rules, it is for the consignor and not for the consignee to apply for and obtain license and when the transporting is done by dealer in Bombay, it is fully covered by the license. Conviction under S. 19 (d) cannot in such a case be sustained. It is sufficient that the person ordering the gun should under R. 22 hold a license to possess the gun and if he is found without one he is liable to prosecution, on receipt of the weapon for possessing it without license. *(Curgenven, J.)* VIRASWAMI NAIDU v. EMPEROR
A I R 1929 Mad 864=52 Mad 999=
30 M L W 945=1929 M W N 807=
2 M Cr C 296=1929 Cr C 607=121 I C 617=
57 M L J 520=31 Cr L J 273 (1).

6. Section 19, Clause (e) — General.

——*S. 19 (e)*—Where an accused who was charged under Ss. 395 and 457, I. P. C., was further charged under S. 19 (e) of the Arms Act, for being armed with a pistol at the time of the dacoity, but for that charge there was no evidence except his own confession which had been found to be suspicious and not voluntary and an exculpatory statement of the co-accused, which could not be taken into consideration as such under S. 30 of Evidence Act, it was held that the conviction of the accused under S. 19 (e), Arms Act, was not proper. *(Stone C. J. and Lokur J.)* EMPEROR v. BHIMAPPA SAIBANNA A I R 1945 Bom 484=
47 Bom L R 648=1946 Bom Rul 87=
222 I C 143=47 Cr L J 252.

——*S. 19 (e)* — Prosecution under S. 19 (e) — Accused a *lambardar* of 30 years' age—There is no reason to show leniency by not sentencing him but only taking security under S. 562, Criminal P. C. — His age and the fact that the offence is a first offence are no considerations. *(Middleton, J. C.)* AKHTAR MUNIR v. EMPEROR
A I R 1937 Pesh 51=9 R Pesh 131=
168 I C 783=38 Cr L J 610.

——*Ss. 19 and 13 — License—Carrying a gun in procession is a breach of license.*

The accused who was a cousin of the licensee of a gun borrowed the gun and carried it in a marriage procession when he fired some shots and wounded some people accidently. The licensee was forbidden under the terms of his license from taking the gun to a public assemblage. *Held* that the accused was guilty of an offence under S. 19 of the Arms Act.

When a marriage procession emerges from private premises and goes down the public street, then it is open to the public to join the procession and the marriage procession becomes a public assemblage. *(Macleod, C. J. and Shah, J.)* KALYANCHAND GOPAL CHAND v. EMPEROR
A I R 1923 Bom 35=24 Bom L R 487=
67 I C 722=22 Cr L J 450.

——*Ss. 19 (e) and 13—Possession of arms.*

Simply possessing arms without license and without an intention to use them is no offence under S. 19 (e) for using arms against S. 13. *(Batchelor and Rao, JJ.)* EMPEROR v. KOYA HANSJI 37 Bom 181=14 Bom L R 964=
17 I C 796=13 Cr L J 860.

——*S. 19 (e) — Conviction under S. 19 (e), Arms Act and S. 30, Rangoon Police Act — Validity — (Rangoon Police Act (1899), S. 30) — (General Clauses Act (1897), S. 26).*

The accused was arrested for having in his possession a revolver, a jemmy, and an auger, and was convicted and sentenced under S. 19 (e), Arms Act, and S. 30, Rangoon Police Act. The facts on which the charge under S. 30 was founded were the same as those on which the graver charge under the Arms Act was founded :

Held, that the conviction and sentence under S. 30, Rangoon Police Act, were not justified and should be set aside. *(Fox, O. C. J. and Irwan and Hartnoll JJ.)* EMPEROR v. PO KA
3 L B R 218=4 Cr L J 481.

7. S. 19, Clause (e) — "Goes armed."

——*S. 19 (e) — "Going armed" — Mysore Arms Act, S. 14 (d).*

Where in self-defence the accused fired the gun of his brother who had a license, and with whom he was living in the same house, the accused could not be said to have been going armed, his primary intention being to fire in self-defence and not to go armed and shoot when occasion arose. *(Medapa*

ARMS ACT (XI of 1878), S. 19 — 7. S. 19, Cl. (e)—'Goes armed'

C. J. and Vasudeva Murthy J.) *In re* RAME GOWDA A I R 1953 Mys 45= I L R (1952) Mys 94=1953 Cr L J 961.

——*Licence-holder of gun in Punjab bringing gun into Union by mistake—Confiscation of gun.*

Where a person had the licence for keeping a gun in the Punjab and it appeared that he imported it into the territory of the Union by mistake or under belief that he could carry it with him because he was going from one part of Ludhiana District to another.

'*Held*' that an order for consfiscating the gun and the cartridges should not have been made. *(Teja Singh J.)* AJMER SINGH v. CROWN A I R 1952 Pepsu 75=2 Pepsu L R 502= 1952 Cr L J 855.

——*Ss. 19 (e), 13—"Go armed"—Meaning of.*

The expression "go armed" in S. 19 (e) does not necessarily imply motion on the part of the person alleged to have gone armed. The words "going armed" and "possession" are not to be taken in the same sense. The phrase "going armed" necessarily implies that the person must have the intention of using the arms when the occasion or opportunity arose. The essence of the offence is, first, the carrying of the weapon in question on the person of the accused, and, secondly, the intention on the part of the accused of using the arms as a weapon when necessary or opportune. The Court has to look to the circumstances of each case to see whether such an intention can be established or not.

Where the accused was found sitting on the Otla which was 8 to 10 paces from the door of his house, with two dharias in his hands at a time when rioting was going on in the mohalla where police found several people running away:

Held that the accused must have come out of his house with the weapons with intention of using them when an opportunity or occasion of using them arose. He was therefore going armed in contravention of S. 13 within the meaning of S. 19 (e): *Case law referred. (Sen and Gajendragadkar JJ.)* EMPEROR v. ABDUL HAFIZ HASAN A I R 1948 Bom 173=49 Bom L R 807= 1948 A W R Sup 33=1948 O A Sup 33= 49 Cr L J 208.

——*S. 19 (e)—Carrying weapon tied to cycle.*

To carry a weapon not in the hand but tied to the cycle in the manner of a piece of luggage amounts to going armed within the meaning of cl. (e) of S. 19, Arms Act. *(Rowland, J.)* IMAMUDDIN MIAN v. EMPEROR A I R 1941 Pat 284=7 B R 411= 13 R P 570=192 I C 766=42 Cr L J 341.

——*S. 19 (e)—Necessary ingredient.*

A man who is found going about with a pistol, gun, sword or other weapon within the definition of 'arm' must, in the absence of proof to the contrary, be presumed to be carrying it with the intention of using it should an opportunity for using it arise. Section 13 itself as it stands is distinct from S. 14, as it implies the action or process of going armed. If arms, according to the definition, are carried, the requirements of the section are fulfilled even where the weapon could not immediately be fired. Any other interpretation would open the way to evasion of the law by

ARMS ACT (XI of 1878), S. 19 — 7. S. 19, Cl. (e)—'Goes armed'

carrying caps or cartridges secretly or in the keeping of a companion. *(Grille & Gruer JJ.)* EMPEROR v. GAJRAJSINGH, AIR 1937 Nag 213= 9 R N 278=ILR (1937) Nag 488= 168 I C 879=38 Cr L J 639

——*S. 19 (e)—Gun without percussion cap and without license.*

The word "arms" as defined in S. 4, Arms Act, includes part of arms. It would, therefore, include a gun minus a percussion cap, and a person carrying that gun would be going armed with arms and the person carrying such a gun without license would be guilty under S. 19 (*e*), Arms Act. *(Grille & Gruer JJ.)* EMPEROR v. GAJRAJSINGH, AIR 1937 Nag 213=9 R N 278= ILR (1937) Nag 488=168 I C 879= 38 Cr L J 639

——*S. 19 (f)*—To be in possession or control of arms other than those mentioned in S. 14 is not an offence, though it is an offence to go armed with them as provided in S. 13. *(Lort.Williams & McNair JJ.)* SACHINDRA KAR GUPTA v. EMPEROR, AIR 1933 Cal 692=1933 Cr Cas 1154= 6 R C 251=60 Cal 1432=146 I C 645= 35 Cr L J 125

——*S. 19 (e)—Going armed—Going armed means carrying weapon intending to use it if necessary —Going need not be habitual.*

Section 19, cl. (e) does not include the word "habitually" and the words "goes armed" connote carrying a weapon with the intention of using it when the necessity arises. Even an isolated act of carrying a weapon in contravention of the license would amount to an offence under S. 19, Cl. (e). The words "goes armed," would imply a motion as well as the possession of the arms in contravention of the license, and mean nothing more than carrying a weapon with the intention of using it as a weapon when the necessity or opportunity arises for its use. The words do not necessarily connote a habitual course of conduct. Where, therefore, an accused gets himself possessed of a sword with the intention of using it as a weapon for the purpose of attacking his opponents and uses it, while using that weapon he must have moved about and he would therefore be considered to have gone armed within the meaning of cl. (e), S. 19. A I R 1923 Bom 35 ; 24 All 454 and 37 Bom 181, *Rel. on. (Mirza and Patkar JJ.)* MANJUBHAI GORDHANDAS v. EMPEROR, AIR 1929 Bom 283=53 Bom 604= 31 Bom L R 536=119 I C 641= Ind Rul (1929) Bom 513=1929 Cr C 38= 30 Cr L J 1059.

——*Public assemblage—Condition of license being not to carry arms in religious procession or public assemblage — Marriage procession is neither religious procession nor public assemblage within condition of the license.*

A licensee was granted a license for gun on certain conditions one of which was "licensee shall not go armed otherwise than in good faith for the purpose of sport, protection, display and save where he is specially authorized in this behalf by the District Magistrate, he shall not take any such arms to a fair, religious procession or other public assemblage." The licensee was convicted under

ARMS ACT (XI of 1878), S. 19 — 7. S. 19, Cl. (e)—'Goes armed'

S. 19, Arms Act, in respect of his having gone armed with his gun in a marriage procession.

Held, that a marriage procession neither comes necessarily under the category of a religious procession nor of a public assemblage within the condition and therefore no special permission of the District Magistrate was required for the carrying of arms in such a marriage procession. *(Findlay J. C.)* BALKISHAN v. EMPEROR,
AIR 1928 Nag 219=11 N L J 84=
109 I C 511=10 A I Cr R 348=
29 Cr L J 575.

——*S. 19 (e)—Going armed—Intention and possibility of using are essential.*

The offence of going armed with fire arm is considerably more narrow than the offence of being in possession merely of fire-arms. The expression 'going armed' clearly indicates two things, namely, firstly an intention to use it as a fire-arm and secondly the possibility of using it. *(Srinivasa Ayyangar J.)* SONAIMUTHU AMBALAM v. EMPEROR,
AIR 1925 Mad 585=87 I C 916=
21 M L W 644=1925 M W N 217=
48 M L J 502=26 Cr L J 1028.

——*S. 19 (e)—Servant's liability.*

Use of a gun by the servant of a licensee for his own purposes is an offence though the servant can carry legally the gun for the purposes of his master or in the presence of his master. *(Krishnan and Waller JJ.)* VAIRAVAN SERVAI, *In re*,
AIR 1924 Mad 668=47 Mad 438=
81 I C 623=19 M L W 507=
1924 M W N 375=34 M L T 97=
46 M L J 401=25 Cr L J 975.

——*S. 19 (e)—"Armed" includes carrying an arm not capable of immediate use.*

A person who carries about a gun without any ammunition can be said to go "armed." To define "armed" as meaning "one who is equipped with an arm capable of immediate use as an arm" seems contrary to the vernacular meaning of the word "armed" and is also not safe. *(Kincaid J. C. and Kennedy A. J. C.)* EMPEROR v. MAHOMED PUNJAL,
AIR 1925 Sind 177=
18 S L R 272=77 I C 736=25 Cr L J 448.

——*S. 19 (e)—'Going armed.'*

A servant who goes out at the request of his master with his master's gun to shoot duck for him is guilty of going armed. 24 All 54, *Foll.* *(Hayward C. J. and Cohen J.)* EMPEROR v. HATIMTAI,
9 I C 720=4 S L R 214=
12 Cr L J 122.

——*Ss. 19, 15—Illegal possession of arms—S. 15 was not applicable to Burma.*

The Sub-Inspector of Police not of the 1st grade who had been presented by Government with a revolver, committed no offence by going armed with a dagger. (Judicial Department Notifications referred.) *(G. W. Shaw J.)* NGA KAING v. EMPEROR,
U. B. R. Cr. 1907 Arms 1=
7 Cr L J 243.

8. S. 19, Clause (f)—Exemptions.

——*S. 19 (f) — Possessing arm — Possession of jambia is not offence in Bombay Presidency under S. 19.*

Possession of a jambia or a kind of dagger is not an offence under S. 19 unless the prohibition contained in S. 15 has been retained by some notification of the Local Government. The only prohibition retained by the Bombay Government by its notification published at p. 2093 of the Bombay Government Gazette is that contained in S. 13, and therefore possession of a jambia does not constitute an offence in Bombay Presidency under S. 19 *(f)*. *(Mirza and Broomfield JJ.)* EMPEROR v. BABAJI MANAJE,
AIR 1930 Bom 159=
32 Bom L R 350=I R 1930 Bom 381=
125 I C 717=1930 Cr C 483=
31 Cr L J 932.

ARMS ACT (XI of 1878), S. 19 — 8. S. 19, Cl. (f)—Exemptions

——*S. 19 (f)—Possessing arm—Sikhs are exempt from prosecution for possessing a sword.*

Sikhs are exempt in virtue of Schedule II, 3 (6) from prosecution under S. 19 *(f)* for possessing a sword or *kirpan*. *(Scott-Smith and Harrison JJ.)* HARI v. THE CROWN,
AIR 1924 Lah 600=
86 I C 37=5 Lah 308=6 L L J 265=
26 Cr L J 661.

——*Kirpan—Punjab Government Notification of 11th May 1917—Burden of proof.*

Where on the ground that the sword which he carried was a *kirpan*, the accused claimed exemption from prosecution under S. 19, Arms Act, on the Notification of 11th May 1917 which permits Sikhs to carry kirpan with impunity.

Held : the petitioner, the accused, who claims the benefit of an exception to the broad rule of law, must establish that he comes within that exception. Though kirpan means sword every sword cannot be a kirpan within the meaning of the word. *(Le Rossignol J.)* BACCHITTAR SINGH v. EMPEROR,
AIR 1922 Lah 141=
65 I C 430=8 P W R 1922 (Cr)=
23 Cr L J 78.

9. S. 19—Clause (f)—General.

——*S. 19 (f)*—Possession : *See* Opium Act, S. 9.

——*S. 19 (f)—Possession or control.*

In order to sustain a conviction under S. 19 (f) of the Arms Act on the ground that the accused was in possession of unlicensed arms or ammunition, it must be shown that his possession was a conscious possession accompanied by the necessary mens rea or intention to possess them and with intent to protect them against others. There must be 'mens rea' and 'animus' accompanying possession. If the conviction of the accused is based on the ground that the unlicensed arms or ammunition were under his control, it must be shown that he had such power over them that he could direct their custody, production, use or disposal in some manner though he may not be in actual possession. *(Shah C. J. and Baxi J.)* STATE v. VORA SARAFALLI ALLIBHAI,
AIR 1953 Sau 155=
1953 Cr L J 1330.

——*S. 19 (f)* — Possession of spear-head without license is no offence : *See* Hyderabad Arms Regulation, S. 10.
AIR 1953 Hyd 204=
1953 Cr L J 1136.

——*S. 19 (f)—Sikh carrying more than one sword —U. P. Arms Rules and Orders (1935), R. 17—Constitution of India, Art. 25, Explanation I.*

In Rule 17 of the U. P. Arms Rules and Orders as well as in the Explanation to Art. 25 of the Constitution the word "Kripans" in plural has been used in relation to *Sikhs and emblems*. It

ARMS ACT (XI of 1878), S. 19 — 9. S. 19, Cl. (f)—General

could never have been intended that in the name of religion a Sikh should carry any number of *kripans* or swords as a religious emblem when one of the Sikh Gurus had ordained that the *Kripan* should be worn only as one of the five emblems; nor could it have been intended that a Sikh should possess without a license any number of arms for the possession of each of which others had to take a license. Hence a person as a Sikh is entitled to possess only one sword. He cannot possess the extra sword without a license. *(P. L. Bhargava J.)* REX v. DHYAN SINGH, AIR 1952 All 53= 1951 R D (H C) 275=1952 Cr L J 218.

——*S. 19 (f) — Possession—Meaning of—Penal Code (1860), S. 27—Section 27, Penal Code, in terms cannot be applied to explain possession under the Arms Act.*

The offence under the Arms Act is possession or control of any arms without licence. Such a concept of possession under the Act must connote an element of consciousness in the person charged with such offences. A person who is not aware of the possession of a weapon without licence cannot be said to commit an offence under the Arms Act. Ignorance of the fact of possession is a defence to the accused charged with such an offence under the Arms Act.

It is the element of intention or consciousness or knowledge, which must be established and must be present as a fact before possession under the Arms Act can be said to constitute an offence. It does not matter whether such possession is actual or constructive or physical or mediate or immediate or direct or indirect or exclusive or joint or concurrent. 'Corpus' without the 'animus' is ineffective: 33 Cr L J 719 and 47 Cr L J 437, *Dissent. from.*

It is wrong law to say that the mere fact that the accused is the head or Manager or Karta of a family is sufficient for a finding that he must have been in possession or control of the arms found in the joint family house.

The fiction of the Common Law that husband and wife are one and the same person cannot be extended to say that the wife's crimes are the husband's crimes. It cannot necessarily be said by invocation of that fiction that the wife's possession of a pistol without a licence is the husband's possession. *(P. B. Mukherji J.)* NARENDRA NATH v. STATE, AIR 1951 Cal 140=87 C L J 58= 52 Cr L J 1241.

——*S. 19 (f)*—Applicability — Unlicensed possession of arms as pledge—*See* ibid, S. 14. AIR 1951 Sau 58=52 Cr L J 1038.

——*S. 19 (f) — Possession and control — There must be* mens rea *or guilty knowledge—There must be conscious possession and actual control.*

Under S. 19 (f) there must be *mens rea* or guilty knowledge. The possession and control required to constitute an offence under S. 19 (f) mean conscious possession and actual control.

Where a single live cartridge was found in an almirah amongst papers and letters, in a house occupied by the accused, and it was established that his brother who had recently died had possessed a shot gun of the same calibre as the cartridge in question, and that it was extremely probable that this cartridge belonged to the deceased and remained in the almirah unnoticed, and it was not suggested that there was any attempt on part of accused at its concealment:

Held, that the accused was not in conscious control of the cartridge and could not be convicted under S. 19 (f): A I R (35) 1948 Pat 222, *Rel. on. (Hemeon J.)* ABDUL RAHIM KHAN v. KING-EMPEROR, AIR 1949 Nag 289= 1949 N L J 195=I L R (1949) Nag 519= 50 Cr L J 838.

——*S. 19 (f)*—Arms—Barrel of a rifle—*See* ibid, S. 4. 1949 Bur L R 131.

——*S. 19 (f)—Conviction—Duty of prosecution—What ought to be proved.*

A conviction under S. 19 (f) cannot be allowed to stand unless the prosecution has adduced sufficient evidence to justify a presumption that an accused person has in his possession or under his control arms and ammunitions in contravention of Ss. 14 and 15. Therefore a person cannot be convicted under this section on the mere fact that he is able to point out the spot where the fire-arm is hidden. That he is able to do so only means that he knows its hiding place and something more like an admission from him that he had hidden it there will be necessary to enable the Court to presume that the fire-arm is in his control or possession: 14 Rang 666, *Rel. on*; A I R 1923 Lah 283: A I R 1933 Lah 314, *Ref. (U San Maung J.)* THA GYAW AUNG v. THE UNION OF BURMA, 1948 Bur L R 665.

——*S. 19 (f)—Possession of gun by person having no licence is punishable.*

If a person having no licence possesses a gun even for a short time, he commits an offence under S. 19 (f): 12 AIR 1925 All 396, *Disting. (Verma and Bind Basni Prasad JJ.)* EMPEROR v. JAGMOHAN, AIR 1947 All 99=1946 A L J 502= 1946 A W R H C 631= ILR (1947) All 240=48 Cr L J 829.

——*S. 19 (f)—Possession of arms what is.*

While searching the house of the accused, a sword, a sword-stick and a dagger were found in a box the key of which was with the accused. Held that the possession of the key of the box tended to show that the accused had knowledge of the presence of the arms in the box and that the arms were in the "possession" of the accused within the meaning of S. 19 (f). *(Thadani J.)* MAHTABALI SHAH HUSSAIN SHAH v. EMPEROR, AIR 1947 Sind 192=230 I C 158= 48 Cr L J 556.

——*Ss. 19 (f), 4 — Spear* nishan sahib *used for religious purposes.*

In cases under the Arms Act it is always a question of fact whether the article for the possession of which a charge under the Act is made comes within the definition of "arms" or not. The fact that an article which comes within the definition of "arms" in the Arms Act is used for religious purposes would not relieve the person in possession of such an arm from the operation of the Act. A spear which has the appearance of a spear, and which can be used as a spear, does not cease to be so because it is electroplated or it is called something else such as *nishan sahib* or because of the religious use to which it is put. *(Young C. J. & Ram Lall J.)* EMPEROR v. SOBHA SINGH, AIR 1941 Lah 340=ILR (1941) Lah 789= 44 P L R 56=14 R L 182=196 I C 766= 43 Cr L J 76.

ARMS ACT (XI of 1878), S. 19—9. S. 19, Cl. (f) —General

——*S. 19 (f)* — Holding arms after expiry of licence is punishable under S. 19 *(f)* and not S. 23. *(Middleton J. C.)* ZAIN-UL-ABDIN v. EMPEROR,
AIR 1937 Pesh 30=9 R Pesh 84=
167 I C 191=38 Cr L J 396.

——*S. 19 (f)*—The case is not within the ambit of S. 19 *(f)*, Arms Act, where two persons make temporary use of revolver with a view to foist a false case upon another person *(King J.)* SUBBIA GOUNDAN v. EMPEROR, 1937 M W N 572.

——*Ss. 19 (a), (f), 14 — Negotiation for sale of arms—Licence not renewed—'Extent' in S. 14.*

Where a weapon is made over merely for the purpose of negotiating a sale, such possession is not unlawful inasmuch as it is not possession of the weapon with the intention of using it as a weapon. Such temporary possession is not possession as contemplated by the Arms Act. Negotiations for sale where no delivery takes place is no offence.

The possession of arms of which the license has not been renewed is also punishable under S. 19 *(f)* of the Arms Act read with S. 14, thereof. The word 'extent' in S. 14 is not limited in its meaning to territorial extent. *(Jack and M. C. Ghose JJ.)* A. MALCOLM v. EMPEROR,
AIR 1933 Cal 218=37 C W N 93=
Ind Rul (1933) Cal 301=1933 Cr Cas 299=
60 Cal 445=142 I C 522 (2)=
34 Cr L J 363.

——*S. 19 (f)—Arm—Meaning—Instrument consisting of a* lathi *and an axe-like blade and not one used for domestic purposes is "arm".*

An instrument consisting of two separate pieces, namely, a *lathi* 6 ft. 3 ins. long at one end of which a hallow screw and an axe-like blade 5 ins. by 4½ ins. having a screw to allow of its being fixed into the long *lathi* was held to be an arm within the meaning of S. 19 *(f)*, Arms Act, as no instrument like that is ever used for domestic or agricultural purposes. 33 P L R 1914; 16 P R (Cr) 1900 and 32 P R (Cr) 1918, *Foll. (Addison and Johnstone JJ.)* EMPEROR v. PURAN SINGH,
AIR 1928 Lah 295=9 Lah 137=
29 P L R 306=10 L L J 538=112 I C 49=
29 Cr L J 961.

——*S. 19 (f) — Offence under — Penal Code, S. 120-B—Agreement of parties makes offence complete—Conspiracy to possess fire-arms — Conspiracy in respect of particular fire-arms need not be proved.*

An offence under S. 120-B consists in the conspiracy without any reference to the subject-matter of the conspiracy. It is true that the law does not take notice of the intention or the state of mind of the offender and there must be some overt act to give expression to that intention, but that overt act in a case of conspiracy under S. 120-B consists in the agreement of the parties. *Mulcahy* v. *The Queen* (L R 3 H L 306, 1868), *Rel. on.* The definition of conspiracy in S. 120-B excludes the agreement to commit an offence, from the category of such conspiracies, in which it is necessary that the agreement should be followed by some act. It is not therefore necessary in a case of conspiracy to possess fire-arms for the prosecution to specify in the charge or to prove that the accused conspired to possess any particular fire-arms. 42 Cal 957, *Rel. on. (Suhrawardy and Panton JJ.)* NIRMAL CHANDRA DE v. EMPEROR,
AIR 1927 Cal 265=31 C W N 239=
100 I C 113=28 Cr L J 241.

ARMS ACT (XI of 1878), S. 19—9. S. 19, Cl. (f) —General

——*Ss. 19 (f)—Possession of arms without license —Minor—Offence.*

It is possible for a minor to be in custody and in control of arms and where he is proved to be in actual possession of arms without a license he can be convicted under S. 19 (f) of the Arms Act. *(Banerjee and Tudball JJ.)* EMPEROR v. GHULAM HUSSAIN,
AIR 1918 All 107=
40 All 420=16 A L J 322=44 I C 975=
19 Cr L J 447.

——*S. 19 (f)—Offence under.*

Where a person is proved to have kept a gun for some time and then made it over to another to keep for him he cannot be convicted under S. 19, Cl. (f). *(Holmwood and Doss JJ.)* AKHIL NATH v. EMPEROR, 15 C W N 440=10 I C 688=
12 Cr L J 197.

——*Ss. 19 (f) and 14 — Temporary possession of a gun.*

The provisions of S. 19 (f) do not make the mere possession of a gun punishable; they make possession contrary to the provisions of S. 14 punishable. The temporary possession which the accused had when he matched a gun, which was in the hand of another, and fired it at a mad dog, does not constitute the possession contemplated by S. 14. *(Rampini and Sharfuddin JJ.)* PRABHAT CHANDRA CHOWDHRY v. EMPEROR, 35 C 219=
12 C W N 272=7 C L J 242=
3 M L T 190=7 Cr L J 112.

10. S. 19, Clause (f)—Illustrative cases.

——*S. 19 (f)—K* having license going out with *J*, for shooting—On way back, on hearing of promulgation of order under S. 144, Cr. P. C., in the town *K* depositing gun at *J's* house and going away with intention to return and take back gun —House searched and gun recovered :

Held, conviction of *J* under S. 19 (f) and *K* under S. 21 were not proper. *(Meredith J.)* KEDAR NATH v. EMPEROR,
AIR 1941 Pat 209=7 B R 164=13 R P 316=
191 I C 187=42 Cr L J 97.

——*S. 19 (f)—Weapons used in acts of resistance.*

Where it was found that the accused was a rebel against the Crown and in possession of unlawful deadly weapons :

Held, that it was immaterial whether the accused used those weapons in acts of aggression or of resistance. *(Panckridge, Ameer Ali and M. C. Ghose JJ.)* EMPEROR v. SURIYA KUNWAR SEN,
AIR 1934 Cal 221=1934 Cr Cas 315=
6 R C 304=147 I C 32=
35 Cr L J 334 (SB).

——*S. 19 (f)—Possession.*

The house occupied by the accused and others was searched by the Police in connection with a burglary case. The Police found a room locked in the *zenana* portion of the house. The accused, a boy of 18 years was ordered to bring the key. He got the key from a woman in the *zenana* and when the room was searched a gun and some cartridges were found. The accused was convicted under S. 19 *(f)* :

ARMS ACT (XI of 1878), S. 19—10. S. 19, Cl. (f)—Illustrative cases

Held, that the facts did not warrant an inference that the accused was in possession of the incriminating articles and the conviction was illegal. *(Raza and Pullan JJ.)* EMPEROR v. MAST RAM, AIR 1931 Oudh 115=8 O W N 128=Ind Rul (1931) Oudh 201=6 Luck 472=1931 Cr Cas 275=131 I C 441=32 Cr L J 699.

——*S. 19 (f)—Accused's brother holding licence—Accused firing blank shots to warn would-be mischief makers—Accused is not guilty.*

When communal riots were taking place in different quarters of the town, the accused, brother of a licence-holder, took out his brother's gun and fired shots in the air so that people mischievously inclined might know that it was not safe for them to do any mischief to the people living in the house.

Held, that the possession of the gun was on behalf of the brother and the accused was not guilty under S. 19 *(f)*: AIR 1925 All 175, *Dist. (Mukerji J.)* BABU RAM v. EMPEROR, AIR 1925 All 396=47 All 606=87 I C 523=23 A L J 356=6 L R A Cr 121=26 Cr L J 987.

11. S. 19, Clause (f)—Possession by servant of a license-holder.

——*S. 19 (f)—Servant.*

Servant of a gun licensee who was merely carrying the gun to the house of the master under his orders cannot be convicted under S. 19 (f), Arms Act. *(Lakshmana Rao J.)* VEERASWAMI, IN RE A I R 1940 Mad 257=1939 M W N 1260=12 R M 699=187 I C 120=41 Cr L J 400.

——*S. 19 (f)—Persons not having knowledge that guns were unlicensed.*

In the case of a licensed weapon a person who merely assists the owner of the weapon by carrying it for him or taking it somewhere for him may be said to assist his master in doing a perfectly legal act, for the master being the licensee is entitled to have the gun in his possession. But in the case of an unlicensed weapon neither the actual owner of the gun nor anybody to whom he entrusts it, can be said to be engaged in a legal act, for the possession in that case is illegal whether it be in the possession of the master or of a servant. But where it is not proved that the accused had knowledge that the gun which he was carrying for his master was unlicensed, the offence does not call for a serious punishment. *(Agarwala and Varma JJ.)* EMPEROR v. LALMAN THARU AIR 1937 Pat 347=167 I C 352=18 P L T 88=3 B R 298=9 R P 409=38 Cr L J 409.

——*S. 19 (f)—Servant in possession—Use in riot.*

It is true that the possession by a servant of a gun is legal if his master has a licence for the gun. But it is not possible for a person licensed to possess gun to authorise the possession of that gun by his servant for an unlawful purpose. Thus, where the servant uses the gun in a riot, he is

ARMS ACT (XI of 1878), S. 19—11. S. 19, Cl. (f)—Possession by servant of a license-holder guilty under S. 19 (f), Arms Act. *(Bennet J.)* NANKU v. EMPEROR A I R 1935 All 916=1935 Cr Cas 1133=1935 A L J 1096=1935 A L R 1078=8 R A 400=159 I C 183=37 Cr L J 35.

——*S. 19 (c) — Servant in possession of master's gun.*

Where the accused, the servant of a license-holder was in possession of his master's gun on behalf of master who was away and who had left the place where the accused was guarding his master's money for a short time only :

Held, that the accused was not liable to be convicted. *(Fazl Ali J.)* PARMESHWAR SINGH v. EMPEROR A I R 1933 Pat 600=14 P L T 653=(1933) Cr Cas 1368=6 R P 213=146 I C 498 (1)=35 Cr L J 127.

——*S. 19 (c) — Servant's liability — Servant carrying master's gun in British India for having it repaired — No acknowledged license — Servant will not be protected.*

Even a servant who is found in British India carrying a gun for the purpose of having it repaired, which has no license acknowledged by the British Government, will not be protected from the provisions of S. 19 read with S. 6. 24 All 454, *Disting. (Raza and Pullan JJ.)* EMPEROR v. ORI AIR 1929 Oudh 157=6 O W N 131=115 I C 839=12 A I Cr R 357=30 Cr L J 543.

——*S. 19 (f) — Use of gun by servant — Master exempted.*

A person who is exempted from the provisions of the Arms Act can send his servant armed with his gun to shoot for him. *(Knox J.)* GOPAL v. EMPEROR AIR 1917 All 327=38 I C 329=18 Cr L J 297.

——*S. 19 (f)—Servant possessing gun on master's behalf.*

A servant carrying a gun on his master's behalf is not guilty under S. 19 (f) of the Arms Act, of possessing a gun in contravention of the provisions thereof. *(Imam and Chapman JJ.)* CHARU CHANDRA GHOSE v. EMPEROR 41 Cal 11=17 C W N 979=20 I C 137=14 Cr L J 377.

——*S. 19 (f)—Servant using master's gun.*

The accused, a servant, was found using for his own purposes a gun which was lent to him by his master who had a license for the gun for his own purpose :

Held, that the act of the accused was an infringement of the proivisions of S. 19, cl. (f) of the Arms Act. *(Brett and Ryves JJ.)* MADHO LAL v. EMPEROR 13 C W N 124=4 I C 333=10 Cr L J 555.

——*S. 19 (f)—Temporary possession by servant.*

A person who had a license to go armed feeling thirsty, went to get a drink, leaving the gun with the servant ;

Held, that such a temporary custody did not amount to "possession" or "control" contemplated

ARMS ACT (XI of 1878), S. 19 — 11. S. 19, Cl. (f) — Possession by servant of a license-holder

by cl. (f) of S. 19. *(Drake-Brockman J. C.)* EMPEROR v. KHUDDA GOND 4 N L R 146= 8 Cr L J 406.

——Possession — Delivery of arm to servant for shooting—*See* Arms Act, Ss. 13, 14, 19, 22 8 Cr L J 18 (Nag)

12. S. 19, Clause (f) — Possession of accused to be exclusive.

——*S. 19 (f)* — Recovery of arm from room — Accused admitting that room belonged to him—It cannot be contended that room was not in his exclusive possession. *(Beg J.)* SWAMI DAYAL v. STATE A I R 1953 All 353= 1952 A W R (HC) 341=1953 Cr L J 762.

——*S. 19 (f)* — Exclusive possession of accused of unlicensed cartridges not proved — No offence. *(Atma Charan J. C.)* AMBA LAL v. STATE AIR 1950 Ajmer 30 (1)=51 Cr L J 1108.

——*S. 19 (f)* — *Exclusive possession or control of particular person if necessary under S. 19 (f), Arms Act and S. 5, Explosive Substances Act.*

Per *Full Bench.* — Exclusive possession or control of any particular person over an incriminating article is not required under S. 19 (f), Arms Act and S. 5, Explosive Substances Act. The possession or control might well be possession or control of two or more persons. Every case must depend upon its particular facts and the Court must consider each case and come to a conclusion whether it is proved that the incriminating article is in the possession or under the control of any particular person or in the possession or under the control of more than one person. If on the evidence the Court cannot hold possession or control by any person or persons, then the case is not established. *(Harries C. J., Din Mohammad and Sale JJ.)* EMPEROR v. SANTA SINGH AIR 1944 Lah 339=ILR (1945) Lah 137= 215 I C 161=46 Cr L J 1 (FB).

——*S. 19 (f)—Words "possession" and "control" —Meaning of — Joint Hindu family — Unlicensed arms found at place belonging to family but not in use or occupation of particular individual — Possession must be deemed to be with manager and not with other members of family.*

The word "possession" in S. 19 (f) means exclusive possession and the word "control" in that section means effective control. In the case of a joint Hindu family, where unlicensed arms are found at a place belonging to the family but not in use or occupation of a particular individual of the family the possession or control must be deemed to be with the manager or the karta of the family. No other member can be said to have been in possession or control of the same within the meaning of S. 19 (f). *(Sinha J.)* HIRDEY RAN v. EMPEROR A I R 1946 All 4= 1945 O W N (HC) 328=1945 A L J 528= 222 I C 393=1945 All W R (HC) 275= 47 Cr L J 437.

——*Several houses belonging to accused.*

A man may possess several houses in the sense that they are his property but he would not be

ARMS ACT (XI of 1878), S. 19—12. S. 19, Cl. (f)—Possession of accused to be exclusive responsible for arms found in one of them unless and until it is established that he occupied that particular house. Where the house belonging to the accused consisted of several *kothas* which were occupied by the accused, his sons and tenants and unlicensed arms were found in a vacant *kotha* of the house, the accused cannot be liable under S. 19, Arms Act, unless it was shown that the *kotha* in which the arms were found was occupied by the accused. *(Mir Ahmad J.)* MANSUR KHAN v. EMPEROR A I R 1943 Pesh 20= 15 R Pesh 88 = 205 I C 239= 44 Cr L J 335.

——*S. 19 (f)*—There is nothing in S. 19 (f), Arms Act, about "exclusive" or "sole" possession or "exclusive" or "sole" control. The test provided by the section is not as to whom the arms belong but whether they are in the "possession" or under the "control" of the person charged. What is contemplated by S. 19 (f) is actual and physical possession and control and not merely a "possession" or "control" by construction of law. It is not a liability to be found in a merely constructive or presumed possession or control which the law might for other purposes import into the facts of the case :

Held, upon facts that it could not be said that the possession and control of the spear belonged to the accused rather than to either of his two adult sons, and consequently the requirements of S. 19 (f) had not been fully complied with. *(Braund J.)* ABDUL RAHMAN v. EMPEROR A I R 1940 All 449=1940 A L J 467= 13 R A 214=I L R (1940) All 657= 190 I C 785=42 Cr L J 59.

——*S. 19 (f)—Exclusive possession of pistol.*

A person was charged under S. 19 (f) of the Arms Act. The only evidence against him was that at his instance a place was dug up in another person's house, from where a pistol along with some cartridges was recovered. He was not alleged to have been armed with pistol during the commission of the robbery. The person from whose house the pistol and cartridges were recovered, was suspiciously withheld by the Police :

Held, that such exclusive possession was not established against the accused as would justify his conviction for the offence of possessing a pistol without a license. *(Din Mohammad J.)* MARU v. EMPEROR AIR 1937 Lah 561=10 R L 301= 172 I C 351=39 Cr L J 119.

——*S. 19 (f)* — *Actual physical possession or control.*

The phrase, "the possession of the arms or control over the arms" referred to in cl. (f) of S. 19 implies actual physical possession or control of the arms or ammunition in respect of which the charge has been lodged. Where the arms are found concealed underneath a gunny cloth spread inside a bullock cart, the persons, who were found sitting inside the bullock cart and who jumped out of it and tried to escape but were caught, must alone be deemed to be in joint physical possession of the arms, found in the cart, and they

ARMS ACT (XI of 1878), S. 19 — 12. S. 19, Cl. (f)—Possession of accused to be exclusive alone are liable to punishment under S. 19 (f).

(Nanavutty J.) LAKHAN SINGH v. EMPEROR
AIR 1934 Oudh 200=1934 Cr Cas 587=
149 I C 533=11 O W N 534=6 R O 572=
9 Luck 607=35 Cr L J 973.

——*S. 19 (f) — Possession of arms — Evidence doubtful—Conviction is illegal.*

Where it was found that the two accused were found lying on a bed in the house of another and in the bedding a *chhavi* was found wrapped in a cloth, *held*, that it was impossible to say which of the two was actually in possession even if it was proved that the owner of the house was not the owner and therefore that the conviction of the accused was illegal. *(Harrison J.)* NARINJAN SINGH v. EMPEROR
65 I C 447 (1)=
4 U P L R (L) 32=13 P W R 1922 (Cr)=
23 Cr L J 95 (1) (Lah).

13. S. 19, clause (f)—Joint occupation of premises.

——*S. 19 (f)* — Arms found concealed in house occupied by two brothers — None can be said to have been in possession of such arms. Criminal Revn. No. 174 of 1948, *Rel. on. (Agarwala J.)* SATDEO v. REX
A I R 1950 All 284=
1950 A L J 19=1950 A W R 79=
51 Cr L J 800.

——*S. 19 (f) — "Possession and control" means conscious possession and actual control—Mens rea is essential for offence—Joint occupation of house — S. 106, Evidence Act (1872), if can be applied and onus cast upon occupiers to establish innocence.*

The words "possession and control" in S. 19 (f) mean something more than mere constructive or legal possession and control. Possession and control required to constitute offence under S. 19 (f) must mean conscious possession and actual control and as under this section mere possession of incriminating articles constitutes serious criminal offence, there must be *mens rea* or guilty knowledge before a person can be convicted of such possession. Merely because an incriminating articl is found in a house occupied by a number of persons, the onus cannot be thrown either under S. 106, Evidence Act, or any other provision of law upon these persons to establish their innocence, unless the occupiers of the house are shown to have been aware of the existence of the article in the house. A I R 1932 All 441, *Expl.*; A I R 1944 Lah 339 (FB), *Rel. on. (Sinha and Dalziel JJ.)* SAHENDRA v. EMPEROR
A I R 1948 Pat 222 = 26 Pat 46=
49 Cr L J 445.

——*S. 19 (f)* — House occupied by *A* and number of relatives including his father — *A* standing in court-yard with his wife — Other members absent — On enquiry by police *A* producing gun from house — Gun held was not in possession or control of *A* : 31 A I R 1944 Lah 339 (FB), *Expl.* and *Rel. on. (Teja Singh J.)* SURAIN SINGH v. EMPEROR
229 I C 455=48 Cr L J 390 (Lah).

——*Possession — Nature of — Liability of head of family—Explosive Substances Act, S. 5. (A I R 1930 Lah 884 = 31 Cr L J 352 and A I R 1928 Lah 272=29 Cri L J 481,* Overruled.*)*

ARMS ACT (XI of 1878), S. 19 — 13. S. 19, Cl. (f)—Joint occupation of premises

Where incriminating articles are recovered from a place in the occupation or possession of more persons than one and it is not possible to fix the liability on any particular individual, a Court is not bound to hold that the said articles were in possession or under the control of the head of the family.

Possession and control required to constitute offences under Explosive Substances Act and Arms Act must mean conscious possession and actual control. It is something more than mere constructive or legal possession and control. The possession or control might well be possession or control of two or more persons. Under S. 5 of the former Act and S. 19 of the latter Act, there must be *mens rea* or guilty knowledge before a person can be convicted of such possession.

Where the evidence does not point to the possession or control of any particular member of the household, the head of the family cannot be convicted. He is in much the same position as other members of the family.

Every case depends upon its own facts. (A. I. R. 1930 Lah. 884 = 31 Cr. L J 352 and A. I. R. 1928 Lah. 272 = 29 Cr. L J 481, Overruled.) *(Harries C. J., Din Mohammad and Sale JJ.)* EMPEROR v. SANTA SINGH
A I R 1944 Lah 339=
I L R (1945) Lah 137=215 I C 161=
46 Cr L J 1 (FB).

——*Incriminating articles under S. 19 (f), Arms Act, and S. 5, Explosive Substances Act, found in place in occupation or possession of several accused.*

In cases where incriminating articles are recovered from a place in the occupation or possession of more persons than one and it is not possible to fix the liability on any particular individual, it would not be legally permissible to call upon all the occupants of the place to account for the presence of the incriminating articles in their premises and in the absence of any satisfactory explanation on their part to hold all of them to be in possession or control of the same. Mere proof that an incriminating article is found in premises occupied by a number of persons does not in itself establish *prima facie* the guilt of any particular person or all of them jointly. That being so they cannot be called upon after such evidence to establish their innocence. They can only be called upon to do that when the evidence has established a *prima facie* case against any one or more of them or all of them. *(Harrics C. J., Din Mohammad and Sale JJ.)* EMPEROR v. SANTA SINGH
A I R 1944 Lah 339=
ILR (1945) Lah 137=215 Ind Cas 161=
46 Cr L J 1 (FB).

——*S. 19 (f) — "Control" — Joint possession of room—No one willing to take responsibility.*

It is the primary duty of the prosecution to prove the possession of the accused, but there may be cases in which the circumstances are such that possession of the accused can safely be presumed, otherwise it will be impossible for the prosecution to secure a conviction. If a serious matter like the possession of illicit arms were to be tolerated by merely shifting possession from one to other members of the family it would be open to practically

ARMS ACT (XI of 1878), S. 19 — 13. S. 19, Cl. (f)—Joint occupation of premises

every member to keep illicit weapons in, e. g., a common sitting room and at the time of recovery it would be too easy for each person merely to say "I am not in exclusive possession of the sitting room." Hence the words "and control" in S. 19 (f), Arms Act, must be taken in a wider sense and to mean something more than actual possession.

Where the two accused were found in the joint exclusive possession of a room from which the arms were recovered and no one was willing to take the responsibility, the only possible presumption the Court can make is that they are in joint control. *(Thomas C. J.)* LALU SINGH v. EMPEROR
A I R 1942 Oudh 448=1942 O W N 379=
15 R O 95=18 Luck 253=201 I C 409=
43 Cr L J 666.

——*S. 19 (f)—Several persons occupying a house.*

In a prosecution under S. 19 (f), Arms Act, it must be proved that the accused has arms in his possession or control. Where several people occupy a house it should be presumed that the head of the family is in possession and control of everything in the house including unlicensed arms. It is of course open to him to rebut that presumption by any evidence which he can adduce. *(Middleton J. C. and Almond A. J. C.)* EMPEROR v. MIR AHMAD AIR 1937 Pesh 73=10 R Pesh 9=
169 I C 681=38 Cr L J 838.

——*S. 19 (f)—House in occupation of father and brother.*

Where the Police suspecting that the accused's house contained stolen property, searched the house and the accused led them to a cattle shed near the house which was open and accessible to outsiders and produced a revolver from there and it appeared that the accused was living in the house with his father and brother :

Held, that although it was the accused who led the Police to the shed and pointed out the place where the revolver was lying, yet the mere knowledge of the fact that the revolver was lying in the shed or the pointing out of the place from which it was actually found, without proof that that place was in the exclusive possession of the accused, was not sufficient to bring home the offence to the accused and that he was not guilty under S. 19 (f), Arms Act. *(Tek Chand J.)* GAIN CHAND v. EMPEROR A I R 1933 Lah 314=
1933 Cr Cas 548=6 R L 195 (2)=
146 I C 232=34 Cr L J 1256.

——*S. 19 (f)—Liability of relation—House occupied by person, his wife and father aged 80 —* Chhavi *blade in wife's possession — Mere fact of father being 80 years old is not sufficient to establish person's possession of* chhavi.

In the case of a house occupied by a joint family there is an initial presumption that an article found therein is in the possession of the head of the family. A. I. R. 1928 Lah. 272, *Rel. on.* Thus where a house was occupied by a person, his father who was 80 years old, and the person's wife and a *chhavi* blade was found in wife's possession the mere fact that the father is 80 years old is not sufficient to establish that the person was in possession of the *chhavi*. *(Bhide J.)* KARAM SINGH v. EMPEROR A I R 1929 Lah 872=
1929 Cr C 544=116 I C 718=
13 A I Cr R 111=30 Cr L J 668 (2).

ARMS ACT (XI of 1878), S. 19 — 13. S. 19, Cl. (f)—Joint occupation of premises

——*S. 19 (f)—Possessing arm—Cartridges found during an investigation in a theft case in house of accused — Accused not knowing who kept them — Offence under S. 19 (f) is not made out.*

During the investigation of a certain theft case the house of the accused was searched by the police and two cartridges of a rifle were discovered from an earthen pitcher placed in the house. The accused admitted the recovery of the cartridges but stated that it was not within his knowledge, and that his brother, who was an ex-military employee may have placed them in the house which was jointly occupied by the accused and his brother :

Held, that the accused was not guilty under S. 19 (f). *(Harrison J.)* MANIGIR v. EMPEROR
AIR 1927 Lah 726=7 A I Cr R 571=
100 I C 819=28 Cr L J 339.

——*S. 19 (f)—Joint possession.*

Where a *chhavi* was found in a house admittedly in the joint possession of both the accused, *held*, it was not be said with any degree of certainty that one of them was in exclusive possession thereof. The accused must be given the benefit of this doubt. *(Abdul Raoof J.)* ALI v. THE CROWN AIR 1923 Lah 513=77 I C 447=
25 Cr L J 399.

——*Possession must be exclusive.*

Where a dagger was found in a room in a house, which along with the house was jointly occupied by a father and his adult son and there was no evidence to show that either of them was aware of its existence :

Held, that neither of them could be convicted of an offence under S. 19. *(William Clark C. J. and Reid J.)* KING-EMPEROR v. SHER ZAMAN
158 P L R 1905=52 P R 1905 Cr=
3 Cr L J 71.

14. S. 19 clause (f) — Possibility of other persons having access.

——*S. 19 (f)—Control—Meaning.*

Control in S. 19 (f) means that the accused must have such power over the weapon that he can direct its custody, production, use or disposal in some manner. Request and compliance with the request do not necessarily indicate control. Control must in this context mean power or ability to regulate the keeping or possession or use or disposal of the weapon.

Where the place in which an article is found is one to which several persons have equal right of access it cannot be said to be in the possession of any one of them. *(P. B. Mukharji J.)* NARENDRA NATH v. STATE A I R 1951 Cal 140=
87 C L J 58=52 Cr L J 1241.

——*S. 19 (f)—Possession and control — Meaning of.*

The words "possession and control" mean something more than mere constructive and legal possession and control. "Possession and control" required to constitute offence under S. 19 mean conscious possession and actual control. There must be *mens rea* or guilty knowledge before a person can be convicted of such possession. Where the only thing in favour of the prosecution was that the quarter had admittedly been allotted to

ARMS ACT (XI of 1878), S. 19 — 14. S. 19, Cl. (f) — Possibility of other persons having access

the accused and legally speaking it was in his possession and occupation; but there was reason to think that at the time of the recovery of the pistol a number of persons other than the accused were also residing in the quarter, it would not be proper to hold that the pistol was in the possession and control of the accused : A. I. R. 1944 Lah. 339, *Rel. on. (Teja Singh J.)* HARI SINGH v. THE STATE 3 Pepsu L R 628.

——*S. 19 (f) — Words "possession and control," meaning of — House owned jointly by several persons having free access to all parts of house — Mere recovery of offending article from a room of the house is not sufficient to convict all persons unless their joint possession of the room or knowledge of the article is proved.*

The words "possession and control" in S. 19 (f), Arms Act, mean something more than a mere constructive or legal possession and control. In order to constitute possession and control of an incriminating article which will make a person liable, he must necessarily have knowledge of the existence of such an article in his house. A person obviously cannot be visited with legal liability unless it is established that he had *mens rea* or guilty knowledge of the existence of the incriminating article. To hold otherwise would undoubtedly result in serious miscarriage of justice, for, it is not inconceivable that in a house occupied by several members of a joint family some of them may be perfectly good and honest men while one or two may be criminals and indulge in criminal activities.

Hence, a recovery of an offending article from a room in a house which is owned jointly by several persons all of whom have free access to all parts of the house will not *ipso facto* make all the occupants liable for the offence of possession or control of the article unless there is evidence that all the persons were in possession of or had the knowledge of the presence of the article in the house or there are other such circumstances from which the joint possession of them all could safely be inferred : A.I.R. 1942 Oudh 448, *Dissent.* ; A.I.R. 1944 Lah. 339 and 2 I C 681 (Cal), *Rel. on. (Walford J.)* CHITTA v. EMPEROR
A I R 1947 Oudh 114=
1946 A W R C C 252=1946 O A C C 252=
228 I C 15=1947 O W N 82=22 Luck 185=
48 Cr L J 17.

——*S. 19 (f)—Possession of accused.*

When a pistol is recovered by the police from a room which was accessible to all the inmates of that house in the absence of the accused, the shelf from which it was recovered had no shutters, and there was no satisfactory proof that the room had been in the exclusive possession of the accused, he cannot be held guilty under S. 15 of Jaipur Arms Act.

The actual possession by the accused of the property recovered is essential and wherever there is doubt as to this fact and there is reason to believe that the property recovered might have been placed there by some one other than the particular accused, the accused is entitled to acquittal : A. I. R. 1933 All. 112 ; A. I. R. 1923 All. 33 and A.I.R. 1944 Lah. 339, *Foll. (Sharma and Bapna JJ.)* GOPAL v. STATE 1946 J L R 238.

——*S. 19 (f)—Possession and control.*

Unlicensed gun recovered from Railway premises within Railway fencing a place where public could not ordinarily go, though it was accessible to them —Recovery made on information given by accused in his statement made in police custody — Gun found concealed from view :

Held, that the accused must be deemed to be in possession and control of the gun. *(Collister and Bajpai JJ.)* EMPEROR v. CHOKHEY
A I R 1937 All 497=1937 A L J 715=
1937 A L R 661=10 R A 108=
I L R (1937) All 710=170 I C 453=
38 Cr L J 910 (2).

——*Possessing arms — Pistol found in room frequented by many persons other than accused— Accused is not in possession.*

Where the evidence does not exclude a reasonable possibility of a pistol having been placed there by some other of the persons who frequented the rooms, or even by the person in whose possession it was at the time of the arrest :

Held, that it cannot be said that it has been proved beyond reasonable doubt that the pistol was in the possession of the accused. *(Daniels J.)* KRISHNA GOPAL v. EMPEROR
92 I C 589=27 Cr L J 301 (All).

——*S. 19 (b)—Arms found in joint family house accesssible to many—Offence.*

When the place in which an incriminating article is found is one to which several persons have equal rights of access, it cannot be said to be in the possession of any one of them. *(Chaudhuri and Newbould JJ.)* SUDHANYA BAWALI v. EMPEROR A I R 1917 Cal 406=21 C W N 839=
41 I C 157=18 Cr L J 781.

15. S. 19, Clause (f) — Possession of arms found in a house belonging to a joint family.

——*S. 19 (f)—Joint possession.*

Where a house or place is jointly occupied by several persons or several persons have access to it and there is nothing on record beyond the fact that articles have been found from such house or such place, none of such persons can be convicted. Even knowledge of the fact that the article is lying in the house is not sufficient to sustain a conviction unless the 'animus' or the will to possess or control is established against the person or persons sought to be made liable. In such a case the senior member or karta of the family cannot be in a worse position than any other member of the family and he can be convicted only if the prosecution proves by evidence that the incriminating articles found in the house were in his possession with the requisite 'mens rea' or under his control. *(Shah C. J. and Baxi J.)* STATE v. VORA SARAFALLI ALLIBHAI
A I R 1953 Sau 155=1953 Cr L J 1330.

——*S. 19 (f) — Possession by head of family —* Mens rea.

Where the accused, a man of fifty, was found to be living in a house along with his adult son and a

ARMS ACT (XI of 1878), S. 19—15. S. 19, cl. (f) —Possession of arms found in a house belonging to a joint family.

nephew and there was no finding that he was personally and consciously in possession of the weapons found in the house but was held responsible for their possession as he was admittedly the karta of the family :

Held, that his conviction was bad. *(Meredith Ag. C. J. and Sarjoo Prasad J.)* MOHAN LAHIRI v. THE KING **A I R 1950 Pat 243= 29 Pat 243=51 Cr L J 977.**

——*Same article can be possessed by several persons — Accused head of joint family — Fact not sufficient to hold him in possession of articles — Articles found in hole in wall of house — Conviction under S. 19 (f) of head of family improper.*

The section does not speak of exclusive possession and therefore there is no bar to the same article being in the possession of several persons. It is not unusual that several persons possess the same article. The mere fact that an accused is the head of the joint family is not sufficient to hold that he is in possession of the articles recovered from the house. It would depend on other circumstances whether his possession over the articles can be held to be proved or not.

On the search of a house, a single barrel country made muzzle-loading pistol, wrapped in cloth, some gun-powder, an iron rod of pistol and three live percussion caps and hand-made lead shots weighing 2½ tolas were recovered from a special hole inside the wall of a room inside the house. This hole was three feet deep and had an opening six inches square. In this house lived the accused with his sons and his younger brother. The pistol and other ammunition were found concealed in the hole in the wall. The opening of the hole was covered with bricks without the usual lime pointing between two bricks. The accused expressed ignorance about the recovery of the articles stating that he was at the time of search ploughing his field. The prosecution evidence was that the accused was present at the time of the search :

Held, that the articles could have been placed there by any member of the family. They were not of such a nature as to indicate that they could not have been kept in that hole without the fact coming to the notice of all the members of the family. The fact that the accused did not directly admit the recovery of the articles from the hole in his house, and made a wrong statement that he was at the time in the field, should not be taken into consideration in concluding that his wrong statement was a pointer to his guilt. An accused is tempted to make many wrong statements in order to avoid admitting incriminating circumstances. It could not, therefore, be held definitely that he was in possession of those arms which were recovered from his house. Hence his conviction under S. 19 (f) of the Arms Act was bad : *Case law discussed. (Raghubar Dayal and Agarwalla JJ.)* SUGHAR SINGH v. REX **A I R 1950 All 277= I L R (1950) All 174=51 Cr L J 776.**

——*S. 19 (f) — "Possession" and "control" must be conscious possession and actual control—Burden of proof is on prosecution — Premises having number of rooms occupied by joint Hindu family — Incriminating article recovered from one of rooms—Keys of room supplied by head of family but in custody of daughter-in-law — Head of family held not proved to be in possession and control of room.*

ARMS ACT (XI of 1878), S. 19—15. S. 19, cl. (f) —Possession of arms found in a house belonging to a joint family.

Mere proof that an incriminating article is found in premises having number of rooms and occupied by a number of persons belonging to a joint family does not in itself establish *prima facie* the guilt of any particular person or of all of them jointly. The possession and control required to be established under S. 19 (f) mean conscious possession and actual control. In other words, *mens rea* or guilty knowledge must be proved in a particular individual or group of individuals. Because the other members of the family cannot be found guilty, it does not follow as a necessary corollary of law that the head of the family must be held guilty. Like all other criminal trials, the burden lies entirely on the prosecution and all the time on the prosecution, to show the guilty knowledge in any particular individual or the head of the joint family.

The mere fact that the keys of the room from where the article was recovered were handed over to the police by the head of the family does not establish that he was in possession of the room specially when the keys were taken from the custody of one of his daughters-in-law. This circumstance alone does not lead to the inference that he was consciously in possession of the incriminating article : A. I. R. 1936 Pat 512, *Expl. and Disting*; A.I.R. 1944 Lah. 339 (F.B.), *Rel. on. (Sinha J.)* BHEKHA AHIR v. EMPEROR **A I R 1947 Pat 236=13 B R 129= 228 I C 64=48 Cr L J 53.**

——*S. 19 (f) — 'Control and possession' — Place belonging to joint family—Possession of* karta.

In S. 19 (f) "control" means effective control. Effective control cannot be that of the junior members of a joint Hindu family; it must be with the head or the *karta* of the family.

Where the articles were found at a place not in the use or occupation of a particular individual but the place belonged to the whole family which was in occupation thereof, the possession must be deemed to be with the manager or the *karta*. No other member of the family could be said to have been in possession of the same. *(Sinha J.)* HIRDEY RAM v. EMPEROR **A I R 1946 All 4= 1945 A W R (HC) 275= 1945 O W N (HC) 328=1945 A L J 528= 222 I C 393=47 Cr L J 437.**

——*S. 19 (f)—Unlicensed weapon found in house occupied by joint family — Head of family must be presumed to be in possession—Presumption can be rebutted.*

In the case of a house occupied by a joint family there is an initial presumption that an article found therein is in the possession of the head of the family. It is open to the head of the family to rebut this presumption. *(Teja Singh J.)* MUSA v. EMPEROR **A I R 1944 Lah 64= 45 P L R 421=16 R L 229= 211 I C 493=45 Cr L J 404.**

——*S. 19 (f)—Unlicensed arms found in house—Presumption.*

The head of the house is responsible for unlicensed arms recovered from it, unless it is shown that one of the other occupants had exclusive possession of them. There is an initial presumption that an article found therein is in the possession of the head of the family. The weight to be

ARMS ACT (XI of 1878), S. 19 — 15. S. 19, cl. (f)—Possession of arms found in a house belonging to a joint family.

attached to the presumption must, however, vary according to circumstances. It can easily be rebutted by showing that the room or receptacle in question was in the particular and exclusive possession of one member of the family. The strength of the presumption would also vary according to the improbability that the article owing to its size etc., could have escaped the notice of the head of the family. *(Gruer J.)* HARBANS SINGH HIRA SINGH v. EMPEROR A I R 1941 Nag 296=1941 N L J 405=14 R N 127=196 I C 727=I L R (1942) Nag 523=43 Cr L J 62.

——*S. 19 (f)—Joint family.*

Where weapon is found in a house belonging to a joint family, in the absence of proof that the room in which the weapon was kept was in the exclusive or particular possession of any member of the family, it cannot be inferred that the weapon was in the possession of any other person than the head of the family. *(Agarwala and Madan JJ.)* MANGAR KOIRI v. EMPEROR A I R 1936 Pat 512=17 P L T 573=1936 Cr Cas 820=15 Pat 696=3 B R 88 (1)=9 R P 216=165 I C 803 (1)=38 Cr L J 100 (1).

——*S. 19 (f)—Liability of head of family : A.I.R. 1932 All. 441=33 Cr L J 719*, Overruled.

Where in the course of a house search, two loaded cartridges were found in a corn bin in the house of the accused, and he was prosecuted for an offence under the Arms Act, on the ground that he being the head of the family should be held responsible for the arms recovered, and was convicted under S. 19, Arms Act :

Held, that in all such cases it was necessary to prove not only the presence of the article in the house but the possession of some particular person over the article in order to justify a conviction : A.I.R. 1932 All. 441 : 33 Cr.L.J. 719, OVERRULED. *(Pullan and Thom JJ.)* KAUL AHIR v. EMPEROR A I R 1933 All 112=1932 A L J 1072=L R 14 All 7 Cr=1933 Cr Cas 160=Ind Rul (1933) All 195 (1)=55 All 112=143 I C 114=34 Cr L J 517.

——*S. 19 (f)—Joint Hindu family.*

Where an unlicensed gun is found in a house where the members of a joint Hindu family live, a presumption is raised against all the adult male members that it was in their possession and control and they might one and all be tried on the charge under S. 19 (f), Arms Act. *(Bennet J.)* EMPEROR v. SIKHDAR A I R 1932 All 441=1932 Cr Cas 561=1932 A L J 570=L R 13 A 43 Cr=Ind Rul (1932) All 535=54 All 411=139 I C 153=33 Cr L J 719.

[Overruled in A I R 1933 All 112=34 Cr L J 517.]

——*S. 19 (f) — House occupied by accused, his sons and their wives—Tests.*

When the house of the accused was searched by the Police on receipt of certain information, an unlicensed muzzle loading pistol was found concealed under a heap of grain inside a vessel and inside the barrel of the pistol some percussion caps were also found on removing a wad of cloth from the muzzle of the pistol. It appeared that only the accused and his sons and their wives were living in the house in which the pistol was found :

ARMS ACT (XI of 1878), S. 19—15. S. 19, cl. (f)—Possession of arms found in a house belonging to a joint family.

Held, that it was most unlikely that an article of such size and description as the pistol should remain concealed in the house without the knowledge of the head of the family and that in the circumstances there could be no doubt that the accused must have been aware of the presence of the pistol in his house and he was "in possession and control" of it within the meaning of S. 19 (f), Arms Act. Every case of this kind must be decided upon its own facts. *(Sulaiman C. J. and King J.)* JAWALA v. EMPEROR A I R 1934 All 548=1934 Cr Cas 672=6 R A 523=1934 A L J 366=147 I C 625=3 A W R 493=33 Cr L J 428.

——*Possession of arm—Possession of one member of Hindu joint family.*

Where unlicensed arms are found cancealed upon premises which are joint property of a Hindu family but are in fact in exclusive possession and control of one member of the family, it is that member alone who is in possession of such arms. *(Banerji J.)* EMPEROR v. RAM SARUP 26 A W N 11=3 A L J 833=28 All 302=3 Cr L J 88 (2).

16. S. 19, Clause (f)—Possession of arms in unserviceable condition.

——*S. 19 (f)*—Pistol in broken and unworkable condition—License is required for its possession—*See also* ibid, S. 4 A I R 1953 All 353=1953 Cr L J 762.

——*S. 19 (f), Proviso — (added by Burma Act (LXIV [64] of 1947)— Ammunition, if includes empty cartridges.*

The expression "ammunition for any of the said guns" occurring in proviso to S. 19, Arms Act, must be deemed to include empty machine gun cartridges. *(U Sen Maung J.)* SOE KHIN v. UNION OF BURMA 1949 Bur L R (HC) 111.

——*S. 19 (f)*—Old, dirty and rusty cartridges—Possession without license is offence under—*See* Arms Act (XI of 1878), S. 4 I L R (1947) Kar 49.

——*S. 19 (f)—Fire-arm unserviceable but repairable is fire-arm.*

A fire-arm even though it is unserviceable but can be repaired is a fire-arm the possession of which without licence would amount to an offence. *(Kuppuswami Ayyar J.)* PUBLIC PROSECUTOR v. NAGA BHUSHANAM A I R 1943 Mad 661=56 L W 519=(1943) 2 M L J 283=1943 M W N 577=16 R M 297=209 I C 272=45 Cr L J 124.

——*S. 19 (f) — Possession of empty cartridges which cannot be re-loaded in India is not an offence.*

To support a conviction for possession of empty cartridges it should be proved that the cartridges can be reloaded in India and used as ammunition by the persons with whom they are found. If this is not found the cartridges are not ammunition and so no prosecution can be made on their basis : 32 All. 152, *Disting.*; A. I. R. 1925 All 498, *Foll.* *(Walsh J.)* KALLU v. EMPEROR A I R 1926 All 255=24 A L J 208=7 L R A Cr 15=91 I C 808=27 Cr L J 136

ARMS ACT (XI of 1878), S. 19 — 16. S. 19, Cl. (f)—Possession of arms in unserviceable condition

——*Ss. 19, cl. (f) and 20—Unserviceable fire-arm.*

The mere fact that the fire-arm is in an unserviceable condition does not take it out of the category of fire-arm. Whether an instrument is a fire-arm or not, is a question to be determined according to the facts of each case. Certain fire-arms had been found from the possession of the accused, who had concealed them under a heap of straw, to prevent their being seen by visitors in his house: *held*, that the concealment was not with the intention specified in S. 20, and the accused could, therefore, be convicted only under S. 19, cl. (f). *(A, Lucas, H. N. Crouch and E. M. Pratt)* CROWN v. WAZU WALAD BANGAR

1 S L R 18 Cr=9 Cr L J 259 (FB).

——Arm out of order—Possession without license —*See* Arms Act (1878), Ss. 4, 13, 19

7 Cr L J 350 (Lah).

——*S. 19 (f)*—Ammunition—Possession of empty cartridge cases—*See* Arms Act (1878), S. 4

2 Cr L J 449 (Bom).

17. S. 19, Clause (i)

——*S. 19 (i)*—Days of grace for renewal of license cannot be claimed as of right — Weapon must be deposited as soon as license expires — Failure to deposit weapon after expiry of licence held technical offence in the circumstances of the case. *(Yahya Ali J.)* IN RE ALAGATHORAI PADAYACHI

A I R 1947 Mad 361=(1947) 1 M L J 200=60 M L W 221=1947 M W N 280=1947 A W R Sup 49=1947 O A Sup 49.

18. Procedure.

——*S. 19 (f)* — Extent of information provable—*See* Evidence Act (1872), S. 27

A I R 1952 Bom 72=1952 Cr L J 334.

——*S. 19 (f) — Joint trial with S. 399, Penal Code.*

Illegal possession of revolver while preparing for dacoity — S. 239 (d), Criminal P. C., applies and the accused can be jointly tried under S. 399, Penal Code and S. 19 (f), Arms Act. *(Young C. J. and Monroe J.)* KHAZAN v. EMPEROR

A I R 1937 Lah 793=39 P L R 1013=10 R L 314=172 I C 405=39 Cr L J 141.

——*S. 19 (f)* — Offence under — Cognizable by Police — Search without warrant by police officer not below certain rank not illegal. *(Burn J.)* KOOJAKALI v. EMPEROR **1936 M W N 624.**

——*Joint trial.*

A joint trial of the accused for offences under S. 29, Frontier Crimes Regulation and S. 19, Arms Act, is not open to any objection. *(Middleton J. C. and Saaduddin A. J. C.)* AKBAR v. EMPEROR

A I R 1933 Pesh 90=6 R Pesh 26=1933 Cr Cas 1445=147 I C 180=35 Cr L J 399.

——*S. 19 (f)*—Conviction under Ss. 411 and 414, Penal Code in respect of possession of stolen revolver is no bar to a conviction in respect of it under S. 19 (f), Arms Act. *(Smith J.)* MUNNOO v. EMPEROR **A I R 1933 Oudh 470=10 O W N 895=6 R O 104=1933 Cr Cas 1393 (2)=146 I C 354 (2)=35 Cr L J 36.**

ARMS ACT (XI of 1878), S. 19—18. Procedure

——*Penal Code, S. 411—Separate trials and conviction under the two enactments—General Clauses Act (X of 1897), S. 29.*

Where a person is found in possession of a stolen revolver without a license, he can be tried under the Arms Act as well as under the Penal Code, and can be punished under both the enactments, inasmuch as it is not the same fact or omission which constitutes the offence under the two enactments. Section 26, General Clauses Act, is no bar to the double punishment. *(Bajpai J.)* REOTI v. EMPEROR **A I R 1933 All 461=L R 14 A 63 Cr=1933 A L J 523=(1933) Cr Cas 761=6 R A 135=145 I C 609=34 Cr L J 1018.**

——*Ss. 19, 20 — Penal Code (Act XLV of 1860), S. 120-B—Conspiracy to possess arms — Separate proceedings under Arms Act.*

Where the accused who was charged for having joined a conspiracy with others to possess arms in contravention of the Arms Act, was absconding and when arrested was found to be in possession of arms and on separate proceedings being taken against him it was admitted by the Government Advocate that this evidence would not be used against him and that conviction in these proceedings would be irrelevant against him in the former proceedings :

Held, that the two cases were entirely independent of each other; that evidence taken in or conviction made in the second proceedings could not be considered in the former case and that the separate proceedings could not be quashed. *(Jailal J.)* SUKHDEV RAJ v. EMPEROR

A I R 1933 Lah 231=1933 Cr Cas 351=Ind Rul (1933) Lah 373=143 I C 627=34 Cr L J 637.

——*S. 19 (f)* — Magistrate with S. 30, Criminal P. C., powers committing two persons for charges of murder and under S. 19 (f), Arms Act, against the first accused, and attempted murder and a similar charge under Arms Act against the second accused. In disposing of the case for murder against the first accused, the Sessions Judge recommending the quashing of the committal for other charges :

Held, that the Magistrate acted rightly in passing the committal order as he did. *(Harrison J.)* EMPEROR v. UJAGAR SINGH

A I R 1933 Lah 500=(1933) Cr Cas 760=142 I C 200=Ind Rul (1933) Lah 174=34 P L R 360=34 Cr L J 314.

——*Ss. 19 (f) and 20* — Prosecution under—Sentence only under S. 20 and not under S. 19 (f)—On appeal sentence set aside on ground of want of jurisdiction — Committal of accused to Sessions recommended, if found necessary — Accused committed under both sections without inquiry under Chap. XVIII, Criminal P. C. :

Held, (i) that order of committal without enquiry under Chap. XVIII was wrong in law, (ii), S. 403, Criminal P. C., was no bar to the prosecution of the accused under S. 19 (f) or S. 20. *(Mallik and Remfry JJ.)* NAGENDRA NATH v. EMPEROR

A I R 1932 Cal 683=36 C W N 926=1932 Cr Cas 636=Ind Rul (1932) Cal 628=139 I C 470=33 Cr L J 770.

ARMS ACT (XI of 1878), S. 19—18. Procedure

——*S. 19 (a)—Offence under — Lead found possibly used for industrial purposes—Duty of Magistrate to enquire.*

In a case under S. 19 (a), the quantity of lead found with the accused and the neighbourhood were such as to suggest that the lead was used for fishing purposes. The Magistrate merely asked each of the accused whether he admitted having the lead for sale without license although they were not represented by counsel and on their pleading guilty convicted them:

Held, that the Magistrate should have in his examination of the accused put some questions with a view to elucidating from them whether they were *prima facie* vendors of lead for industrial, that is fishing, purposes within the meaning of Arms Act, S. 2 (7) (a), *(Doyle J.)* ALI HOSSEIN v. EMPEROR **A I R 1930 Rang 349=Ind Rul (1931) Rang 61=128 I C 845=1930 Cr C 1177=32 Cr L J 206.**

——*Recovery not in presence of witnesses cannot be relied on.*

Where the head constable made a false report that a dacoity had been committed and that he had arrested some dacoits and after a delay of 3 days, as he said, recovered the arms from the petitioner not in the presence of witnesses, who signed the list but who distinctly recorded that the arms were produced before them by the constable:

Held, the petitioner was not guilty. *(Moti Sagar J.)* ALIF DIN v. EMPEROR **A I R 1923 Lah 466.**

——*Ss. 19 and 30 — Search by police-officer — Legality of.*

The power of search in respect of an offence punishable under S. 19 (f) must be exercised in the presence of some officer specially appointed by name or in virtue of his office by the Local Government in this behalf. A search conducted by a police-officer in charge of a reporting station, specially empowered as above without obtaining a warrant from a Magistrate is not illegal. *(Piggot J.)* BABURAM v. EMPEROR **A I R 1918 All 113=16 A L J 721=47 I C 801=19 Cr L J 949.**

——*Ss. 19 and 20—Offence—Exclusive possession—Questions raised for the first time in appeal.*

In a case under the Arms Act the question of exclusive possession of an arm cannot be raised for the first time in appeal. *(Johnston J.)* GAHNA v. EMPEROR **A I R 1914 Lah 280 (1)=1 P W R 1914 (Cr.)=33 P L R 1914=24 I C 594=15 Cr L J 506.**

——*Case not tried under Arms Act or Explosive Substances Act — Re-trial not asked for—Conviction under either of the Acts — Power of High Court in revision.*

Where a case might properly have been tried under the Arms Act or the Explosive Substances Act, but the public prosecutor does not ask the High Court to order a re-trial, the High Court cannot convict the accused under either of those two enactments without a fresh trial. *(Miller and Munro JJ.)* EMPEROR v. JOSEFH KANGANI **8 M L T 296=8 Ind Cas 397=11 Cr L J 645 (1).**

ARMS ACT (XI of 1878), S. 19—18. Procedure

——*Ss. 19 (e), (f), 29—Illegal possession of firearms—Previous sanction—Institution of proceedings.*

The accused was sent up for trial under S. 19 (e) for illegally going armed. After hearing the prosecution, the Magistrate charged him in the alternative with offence under S. 19 (e) and with illegal possession of arm under S. 19 (f). The sanction of the District Magistrate, under S. 29, was obained after the framing of the charges. The accused was convicted under S. 19 (f).

Held that, as the police sent up the case under cl. (e) of S. 19, proceedings under cl. (f) were instituted after the Magistrate framed the charge under that clause. Although the charge was actually framed without jurisdiction, the Magistrate might have instituted proceedings afresh, after receiving sanction, by framing a fresh charge; and the accused not having been prejudiced by the procedure adopted, the absence of a fresh charge after the receipt of sanction was cured by S. 535 of the Criminal Procedure Code, 1898. *(Irwin, Offg. C. J.)* KAKA v. KING-EMPEROR **4 L B R 247=8 Cr L J 65.**

19. Sanction.

——*Ss. 19 (f) and 29—Sanction.*

In order to sustain conviction under S. 19 (f) previous sanction of the District Magistrate is necessary *(Chowdhry J.)* NAZAMUDDIN v. STATE **A I R 1952 Him P and B 45=1952 Cr L J 1135.**

——*S. 19 (f)* — Prosecution under—Sanction obtained after institution of proceedings—Validity of trial—*See* ibid, S. 29 **A I R 1952 Assam 73=1952 Cr L J 645.**

——*S. 19 (f)*—Sanction—*See* ibid, S. 29 **A I R 1951 H P 35=52 Cr L J 187.**

——*S. 19 (f)*—Trial under — Acquittal on ground of absence of sanction—Subsequent prosecution for same offence on same facts, with sanction is not barred — Court while trying without sanction was not Court of competent jurisdiction — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 403. **1948 Bur L R 175.**

——*S. 19 (f) — Prosecution under—No previous sanction under S. 29—Effect—Subsequent sanction—Effect.*

Proceedings commenced for offence under S. 19 (f) without previous sanction of the District Magistrate under S. 29 are null and void. A sanction obtained subsequently after the institution of the proceedings would not make the proceedings legal. *(Varma and Pande JJ.)* GIRIJA v. EMPEROR **A I R 1946 Pat 160=24 Pat 641=12 B R 765=47 Cr L J 927.**

——*Ss. 19 (f), 29—Sanction.*

An accused cannot be convicted under S. 19 (f), Arms Act, when there is no sanction as required by S. 29 of the Act to the commencement of a prosecution for an offence under that section. *(Rowland J.)* IMAMUD-DIN MIAN v. EMPEROR **A I R 1941 Pat 284=7 B R 411=13 R P 570=192 I C 766=42 Cr L J 341.**

——*Ss. 19 (f), 29—Trial by City Magistrate who was also Additional District Magistrate exercising powers of District Magistrate—Sanction under*

ARMS ACT (XI of 1878), S. 19—19. Sanction

S. 29—S. 556, Criminal Procedure Code (Act V of 1898).

Where a case under S. 19 (f), Arms Act, is tried by a City Magistrate who is also the Additional District Magistrate empowered with the powers of District Magistrate, it cannot be said that sanction under S. 29 is unnecessary as he himself exercised the powers of the District Magistrate. Even in such a case the trial of the case without sanction under S. 29 is illegal.

Sanction under S. 29, Arms Act, would only be granted on a consideration of the facts connected with the prosecution, and having once granted sanction in his capacity as Additional District Magistrate the accused could not be tried by the Magistrate granting the sanction whether he acted as Additional District Magistrate or as City Magistrate. The trial is, therefore, illegal under S. 556. Criminal P. C. *(Lobo J. C.)* YUSUF UMAR v, EMPEROR A I R 1940 Sind 107 (108)= I L R (1940) Kar 296=13 RS 26= 189 I C 29=41 Cr L J 707.

——*S. 19 (f)—Offence, if cognizable — Sanction, conspiracy.*

The offence of being in possession of arms without a licence is a cognizable offence and the fact that the sanction of the District Magistrate is necessary to constitute proceedings in respect of a specific offence itself is no bar to the institution of proceeding in respect of an offence of criminal conspiracy to commit the substantive offence itself. *(Grille J. C.)* MAGAN LAL BAGDI v. EMPEROR A I R 1934 Nag 71=1934 Cr Cas 276= 7 R N 1035=30 N L R 269= 150 I C 623=35 Cr L J 1097.

——*Ss. 19 (f), 32* — In Dehra Ghazi Khan, for prosecution under S. 19 (f) previous sanction of District Magistrate is necessary. *(Addison J.)* EMPEROR v. ALI BEG A I R 1933 Lah 869= 6 R L 229=34 P L R 965=15 Lah 6= 1933 Cr Cas 1114 (1)=146 I C 437= 35 Cr L J 109 (1).

——*S. 19 (f)—Sanction of District Magistrate—Frontier Province.*

The previous sanction of the District Magistrate is required for a prosecution under S. 19 (f) not only in Peshawar but also in other four districts of the Frontier Province *(Fraser J. C. and Saduddin A. J. C.)* GOVERNMENT ADVOCATE, N. W. F. PROVINCE v. FAZAL RAHIM AIR 1933 Pesh 69=1933 Cr Cas 1309= Ind Rul (1933) Pesh 29=143 I C 508= 34 Cr L J 670.

——*S. 19 (f)—Sanction—In Ailgarh District for prosecution under S. 19 (f), District Magistrate's sanction is not necessary.*

According to S. 29, sanction of the District Magirtrate was necessary to prosecute a person under S. 19 (f) for possessing arms without a license in the District of Aligarh, only for three months after 15th March 1878, and not subsequently. A. I. R. 1926 All. 143 and A. I. R. 1929 All. 68, *Rel. on. (Dalal and Kendall JJ.)* EMPEROR v. ANGAD A I R 1929 All 69= 1929 A L J 215=117 I C 822= 10 L R A Cr 38=11 A I Cr R 255= 30 Cr L J 856.

——*Ss. 19 (f) and 29 — Sanction — Where unlicensed possession is clear, previous sanction is unnecessary.*

ARMS ACT (XI of 1878), S. 19—19. Sanction

Where the accused is clearly in possession of arms and ammunition without a license, no sanction is necessary for starting prosecution under S. 19 (f). A. I. R. 1926 All. 143, *Foll. (Bannerji and Bennet JJ.)* EMPEROR v ABDUL GHAFUR A I R 1929 All 68=1929 A L J 28= 116 I C 29=10 L R A Cr 17= 11 A I Cr R 149=30 Cr L J 566.

——*S. 19 (f) — Sanction — Prosecution under S. 19 (f) — Sanction of District Magistrate is not necessary in some part of United Provinces.*

In the Bijnor District and other parts of the United Provinces to the north of the rivers, Jumna and Ganges, the sanction of the District Magistrate for a prosecution under S. 19 (f) of the Arms Act is not necessary. *(Daniels J.)* AMIR AHMAD v. EMPEROR A I R 1926 All 143= 24 A L J 30=6 L R A Cr 196= 91 I C 47=27 Cr L J 15.

——*Ss. 19 (f), and 20 — Sanction—Conviction under S. 19 (f) is bad if no express sanction obtained—No sanction is necessary for prosecution under S. 20.*

The appellant was in secret possession of local-made guns and the cartridges. Sanction was obtained for prosecution under S. 20. He was convicted both under S. 20 and S. 19 (f).

Held, that conviction under S. 20 was legal but conviction under S. 19 (f) was bad for want of sanction. *(May Oung J.)* NGA THA HLA v. EMPEROR A I R 1924 Rang 85= 2 Bur L J 203=76 I C 571= 25 Cr L J 203.

——*Ss. 19, 20 and 29—Sanction for prosecutions.*

S. 29 is restricted to offences under S. 19 (f) and does not extend to a prosecution under S. 20. The first part of section 20 creates offences distinct from and graver than those under S. 19. *(Fox C. J., Twomey, Parlett and Young JJ.)* NGA POOCHIEN v. EMPEROR A I R 1917 L B 96= 9 Bur L T 217=38 I C 741= 18 Cr L J 357 (FB).

——*S. 19 (f)—Proceedings with sanction—Person discharged under S. 20.*

Where a person is discharged under S. 20 of the Arms Act for want of evidence of intention to conceal his secret possession of arms in contravention of S. 14 or 15 of the same Act, proceedings may be instituted against him under S. 19 (f) after sanction thereto is given under S. 29 of the same Act. *(Fox C. J. and Parlett, Young and Twomey JJ.)* NGA PO CHAIN v. EMPEROR A I R 1916 L B 105=34 I C 321= 8 L B R 452=17 Cr L J 209 (FB).

——*S. 19 (f) — Offence after several years after the Act came into force—Previous sanction if necessary.*

Where several years after passing of Act XI of 1878, an offence under S. 19 (f) of the Act was committed at a place to which the previous Act of 1860 applied, the previous sanction of a Magistrate is not a condition precedent for prosecution. *(Reid C. J.)* SUNDER SINGH v. EMPEROR A I R 1914 Lah 584 (1)=24 P R 1913 Cr= 274 P L R 1914=21 I C 1008= 14 Cr L J 688.

——*S. 19 (f)—Sanction for prosecution essential.*

Where an offence under S. 19 (f) has been committed previous sanction of the District Magistrate is necessary for proceedings in that behalf;

ARMS ACT (XI of 1878), S. 19—19. Sanction

the proceeding is illegal, null and void if no sanction is obtained. *(Abdur Rahim and Ayling JJ.)* GOPALA KRISHNA IYER v. EMPEROR
10 I C 261=(1911) 1 M W N 271=
9 M L T 475=12 Cr L J 234.

——*Ss. 19 (f) and 29 — Proceedings under S. 19 (f) instituted without sanction—Sanction obtained after commitment—Illegality — (Criminal Procedure Code (Act V of 1898), Ss. 532, 537.)*

No proceedings can be instituted under S. 19 (f) of the Arms Act without the previous sanction of the District Magistrate and a conviction under that section without such sanction is illegal. Nor does the obtaining of the sanction after commitment cure the omission under S. 532 or 537 of the Criminal Procedure Code. *(Munro and Sankaran Nair JJ.)* IN RE ABDUL KADIR SAHEB
4 Ind Cas 1107=5 M L T 162=
11 Cr L J 190 (1).

20. Conviction and punishment.

——*S. 19 (f)—Possession or control of accused — Sufficiency of proof—Accused's statement accompanied by production—Admissibility—(Evidence Act (1872), S. 27).*

An offence under S. 19 (f) is completed as soon as it is shown that the accused unauthorisedly had firearms in his possession. The question as to whether he owned them or the manner in which he acquired possession or control over them is immaterial. There is sufficient evidence to prove his control when it is shown by the testimony of witnesses that the accused had, immediately after his arrest, made a statement to the police that he concealed the fireams and produced them from the place of concealment.

That statement is not inadmissible in evidence as one made by a person in police custody, for S. 27, Evidence Act, is available even when a person in police custody produces from some place of concealment some object said to be connected with the crime and the only thing that is inadmissible in such cases being that portion of the statement which contains the confession of the accused relating to some past user or history of the object produced. *(Falshaw and Kapur JJ.)* STATE v. MOHINDER SINGH A I R 1953 Punj 81=
54 Pun L R 408=1953 Cr L J 561.

——*S. 19—Conviction under—Proof of possession necessary.*

In order to found a conviction under S. 19 it must be proved that the accused was in possession of the arms otherwise there can be no conviction. And if the conviction cannot be sustained the consequential order of confiscation of the arms falls through. *(Teja Singh J.)* AJMER SINGH v. CROWN
A I R 1952 Pepsu 75=2 Pepsu L R 502=
1952 Cr L J 855.

——*S. 19 (f) — Possession — Question of law or fact.*

Where there are no grounds in the evidence taken as a whole upon which any tribunal could properly as a matter of legitimate inference arrive at a conclusion that the accused was guilty and any conclusion on the available materials would be mere conjecture or guess, which are not in law or justice permissible grounds on which to base a verdict, then the jury should not be allowed to gamble and speculate on possible inferences. Where there is no scintilla of evidence, the Judge is not justified in leaving the case to the jury. There

ARMS ACT (XI of 1878), S. 19—20. Conviction and punishment.

must be some evidence on which the jury can be expected reasonably and properly to conclude a fact to be established before the case can go to the jury. It is for the jury to see whether and how far the evidence is to be believed. And if the facts regarding which evidence is given are such that from them a further inference of fact may reasonably be drawn then also it is for the jury to say whether that inference should be drawn or not. But it is for the Judge first to determine whether from any facts the inference can legitimately and lawfully be drawn. *(P. B. Mukharji J.)* NARENDRA NATH v. STATE A I R 1951 Cal 140=
87 C L J 58=52 Cr L J 1241.

——Recovery of bomb and cartridges from place shown by accused is not sufficient to convict accused unless he is proved to have placed them there. *(Teja Singh J.)* CHETU SANSARI v. EMPEROR
A I R 1948 Lah 69=228 I C 334=
49 P L R 16=48 Cr L J 200.

——*Proof—Duty of prosecution—Explosive Substances Act, S. 5.*

Under S. 5, Explosive Substances Act or S. 19, Arms Act, the onus of proving the guilt of the accused rests on the prosecution as in all other criminal charges. Section 106, Evidence Act, does not affect the onus which rests on the prosecution and does not shift on the accused by reason of S. 106.

Mere proof that an incriminating article is found in premises occupied by a number of persons does not in itself establish *prima facie* guilt of any particular person or all of them jointly. That being so, they cannot be called upon after such evidence to establish their innocence. They can only be called upon to do that when the evidence has established a *prima facie* case against any one or more of them or all of them. *(Harries C. J. Din Mohammad and Sale JJ.)* EMPEROR v. SANTA SINGH A I R 1944 Lah 339=
ILR (1945) Lah 137=215 Ind Cas 161=
46 Cr L J 1 (FB).

——*Ss. 19 (f), 17 and 14 — Form 16 under S. 17 —Renewal before expiry of license—Note 2 to Form 16.*

A person holding a licence for a gun under Form 16 prescribed under S. 17, Arms Act, must apply for renewal before expiry of the licence. After the expiry of the licence, the possession of the gun is in contravention of the provisions of S. 14, and clearly, this is an offence punishable under S. 19 (f). Note 2 appended to conditions printed on the licence Form 16 merely provides a period of grace during which the application for renewal may be made and the fees payable thereon deposited. It does not lay down that the *quondam* licence-holder is entitled, as of right, to have the licence renewed on payment of the fee mentioned.

The fact that the licences of several other persons had, as a matter of fact, been renewed by the District Magistrate, long after the dates on which they had expired, in one case the renewal being as late as three years after the date of expiry, does not affect the illegality of the accused's possession of the gun after the expiry of his licence, though it might indicate that his failure to apply for renewal within the prescribed time was not *mala fide*.

[The case held called for only nominal sentence of fine. No order for confiscation of gun under

ARMS ACT (XI of 1878), S. 19—20. Conviction and punishment.

S. 24 held should be passed.] *(Tek Chand and Din Mohammad JJ.)* EMPEROR v. BAKSHI RAM
A I R 1942 Lah 300=44 P L R 486=
I L R (1943) Lah 756=15 R L 235=
203 I C 542=44 Cr L J 101.

——*S. 19 (b)—Accused living in different houses —Plea of articles being foisted.*

A miscellaneous collection of arms and ammunition was found in a house belonging to the accused. Except the fact that the arms and ammunition were found in the petitioner's house, there was really no evidence for the prosecution and the case against him depended upon evidence of the discovery in the house. The defence was that the contraband property must have been foisted into the house by someone of his enemies and an attempt was made to prove by positive evidence that persons had been seen tampering with the roof of the house on the night before the property was seized. No witnesses were called by the prosecution to prove just at what time the petitioner was in residence in this house in view of the fact that the accused was in the habit of staying at no less than three houses. The articles found were not *prima facie* the type of articles which would be kept by a man who wished to shoot with a gun or a revolver without a license most of them being quite unserviceable and there was a mass of miscellaneous collection of cartridges some of which might and some of which could not fit the gun or revolver :

Held, that the property found, of itself, suggested the possibility that the plea of foisting put forward might not be altogether unreasonable, and that a sufficient element of reasonable doubt was introduced to make it possible that the plea might be true so as to warrant his acquittal. *(King J.)* RAMALINGA GOUNDAN, In re
A I R 1937 Mad 975=
1937 M W N 878=46 L W 522=
(1937) 2 M L J 620=10 R M 459=
172 I C 498=39 Cr L J 147.

——*S. 19 (f) — Adequate sentence.*

The sentence of one year's rigorous imprisonment under S. 19 (f), Arms Act, for the offence of being in possession of unlicensed revolver is not appropriate. If it had been the case of some other unlicensed weapon having been found in the possession of an accused person, a sentence of one year's rigorous imprisonment might well be considered to be adequate. The case of pistol or revolver stands on a somewhat different footing. It is a dangerous weapon and can easily change hands without detection. The chances of a weapon of that kind falling into the hands of dangerous persons are not very remote.

(Sentence was enhanced to two years' rigorous imprisonment.) *(Niamat Ullah and Ganga Nath JJ.)* EMPEROR v. BISHWANATH
A I R 1936 All 850=1936 A L J 1287=
1936 A L R 1008=9 R A 366=
1936 Cr Cas 1109=ILR (1937) All 308=
166 I C 176=38 Cr L J 137.

——*S. 19 (f) — Licence-holder, if can transfer privilege to possess rifle to non-licence-holder for use.*

A licence-holder, who has a personal privilege to possess a rifle, cannot transfer that privilege by

ARMS ACT (XI of 1878), S. 19—20. Conviction and punishment.

lending the rifle, to a non-licence-holder for use by that non-licence-holder for his own purposes. Consequently, an offence punishable under S. 19 (f) is committed when a rifle is borrowed by the accused, a non-licence-holder, for the protection of the accused, that is, for his own private use and not for use on behalf of the licence-holder. But if his possession is not for any unlawful purpose, though his actual possession is unlawful a nominal sentence will be sufficient to meet the ends of justice. *(Middleton J. C. and Mir Ahmad A. J. C.)* EMPEROR v. SARFARAZ KHAN SHAH BHAZ KHAN
A I R 1935 Pesh 103=
8 R Pesh 26=1935 Cr Cas 855=
157 I C 411=36 Cr L J 1204.

——*S. 19 (f) — Conspiracy — Accused sheltering co-accused — Penal Code (Act XLV of 1860), S. 120-B.*

The essence of the offence under S. 19 (f) is the possession of arms without a licence and a licence is required for each separate weapon.

When once the prosecution fails to connect the accused with knowledge of the revolver, he cannot be convicted of conspiracy. It would be impossible to infer merely from the fact that he gave shelter to the co-accused that he was privy to any offence the latter might commit. In such a case the accused is entitled to an acquittal. *(Mitter and Henderson JJ.)* ABANI MOHAN v. EMPEROR
A I R 1934 Cal 368=38 C W N 84=
60 Cal 1477=6 R C 488=1934 Cr Cas 470=
148 I C 925=35 Cr L J 766.

——*S. 19 (f)*—Use of pistol by accused, with reckless disregard to consequences, against a Police Constable who was chasing him, the bullet remaining lodged inside the body of the policeman—Accused is guilty both under S. 307, I. P. C. and S. 19 (f), Arms Act. *(Dalip Singh J.)* DHANWANTRI DURGA DAS v. EMPEROR
A I R 1933 Lah 852=34 P L R 672=
1933 Cr Cas 1108=6 R L 278=
14 Lah 820=146 I C 843=35 Cr L J 171.

——*S. 19 (f)*—Where in a search of two persons' revolver cartridges are found on the person of one of them but nothing incriminating is found on the other, S. 34, I. P. C., does not apply and a conviction of the latter under S. 19 (f), Arms Act, is not proper nor can he be convicted for abetment. *(Rankin C. J. and Pearson J.)* MANMATHA NATH v. EMPEROR
A I R 1933 Cal 132=
37 C W N 201=Ind Rul (1933) Cal 246=
(1933) Cr Cas 193=60 Cal 618=
142 I C 280=34 Cr L J 299.

——*S. 19 (f)*—Conviction under Arms Act, S. 19 (f), should not be altered in revision to one under Explosives Substances Act, unless the conviction under the latter Act were obviously correct and unless the accused was prejudiced by being charged under the Arms Act. *(King J.)* KIFAYTULLAH KHAN v. EMPEROR
A I R 1931 All 17=
1930 A L J 1467=L R 12 A 42 Cr=
Ind Rul (1931) All 290=53 All 226=
1931 Cr Cas 33=130 I C 626=
32 Cr L J 564.

——*S. 19 (f)—Before entering house to be searched police seeing some men throwing something*

ARMS ACT (XI of 1878), S. 19—20. Conviction and punishment.

from their persons—Police discovering cartridges under Chowki on which accused sat conversing with others—Charge against them resting on suspicion — Their possession or knowledge not proved —They cannot be convicted under S. 19 (f).

Before the police entered the house which was to be searched, certain persons inside were seen throwing down something from their person, and on a search being made certain cartridges were discovered under the Cowki on which the accused were sitting conversing with others. The cartridges were not proved to be in their possession, nor was it proved that they knew that they were there.

Held, that the charge against them rested on suspicion and their guilt not being proved they cannot be convicted under S. 19 (f). *(C. C. Ghose and Jack JJ.)* BAZLAR RAHMAN v. EMPEROR
A I R 1929 Cal 302=33 C W N 202=119 I C 297=Ind Rul (1929) Cal 777=30 Cr L J 1038 (1).

——*S. 19 (f) — Forbidden weapon discovered by reason of information from accused—His conviction is valid—Evidence Act, S. 27.*

Where an article, the possession of which is forbidden by the Indian Arms Act, has been discovered by reason of information given by an accused person, his conviction based upon that evidence is valid. 72 P. L. R. 1916, *Foll. (Fforde J.)* NAURANG SINGH v. EMPEROR
A I R 1927 Lah 900=9 L L J 211=28 P L R 626=100 I C 122=28 Cr L J 250.

——*S. 19 (f) — Son of a licensee (the latter not being entitled to hand over gun to retainer) was convicted for possessing father's gun for shooting birds.*

The accused's father held a license for a gun. The license which had been issued to him did not mention that he was entitled to hand over his gun to a retainer. The accused took out the gun of his father for the purpose of shooting birds. While thus possessing the gun near a pond, he was found out by an officer of the police and the Tahsildar.

Held, that though the spirit of the law was not contravened yet, the letter was certainly contravened but that a fine of Rs. 25 would answer the purpose. *(Mukerji J.)* MUHAMMAD HASAN v. EMPEROR
A I R 1925 All 175=47 All 267=22 A L J 1095=6 L R A Cr 23=85 I C 159=26 Cr L J 479.

——*Solitary confinement cannot be awarded for convictions under Arms Act—Penal Code, S. 73.*

Solitary confinement cannot be awarded for offences under Special or Local Acts. 17 P. R. 1889 (Cr.); 20 P. R. 1870 (Cr.); 4 P. R. 1875 (Cr.); 24 P. R. 1879 (Cr.), *Ref. (Abdul Raoof J.)* EMPEROR v. NAZIR SINGH
A I R 1924 Lah 667=76 I C 184=25 Cr L J 120.

——Possession of bad bullets without licence — Absence of criminal intention — Sentence — *See* ibid, S. 4
11 Cr L J 421 (Punj).

—S. 20.

ARMS ACT (XI of 1878), S. 20

SYNOPSIS.

1. Applicability and scope.
2. "Conceals."
3. "Intention that such act may not be known."
4. Power of superior Court.
5. Procedure.
6. Sanction.
7. Sentence.

1. Applicability and scope.

——*Ss. 20, 19 — Person holding license in Indian State bringing by sea from Ceylon cartridges and hiding them from custom authorities—Act though not an offence under S. 19 (c) is an act contemplated by S. 19 (c) and is offence under S. 20.*

The doing of an act indicating an intention that the act may not be known to the public servant is sufficient to make it an offence under S. 20. Where a person holding licence in an Indian State tries to bring by sea into British Indian territory live cartridges from Ceylon and is detected by the Custom Authorities to hide them, even if his act is not an offence under S. 19 (c), it is certainly an act contemplated by S. 19 (c) and that being so he is guilty of an offence under S. 20. *(Govinda Menon J.)* PUBLIC PROSECUTOR v. IBRAHIM SAHIB
A I R 1949 Mad 166=1948 M W N 665=61 M L W 635=1948-2 M L J 273=1948 A W R (Sup) 143=50 Cr L J 213.

——*Ss. 20, 19 — Possession of spear-head and* sandhewa *a burglar's implement, hidden in loin cloth.*

Two *sowars* of the mounted Police who were on patrol between two Police Stations saw a mounted Sikh at about 4-30 A. M., and challenged him. He galloped off; the *sowars* followed. After a time the Sikh fell, they captured him and as they found that he was in possession of a *khunda* with a screw, they searched him. They found concealed below his *khes* a burglar's implement—a *sandhewa* —and in his loin cloth a spear-head which screwed into the *khunda*. They also found an electric torch, a knife and a handkerchief:

Held, that the offence committed by the Sikh was one under S. 20, Arms Act, and not under S. 19. *(Skemp, J.)* JODH SINGH v. EMPEROR
A I R 1939 Lah 17=40 P L R 921=11 R L 650=179 I C 897=40 Cr L J 279.

——*Ss. 20, 13 and 14 — Going armed with revolver.*

An unlicensed person going armed with a revolver may be convicted under either S. 13 or S. 14 and therefore may be convicted under S. 20. *(Lort-Williams and Mc Nair JJ.)* SACHINDRAKAR GUPTA v. EMPEROR
A I R 1933 Cal 692=1933 Cr Cas 1154=6 R C 251=60 Cal 1432=146 I C 645=35 Cr L J 125.

——*Scope.*

Section 20 is not restricted to cases of importation and exportation of arms in bulk. There must be intention to conceal arms. *(Lort-Williams and McNair JJ.)* SACHINDRA KAR GUPTA v. EMPEROR
A I R 1933 Cal 692=1933 Cr Cas 1154=6 R C 251=60 Cal 1432=146 I C 645=35 Cr L J 125.

——*Ss. 20, 19—First part of S. 20—Possession of revolver — Presumption — Intention to conceal—*

ARMS ACT (XI of 1878), S. 20 — 1. Applicability and scope.

Question of fact—Difference between S. 19 (f) and S. 20.

The first part of S. 20, Arms Act, is not inapplicable to cases where arms are found on a search being made under S. 25 of the Act. The two parts of S. 20 are quite independent of one another.

In view of the severe restrictions imposed by the authorities on the possession of revolvers, there is, in the nature of things, a strong presumption that a person in unlicensed possession of such a weapon, who cannot or will not account for his possession thereof, has procured it for unlawful purposes, and has a fixed intention that his possession thereof shall not become known to those public servants namely the Police, whose duty it is to enforce the provisions of the Arms Act.

The intention referred to in the first part of S. 20 is only one of the factors that would have to be taken into consideration in deciding what sentence would be appropriate in any particular case, and it does not follow that a person who has been convicted under the first part of S. 20 will necessarily receive a heavier sentence than would have been inflicted on him under S. 19 (f) of the Act.

The presumption referred to above is one which could very easily be rebutted in the case of persons whose only fault has been carelessness, thoughtlessness or ignorance of the law and who have not been inspired by any deliberate intention of keeping the fact of their being in possession of an unlicensed revolver from the knowledge of the authorities.

Mere possession of an unlicensed weapon is ordinarily punishable under S. 19 (f), but, if the circumstances are such as to indicate an intention that the possession may not be known to the Police, the offence is punishable under S. 20. Whether the intention referred to above exists or not is a pure question of fact, and this question must, therefore, be determined in each particular case with reference to the facts proved in that case. Each case has to be considered on its own merits. *(Mallik and Patterson JJ.)* JOGENDRA MOHAN v. EMPEROR A I R 1933 Cal 516=60 Cal 545=6 R C 68=1933 Cr Cas 860=144 I C 957=34 Cr L J 879.

——*Ss. 20, 19 — Keeping* chhavi *blade in one's house.*

An essential ingredient of S. 20 of the Arms Act, is that the man doing any act mentioned in cls. (a), (c), (d) or (f), of S. 19, should do it in such a manner as to indicate an intention that such act may not be known to any public servant. Merely keeping of a *chhavi* blade in one's own house and possessing a stick that would fit into it, cannot be regarded as falling within the purview of S. 20. The case would fall more appropriately under the definition of S. 19 (f). *(Abdul Qadir J.)* IDA v. EMPEROR A I R 1931 Lah 561 (1)=1931 Cr Cas 849 (1)=Ind Rul (1932) Lah 260 (1)=33 P L R 379=136 I C 724 (1)=33 Cr L J 346 (1).

——*Arms — Instrument of attack and defence, and not used for domestic purposes is 'arms.'*

ARMS ACT (XI of 1878), S. 20—1. Applicability and scope.

Whether or not any particular instrument is included in the expression "arms," used in the Arms Act, must necessarily depend on the circumstances of each case. Whatever can be used as an instrument of attack or defence and is not an ordinary implement for domestic purposes, falls within the purview of the Act. *(Wilberforce and Martineau JJ.)* MANGAL SINGH v. EMPEROR A I R 1922 Lah 138 (2)=2 Lah 291=12 P L R 1922=64 I C 847=23 Cr L J 63.

——*Concealment.*

The first part of S. 20 does not deal with cases of concealment of arms in the possession of the person on his being arrested. It only deals with cases of concealment before arrest. *(Abdur Rahim and Agling, JJ.)* GOPAL KRISHNA IYER v. EMPEROR (1911) 1 M W N 271=9 M L T 475=10 I C 261=12 Cr L J 234.

2. "Conceals."

——*Ss. 20, 19—Concealment from Railway Officials.*

Section 20, Arms Act, is not confined to cases where an import or export of arms is attempted but applies to cases where a person is concealing a weapon while he is at a Railway platform, as in such cases there must be an intention to conceal that weapon from *inter alia* Railway Officials who are on that platform.

The appellant was travelling in a Railway train. The travelling ticket examiner who had found that he was travelling beyond the place for which his ticket was issued, searched his person and revolver wrapped in a rag along with four cartridges was recovered from the inner pocket of his inner coat over which he was wearing an overcoat:

Held, that the accused was guilty of an offence under S. 20, Arms Act, and could be punished under that section. *(Currie, J.)* SAID GUL v. EMPEROR A I R 1931 Lah 663=1931 Cr Cas 927=Ind Rul (1931) Lah 691=132 I C 855=32 Cr L J 995.

——*Concealment—Question of fact.*

In determining whether an accused person possessed arms in such a manner as to indicate an intention that this should not be known to any public servant and, therefore, committed an offence under S. 20, Arms Act, each case has to be decided on its own merits. *(Wild J. C. and Milne A. J. C.)* SABJHATULLAH SHAH v. EMPEROR A I R 1931 Sind 9=25 S L R 1=1931 Cr Cas 57=130 I C 437=32 Cr L J 517.

——*Spear held next to skin—Intention to conceal from public servant cannot be inferred.*

The fact that the accused secreted the spear head next to his skin does not indicate any intention that the possession by the accused of the spear head might not be known to any public servant. *(Milton, J.)* HARNAM SINGH v. EMPEROR A I R 1929 Lah 576=120 I C 273=1929 Cr C 142=13 A I Cr R 225=31 Cr L J 79 (1).

——*Ss. 20 and 19 — Keeping ammunition and parts of arms hidden under clothes falls under S. 20 and not under S. 19.*

Keeping ammunition and parts of arms in a bag hidden under a *chaddar* or hidden under the clothes falls clearly under S. 20 and not merely

under S. 19 of the Act: 44 P W R 1912 Cr; 1 P W R 1914 (Cr), Diss. *(Martineau, J.)* MT. BABO v. EMPEROR
A I R 1926 Lah 61=89 I C 1027=26 Cr L J 1459.

——*Ss. 20 and 19*—Where the weapon which the accused was carrying was originally concealed but the appellant voluntarily took it from its place of concealment in order to threaten a railway servant who caught him for travelling without a ticket. *Held*, it indicates an indifference as to whether the weapon was seen or not. The intention requisite for an offence under S. 20 had not been established and conviction must be altered to S. 19 of the Act. *(Brasher, J.)* SURJAN SINGH v. EMPEROR
A I R 1923 Lah 10=83 I C 726=26 Cr L J 166.

——*Gun placed in corn bin—S. 20 applies.*

Each case of concealment of arms must be decided on its own facts.

Held, on the facts proved in the case that the gun appeared to have been placed in the corn bin in order to conceal it from the Police and therefore section 20 was applicable. 8 P R 1915 Cr : 9 P R 1912 Cr, Not Foll. *(Abdul Qadir, J.)* SHER ALI v. EMPEROR
A I R 1923 Lah 79=68 I C 833=23 Cr L J 609.

——Where the arms were discovered on the information given by the accused, the concealment of the *chhavis* and other arms recovered from the possession of the accused is clearly with the intention referred to in S. 20 of the Indian Arms Act. *(Moti Sagar, J.)*
A I R 1923 Lah 434.

——*Concealment of weapon—Knowledge of where weapon was, does not show that he concealed it.*

Petitioner was alleged to have given information which led to the discovery of a rifle. One of the prosecution witnesses deposed that the petitioner said where the rifle had been buried, the other deposed that he said "I buried it."

Held, in absence of any other evidence of possession by the petitioner it cannot be presumed that because he knew where the rifle was, he had concealed it himself. *(Campbell, J.)* KHUDA BAKSH v. EMPEROR
A I R 1923 Lah 238 (2).

——*Arms—Concealment.*

Section 20 of the Arms Act does not apply to ordinary cases of concealment of arms, but where export or import of arms is attempted. *(Kensington J.)* IBRAHIM v. EMPEROR
9 P R 1912 Cr=128 P L R 1913=44 P W R 1912 Cr=18 I C 265=14 Cr L J 41.

——Possession of unserviceable fire-arms—Concealment—Intention—*See* Arms Act, S. 19, Note 16
9 Cr L J 259 (Sind) (FB).

——*Concealment of arms—Mere denial of possession.*

Mere denial, on the part of a person, whose house is being searched by the Police for unlicensed arms, that he has any such arms in his possession does not constitute a concealment or attempt to conceal arms on search being made by the police within the meaning of the second paragraph of

S. 20 of Act XI of 1878. *(Banerji, J.)* EMPEROR v. RAM SARUP
1906 A W N 11=3 A L J 833=28 A 302=3 Cr L J 88 (2).

3. "Intention that such act may not be known."

——*"Intention that such act may not be known."*

When a person carries an unlicenced pistol in a hand-bag which is locked and says, on being asked by a public servant, that the bag contains a pistol he cannot be convicted under S. 20 there being no special concealment contemplated by the section. *(Desai, J.)* RAM CHANDER v. REX
A I R 1950 All 386=1950 A L J 811=51 Cr L J 1064.

——*Mere concealment of unlicensed weapon by itself not sufficient for offence under S. 20.*

Mere concealment of an unlicensed weapon may not of itself be sufficient to bring the offence within the mischief of the first part of S. 20, more especially if the circumstances are such as to indicate that the intention of the offender was merely to keep the weapon concealed from his friends, relations and other private persons and not necessarily from the police : 60 Cal 545, *Foll.* *(Thein Maung J.)* HLA SEIN v. THE KING
1947 Rang L R 53.

——*Ss. 20, 19—Carrying unlicensed firearms in sack while travelling.*

The carrying of firearms of which a man is not lawfully in possession, inside a haversack or a suit case when travelling by rail does bring the person concerned within the mischief of S. 20, for, it must be conceived that it is his intention that his possession of an unlicensed weapon may not be known to a public servant, as for example, the Police or to any person employed upon a railway. *(Yorke, J.)* MAN SINGH v. EMPEROR
A I R 1942 All 349=1942 A L J 383=I L R (1942) All 899=15 R A 179=202 I C 562=43 Cr L J 854.

——*Ss. 20, 19—Intention to conceal.*

It is difficult to lay down any general rule as to what cases fall under S. 20 and what cases under S. 19, Arms Act. Every case must be decided on its own facts. The question whether the circumstances justify the inference that the intention was such as is indicated in S. 20 must depend upon the particular circumstances of each case. Section 20 is not confined to cases where import or export of arms is attempted and applies to cases where a person is concealing a weapon, be it at a Railway platform, as it indicates an intention to conceal it from *inter alia* Railway officials who are on the platform, or anywhere else. Where the arms and ammunitions are tied up and concealed in such a manner that it must be presumed that the intention of the accused was not only to conceal them from the boys of the school hostel but also from any public servant who may happen to come to the hostel, there is no doubt that the intention of the accused is that his act may not be known to any public servant. *(Thomas C. J.)* JAGDISH DUTT v. EMPEROR
A I R 1940 Oudh 337=1940 O W N 481=1940 O L R 306=12 R O 424=188 I C 110=41 Cr L J 545.

——*Joint possession of room.*

The accused, along with two other persons, were in joint occupation of a room in which ammuni-

ARMS ACT (XI of 1878), S. 20—3. "Intention that such act may not be known"

tions were found. They were discovered in a suit-case which was under a cot which was very low. The accused denied the ownership and knowledge and also refused to deliver its key to the Police. On breaking open the suit-case live cartridges were found. The key was also found underneath the bedding belonging to the accused:

Held, that the joint possession of the room by the accused, taken along with the possession of the suit-case and its contents which must be attributed to the accused alone, clearly proved their intention to conceal the suit-case and its contents from the Police Officers. The accused was guilty under S. 20, Arms Act. *(Guha and Nasim Ali JJ.)* NAGENDRA CHANDRA v. EMPEROR

A I R 1934 Cal 705=38 C W N 656=1934 Cr Cas 1100=60 C L J 190=7 R C 384=153 I C 529=36 Cr L J 370.

——*Question of intention under S. 20—Exposure of weapon.*

In a prosecution under S. 20, the question whether the circumstances justify the intention as indicated in S. 20, depends on the particular circumstances of each case.

When a person is about to proceed on a dacoity and he travels to the place not by railway or by a public vehicle, it cannot be reasonably inferred that a weapon which is found in his pocket or in his clothes has been placed there with the express intention of concealing the possession of the weapon from any of the persons specified in S. 20. The mere fact that the weapon is not exposed to view does not necessarily indicate the intention mentioned in S. 20. *(Agarwala J.)* GANGA PRASAD v. EMPEROR

A I R 1933 Pat 493=1933 Cr Cas 1035=6 R P 129=144 I C 850=34 Cr L J 890.

——*Keeping arm in store house.*

Where arms were kept by the accused without a license in a *taikhana* (store-room) and there was no attempt to conceal the *taikhana* itself, although it was covered by creepers :

Held, that the *taikhana* being a place where arms would naturally be kept, it could not be said that the accused possessed the fire-arms in such a manner as to indicate an intention that his possession should not be known to public servants and the accused could not be convicted of an offence under S. 20, Arms Act, though he was guilty of an offence under S. 19 (f). *(Wild J. C. and Milne A. J. C.)* SABJHATULLAH SHAH v. EMPEROR

A I R 1931 Sind 9=25 S L R 1=1931 Cr Cas 57=130 I C 437=32 Cr L J 517.

——*Person running away when challenged—Companion also running away with him — Intention under S. 20 cannot be inferred.*

The fact that the accused ran away when challenged by the constable indicates an intention of the character mentioned in S. 20. But where accused had a companion who also ran away but upon whose person nothing incriminating could be found, as no such intention can be credited to the companion on the ground that he also ran away, it cannot be attributed to the accused as well. *(Milton J.)* HARNAM SINGH v. EMPEROR

A I R 1929 Lah 576=1929 Cr C 142=120 I C 273=13 A I Cr R 225=31 Cr L J 79 (1).

ARMS ACT (XI of 1878), S. 20—3. "Intention that such act may not be known"

——*Possession of arms—Person concealing weapon while on railway platform — S. 20 of the Act is applicable.*

In every case it is a question of fact whether the person found in possession of a concealed weapon is carrying the weapon in such a way as to indicate an intention to hide the article from the classes of persons referred to in S. 20. But the fact that a person is concealing a weapon while he is on a railway platform must indicate an intention to conceal that weapon from *inter alia* railway officials who are about that platform: A. I. R. 1926 Lah. 262, *Foll. (Fforde J.)* ABDUL WAHID v. EMPEROR

A I R 1928 Lah 110=9 Lah 302=9 L L J 533=107 I C 495=29 P L R 329=9 A I Cr R 454=29 Cr L J 256.

——Where the circumstances under which a pistol was recovered from the accused, who had come on a visit to Lahore from his village, led to a clear inference that his intention was that the possession of the pistol by him may not be known to any public servant :

Held, that it was not a case of an ordinary concealment and conviction should be one under S. 20. *(Jailal J.)* FAIZ v. EMPEROR

8 L L J 301=96 I C 390=27 P L R 446=27 Cr L J 934.

——*Special indication of intention to conceal must exist.*

Each case of concealment of arms must be decided on its own facts as to whether it falls under S. 19 or S. 20 of the Arms Act : 1 S. L. R. 18 Cr. (F. B.) and 8 P. R. Cr. 1915, *Foll.*

For a conviction to fall under S. 20 there must be some special indication of an intention that the possession of the arms was being concealed from a public servant or from a railway official. *(Addison J.)* CHET SINGH v. EMPEROR

A I R 1926 Lah 262=7 Lah 65=27 P L R 523=94 I C 401=27 Cr L J 625.

——*S. 20 applies only where export or import of arms is attempted.*

Section 20 applies only where the possession is such as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code, or to any person employed upon a railway or to the servant of any public carrier. The section applies only to cases where the import or export of arms is attempted and not to every case of possession or concealment of arms. Something more than a mere ordinary concealment should be established in order to bring the possession within the meaning of S. 20. Where the gun was upon a *charpoy* upon which the accused was sitting and was covered with a *dotahi* and the accused had been convicted under S. 20, the conviction was altered into one under S. 19 (f) of the Arms Act : 9 P. R. 1912 (Cr.) ; 15 L. R. 18 (Cr.) (F. B.) and 27 Cal. 692, *Foll. (Scott-Smith J.)* CHANAN SINGH v. THE CROWN

A I R 1925 Lah 395=6 Lah 151=86 I C 221=7 L L J 329=26 P L R 49=26 Cr L J 733.

——*Ss. 20 and 19—Intention to commit.*

Where the weapon which was found to fit the dang the appellant was carrying was originally concealed but the appellant voluntarily took it from its place of concealment in order to threaten a railway servant who caught him for travelling without a ticket :

ARMS ACT (XI of 1878), S. 20—3. "Intention that such act may not be known"

Held, it indicates an indifference as to whether the weapon was seen or not. The intention requisite for an offence under S. 20 had not been established and conviction must be altered to S. 19 of the Act. *(Brasher J.)* SURJAN SINGH v. EMPEROR A I R 1923 Lah 10=83 I C 726=26 Cr L J 166.

——*Criminal intention—Evidence.*

Where the arms were discovered on the information given by the accused, the concealment of the *chhavis* and other arms recovered from the possession of the accused is clearly with the intention referred to in S. 20 of the Indian Arms Act. *(Moti Sagar J.)* ALI AHMAD v. EMPEROR A I R 1923 Lah 434.

4. Power of superior Court.

——*Alteration of conviction to one under S. 19 (f).*

Where an accused person is convicted under S. 20, Arms Act, if the first three clauses of S. 19 do not apply to the case it must be held that the Magistrate has in fact held that the accused has committed an act mentioned in S. 19 (f), and it is open to the Appellate Court to alter the finding from one under S. 20 to one under S. 19 (f). *(Wild J. C. and Milne A. J. C.)* SABJHATULLAH SHAH v. EMPEROR A I R 1931 Sind 9=25 S L R 1=(1931) Cr Cas 57=130 I C 437=32 Cr L J 517.

5. Procedure.

——*Approver's statement disclosing illegal possession of fire-arms—Trial under S. 20 not legal.*

Where an approver makes a statement disclosing his illegal possession of fire-arms, and is released on the pardon, it is illegal to try him under S. 20. *(Stuart J.)* SHIAM SUNDER v. EMPEROR A I R 1921 All 234=19 A L J 717=63 I C 827=L R 2 A (Cr) 107=22 Cr L J 699.

——*Evidence of offence under S. 20 — Magistrate's duty.*

If in the trial of a case under the Arms Act, the evidence recorded shows an offence under S. 20 of the Act, the Magistrate ought to commit the case to the Sessions Court. *(Chitty and Walmsley JJ.)* NISHI KANT LAHIRI v. EMPEROR A I R 1916 Cal 477=34 I C 314=20 C W N 732=17 Cr L J 202.

——*Offence, by whom triable — Criminal P. C. (1898), S. 29 and Sch. II.*

An offence under S. 20, Arms Act, is triable only by a Court of Session. *(Bicks J.)* SHUNSHANISA v. KING-EMPEROR 2 L B R 244=1 Cr L J 742.

6. Sanction.

——*Ss. 20, 19—Sanction.*

For a prosecution under S. 20, Arms Act, no sanction would be necessary even in parts of India where such sanction might be necessary for a prosecution under S. 19. *(Yorke J.)* MAN SINGH v. EMPEROR A I R 1942 All 349=1942 A L J 383= I L R (1942) All 899=15 R A 179=202 I C 562=43 Cr L J 854.

——Sanction is not required for prosecution under S. 20, Arms Act. *(Guha and Hasim Ali JJ.)* NAGENDRA CHANDRA v. EMPEROR A I R 1934 Cal 705=38 C W N 656=1934 Cr Cas 1100=60 C L J 190=7 R C 384=153 I C 529=36 Cr L J 370.

ARMS ACT (XI of 1878), S. 20—6. Sanction

——*Report for offence under S. 20—Sanction for offences under Ss. 20 and 19 (f).*

A Police report was sent against the accused for an offence under S. 20, Arms Act, on the 27th March. Sanction for the prosecution of the accused under Ss. 19 (f) and 20, Arms Act, was given on the 3rd April and the accused was challaned on the same day :

Held, (1) that as no sanction is required for an offence under S. 20, the sanction must be held to have been given in respect of S. 19 (f) ;

(2) that the proceedings were not invalid on the ground that sanction was not obtained before the 27th March as the Police report was for an offence under S. 20 which did not require sanction. *(Wild J. C. and Milne A. J. C.)* SABJHATULLAH SHAH v. EMPEROR A I R 1931 Sind 9=25 S L R 1=1931 Cr Cas 57=130 I C 437=32 Cr L J 517.

——*Ss. 20 and 19 (f)—Conviction under S. 19 (f) is bad if no express sanction obtained — No sanction is necessary for prosecution under S. 20.*

The appellant was in secret possession of local-made guns and the cartridges. Sanction was obtained for prosecution under S. 20. He was convicted both under S. 20 and S. 19 (f) :

Held, that conviction under S. 20 was legal but the conviction under S. 19 (f) was bad for want of sanction. *(May Oung J.)* NGA THA HLA v. KING-EMPEROR A I R 1924 Rang 85=2 Bur L J 203=76 I C 571=25 Cr L J 203.

——*Proceedings under.*

Proceedings may be taken against a person under S. 20 of the Arms Act for the secret possession of arms in contravention of S. 14 or 15 of the same Act, without previous sanction under S. 29. Where proceedings are instituted against any person for secret possession of arms in contravention of S. 14 or 15 of the Arms Act, the accused should be discharged under S. 20 if the intention to conceal the possession is not made out. *(Fox C. J., Parlett, Young and Twomey JJ.)* NGA PO CHIN v. EMPEROR A I R 1916 L B 105=34 I C 321=8 L B R 452 =17 Cr L J 209 (F B).

7. Sentence.

——*Ss. 20, 19—Possession of six-chambered revolver while travelling—Sentence of four years.*

A man who is found travelling on the railway, in possession of six-chambered revolver even if it not be of the most modern type, cannot complain that his sentence is severe when he is given a sentence of four years' rigorous imprisonment, the maximum sentence being one of seven years. *(Yorke J.)* MAN SINGH v. EMPEROR A I R 1942 All 349=1942 A L J 383= I L R (1942) All 899=15 R A 179=202 I C 562=43 Cr L J 854.

——*Suspicion that accused was about to take part in some criminal offence is no consideration in passing sentence.*

The fact that there was a suspicion in the mind of the police that the accused was about to take part in a criminal undertaking is not a circumstance which a Court can take into consideration in arriving at an appropriate punishment for the

ARMS ACT (XI of 1878), S. 20—7. Sentence

actual offence which has been proved under S. 20. *(Fforde J.)* ABDUL WAHID v. EMPEROR
A I R 1928 Lah 110=9 Lah 302=
9 L L J 533=107 I C 495=29 P L R 329=
9 A I Cr R 454=29 Cr L J 256.

——*Carrying* chhavi *concealed — Maximum sentence must not be inflicted in every case.*

The maximum sentence must not be inflicted in every case merely because the weapon found concealed by the accused is a *chhavi* : 8 P. R. 1915 (Cr.), *Dist. (Chevis J.)* FAQIRIA v. THE CROWN
66 I C 995=3 L L J 145=23 Cr L J 339.

——*Heavy sentence—Propriety of.*

Sentence of three years rigorous imprisonment without special grounds is very heavy and ought to be reduced. *(Abdur Rahim and Ayling JJ.)* BALAMBOIL BUTTASHERI AHMED, IN RE
32 I C 672=17 Cr L J 80 (Mad).

—S. 21.

——*Ss. 21, 19 (f)—Holding of weapon on behalf of person entitled to it.*

K had gone out shooting with the gun, and *J* had gone with him. When they returned they were informed of the order under S. 144, Criminal P. C., promulgated that day prohibiting the carrying of arms. *K* stayed in the house of his friend *J* for that night, but before 6 A. M. the following morning he had to leave. He left his gun and bedding, etc., in *J's* house with the intention of returning shortly afterwards for them. Next day the houses of many persons in the *bazar* were searched, and from the house of *J* the gun was recovered. It was found that *J* had no license for this gun. It was licensed, but the license stood in the name of *K* and there was no provision for any retainer :

Held, that possession in circumstances comparable to the present case was not possession within the meaning of S. 19 of the Arms Act, but was merely the holding of the weapon on behalf of the person entitled to it. The possession of the gun must be deemed to have remained with *K* though it was not actually in his physical possession, and if *J* was in possession of the gun at all, which may be considered doubtful if he was unaware that it was within his house, then at most the possession of *J* was on behalf of the licensee, *K* and not on his own behalf. Hence the conviction of *K* under S. 21 and of *J* under S. 19 (f), Arms Act, were not proper :

Held, further the special conditions prevailing at the time, the communal riot and the great danger that arms might be misused, were quite irrelevant when it came to deciding the legal question involved. *(Meredith J.)* KEDAR NATH v. EMPEROR
A I R 1941 Pat 209=
7 B R 164=13 R P 316=191 I C 187=
42 Cr L J 97.

—S. 22.

——"Delivery" contemplated is conscious delivery — Disjointed gun of accused found in closed almyrah in house of accused — Lessee taking possession of house only previous evening—Nothing to show that lessee had express or implied permission to use almyrah :

Held, there was no delivery to lessee of gun within meaning of S. 22. *(Rajagopalan J.)* THE PUBLIC PROSECUTOR v. GOPALASWAMI PILLAI
A I R 1949 Mad 850=1949 M W N 451=
1949 A W R Sup 53 (2)=
1949-2 M L J 110=51 Cr L J 54.

ARMS ACT (XI of 1878), S. 22

——*Sword-stick.*

A sword-stick is a 'sword' within the meaning of the term 'sword' in the Arms Act. Consequently, selling of a sword stick or the using of it without license is an offence under S. 22, by virtue of notification of the Bombay Government under the power conferred by the Arms Rules, 1924. *(Murphy and Wadia JJ.)* BOVJI SHIKALDAR v. EMPEROR
A I R 1933 Bom 438=
35 Bom L R 884=1933 Cr Cas 1330=
6 R B 155=146 I C 472=
35 Cr L J 104 (1).

——*Servant's liability — Making over an arm to person not licensed merely to carry to its owner is no offence.*

Where a gunmaker acting under the directions of the license-holder made over his gun to a person merely to carry it to its owner and not with any authority to use it as an arm :

Held, that the gunmaker did not commit an offence under S. 22, Arms Act. A license-holder of a gun can permit another person who is not so licensed to carry his gun. *(Dalal J.)* MANZUR HUSAIN v. EMPEROR
A I R 1928 All 55=
.8 A I Cr R 560=8 L R A Cr 166=
26 A L J 162=106 I C 689=
29 Cr L J 97.

——Scope—Section 22 deals with persons without licenses dealing with licensed vendors or purchasers or with persons with licenses dealing with unlicensed vendors or purchasers. *(Suhrawardy and Panton JJ.)* NIRMAL CHANDRA v. EMPEROR
A I R 1927 Cal 265=31 Cal W N 239=
100 I C 113=28 Cr L J 241.

——*'Delivery into possession', meaning of.*

'Delivery into possession' contemplated by S. 22 of the Arms Act is such a delivery as gives the person into whose possession the arm is delivered control over the arm and authority to use it as an arm. Where the facts of the case showed that there was no such delivery of a rifle to the servant, the master was held not guilty under S. 22. *(Moore J.)* ADAMS v. KING-EMPEROR
5 L B R 83=10 Cr L J 361.

——Possession — Delivery of arm to servant for shooting—*See* Arms Act (1878), Ss. 13, 14, 19, 22
8 Cr L J 18 (Nag.).

—S. 23.

——Holding of arms after expiry of license is not punishable under S. 23 but under S. 19 (f). *(Middleton J. C.)* ZAINUL ABDIN v. EMPEROR
A I R 1937 Pesh 30=9 R Pesh 84=
167 I C 191=38 Cr L J 396.

—S. 24.

——*Necessity of taking precautions for safe custody of weapons.*

All license-holders should be meticulous in taking all precautions for the safe custody of weapons for which they hold a license and for preventing the borrowing of those weapons by other persons. Absence of such precautions constitutes a danger to the public. In such cases under S. 24, they will be confiscated to Government. *(Middleton J. C. and Mir Ahmad A. J. C.)* EMPEROR v. SARFARAZ KHAN
A I R 1935 Pesh 103=
8 R Pesh 26=1935 Cr Cas 855=
157 I C 411=36 Cr L J 1204.

—S. 25.

——*Ss. 25, 19, 14, 15, 30 — Offence under S. 19, when complete — Search not carried out under*

Ss. 25 and 30—Unimpeachable evidence by prosecution of suspicion.

The offence under S. 19, is complete as soon as the accused is found in possession of arms and ammunition in contravention of S. 14 or S. 15 of the Act and the commission of the offence is not dependent upon whether the search was or was not conducted in the manner provided by Ss. 25 and 30. Indeed it is conceivable that there may be cases of an exceptional nature where, in view of the exigencies of a situation demanding immediate action, the provisions of Ss. 25 and 30 cannot be strictly complied with and in such cases if unimpeachable evidence is offered by the prosecution to prove that the accused was in fact found to be in possession of certain incriminating articles, the prosecution cannot fail merely because the search was not made in strict accordance with the provisions of S. 25 or S. 30. On the other hand, the clear and unambiguous provisions of Ss. 25 and 30 cannot be allowed to be normally disregarded so as to reduce those sections to a mere dead letter. These sections were enacted for the protection of the subject as well as to inspire confidence in the proceedings conducted by the Police Officers. If these provisions are, therefore, disregarded and no reasonable excuse or justification is offered for not following them, the Court may well look with suspicion upon the entire proceeding and hesitate to convict the accused person upon the result of the search, unless the prosecution offers strong and unimpeachable evidence to remove the suspicion and the Court is convinced that the accused was in fact found to be in possession of the incriminating articles of which he is alleged to have been in possession. *(Fazl Ali J.)* PERSAD DAHAIT v. EMPEROR
A I R 1935 Pat 465=16 P L T 598=1935 Cr Cas 1202=2 B R 88=8 R P 286=159 I C 487=37 Cr L J 100.

——*Ss. 25, 19 and 20 — Non-compliance with S. 25 is not fatal.*

Want of compliance with the provisions of S. 25 will not render conviction under Ss. 19 and 20 illegal. *(Dalal J.)* SHIAM LAL v. EMPEROR
A I R 1927 All 516=8 L R A Cr 7=8 L R A Cr 92=103 I C 108=28 Cr L J 652.

——*Order for search of arms — Warrant—Judicial act.*

A Magistrate directing the issue of a warrant to search premises on information received that the owner or occupant thereof is in possession of fire arms without a license acts as a Court and not merely as a public servant whether he purports to act under the Criminal Procedure Code or under S. 25 of the Arms Act. *(Sadasiva Ayer and Napier JJ.)* GADDAM PANCHALU REDDI, IN RE
A I R 1919 Mad 620=35 M L J 686=(1918) M W N 908=9 L W 237=48 I C 890=42 Mad 96=20 Cr L J 90.

——*Search for arms—Suit for damages—Defence.*

In order that a Magistrate may plead S. 25 of the Arms Act in defence to an action for damages for trespass of plaintiff's house the preliminary conditions prescribed by the Act including the recording of the grounds of his belief should have been complied with. *(Lord Macnaughten.)* CLARKE v. BROJENDRA KISHORE ROY
39 Cal 953=(1912) M W N 760=12 M L T 171=10 A L J 193=16 C L J 231=16 C W N 865=23 M L J 32=14 Bom L R 717=16 I C 501=39 I A 163=13 Cr L J 693 (P C).

——*Search—Grounds of belief—(Per Majority—Brett J. Contra.)*

When a statute creates a special right, but certain formalities have to be complied with, antecedent to the exercise of that right, a strict observance of the formalities is essential to the acquisition of that right. Where in a search for arms under S. 25 of the Arms Act, 1878, the Magistrate holding such search does not comply with the required formality by recording the grounds of his belief as directed therein, the section does not protect him from the consequences of his action. *(W. Maclean C. J., Harington and Brett JJ.)* CLARKE v. BROJENDRA KISHORE ROY CHOWDHRY
36 C 433=13 C W N 458=9 C L J 298=5 M L T 367=2 I C 436.

——*Search for arms—Essential preliminaries for conducting search of house—Search not justified under S. 25, Arms Act or under S. 105 or S. 165, Criminal P. C. — Magistrate if protected under Judicial Officers' Protection Act—His liability in tort for damages for trespass* — Bona fides, *if relevant.*

Where a Magistrate cannot hold a search of a house under the Arms Act, without first recording the grounds of his belief that the owner of the house has in his possession any arms for an unlawful purpose and that he cannot be left in possession of them without danger to public peace. Where he does not first so record the grounds of his belief, a search under S. 25, Arms Act is not justified. He cannot direct a search in his presence under S. 105, Criminal P. C. unless he is acting as a "Court" within the meaning of S. 94, Criminal P. C. But if no proceedings are pending before him, he cannot be said to be a "Court". S. 165 of the Code also does not authorize a search for the purpose of discovering arms generally. Unless, therefore, the Magistrate can justify his acts as having been done under some authority of law, he is liable in action for trespass for his acts. He must strictly bring himself within the words of the statute under which he justifies his act. He will not be protected under the provisions of the Judicial Officers' Protection Act, 1850, for conducting search for discovering of arms, etc., cannot be held to be "acting judicially" within the meaning of the Act. He is not released from his obligations under the law by the plea of *bona fides*, in conducting the search. His *bona fides* may affect damages to be awarded for trespass. His conduct may not be such as to award exemplary damages; but all the same ought to be substantial and not purely nominal. *(Fletcher J.)* BRAJENDRA KISHORE ROY CHOWDHURY v. CLARKE
8 C L J 75=12 C W N 973.

—S. 27.

——Power conferred by section—Nature of — *See* Government of India Act, (1935), S. 124 (1).
A I R 1950 All 423=51 Cr L J 1144.

——Delegation of powers under Section to Provincial Government—Notification of such Government

ARMS ACT (XI of 1878), S. 27.

published in Provincial Gazette — Section is complied with—General Clauses Act (1897), S. 3 (37a). *(Agarwala and Bhargava JJ.)* AMIR KHAN v. STATE, A I R 1950 All 423= 1950 A W R 328=1950 A L J 407= 1950 All Cr C 99=51 Cr L J 1144.

——U. P. Government Notification No. 2185-Z/ VIII-347-40 dated, 1-11-1946 — Words 'pointed blades exceeding 4 inches in length' refer to knives alone and not to other arms mentioned in notification. *(Agarwala and Bhargava JJ.)* AMIR KHAN v. STATE, A I R 1950 All 423= 1950 A W R 328=1950 A L J 407= 1950 All Cr C 99=51 Cr L J 1144.

——*'Proceedings' — Meaning — Grant of bail before sanction.*

The mere consideration of the question of bail in the initial stage when the accused is sent up in custody cannot amount to the initiation of proceedings in respect of which sanction is required by S. 29. *(Meredith Ag. C. J. and Sarjoo Prasad J.)* MOHAN LAHIRI v. THE KING, A I R 1950 Pat 243=29 Pat 243= 51 Cr L J 977.

——*Notifications imposing penalty must be construed strictly.*

Notifications relating to the Arms Act imposing a penalty upon the subject must be construed very strictly. *(Patkar and Wild, JJ.)* DALJITSING FATESING v. EMPEROR A I R 1930 Bom 153= 32 Bom L R 106=I R 1930 Bom 339= 125 I C 435=1930 Cr C 477= 31 Cr L J 847.

——*Ss. 27 and 19—Sword-stick is not a* kirpan.

A sword-stick is a weapon different from *kirpan*. The two expressions cannot be regarded as synonymous, and so the possession of a sword-stick by a Sikh is not exempted by S. 27 of the Arms Act. A I R 1924 Lah 600, *Ref. (Shadi Lal C. J. and Agha Haidar J.)* RANDHIR SINGH v. EMPEROR, A I R 1928 Lah 239= 108 I C 596= 10 A I Cr R 81= 29 Cr L J 425.

——*Possession by servant — Pistol found in accused's shop.*

Though an unlicensed pistol was found in a shop the master being absent the servant in possession of the pistol alone could be convicted for the offence. The master's conviction could not be upheld *(Ryves J.)* CHHOTEY v. EMPEROR, A I R 1923 All 33=20 A L J 855= L R 3 A 171 (Cr)=9 O and A L R (A) 27= 69 I C 457=23 Cr L J 729.

——*Rule 6, Sch. 1—'Own personal use.'*

'Own personal use' means use not by a servant nor by a friend nor any one else but only by the master. 22 All 118 *Diss.* 13 C W N 124 *Ref. (Hayward J. C. and Cohen A. J. C.)* EMPEROR v. HATIMTAI, 4 S LR 214= 9 I C 720= 12 Cr L J 122.

—S. 29

See also ibid, S. 19.

SYNOPSIS

1. Non-compliance with section—Effect of.
2. Proceedings.
3. Sanction.

ARMS ACT (XI of 1878), S. 29.

1. Non-compliance with section—Effect of.

——Saurashtra Arms Rules, S. 34—Provisions of S. 34 as to sanction are mandatory — Its absence is fatal defect. *(Shukla and Shroff JJ.)* PARMAR ANADUBHA MUNJAJI v. UNITED STATE OF SAURASHTRA, 2 Sau L R 180

——*Absence of sanction—Effect.*

The sanction under S. 29, Arms Act, is an essential prerequisite to the institution of proceedings and proceedings taken in the absence of such a sanction are a complete nullity. The question is not of a technical defect which can be remedied by a sanction subsequently obtained, but the failure to get the sanction before instituting the proceedings renders the proceedings altogether null and void. *(Shah C. J. and Baxi J.)* STATE v. KOLI NAGI, A I R 1952 Sau 82= 1952 Cr L J 1263.

——*Ss. 29, 19 (f)—Prosecution for offence under S. 19 (f)—Sanction under S. 29 obtained after institution of proceedings—Validity of trial.*

Requisite sanction under S. 29 is a condition precedent for the institution of a proceeding in respect of an offence under S. 19 (f), Arms Act. Proceeding instituted without such sanction is null and void. A sanction obtained after the institution of the proceedings under S. 19 (f) cannot therefore validate the proceedings with retrospective effect. *(Ram Labhaya J.)* GANESH BAHADUR v. THE STATE, A I R 1952 Assam 73= I L R (1951) 3 Assam 166= 1952 Cr L J 645.

——*(Burma) Ss. 29, 19 (f)*—Proceedings cannot be instituted except with sanction — Proceedings without sanction are void—Sanction obtained later on does not cure defect — Proceedings are entirely without jurisdiction — Evidence recorded prior to sanction cannot be used : 4 L B R 247, *Not foll. (U Thaung Sein J.)* THE UNION OF BURMA v. SAN TIN, 1948 Bur L R 339.

——*Prosecution for offence under S. 19 (f) — No sanction—Effect—Subsequent sanction, effect.*

Proceedings commenced for offence under S. 19 *(f)* without previous sanction of the District Magistrate under S. 29 are null and void. A sanction obtained after the institution of the proceedings would not make the proceedings legal. *(Varma and Pande JJ.)* GIRIJA v. EMPEROR, A I R 1946 Pat 160=24 Pat 641= 12 B R 765=47 Cr L J 927.

——*Ss. 29, 19 (f), 32—Dera Ghazi Khan District —Sanction of District Magistrate.*

The provisions of S. 32, not being in force in Dera Ghazi Khan, the previous sanction of the District Magistrate is necessary for a prosecution under S. 19 *(f)*, in that District. Prosecution without such sanction is illegal. *(Addison J.)* EMPEROR v. ALI BEG, A I R 1933 Lah 869= 1933 Cr. Cas 1114 (1)=6 R L 229= 34 P L R 965= 15 Lah 6=146 I C 437= 35 Cr L J 109 (1).

——*Want of sanction under—Fatal defect.*

Absence of sanction under S. 29 is a fatal defect not curable under S. 537, Criminal P. C. *(Fox C. J. Parlett, Young and Twomey JJ.)* NGA PO CHIN v. EMPEROR A I R 1916 L B 105= 8 L B R 452= 34 I C 321= 17 Cr L J 209 (FB).

ARMS RULES (1924)

—Sch. VII, Item 1 (c).

——*Exemption—Arms Act (XI of 1878), S. 14—Exemption in any one year—Re-opening of matter in succeeding year.*

Schedule VII of the Arms Act Rules of 1924, does not provide for exemption of any person or class of persons at all but only describes what classes of persons are exempt from payment of license-fee in respect of certain arms. The most that a person falling within item (e), Sch. VII of the Rules, 1924, might be entitled to might be a paper declaring that the holder was entitled to a license without payment, and such a person would not be entitled to a life certificate of exemption, for he is not exempted at all.

Both licenses and exemptions are granted by virtue of the Act and Rules. Any license or exemption not so granted would be invalid, and no protection to an accused person charged with contravening the Act. If it is established that an accused had no license under the Act or Rules and if he could not prove himself to be exempted under the Act, or Rules he would be a person within the provisions of S. 14 of the Act.

The fact that a person had been treated as entitled e. g , to an exemption in any one year or for any period, would not prevent the matter from being re-opened in any succeeding year or period. *(Otter and Baguley JJ.)* EMPEROR v. B. R. VERTANNES

AIR 1932 Rang 180=1932 Cr Cas 815=Ind Rul (1933) Rang 2 (2)=140 I C 754=34 Cr L J 112 (2).

ARMY ACT (VIII of 1911)

——*Applicability — Military store-keeper is subject to Act and can be tried by Court-martial.*

A military store-keeper attached to or employed with military forces raised in British India must, by force of Ordinance No. 10 [X] of 1941, be deemed to be on active service for the purposes of the Indian Army Act and is, therefore, subject to the provisions of that Act and can be tried by a Court-martial. *(Harries C. J., Abdur Rahman and Mahajan JJ.)* KARTAR SINGH v. EMPEROR

AIR 1946 Lah 103=I L R (1945) Lah 419=47 P L R 423=227 I C 216=47 Cr L J 1022 (FB).

——*Court-martial proceedings — Evidence — Powers of High Court under S. 491, Criminal Procedure Code.*

In proceedings under S. 491, Criminal P. C., High Court cannot go into the question of evidence before the Court-martial. It cannot interfere if they had made a mistake of law and convicting on no real evidence would be a mistake of law. Whether there is evidence to sustain conviction is a question of law and the Court-martial are the sole Judges of both law and fact. Where ,however, the Court-martial convicted an accused person without hearing any evidence at all, the matters would be different. *(Harries C. J., Abdur Rahman and Mahajan JJ.)* KARTAR SINGH v. EMPEROR

A I R 1946 Lah 103=I L R (1945) Lah 419=47 P L R 423=227 I C 216=47 Cr L J 1022 (FB).

——*Ordinance X of 1941 — Effect — Trial by Court-martial.*

ARMY ACT (VIII of 1911)

Section 1, sub-s. (2) of the Active Service Ordinance X of 1941 promulgated by the Governor-General under powers given to him by an Act of Parliament, 3 & 4, George VI, Chapter 63, makes the Ordinance applicable to British subjects and servants of the Crown in any part of British India and to all members of and persons attached to, employed with, or following any military or air force raised in British India wherever they may be. By S. 2 of the Ordinance, such persons were deemed, so long as the present hostilities continued, to be on active service for the purposes of British and Indian Army Acts.

Hence military store-keepers employed by the Army authorities during the continuation of the hostilities must be regarded as on active service for the purposes of the British and the Indian Army Acts and can be tried by the Court-martial. *(Harries C. J., Abdur Rahman and Mahajan JJ.)* KARTAR SINGH v. EMPEROR

A I R 1946 Lah 103=47 P L R 423=I L R (1945) Lah 419=227 I C 216=47 Cr L J 1022 (FB).

—S. 1.

——The Act continued to be effective till passing of Act 46 of 1950 — *See* Constitution of India, Art. 33.

A I R 1951 Mad 777=52 Cr L J 827.

—S. 2.

——*Short service commissioned officer — If governed by Act or contract—Detention after expiry of term of service—Validity.*

A short service commissioned officer, as soon as he takes up the commission, will become subject to the provisions of the Indian Army Act and by virtue of S. 2 (2) he will remain so subject until he is duly discharged. Such a person cannot contend that he is governed solely by the terms of his contract with the Government and not by the provisions of the Act and the rules made thereunder. There can be no automatic discharge by reason of the expiry of his term of the commission and unless he is released by the Army authorities he cannot be considered as not subject to the Military law and discipline. Consequently, he can be tried by the Court-Martial for offences committed while he was on active list and service and, therefore, his detention for the purpose of bringing him to trial before a Court-Martial cannot be held to be illegal even if the term of his commission has expired and no further extension has been granted to him. *(Govinda Menon J.)* R. CHATTERJEE v. SUB-AREA COMMANDER

A I R 1951 Mad 777=64 Mad L W 193=1951 Mad W N 156=1951 Mad W N Cr 40=1951-1 Mad L J 258=52 Cr L J 827.

—S. 27.

——*Good faith.*

Plea of good faith will not afford a valid defence for an offence under S. 27. It may, however, be taken into consideration while imposing a sentence. *(Harries C. J., Abdur Rahman and Mahajan JJ.)* KARTAR SINGH v. EMPEROR

A I R 1946 Lah 103=I L R (1945) Lah 419=47 P L R 423=227 I C 216=47 Cr L J 1022 (FB).

—S. 31.

——*Ss. 31, 41—Criminal breach of trust of army property by army personnel — Offence is triable both by ordinary criminal Court and Court-martial.*

After 1911, an offence of criminal breach of trust of army property by a person governed by the Army Act, is triable both by an ordinary criminal Court as well as by a Court-martial.

(History of law relating to offences by army personnel traced.) *(Govinda Menon J.)* IN RE MAJOR F. K. MISTRY 1949 M W N 349= 1949-2 M L J 44.

—S. 41.

——Criminal breach of trust of army property by army personnel — Offence is triable both by ordinary criminal Court and Court-martial—*See* ibid, S. 31. 1949-2 M L J 44.

——*S. 41 conferring jurisdiction on Court-martial to try non-British subjects for offences committed by them beyond British India is* intra vires *Indian Legislature.*

Section 73, Government of India Act of 1833 did not cease to be operative after 1861. The Parliament even while enacting the Indian Councils Act of 1861, contemplated the continued exercise by the Indian Council of the powers conferred on it by S. 73 of the Act of 1833. Section 73 of the Act of 1833 was also not repugnant to S. 22, Indian Councils Act of 1861 and cannot therefore be deemed to have ceased to be in operation after 1861. The validity of S. 41, Army Act of 1911, must therefore, be determined with reference to the terms of S. 73, Government of India Act of 1833. Section 73 not only contained no words of territorial limitation, but by the use of the words "wheresoever they may be serving" clearly indicated an intention to make the Articles of War binding on the officers and soldiers independently of any territorial limitation. Hence, the portion of S. 41, Army Act of 1911, which confers jurisdiction on a Court-martial to try non-British subjects for offences committed by them beyond British India is *intra vires* the Indian Legislature : A. I. R. 1946 Lah. 158 (F.B.), *Affirmed. (Spens C. J., Varadachariar and Zafrulla Khan JJ.)* MUHAMMAD MOHY-UD-DIN v. EMPEROR

A I R 1946 F C 27=1946 F L J 64= 1946-2 M L J 23=1946 M W N 541= 225 I C 520=1946 F C R 94=12 B R 670= 48 Bom L R 740=1946 O A F C 7= 81 C L J 263=1946 A W R F C 7= I L R (1947) Lah 387=47 Cr L J 800 (FC).

——*Ss. 41, 69 to 71—Penal Code (1860), S. 4 and 5 — Subject of Indian State committing civil offence outside India as native officer — Case not triable by ordinary criminal Courts and hence outside Ss. 69 to 71, Army Act — Offence can be tried under S. 41, Army Act, that being special law within S. 5, Penal Code (*Per *Abdul Rashid J.).*

Where a subject of an Indian State commits a civil offence outside British India in the capacity of a native officer in the army, the offence is not covered by S. 4, Penal Code, and as such, the person is not triable by the ordinary criminal Courts. For the same reason, Ss. 69 to 71, Indian Army Act, which relate to the adjustment of the jurisdiction of the Court-martial and criminal

Courts, would not apply to the case. But it cannot be contended that S. 41, Army Act, would also be inapplicable for the same reason. The provisions of the Government of India Act, 1833, have been expressly saved by S. 5, Penal Code, and moreover, the Indian Army Act is a special law within the meaning of that section, governing persons enlisted in Indian forces. The provisions of S. 41 would, therefore, fully apply to the person. *(Abdul Rashid, Sale and Munir JJ.)* MOHD. MOHY-UD-DIN v. EMPEROR

A I R 1946 Lah 158=224 I C 608= 47 Cr L J 645 (FB).

——*Section not* ultra vires *of Indian Legislature in 1911—Section applies to all native officers and soldiers, including a subject of native state, in or at any place beyond British India.*

The *ultra vires* nature of the provisions of S. 41, Indian Army Act, 1911, cannot be determined by reference to S. 65 (1) (d), Government of India Act, 1915. It must be determined in accordance with the provisions of S. 22, Indian Councils Act, 1861, and S. 73, Government of India Act, 1833.

Section 73, Government of India Act, 1833, stood unrepealed till the passing of the Government of India Act, 1915. The Governor-General in Councill, therefore, was competent to pass any legislation in 1911 in respect of the native officers and soldiers in or at any place beyond British India. Section 41, Indian Army Act, 1911, is not *ultra vires* of the Indian Legislature and can govern a native officer serving beyond British India even though he is a subject of a native State. *(Abdul Rashid, Sale and Munir JJ.)* MOHD. MOHY-UD-DIN v. EMPEROR

A I R 1946 Lah 158=224 I C 608= 47 Cr L J 645 (FB).

—S. 69.

——*Offence triable by criminal Court as well as Court-martial — Decision under S. 69, if a prerequisite — No decision by prescribed military authority—Initiation of proceedings in criminal Court is not illegal.*

In the case of an offence triable both by the ordinary criminal Court and Court-martial, a discretion is given under S. 69 to the prescribed military authority to decide before which Court the proceedings shall be instituted. It may not as well decide anything. There is no compulsory duty cast upon the prescribed military authority in all cases where a criminal Court and a Court-martial have concurrent jurisdiction in respect of an offence to direct in which Court a prosecution shall be instituted. Hence, the initiation of proceedings in a criminal Court in respect of such an offence without any decision by the prescribed military authority, is not illegal :

Held, that even if a decision under S. 69 is a necessary pre-requisite to the institution of proceedings in an ordinary criminal Court there had been such a decision by the prescribed military authority. *(Govinda Menon J.)* IN RE MAJOR F. K. MISTRY 1949 M W N 349= 1949-2 M L J 44.

——*Jurisdiction of Court-martial — First information report lodged — Magistrate taking cognizance of offence — Prescribed military authority subsequently deciding that proceedings should be instituted before Court-martial—Latter has jurisdiction to try offence.*

ARMY ACT (VIII of 1911), S. 69

In cases where an ordinary criminal Court and a Court-martial have each jurisdiction in respect of an offence, it cannot be said that the Court-martial has no jurisdiction to try an offence because the first information report in respect thereof was lodged by persons other than the prescribed military authority and cognizance was taken by a Magistrate before the decision of the prescribed military authority as to before which Court the proceeding should be instituted. *(Harries C. J., Abdur Rahman and Mahajan JJ.)* KARTAR SINGH v. EMPEROR **A I R 1946 Lah 103= I L R 1945 Lah 419=47 P L R 423= 227 I C 216=47 Cr L J 1022 (FB).**

——*Ss. 69 and 70 — Applicability — Military servant committing criminal breach of trust and absconding — Military Court having concurrent jurisdiction as regards criminal breach of trust but exclusive jurisdiction as to desertion — Mere fact that accused was arrested by police, put up before Magistrate and that case proceeded to some length does not make S. 70 applicable.*

Where a military servant was accused of criminal breach of trust and desertion :

Held, that since the offence of criminal breach of trust was triable both by criminal Court and by a Court-martial, it rested with the military authority to decide whether the accused should be tried by Court-martial or not :

Held, further, that since the offence of desertion could be tried by the military Court only, S. 70 could not apply and that the mere fact that the accused was arrested by the police and was put up before the Magistrate and the case had proceeded to some length, could not make any difference. *(Sulaiman Ag. C. J.)* EMPEROR v. LACHMI DATT **A I R 1928 All 672=26 A L J 942= 9 L R A Cr 143=10 A I Cr R 453= 111 I C 307=29 Cr L J 803.**

—S. 87.

——*S. 87 (1)—Retention order must be from competent Military Authority.*

Section 87 (1), Army Act, gives a power to retain soldier in order to have the benefit of his services as soldier and has no bearing on his retention for the purposes of his trial by Court-martial. Before the section can operate, it is necessary to have an order of the competent Military Authority in which the period of retention must be specified. *(Monreo J.)* ALFRED BEEDHAM, QUETTA, IN THE MATTER OF **A I R 1934 Lah 845= 1934 Cr Cas 1185=7 R L 717= 155 I C 444 (2)=36 Cr L J 737.**

—S. 90.

——*S. 90 (1) — 'Convenient' — Soldier under arrest—Subsistence allowance.*

Section 90 (1) does not apply to a soldier who has served the full period of 21 years. The word "convenient" refers only to the speed with which the discharge is effected and the section does not entitle the superior Military Authority deliberately to hold up a soldier's discharge if he has become legally entitled to it.

The subsistence allowance provided to enable a soldier to live is not his pay; the allotment and other payments not paid at his request is the unilateral act of the Military Authorities, and

ARMY ACT (VIII of 1911), S. 90

cannot affect his legal position. *(Monroe J.)* ALFRED BEEDHAM, QUETTA, IN THE MATTER OF, **AIR 1934 Lah 845=1934 Cr Cas 1185= 7 R L 717=155 C 444 (2)= 36 Cr L J 737.**

—S. 100.

The Army Act intended the findings of a Court-martial as and when confirmed by the proper confirming officer, to be final subject only to the power of revision for which that Act provides. There is no room for an appeal to His Majesty in Council consistently with the subject-matter and scheme of the Act. For an Act framed long after the Judicial Committee Act of 1833, the competence of the appeal must be determined by considering not whether there are words in the Act creating the Court taking away prerogative of the Crown but whether the Act ever intended to create the Court with the ordinary incident of an appeal to the Crown ; (1877) 2 A C 102, *Rel. on. (Lord Thankerton, Lord Porter, Lord Simonds, Sir Madhavan Nair, and Sir John Beaumout.)* MOHD. YAKUB KHAN v. EMPEROR, **AIR 1947 P C 87= 229 I C 420=1947 O A P C 17= 1947 M W N 344=(1947) 1 M L J 403= 13 B R 425=1947 A W R P C 17= 74 I A 8=49 Bom L R 567= 51 C W N 776=60 M L W 594= 48 Cr L J 514.**

—S. 123.

——*Deserter from army—Arrest without warrant or authority from commanding officer—Legality —Cr. P. C. (Act V of 1898), Ss. 54, 56.*

For the arrest of a deserter no warrant is actually issued but the deserter is to be arrested as if a warrant had been issued and, therefore, S. 56, Criminal P. C., which applies to arrests without warrant, can have no application. The provisions of S. 80 and the following sections of the Code will apply.

An arrest of a deserter is not illegal merely because the head constable who effected the arrest had not got with him the authority on which he relied for making the arrest so long it is not proved that the head constable did not tell the deserter the reason for his arrest, on the other hand, it may be contended that as a deserter can be arrested under S. 123 (1), Army Act, without any warrant, the production of a warrant cannot be insisted upon. Moreover, S. 54 (1), Criminal P. C., empowers any Police Officer to arrest without any warrant and without any order from a Magistrate any person reasonably suspected of being a deserter from His Majesty's forces and hence no question of the production of a warrant or an order can arise. *(Byers J.)* IN RE, THANGA PANDIAN NADAR, **AIR 1943 Mad 280=(1943) 1 M L J 59= 1943 M W N 47=56 L W 34= 15 R M 965=ILR (1943) Mad 827= 206 I C 307=44 Cr L J 465.**

ARMY ACT (ENGLISH) (1881) (44 and 45 Vict., Ch. 58).

——Proceedings under before Court-martial are not criminal proceedings. *See* GOVERNMENT OF INDIA ACT 1935, S. 270 (1).

AIR 1948 P C 156=49 Cr L J 660 (PC).

—S. 45.

——*Whole time and regular nurse working in military hospital under Voluntary Aid Detach-*

ARMY ACT (Eng.) (1881), S. 45

ment conditions is subject to military law— Absence without leave — She can be arrested and detained by Provost Marshal.

A person working as a nurse regularly and whole time in a military hospital, under Voluntary Aid Detachment conditions, is subject to the Military law and is liable to be taken under military custody under S. 45, if she absents herself from duty without leave. Under S. 74 also the Provost Marshal and his assistant may at any time arrest and detain her for trial. *(Roxburgh and Ellis JJ.)* EVELYN BETTY VIVIAN PERRY v. EMPEROR,
ILR (1946) 1 Cal 95.

—S. 49.

——*Applicability of Ordinance 10 [X] of 1941— All individuals of body of force on active service by virtue of Ordinance — Officer in command of such body of force is empowered to convene Field General Court-martial.*

As all the individuals composing a force in India are deemed to be on active service by virtue of the Ordinance, it follows that the force itself must also be deemed to be on active service. Therefore, an officer commanding such a force is an officer in immediate command of a body of forces on active service within the meaning of S. 49 and therefore empowered to convene a Field General Court-martial. *(Blacker J.)* A. W. MEADS v. IMPERATOR,
AIR 1946 Lah 112=225 I C 102=
47 Cr L J 687.

——*S. 49 and R. 123 made under S. 70—Rule is binding on all Courts.*

Rule 123 of the Rules of Procedure made under S. 70, Army Act, is not only binding on the Court-martial itself, but has the force of law and is binding on all Courts.

Consequently, where an application is made to a High Court under S. 491, Criminal P. C., by a person convicted by a Field General Court-martial, the opinion of the officer that it is not practicable that an ordinary General Court-martial should be held is binding on the High Court. *(Blacker J.)* A. W. MEADS v. IMPERATOR,
AIR 1946 Lah 112=225 I C 102=
47 Cr L J 687.

—S. 74.

——Whole time and regular nurse working in military hospital under Voluntary Aid Detachment conditions is subject to military law—For absence without leave she can be arrested and detained by Provost Marshal—*See* ibid, S. 45.
I L R (1946) 1 Cal 95.

—S. 154.

——Magistrate purporting to act under, issuing warrant without examining on oath the applicant for warrant or without taking any evidence as required by section — Whole proceedings are bad. *(Roxburgh and Ellis JJ.)* EVELYN BETTY VIVIAN PERRY v. EMPEROR, I L R (1946) 1 Cal 95.

—S. 156.

——*S. 156 (1)—Provisions of, are not applicable in India.*

There are no provisions similar to those in S. 156 (1), Army Act, to be found in the Indian Army Act, and it is doubtful whether such provision exists elsewhere or whether there are provi-

ARMY ACT (Eng.) (1881), S. 156

sions similar to those of the Public Stores Act, 1875, in force in India. *(Roxburgh and Ormond JJ.)* CHANG CHUNG CHING v. EMPEROR,
AIR 1945 Cal 363=1946 Cal Rul 23=
49 C W N 229=221 I C 154=
I L R (1945) 1 Cal 610=47 Cr L J 95.

—S. 158.

——*S. 158 (1)—Person, no more subject to military law.*

Section 158 gives powers of arrest and trial of a person who has ceased to be subject to Military Law and his trial must commence within three months of his ceasing to be so subject : and after the expiration of this period of three months the person charged with an offence ceases to be liable to arrest or trial by Court-Martial. *(Monroe J.)* ALFRED BEEDHAM, QUETTA, IN THE MATTER OF,
AIR 1934 Lah 845=1934 Cr Cas 1185=
7 R L 717=155 I C 444 (2)=
36 Cr L J 737.

—S. 159.

——*Jurisdiction to convene Court-martial — Offence committed in district R — Offender stationed at L in another district — Officer having jurisdiction over latter district can convene Court-martial.*

An offence was committed in the Military District of *R*. At the time the Court-martial was convened and held, the offender was actually stationed at *L* in another district within the jurisdiction of the officer who convened the Court-martial :

Held, that the officer had jurisdiction to convene the Court-martial. *(Blacker J.)* A. W. MEADS v. IMPERATOR, AIR 1946 Lah 112=
225 I C 102=47 Cr L J 687.

—S. 170.

——*Appeal—Jurisdiction of High Court.*

Section 170 of the Army Act relates to anything done under the Act and the person is to be exclusively tried by that Act under Court-martial and the High Court has no jurisdiction to sit in judgment on the findings of any Court-martial where a person has been tried under the Army Act, particularly when a more appropriate remedy is open to the applicant. *(Thomas C. J.)* G. R. F. X. MONTESERRAT v. HARMOND, MAJOR GENERAL,
AIR 1945 Oudh 217=20 Luck 335=
1945 O W N (C C) 143=
1945 A W R (C C) 152=1946 Oudh Rul 1=
220 I C 373=46 Cr L J 746.

—S. 176.

——Effect of Ordinance 10 of 1941 on persons covered by S. 176 — *See* Active Services Ordinance (X [10] of 1941). I L R (1946) 1 Cal 95.

ARMY RULES

—R. 62.

——*Convening Court-martial during active service.*

Under R. 62 of Army Rules, Central Government or the Commander-in-Chief can empower an officer to convene a Court-martial to try a person whether the latter be on active service or not. There is a general power given to the Central Government and the Commander-in-Chief. On

ARMY RULES, R. 62

active service, others may convene a Court-martial who cannot do it in peace time. The section does not mean that the Central Government or Commander-in-Chief lose their right to empower an officer to convene a Court-martial when the troops are on active service. The Central Government or the Commander-in-Chief can empower an officer to convene a Court-martial at all times whereas the officer commanding forces in the field can only empower an officer to convene such a Court on active service. *(Harries C. J., Abdur Rahman and Mahajan JJ.)* KARTAR SINGH v. EMPEROR, AIR 1946 Lah 103 (110)= I L R (1945) Lah 419=47 P L R 423= 227 I C 216=47 Cr L J 1022 (FB).

ARREST

See (1) CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 54, 55 AND 64.
(2) DEFENCE OF INDIA ACT (1939), S. 16.
(3) DEFENCE OF INDIA RULES (1939), RR. 128 AND 129.

—Arrested person, search of — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 51.

—By private person—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 59.

—Escape from—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 66.

—Escape, retaking—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 46-67.

—Illegality of arrest — Effect—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 96.

—In presence of Magistrate—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 65.

—Mode of effecting—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 56 (1) as amended.

—Of accused pending appeal — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 427.

—Of deserter from Army or Navy—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 54.

—On breach of bond for appearance—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 91.

—Resistance to—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 46 (2).

—To prevent offence—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 151.

—Without warrant—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 54-67.

ART

—Opinion on, relevancy of—*See* EVIDENCE ACT (1 OF 1872) S. 45.

ARTICLES OF WAR, PERSON SUBJECT TO

See PENAL CODE (45 OF 1860), S. 139.

ARTIFICERS ACT (XIII of 1859).

—S. 2.

——Nature of proceedings under—*See* Penal Code (XLV of 1860), S. 211.

2 Cr L J 314 (Lower Burma).

——'*Workman*'—*Cooly gaung.*

A cooly gaung may be a workman or labourer when there is nothing to show that he was only a a contractor to supply coolies. *(A. M. B. Irwin J.)* MAUNG TUN v. FAZIL KADRE,

U B. R. (1904) Workman's Breach of Contract 1=1 Cr L J 551 (U.B.).

ARTISAN

See EMIGRATION ACT (7 OF 1922), S. 2.

ASSAM COTTON CLOTH AND YARN CONTROL ORDER (1946)

—S. 12.

——*S. 12 (1) — Accused found travelling with truck loaded with yarn — Denial of all knowledge of ownership of yarn — Mere circumstances of travelling, held did not establish guilt of accused.*

It is a fundamental rule of universal application that in cases dependent on circumstantial evidence, in order to justify an inference of guilt, the incriminating circumstance must be incompatible with the innocence of the accused and must be incapable of explanation upon any other reasonable hypothesis than that of guilt; the circumstantial evidence must be of such a character that it should establish the guilt of the accused beyond any reasonable doubt, and all possibilities of innocence of the accused should be excluded.

The driver of a truck loaded with some cases of yarn and match boxes and the accused who was standing nearby, on being asked as to the ownership of the yarn, said that it belonged to some one from Manipur who had been travelling in the truck and had gone to fetch a mechanic when, on account of some defect in the machine, the truck containing the yarn stopped on the way. All that was proved was that the accused was standing by the truck which contained the yarn. There was no direct evidence to show that the accused was the owner of the yarn or that he was interested in its transport in any other capacity. There was no suggestion that he was dealing in cloth or yarn. Both the accused and the driver of the truck made exactly the same statement. It was also established that the accused had travelled in the truck:

Held that the circumstances were not enough to establish the guilt of the accused. *(Ram Labhaya J.)* PURNAMAL AGARWALLA v. THE KING

A I R 1949 Assam 84= I L R (1949) 1 Assam 323=51 Cr L J 63.

——*S. 12 (1)* — Sanction for prosecution under— Facts constituting offence not shown on face of sanction — Proof that all facts were put before sanctioning authority, given — Sanction is valid. A I R 1948 P C 82, *Rel. on. (Ram Labhaya J.)* PURANMAL AGARWALLA v. THE KING

A I R 1949 Assam 84= I L R (1949) 1 Assam 323=51 Cr L J 63.

ASSAM CRIMINAL LAW AMENDMENT ACT (III OF 1934)

—S. 20.

——*S. 20 (1)—Applicability..*

A person in Assam was served with a notice under S. 16 (1) (a) of the Assam Criminal Law Amendment Act, directing him to notify his residence and any change of residence to Superintendent of Police, and he notified his residence duly; he wrote a letter to the Superintendent of Police to say that he was starting for Bombay that evening, he attended the Congress Session as a representative of a local weekly, and he left the town on the same evening. He wrote a letter from Calcutta stating that at Bombay he had stayed at certain place and had been detained by illness and that he had arrived at Calcutta a few days pre-

ASSAM CRIMINAL LAW AMENDMENT ACT (III of 1934), S. 20

viously. On his return he was arrested on a charge under S. 20 (1), Assam Criminal Law Amendment Act :

Held, that the Act had no force outside Assam and was not intended to apply to such a person outside the limits of Assam, and that he was not bound to inform of his subsequent addresses outside Assam. *(Lort-Williams and Jack JJ.)* SUPERINTENDENT & REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. KALI RAMAN BHATTACHARJEE

A I R 1936 Cal 414=40 C W N 28=63 Cal 519=1936 Cr Cas 662=9 R C 498 (2)=166 I C 297=38 Cr L J 182.

ASSAM FOOD GRAINS CONTROL ORDER (1947)

—S. 2.

——*S. 2 (3) (a)* — All Deputy Commissioners in Assam are notified as Directors for purposes of the Order—There is no warrant for drawing a distinction between a Deputy Commissioner and an Additional Deputy Commissioner in this respect. *(Chandrasekhara Aiyar and Bhagwati JJ.)* RAMESHWAR BHARTIA v. STATE OF ASSAM

A I R 1952 S C 405=1952 S C J 559=1953-1 Mad L J 17=1953 All W R (Sup) 1=1953 All Cri R (Sup) 1=1953 S C A 42=1953 S C R 126=1953 Mad W N 343=I L R (1953) 5 Assam 1=1953 Cr L J 163 (S C).

—S. 3.

——*Ss. 3, 6, 38—Trial without sanction—Effect—Criminal P. C. (1898), Ss. 225, 537.*

Where the accused was charged and convicted under S. 3 but the Sub-Divisional Officer who granted sanction could grant sanction only for contravention of Ss. 6 and 7.

Held that the conviction could not be altered to one for a contravention of S. 6, the trial being wholly without jurisdiction and the conviction must therefore be quashed. *(Thadani C. J. and Ramlabhaya J.)* MOHAN LAL AGARWALLA v. STATE

A I R 1951 Assam 87=I L R (1951) 3 Assam 375.

——*S. 6* — Trial under S. 3 without sanction — Conviction cannot be altered to one under S. 6 and must be quashed—*See* Assam Food Grains Control Order (1947), S. 3

A I R 1951 Assam 87 (DB).

——*S. 38* — Trial under S. 3 without sanction—Conviction cannot be altered to one under S. 6 and must be quashed—*See* Assam Food Grains Control Order (1947), S. 3

A I R 1951 Assam 87 (DB).

ASSAM FOREST REGULATION (VII of 1891)

—S. 5.

——*Ss. 5, 6, 15 and 17—Reserved forest—Notification—Objection disallowed by Forest Settlement Officer — Remedy of objector — Notification if impeachable.*

If an objection made to a notification of Local Government under the Regulations for reserving a certain plot of land, is disallowed by the Forest Settlement Officer the remedy of the objector is by appeal to the Commissioner and if the appeal is not preferred, the Notification cannot afterwards be impeached. *(Sanderson, C. J. and Walmsley, J.)* KHANDKAR HIDAYATULLA v. EMPEROR

A I R 1920 Cal 291=24 C W N 645=58 I C 338=47 C 889=21 Cr L J 754.

—S. 33.

——*Ss. 33, 34, 35 and 63 and S. 3, sub-cl. (a) of cl. 4—Rules made under S. 34—Rule 13 — Forest produce—Presumption, that the forest produce is the property of Government—Applicability.*

A criminal prosecution, instituted at the instance of a lessee from the Government, for the infringement of the provisions of S. 33 or of any rules made under S. 34, is a proceeding taken under the Regulation within the meaning of S. 63 to which the presumption referred to in S. 63 applies even if the trees are not in direct possession of the Government.

Where the facts, which would sustain a conviction under Ss. 34, 35 and 40 of the Regulation, were fully set out and the accused had an opportunity of meeting the case, it cannot be said that the omission to frame charges in respect of the offences under those sections prejudiced the accused.

The absence of any criminal knowledge or intention should be an element for consideration in awarding sentence only for the infringement of R. 13. *Mookerjee, J.)* MANIK CHANDER AGARWALLA v. EMPEROR

10 C W N 311=3 Cr L J 202.

—S. 40.

——*Ss. 40, 41*—"Transit Passes" prescribed under the rules made by the Local Government in pursuance of the power given to it by Ss. 40 and 41 (1), Assam Forest Regulation, 1891, are "valuable securities" within the meaning of S. 30, Penal Code. *(Panckridge and M. C. Ghose JJ.)* SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. DAULATRAM

A I R 1932 Cal 390=36 C W N 505=55 C L J 349=1932 Cr Cas 337=Ind Rul (1932) Cal 504=59 Cal 1233=138 I C 705=33 Cr L J 685.

——*Rules under — Rr. 1 and 2—Breach of Rules—Burden of proof.*

In order to sustain a conviction under Rr. 1 and 2, the onus is on the prosecution to prove that the forest produce in question had been removed along some route other than the prescribed routes. The onus does not rest on the accused of proving that the produce was on its way for conveyance by an authorised route. *(Brett and Stephen JJ.)* MOTI THAKOOR v. DEPUTY CONSERVATOR OF FORESTS

33 C 895=4 Cr J 206.

—S. 68.

——*S. 68 — Scope and object — (Evidence Act (1872), S. 145).*

Section 68 (2) of the Assam Forest Regulation was intended to safeguard the interest of the accused and regulates the use of statements recorded under S. 68 (1) (d) when they are sought to be used as substantive evidence. The purpose of the provision is not to shut out or to regulate the use of such statements for the purpose of cross-examination under S. 145, Evidence Act. The Statements recorded under S. 68 (1) (d) even in the absence of the accused are no more than previous statements and would be available for use under S. 145, Evidence Act, unless their use was expressly

ASSAM FOREST REGULATION (VII of 1891), S. 68

or impliedly barred by some provision contained in the Forest Regulation. Section 68 (2) does not create any such bar. *(Sarjoo Prosad C. J. and Ram Labhaya J.)* KAMALUDDIN AHMAD (ACCUSED) v. THE STATE

I L R (1953) 5 Assam 297.

ASSAM FRONTIER (ADMINISTRATION OF JUSTICE) REGULATION (I of 1945)

—S. 26.

——*"In other cases" — Appeals against orders of acquittal.*

The words "in other cases" in S. 26 cannot be considered to cover appeals against orders of acquittal. It could not have been intended that instead of the Government having the right of appeal in suitable cases against orders of acquittal, a party considering himself adversely affected by the order may appeal from that order as of right. *(Thadani Ag. C. J. and Ram Labhaya J.)* PROVINCE OF ASSAM v. LAKHI NAYAK

A I R 1950 Assam 43=
I L R (1950) 2 Assam 62=51 Cr L J 447.

—S. 28.

——Powers of High Court under S. 28 — Interference with orders of acquittal — *See* Criminal P. C. (1898), S. 439 A I R 1950 Assam 43=
51 Cr L J 447.

——*Right of appeal against orders of acquittal.*

Section 28 deals with cases of conviction only as distinguished from those of acquittal. It does not give any right of appeal even to the Government against orders of acquittal. It would not be conceivable that, in these circumstances, it would permit anyone feeling aggrieved by the order to move the High Court for its reversal in the exercise of its revisional jurisdiction. There is no power in the High Court to set aside an order of acquittal under the section. *(Thadani Ag. C. J. and Ram Labhaya J.)* PROVINCE OF ASSAM v. LAKHI NAYAK A I R 1950 Assam 43=
I L R (1950) 2 Assam 62=51 Cr L J 447.

—S. 32.

——Powers of High Court — Interference with orders of acquittal under S. 32—*See* Criminal P. C. (1898), S. 439 A I R 1950 Assam 43=
51 Cr L J 447.

——*Right of appeal against order of acquittal.*

The principle of S. 404, Criminal P. C., is binding on the Courts acting under the Regulation. The Regulation contains no provision for an appeal against an order of acquittal. No right of appeal against orders of acquittal can be said to exist either in the Government or in anyone else. *(Thadani Ag. C. J. and Ram Labhaya J.)* PROVINCE OF ASSAM v. LAKHI NAYAK

A I R 1950 Assam 43=
I L R (1950) 2 Assam 62=51 Cr L J 447.

ASSAM FRONTIER TRACTS REGULATION (III of 1884)

——*Garo Hills — High Court — Jurisdiction — Compensation.*

In Garo Hills, Assam petty Magistrates known as Laskars can grant compensation in cases of petty complaints and the High Court cannot deal with the matter. *(Holmwood and Sharfuddin JJ.)* DARSINGH NAKMA v. EMPEROR

13 C L J 444=9 I C 114=12 Cr L J 10.

ASSAM HIGH COURT ORDER (1948) —S. 4.

——*S. 4—Power of High Court to quash proceedings—Administration of Justice and Police in the Naga Hills District Rules, R. 16.*

Under R. 16 of the Rules for the Administration of Justice and Police in the Naga Hills District the Governor can set aside a sentence passed or remand the case for retrial, which obviously implies that the Governor could hold a person not guilty and declare that the complaint disclosed no offence and as such no process of the Court should have been issued against a certain individual. Hence in a case arising from Naga Hills the Assam High Court in the exercise of its powers vested under S. 4 of the Assam High Court Order is competent to quash a complaint which discloses no offence and where the examination of the complainant is also silent upon the commission of any offence. *(Thadani C. J. and Deka J.)* PRADIP CHANDRA BARUA v. DEPUTY COMMISSIONER OF NAGA HILLS A I R 1952 Assam 1=
I L R (1952) 4 Assam 28=1952 Cr L J 97.

ASSAM LABOUR AND EMIGRATION ACT (VI of 1901)

—S. 2.

——*Ss. 2 (1) (e) and 164 — Emigrate — Recruits to emigrate.*

Section 2 (1) (e) does not aim at defining the word 'emigrate' but simply describes what emigration may mean and is intended to avoid repetition, in the main provisions of the Act, of the various points of the departure from and destination to which it desired to restrict emigration. To constitute emigration within the Act all that is necessary is (1) that departure should be from any part of the territories in which the Act for the time being is in force and the destination should be a labour district, (2) that the emigrant should be 16 years of age or upwards, and (3) that the emigrant is to labour for hire in a labour district otherwise than as a domestic servant. Clause (e) does not mean that in order to constitute emigration within S. 164, the person recruited must be intending when he is recruited to go to a labour district to work there for hire. A I R 1916 Pat 81 : 18 Cr L J 284, Overruled; 37 Cal 27, dist. To constitute an offence under S. 64 the purpose for which the recruiter was recruiting, viz., emigration, must be present in his mind. (1913) A C 107, Ref. *(Chapman, Mullick and Atkinson, JJ.)* MANICK RAM AHIR v. EMPEROR

A I R 1916 Pat 133 (2)=2 P L J 91=
2 Pat L W 357=38 I C 964=
1917 P. H. C. C. 89=18 Cr L J 404.

——*Ss. 2 (n) and 161 — Illegal recruitment of coolies — Employer asked to defray costs of repatriation — No allegation of coercion or undue influence.*

A Sub-Deputy Magistrate who was not appointed under the Act, acquitted certain accused of illegal recruiting and directed the employer to whose garden the coolies were being conveyed to deposit the expenses of repatriation. No notice under S. 161 was given nor was there any indication of coercion or undue influence. *Held* that the order for repatriation was bad. *(Holmwood and Sharfuddin, JJ.)* EMPEROR v. RITU CHAMARR

A I R 1914 Cal 615=18 C W N 1143=
22 I C 979=15 Cr L J 195.

ASSAM LABOUR AND EMIGRATION ACT (VI of 1901)

—S. 164.

——*Emigration—Meaning of.*

Emigration within the meaning of the Act must be with the idea that the object to be attained or kept in view by the emigrant is arrival in a labour district and labouring there. The accused induced coolies to leave Sambhalpur under a promise of domestic employment in Chittagong but they were in fact taken to the labouring District of Assam. No offence under the section is committed. *(Roe and Jwala Prasad, JJ.)* MANIKRAM AHIR v. EMPEROR A I R 1916 Pat 81=1 P L J 388=2 P L W 355=38 I C 316=18 Cr L J 284.

——*Keeping recruiting house without license,*

A person keeping recruiting house without license or certificate, and using a licensed recruiter as a mere figure is guilty under S. 164. *(Knox, J.)* MAHABIR SINGH v. EMPEROR A I R 1916 All 169=36 I C 479=14 A L J 784=17 Cr L J 511.

——*Offence under S. 164 — Place where inducement to depart was given confers jurisdiction to Court—(Criminal P. C. (1898), S. 177).*

A was induced by the accused to leave Cawnpore in order to go to Fiji to work. On the way they stopped at Arrah, and there the accused told *A* that he would have to go to Sylhet and placed him in a train in charge of *B* for the purpose of ultimately going to that place:

Held, that as *A* was not induced to leave Cawnpore, in order to go to labour at Sylhet, but in order to go to Fiji, no offence under S. 164 of the Assam Labour and Emigration Act was committed at Cawnpore, that *A* did not emigrate within the meaning of the Act from Cawnpore, that it was not until *A* arrived at Arrah that any attempt was made to induce him to depart from that place for the purpose of labouring for hire in Sylhet, that the offence was committed at Arrah, and the Magistrate there had jurisdiction to try the offence. *(Coxe and Ryves JJ.)* FAIZ ALI v. EMPEROR 5 I C 495=37 C 27=11 Cr L J 143.

—S. 167.

——*Offence under.*

A person carrying a recruiting concern without license is punishable but not one who for remuneration helps an authorised person under the Act. *(Walsh J.)* QASIM ALI v. EMPEROR, A I R 1916 All 126=14 A L J 1222=35 I C 967=17 Cr L J 407.

—S. 213.

——*Abetment — Emigration or assisting in the emigration is not an abetment within S. 213—Penal Code, S. 107.*

Emigration or assisting in the emigration cannot be taken as forming an abetment of the offence of illegal recruitment within S. 213 of the Act; S. 213 expressly refers to abatement as meant by the Penal Code. *(Mukerji J.)* ASHITA RANJAN BOSE v. EMPEROR, A I R 1928 Cal 339=48 C L J 92=32 C W N 1062=10 A I Cr R 572=111 I C 123=29 Cr L J 795.

ASSAM LAND AND REVENUE REGULATION (I of 1886)

——*Settlement Rules under—Rule 18 (2) and (5)—Order of Deputy Commissioner asking encroacher to remove structures forthwith — Encroacher having* bona fide *claim of right — Order held not proper—Encroacher directed to establish claim in civil Court within three months, in default to be ejected.*

Where it has been contended by the encroacher that the land upon which he had built a structure vested in the municipality and the structures were built with its permission, and this fact is not disputed by the State, there being a *bona fide* claim of right involved the order of the Deputy Commissioner for forthwith removal of the structures is not in strict consonance with the provisions of the law. It would undoubtedly be for the Civil Court to enquire what right the encroacher has acquired by virtue of such permission from the Municipality. The order of the Deputy Commissioner comes within cl. (2) read with cl. (5) of R. 18, and it admits of proper variation to suit the circumstances.

The order of the Deputy Commissioner was modified to the extent that the encroacher was given three months' time for establishing his claim of right with respect to the encroached land in a properly framed suit in a Civil Court and in default of obtaining any stay order or a decree in his favour, the order of the Deputy Commissioner was to be put into operation forthwith after expiry of three months from the date of the order. *(Deka J.)* RAMJIDAS GANPATRAI v. STATE OF ASSAM, A I R 1952 Assam 155.

—S. 141.

——*Ss. 141, 142 and 147—Non-judicial proceeding cannot be regarded as judicial proceeding because there is statutory provision for right of appeal.*

There is no justification for the proposition that a non-judicial proceeding taken by the Sub-Deputy Collector under Ss. 141 and 142 must be regarded as a judicial proceeding merely because there is a statutory provision under S. 147 for a right of appeal from an order made in a non-judicial proceeding. The character of the original proceeding is not changed, notwithstanding the statutory right of appeal against an order made in a non-judicial proceeding. *(Thadani Ag. C. J. and Ram Labhaya J.)* DEPUTY COMMISSIONER, GOALPARA v. UPENDRA SARAN SANYAL, A I R 1950 Assam 25.

—S. 142.

——Non-judicial proceeding cannot be regarded as judicial proceeding because there is statutory provision for right of appeal. *See* ibid, S. 141. A I R 1950 Assam 25.

—S. 147.

——Non-judicial proceeding cannot be regarded as judicial proceeding because there is statutory provision for right of appeal. *See* ibid, S. 141, A I R 1950 Assam 25.

ASSAM LOCAL SELF-GOVERNMENT ACT (VIII of 1926)

—S. 254.

——*Heavy onus lies on prosecution.*

In a prosecution under S. 254, Assam Municipal Act, a heavy onus lies on the prosecution to prove that the accused person is actually a prostitute, within the meaning of S. 3, Bengal Suppression of

ASSAM LOCAL SELF-GOVT. ACT (VIII of 1926), S. 254

Immoral Traffic Act. The fact that the accused is residing in a quarter of the town ordinarily inhabited by prostitutes or that her name appeared in the register of prostitutes maintained at the Thana, especially in a case, in which the person who actually prepared the register has not been examined or the fact that she was maintained by a resident of the town, would not make her a prostitute so as to warrant a conviction under S. 254. *(Edgley J.)* DHUBRI MUNICIPALITY v. KUMUDINI GANIKA,
AIR 1941 Cal 445=
73 C L J 191=45 C W N 167=
14 R C 134=195 I C 546=
42 Cr L J 756.

ASSAM MAINTENANCE OF PUBLIC ORDER ACT (V of 1947)

——No prior consent of Governor-General was necesssary—Act is not on that account *ultra vires*. *(Lodge C. J. and Thadani J.)* NIRENDRA MOHAN LAHIRI v. GOVT. OF ASSAM,
A I R 1949 Assam 37=50 Cr L J 754.

—S. 2.

——*Ss. 2 (1), 3 and 4B (3) — Reasonable restrictions—(Constitution of India, Art. 19).*

Whether the restrictions imposed by an impugned legislation on the exercise of the fundamental rights are reasonable or not is the matter for the Court to consider, and in doing so, the Court is entitled to take into account the reasonableness of both the substantive as well as the procedural part of the law in all its bearings; in regard to territory, in regard to duration; in regard to the nature of the restrictions, and the circumstances and the manner of their enforcement etc. The test of reasonableness is bound to be conditioned by the understanding and prudence of the individual who applies it to the facts and circumstances of each case; but there can be no doubt that it is a well-recognised objective standard by which Courts can be guided.

In view of the above, the provisions of Ss. 2 (1), 3 and 4B of Assam Maintenance of Public Order Act are saved by cl. (5) of Art. 19 and are not void. *(Sarjoo Prosad C. J. and Ram Lobhaya J.)* HAREN KALIFA v. STATE,
A I R 1953 Assam 209=1953 Cr L J 1740.

——*S. 2 (1) — Satisfaction of State Government does not impose restriction.*

Section 2 (1) has provided for serving the grounds on which the order is made upon the person affected and for enabling him to make a representation to the Advisory Council against that order. But if the petitioner has made no grievance on these points, the mere fact that the order depends upon the satisfaction of the officer does not necessarily impose any reasonable restrictions on the exercise of the citizen's right, and the section is not '*ultra vires*' on that ground. *(Sarjoo Prosad C. J. and Ram Labhaya J.)* HAREN KALIFA v. STATE,
A I R 1953 Assam 209=
1953 Cr L J 1740.

——*S. 2 (1) and S. 3 Proviso—Validity.*

The contention that under the proviso to S. 3 the State Government can at its will indefinitely continue the order of detention and there is no provision in the Act that the report of the Advisory Council will be binding on the State Government and that, therefore, the proviso is unreasonable and it makes S. 2 (1) void, is not tenable, because the proviso to S. 3 is severable from the first part of S. 3, and therefore, even if it is held to be unreasonable, it will not affect the validity of the remaining portion of S. 3 or that of the other sections of the Act on the ground of unreasonableness. *(Sarjoo Prosad C. J. and Ram Labhaya J.)* HAREN KALIFA v. STATE,
A I R 1953 Assam 209=1953 Cr L J 1740.

——*S. 2 (1)—Fixation of period if makes detention order invalid.*

The contention that there should be no period fixed in the order itself as the fixation of such a a period is likely to prejudice the case of the detenu before the Advisory Council, cannot stand because under S. 2 (1) the order continues for a period of one year from the date on which it is confirmed or modified under sub-s. (3) of S. 4B of the Act, unless earlier revoked. Moreover, the Advisory Council is not concerned with the duration of the order but it has to consider on the materials placed before it as to whether there is sufficient ground for the making of the order and then on the report of the Advisory Council the State Government can confirm, modify or even cancel the order made under sub-s. (1) of S. 2. Thus, the Act purports to be a permanent statute and the fixation of time in the detention order itself is not prejudicial but to the advantage of the detenu. *(Sarjoo Prosad C. J. and Ram Labhaya J.)* HAREN KALIFA v. STATE,
A.I R 1953 Assam 209=1953 Cr L J 1740

——*Validity — (Constitution of India, Arts. 22 (4) and 19 (5)).*

The preamble to the Assam Maintenance of Public Order Act, 1947, has been amended by the Assam Maintenance of Public Order Act, 1950 (Act 21 of 1950) whereby, the words "restrictions on movement" have been substituted for the words "preventive detention"; in other words, the Assam Maintenance of Public Order Act, 1947, as amended by Act 21 of 1950, is no longer law dealing with preventive detention, but law imposing restrictions on movement. There is nothing in the Constitution of India which imposes an obligation on a State Government, when enacting a law restricting the movement of a citizen, to provide a safeguard similar to the one providing for a reference to an Advisory Board under the Preventive Detention Act, 1950 (4 of 1950), as amended. In the absence of such a constitutional obligation, the question of reasonableness or otherwise of restrictions imposed on a citizen's movement, must be determined without any reference to what are characterised as safeguards. Hence S. 2 of the Assam Act 5 of 1947 which imposes restrictions on movement without providing a safeguard, namely, reference to an Advisory Board, is not *ultra vires* the Legislature, and the restrictions imposed cannot be regarded as unreasonable from the point of view of procedural and substantive law. *(Thadani C. J.)* AMRIT BHATTACHARJYA v. STATE,
A I R 1953 Assam 77=
I L R (1952) 4 Assam 126=
1953 Cr L J 657

——*S. 2 (6) (a)—There must be report in writing of the Provincial Government.*

Under sub-s. (6) of Section 3 if it is intended to take action under clause (a) of sub-s. (6) of S. 2, it

ASSAM MAINTENANCE OF PUBLIC ORDER ACT (V of 1947), S. 2

is the Provincial Government who is to make a report in writing of the fact, namely, that the person against whom an order of detention is made has absconded or is concealing himself, to a Magistrate of the First Class having jurisdiction. Without such report the Magistrate cannot take action. *(Thadani C. J. and Deka J.)* ACHINTA KUMAR v. STATE, **A I R 1953 Assam 54= ILR (1953) 5 Assam 194=1953 Cr L J 476.**

——*S. 2 (6)—Action under, after lapse of detention order cannot be taken.*

Once the duration of the order of detention has expired, the authorities competent to act under the Act, are debarred from making any order under the provisions of the Act, the effect of which is to revive a lapsed order. Hence an action under S. 2 (6) after the lapse of detention order by efflux of time is without jurisdiction. *(Thadani C. J. and Deka J.)* ACHINTA KUMAR v. STATE, **A I R 1953 Assam 54= I L R (1953) 5 Assam 194= 1953 Cr L J 476.**

——*S. 2 (6)* — Order of detention for two months —Conviction under S. 2 (6) — Sentence of 12 months R. I. held unduly severe *(Obiter). (Thadani C. J. and Deka J.)* ACHINTA KUMAR v. STATE, **A I R 1953 Assam 54= I L R (1953) 5 Assam 194= 1953 Cr LJ 476.**

——*S. 2 (7)* — Offence under, is bailable — Bail refused—Proper procedure is to move appropriate Court by application under Criminal P. C., and not by application under Art. 226, Constitution of India — (Constitution of India, Art. 226) — Criminal P. C. (1898), S. 498). *(Thadani C. J.)* HABIRAM DEKA v. STATE, **A I R 1952 Assam 192=1952 Cr L J 1710.**

——*(as amended) S. 2 (1) (a)* — *"Satisfied"* — *Meaning—Power of Court to question reasonableness of grounds of detention — Criminal P. C. (1898), S. 491.*

Per *Ram Labhaya J.*—Under S. 2 the satisfaction contemplated by the section is satisfaction in point of fact. The reasonableness or otherwise of the satisfaction which forms the basis of the action of the detaining authority is not open to question in any Court.

Where past conduct is relied on and it is referred to and described in the grounds of detention, there can be no reasonable objection to the validity of the grounds.

Mere preaching of Communism amongst students may not by itself be subversive of law and order if the Communist Party in India has not been declared unlawful. But if the petitioner propagated adoption of Communism as creed by methods unconstitutional or unlawful, his conduct or activity could be said to be subversive of law and order.

Per *Thadani C. J.* — The grounds stated by the detaining authority are strictly not a part of the order in the sense that they can affect the validity of the order. The validity of the order of detention cannot be questioned simply because in the ground is stated a fact which may not be prejudicial to public safety and the maintenance of public order. A High Court must content itself where the order of detention is free from the taint of mala fides,

ASSAM MAINTENANCE OF PUBLIC ORDER ACT (V of 1947), S. 2

to regard what is stated by the detaining authority, as a fact, and not to question it because in its opinion the grounds stated by the detaining authority are inadequate or defective. *(Thadani A. C. J. and Ram Labhaya J.)* KESHO RAM HAZARIKA v. THE GOVERNMENT OF ASSAM, **A I R 1951 Assam 14= I L R (1950) 2 Assam 147=52 Cr L J 68.**

——*Ss. 2, 3 and 9* — Order of detention passed by District Magistrate in pursuance of powers delegated to him under S. 9—Order is valid for period not exceeding six months (Per *Thadani J.*)—Order is valid for period not exceeding two months (Per *Lodge C. J.*). *(Lodge C. J. and Thadani J.)* TARUN SEN DEKA v. GOVT. OF ASSAM, **A I R 1949 Assam 38=50 Cr L J 762.**

——*S. 2 (1)—Satisfaction.*

If the Provincial Government is satisfied, it is not the function of the Court to examine the grounds of detention and decide whether the grounds are such as in the opinion of the Court would justify the orders passed. *(Lodge C. J. and Thadani J.)* NIRENDRA MOHAN LAHIRI v. GOVT. OF ASSAM, **A I R 1949 Assam 37= 50 Cr L J 754.**

——*S. 2 (1) (a)* — *District Magistrate passing order under S. 2 (1) (a)—Provincial Government cannot extend period of its validity.*

Where a District Magistrate has passed an order under S. 2 (1) (a) the force of that order must expire in two months and the period of its validity cannot be extended either by the District Magistrate or by any other authority. The Provincial Government may exercise the power conferred by S. 2 (1) in respect of any person in respect of whom the District Magistrate has already made an order under S. 2 (1) (a). The Provincial Government must, however, exercise this jurisdiction, if at all, independently of the District Magistrate. *(Lodge C. J.)* A. CHYNE v. THE STATE, **53 C W N 222 (Assam)**

—S. 3.

——Provisions of S. 3 are not void — *See* ibid, S. 2 (1) **A I R 1953 Assam 209= 1953 Cr L J 1740.**

——District Magistrate under delegated powers can validly pass orders for detention of person for period not exceeding six months—*See* ibid, S. 9 **A I R 1949 Assam 50= 51 Cr L J 118.**

——Order of detention passed by District Magistrate in pursuance of powers delegated to him under S. 9—Period for which the order is valid — *See* ibid, Ss. 2, 3 and 9 **A I R 1949 Assam 38=50 Cr L J 762.**

—S. 4.

——*Grounds — Sufficiency of.*

Where the grounds furnished to the detenu, *inter alia*, stated that he threatened public peace and tranquillity in a certain district by urging violent methods, specially among the labour classes and that he professed communist ideology and had actively engaged himself to put communist directives into effect for a political struggle by bringing a revolution :

Held that these grounds were sufficient to enable the detenu to make a representation to the Provin-

ASSAM MAINTENANCE OF PUBLIC ORDER ACT (V of 1947), S. 4

cial Government. *(Thadani Ag. C. J. and Ram Labhaya J.)* BENOY BHUSAN CHAKRAVERTY v. GOVERNMENT OF ASSAM

A I R 1950 Assam 49=51 Cr L J 477.

——*Communication of grounds made orally.*

There is nothing in S. 4 to require that the communication of the grounds shall be made in writing. Where the communication has been made orally, it cannot be held that there has been a failure to comply with the provisions of S. 4. *(Lodge C. J.)* A. CHYNE v. THE STATE,

53 C W N 222 (Assam).

—S. 4B.

——Provisions of S. 4B are not void — *See* ibid, S. 2 (1) A I R 1953 Assam 209= 1953 Cr L J 1740.

—S. 9.

——*Delegation of powers under S. 2 (1) (a) by Provincial Government to District Magistrate.*

When the Provincial Government delegates its powers to the District Magistrate under S. 2 (1) (a) by virtue of S. 9, S. 2 (2) which limits his powers of detention becomes inoperative for he can pass any order of detention for any period not exceeding six months under S. 2 (1) (a). It is then unnecessary for him to exercise any powers under S. 2 (2). The effect of delegation is practically to reduce cl. (2) of S. 2 to a mere surplusage. *(Ram Labhaya J.)* TARUN SEN DEKA v. THE STATE

A I R 1949 Assam 50=53 C W N 422= 51 Cr L J 118.

——Order of detention passed by District Magistrate in pursuance of powers delegated to him under S. 9 — Period for which order is valid—*See* ibid, Ss. 2, 3 and 9 A I R 1949 Assam 38= 50 Cr L J 762.

——*Scope.*

The fact that the Government of Assam, purporting to act under S. 9 of the Act, has by order directed that the powers and duties conferred on the Provincial Government by S. 2 (1) shall be exercised and discharged by the District Magistrate in each district of the province, does not mean that the Provincial Government has divested itself of power to take action. *(Lodge C. J. and Thadani J.)* NIRENDRA MOHAN LAHIRI v. GOVERNMENT OF ASSAM A I R 1949 Assam 37= 50 Cr L J 754.

ASSAM MUNICIPAL ACT (I of 1923)

—S. 30.

——*Delegation of power— Chairman can delegate his powers only by written order—Act done by Vice-Chairman with Chairman's express or implied consent is not invalid.*

A written order is essential for delegation of authority to the Vice-Chairman by the Chairman of the Municipality, but if there is no such delegation, an act done by the former shall not be invalid if done with the express or implied consent of the latter previously or subsequently obtained. *(Mukerjee J.)* RADHA KISHEN v. CHAIRMAN OF THE GAUHATI MUNICIPALITY

A I R 1928 Cal 357=48 C L J 293= 112 I C 780=11 A I Cr R 387= 30 Cr L J 12.

—S. 220.

——*Ss. 220 to 223—Procedure—Attention of sanctioning officer should be directed to person or persons to be proceeded against.*

ASSAM MUNICIPAL ACT (I of 1923), S. 220

Sections 220 to 223 involve that the attention of the officer, who is to give order or consent to the institution of the proceedings, should be directed to the person or persons against whom such proceedings are to be instituted, though a general order or consent to the prosecution may be made. *(Mukerjee J.)* RADHA KISHEN v. CHAIRMAN OF THE GAUHATI MUNICIPALITY

A I R 1928 Cal 357=48 C L J 293= 112 I C 780=11 A I Cr R 387= 30 Cr L J 12.

—S. 221.

——*Sanction — Person against whom sanction is not obtained cannot be convicted.*

G was the agent of *M* who dealt in mustard oil which was found to be not genuine. Order for prosecution was sanctioned against *G* alone, but during trial *M* appeared and took upon himself the responsibility. *G* remained absent. *M* was convicted under S. 221.

Held, that the order obtained for prosecution was against *G* alone and, therefore, *M* could not be convicted. *(Mukerjee J.)* RADHA KISHEN v. CHAIRMAN OF THE GAUHATI MUNICIPALITY

A I R 1928 Cal 357=48 C L J 293= 112 I C 780=11 A I Cr R 387= 30 Cr L J 12.

ASSAM OPIUM PROHIBITION ACT (XXIII of 1947)

—S. 5.

——*S. 5 (a) — Possession of opium — Proof of mens rea essential for offence.*

Possession of opium within the meaning of S. 5 (a) of the Assam Opium Prohibition Act must imply knowledge. It must be conscious possession making some kind of control possible, or in other words, there must be mens rea or guilty knowledge before a person could be convicted of an offence under S. 5 (a) for possession of opium.

The accused who were two brothers, were living in the same house which was enclosed by a courtyard inaccessible to persons from outside. On a search a large quantity of opium i.e. 1¼ seer was found hidden in a heap of bricks lying in th courtyard of the house. There was, however, no evidence pointing to the conclusion that both or any one of them had guilty knowledge of the existence of the opium. On the other hand the evidence did not exclude the possibility of the opium being kept there by the other inmates of the house

Held that it could not be held in the circumstances that the opium was in the possession of the accused merely because they were owners of the house. In the absence of any evidence pointing to their guilty knowledge they could not be convicted under S. 5 (a). *(Thadani C. J. and Ram Labhaya J.)* DULAR KUMAR v. STATE

A I R 1952 Assam 26.

——*S. 5 (a)—Sentence.*

Where the opium seized from the accused is 15 seers, it suggests that the importing is on a large scale and hence the sentence of rigorous imprisonment for 5 years and a fine of Rs. 2000 is not excessive. *(Thadani C. J. and Ram Labhaya J.)* ABDUL SAMAD v. STATE

A I R 1951 Assam 124= ILR (1951) 3 Assam 321= 52 Cr L J 1235.

ASSAM OPIUM PROHIBITION ACT (XXIII of 1947), S. 5

——*Ss. 5 (a) and 28 — Possession — Meaning — Presumption — Burden of proof — Opium Act (1878), Ss. 9 and 10 — Evidence Act (1872), Ss. 101, 103.*

Possession within the meaning of S. 5 (a) must imply knowledge. It must be conscious possession making some kind of control possible, or, in other words, there must be *mens rea* or guilty knowledge before a person could be convicted of an offence under S. 5 (a).

Mere recovery of opium from a house in which the accused lives along with other persons, would not be sufficient to show that he was in possession with knowledge of its existence.

Unless conscious possession is proved, no presumption under S. 28 arises.

The burden of proving conscious possession remains on the prosecution and is not shifted by anything that is contained in S. 28. *(Thadani C. J. and Ram Labhaya J.)* ABDUL ALI v. STATE
A I R 1950 Assam 152=
ILR (1950) 2 Assam 333=51 Cr L J 973.

——*(As amended in 1948), S. 5 (a).*

——No conviction on uncorroborated confession of co-accused—*See* Evidence Act (1872), S. 133
A I R 1949 Assam 60=51 Cr L J 135.

—S. 6.

——*Reason to suspect or believe—Conviction.*

Before an owner or driver of any vehicle can be convicted under S. 6, he must knowingly permit the vehicle to be used for the commission by any other person of an offence punishable under the Act or the rules made thereunder. Reason to suspect or reason to believe, is not enough for the purposes of a conviction under S. 6; existence of knowledge alone, and not something less than knowledge, can justify a conviction under S. 6. *(Thadani C. J.)* ANWAR HUSSAIN v. STATE
A I R 1952 Assam 390=
I L R (1952) 4 Assam 178=
1952 Cr L J 390.

—S. 11.

——*Ss. 11, 16, 17 — Evidence of general repute —Proof—Cr. P. C. (1898), S. 117.*

General repute or reputation of a man may be proved like any other fact in issue. Witnesses may depose to what the reputation of a particular individual is. A witness giving evidence as to the reputation may depose that a particular individual has the reputation of being a habitual smuggler. Such a witness may be examined and cross-examined as to his means of knowing the reputation of the individual he is talking about. The value of evidence that he gives would no doubt depend to a great extent on whether he is in a position to know of the reputation of the man against whom he is deposing. The evidence of repute is essentially based on hearsay. Where, therefore, reputation is spoken of or described as a fact even though the reputation came to be known by hearsay the evidence is not inadmissible. The weight that should attach to evidence of general repute would vary not only in the circumstances of each case but in the case of each witness. The evidence will have to be weighed in relation to other facts elicited from the statement of the witnesses. General repute has to be distinguished from mere rumour. If a person is suspected of a crime in a particular case by some and there are others who do not share the suspicion, the evidence of those who suspect him cannot be described as evidence of general repute. But, if an individual is suspected in several cases and in course of time people begin to believe and talk about him as a thief or a robber or a smuggler by habit, he may be said to have acquired the reputation that is attributed to him. The roots of a bad reputation would be ultimately found planted in rumour and it would be difficult to lay down any rule as to how many instances or how long it should take the rumour to ripen into reputation. All that it means and implies is what is thought of a person by others and the general reputation of a person is merely the collective opinion of those in whose midst he lives. It need not necessarily be the opinion of the entire community. Evidence which discloses the existence of collective opinion is evidence of general repute. *Case law discussed. (Thadani C. J. and Ram Labhaya J.)* ISRAIL KHAN v. STATE
A I R 1951 Assam 106=
I L R (1951) 3 Assam 181=
52 Cr L J 966.

ASSAM OPIUM PROHIBITION ACT (XXIII of 1947), S. 11

—S. 16.

——Proceeding under — Constitution coming into force at appellate stage—Finality of appellate order —*See* Constitution of India, Preamble,
A I R 1953 Assam 35=
1953 Cr L J 395 (FB).

——Evidence of general repute—Proof—*See* ibid, S. 11.
AIR 1951 Assam 106=
52 Cr L J 966.

——*Ss. 16 and 17—Notification No. MEX. 66/48 —Empowerment therein is special — (Criminal P. C. (1898), S. 39 (1)) — General Clauses Act (1897), S. 3 (31)).*

Notification No. MEX. 66/48, dated 5-6-48 empowered all Magistrates of the first class in the State of Assam to exercise powers under S. 17, Assam Opium Prohibition Act of 1947. The question was whether the empowerment was special empowerment as required by S. 16 of the Act.

Held that having regard to the definition of the word "Magistrate" in S. 3 (31), General Clauses Act, and the connotation of the word 'Magistrate' in Chap. II of the Code in which manifestly a Magistrate or a Court of Magistrate is regarded as an office and not an official, the notification in question fulfilled the requirements of S. 16, Assam Opium Prohibition Act read with S. 39 (1) of the Code : 16 Cr L J 268, *Dissent from. (Thadani C. J. Ram Labhaya and Deka JJ.)* STATE v. JUDHABIR CHETRI,
AIR 1953 Assam 35=
ILR (1953) 5 Assam 24=
1953 Cr L J 395 (FB).

——*Ss. 16, 17—Evidence of general repute—Admissibility.*

(Per *Ram Labhaya J. Thadani C. J.* contra). Evidence of general repute is admissible in externment proceedings under Chap. VI. *(Thadani C. J. and Ram Labhya J.)* ISRAIL KHAN v. STATE.
AIR 1951 Assam 106=
ILR (1951) 3 Assam 181=52 Cr L J 966.

——*Ss. 16, 17 (2)—Period of duration of externment—Unreasonableness—Const. Ind., Art. 19.*

The period of duration of externment u/s. 17 is to be determined by a Court of law after giving the fullest opportunity to the person proceeded against

ASSAM OPIUM PROHIBITION ACT (XXIII of 1947), S. 16

of representing his case. The Magistrate has been given the authority to fix the period. His order is subject to appeal to the Court of Session and an order under S. 17 (3) would be subject to the supervisory jurisdiction of the High Court under Art. 227 of the Constitution. Hence it cannot be said that in leaving the specification of the period of externment to the Magistrate whose decision is subject to judicial review and scrutiny, the Legislature acted unreasonably. Hence the validity of the provisions contained in Ss. 16 and 17 is not assailable on the ground that no maximum duration for externment has been fixed. *(Thadani C. J. and Ram Labhaya J.)* ISRAIL KHAN v. STATE,
AIR 1951 Assam 106=
I L R (1951) 3 Assam 181=52 Cr L J 966.

——*Ss. 16, 17 — Unreasonableness on territorial grounds—Const. Ind., Art. 19.*

The reasonableness of the provisions of Ss. 16 and 17 cannot be questioned on the ground that they enable the Courts to extern a person from the entire State. The reasonableness of the impugned legislation has to be determined on the basis of existing conditions. The Court is not concerned with the situation that might arise if every State were to pass a similar legislation, and to pass a similar order against the person. *(Thadani C. J. and Ram Labhaya J.)* ISRAIL KHAN v. STATE,
AIR 1951 Assam 106=
ILR (1951) 3 Assam 181=52 Cr L J 966.

——*Habitual smuggler—Specific instances.*

Proof of specific instances of smuggling is not necessary in law as the fact that a person is a habitual smuggler may be proved by evidence of general repute or otherwise. *(Thadani C. J. and Ram Labhaya J.)* ISRAIL KHAN v. STATE,
AIR 1951 Assam 106=
ILR (1951) 3 Assam 181=52 Cr L J 966.

—S. 17

——Notification No. MEX. 66/48—Empowerment therein is special—*See* ibid, S. 16.
AIR 1953 Assam 35=1953 Cr L J 395 (FB).

——*S. 17 (3)* — Finality of appellate order—*See* Constitution of India, Preamble.
AIR 1953 Assam 35=1953 Cr L J 395 (FB).

——Evidence of general repute—Proof—*See* ibid, Ss. 11, 16 and 17. AIR 1951 Assam 106=
52 Cr L J 966.

——Externment order—Validity—*See* Const. Ind., Art. 19. AIR 1951 Assam 106=
52 Cr L J 966.

——*S. 17 (3)—Order under — Interference—Cr. P. C. (1898), Ss. 439, 561A.*

The effect of S. 17 (3) is to exclude the revisional jurisdiction of the High Court under S. 439, Cr. P. C., at least by necessary implication, if not expressly. The order of the Sessions Judge, therefore, is not revisable under S. 439, Cr. P. C. The attribute of finality which the law attaches to the order under S. 17 (3) will also prevent the High Court from exercising its inherent jurisdiction under S. 561A, Cr. P. C. *(Thadani C. J. and Ram Labhaya J.)* ISRAIL KHAN v. STATE,
AIR 1951 Assam 106=
I L R (1951) 3 Assam 181=52 Cr L J 966.

——*S. 17 (3) — Effect on powers of superintendence—Const. Ind., Art. 227 (1).*

ASSAM OPIUM PROHIBITION ACT (XXIII of 1947), S. 17

No provision contained in any local or special law if it conflicts with an express provision contained in the Constitution can have any force or validity. An act of the Provincial Legislature cannot have the effect of curtailing the powers conferred on the High Courts by the Constitution of India. Hence S. 17, Cl. (3) has not the effect of limiting the powers conferred on the High Courts by Art. 227 (1) of the Constitution. *(Thadani C. J. and Ram Labhaya J.)* ISRAIL KHAN v. STATE,
AIR 1951 Assam 106=
I L R (1951) 3 Assam 181=52 Cr L J 966.

—S. 28.

——Burden of proof of conscious possession is on prosecution and it is not shifted to accused by anything that is contained in S. 28—*See* ibid, S. 5 (a).
AIR 1950 Assam 152=51 Cr L J 973.

ASSAM PURE FOOD ACT (IV of 1932)

—S. 6.

——*Articles not or not represented to be, articles of food—S. 6 in so far as it refers to mustard oil.*

The Assam Pure Food Act is an Act to make provision for the prevention of adulteration of food in Assam. *Prima facie* it does not apply to the sale or exposure for sale or manufacture or storage for sale of articles which are not or are not represented to be articles of food. Section 6 of the Act in so far as it refers to mustard oil must mean that no article shall be sold, exposed for sale, or manufactured or stored for sale as mustard oil or in such a manner as to indicate that it was intended to be sold, etc., as mustard oil, unless it be derived exclusively from mustard or rape seed; but there is nothing in the section to render illegal the sale of article containing mustard oil under circumstances in which there is no representation that the article sold is mustard oil or is to be regarded as mustard oil. Hence, when there was no representation by the vendor that the oil was mustard oil or was anything but fuel oil, S. 6 cannot apply. The fact that the fuel oil was found to contain mustard oil would not make S. 6 applicable. *(Edgley and Lodge JJ.)* NISHIKANTA SAHA v. EMPEROR,
AIR 1943 Cal 468=
47 C W N 698=16 R C 351=209 I C 229=
45 Cr L J 111.

ASSAM VEGETABLE OIL AND OIL SEEDS CONTROL ORDER (1944).

—Para. 6.

——*Para. 6 (a)—Notification under—Notification No. S. D. 398/206, is* ultra vires *to the extent that it prohibits storing of seeds for sale except under licence, after certain date — Para. 6 (a) sanctions notification prohibiting only the purchase of oil seeds— Notification does not extend to Nowgong and Sibsagar Mikir Hill Tract.*

Paragraph 6 (a) of the Assam Vegetable Oil and Oil Seeds Control Order, 1944, sanctions a notification prohibiting purchase of oil seeds except under certain condition after a specified date. It does not sanction a notification prohibiting the storing for sale of any oil seed if the purchase was made before the prescribed date.

The Notification No. S. D. 398/43/206 issued under Para 6 (a) of the Order is therefore *ultra vires* to the extent that it prohibits the storing for sale of mustard seed in excess of five maunds on or after 1st July 1944.

ASSAM VEGETABLE OIL AND OIL SEEDS CONTROL ORDER (1944), Para. 6

Obiter.—The Notification does not extend to the partially excluded area of Nawgong and Sibsagar Mikir Hill Tract. *(Lodge C. J.)* BUDHURAM CHAUDHURY v. KING-EMPEROR, 52 C W N 801.

ASSAULT

See PENAL CODE, SS. 349 TO 358.

—defined—*See* PENAL CODE (45 OF 1860), S. 351.

—deterring public servant in his duty—*See* PENAL CODE (45 OF 1860), S. 353.

—to woman—*See* PENAL CODE (45 OF 1860), S. 354.

—without provocation, punishment for — *See* PENAL CODE (45 OF 1860), S. 352.

ASSEMBLING

—to commit dacoity—*See* PENAL CODE (45 OF 1860), S. 402.

ASSESSOR

—personation of—*See* PENAL CODE (45 OF 1860), S. 229.

ASSESSORS

—Attendance of — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 285, 295, 319, 330, 332.

—Choosing of—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 284.

—Examination of — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 294.

—Exemption from, serving as— *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 320.

—Inability to attend — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 285 (1).

—List of — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 321-325..

—Summoning of — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 326-329 AND 331.

—To put questions, power of — *See* EVIDENCE ACT (1 OF 1872), S. 166.

—Trial with aid of—*See* CRIMINAL PROCEDURE CODE (1898), S. 309.

—View of—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 293, 309.

ASSISTANT SESSIONS JUDGE

See CRIMINAL PROCEDURE CODE (5 OF 1898), S. 31 (3).

ASSISTING IN CONCEALING STOLEN PROPERTY

See PENAL CODE (45 OF 1860), S. 414.

ATTACHED PROPERTY

—Restoration—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 89.

ATTACHMENT

—Breach of peace proceeding — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 145.

—Of absconder's property, claim or objection to —*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 88 (6-A).

—Of absconding person's property—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 88.

—Of property—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 88, 89 AND 146.

ATTACHMENT

—Subject matter of dispute — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 146 AND S. 145.

ATTEMPT

—Of dacoity or robbery with deadly weapons —*See* PENAL CODE (45 OF 1860), S. 398.

—Of suicide — *See* PENAL CODE (45 OF 1860), S. 309.

—To commit culpable homicide — *See* PENAL CODE (45 OF 1860), S. 308.

—To commit offence — *See* PENAL CODE (45 OF 1860), S. 511.

—To commit rape — *See* PENAL CODE (45 OF 1860), S. 376.

—To commit robbery—*See* PENAL CODE (45 OF 1860), S. 393.

—To murder — *See* PENAL CODE (45 OF 1860), S. 307.

—To seduce sailor or soldier—*See* PENAL CODE (45 OF 1860), S. 131.

ATTENDANCE

—Of jury— *See* CRIMINAL PROCEDURE CODE (5 OF 1898), SS. 295, 318, 332.

—Of witnesses during investigation, order for —*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 160.

ATTORNEY

—Retainer of — *See* LEGAL PRACTITIONER.

AUTHORITY

—To public prosecutor to conduct prosecution —*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 493.

AUTRE FOIS ACQUIT

See (1) CRIMINAL PROCEDURE CODE (1898), SS. 247, 403.
(2) CONSTITUTION OF INDIA, ART. 20.

AUTRE FOIS CONVICT

See CRIMINAL PROCEDURE CODE (1898), S. 403.

BAIL

See (1) CR. P. CODE—SS. 496 to 502, 513, 514 and 561A.
(2) DEFENCE OF INDIA RULES, 1939.
(3) EXTRADITION ACT (15 OF 1903), SS. 3, 7.

—admission to — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 498.

—bond—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 499.

—in bailable cases—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 496.

—in non-bailable cases—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 497.

—reduction of—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 498.

BAILABLE OFFENCE

—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 4 (1) (b).

BAIL BOND

—*See* CRIMINAL PROCEDURE CODE, SS. 514-516.

BALUCHISTAN
—*See* CRIMINAL PROCEDURE CODE, S. 82.

(BANGALORE) CITY OF BANGALORE IMPROVEMENT ACT (V of 1945)
—S. 25 (1).
——*Forming lay-out—What is—Attempt to form lay-out.*
When a person begins to form sites by fixing stones to demarcate the line between site and site and between sites and roads, circles and lanes, he is clearly laying out and forming. If after he begins to do so he is prevented from accomplishing it, his act is an attempt that failed. Nevertheless it is an attempt to form a lay-out. It is sufficient if the purpose of the lay out is the construction of buildings. It is not necessary that any building should be actually put up before it could be said that a lay-out is formed. *(Balakrishnaiya and Mallappa JJ.)* GOVT. OF MYSORE v. MALAVALLI THIMMIAH,
AIR 1951 Mys 51=
ILR (1951) Mys 370=52 Cr L J 590.

BANKER AND CUSTOMER
——Deposit in bank — Nature of—*See* Penal Code (1860), S. 405.
1950 A L J 808.

BANKERS' BOOKS EVIDENCE ACT (XVIII of 1891).
—S. 5.
——*Right of Police Officer to inspect books.*
Where a Police Officer investigating a charge under S. 420, Penal Code, against a customer of a Bank asks for inspection of his accounts in the Bank, S. 5, Bankers' Books Evidence Act, does not prevent the Police from inspection of the books of the Bank even without the order of a Court, as proceedings before him during investigation are not legal proceedings within S. 5. *(Skemp J.)* PRICE A. F. G. v. EMPEROR,
AIR 1937 Lah 160=17 Lah 593=
38 P L R 1042=9 R L 515=
167 I C 555=38 Cr L J 435.

——*Ss. 5, 2—'Evidence,' meaning of—Proceedings before Police Officer, if legal proceedings.*
'Evidence' in the Bankers' Books Evidence Act, has the same meaning as in the Evidence Act, and as evidence is not given before a Police Officer, proceedings before him are not 'legal proceedings' as defined in that Act. Statements made by persons during investigation to a Police Officer are not made on oath; they need not be signed; they need not be made in the presence of the accused; and they are not subject to cross-examination, *i.e.*, they lack many of the characteristics of 'evidence.' They can only be used as evidence within narrowly restricted limits. *(Skemp J.)* PRICE A. F. G. v. EMPEROR,
AIR 1937 Lah 160=
17 Lah 593=38 P L R 1042=9 R L 515=
167 I C 555=38 Cr L J 435.

—S. 6.
——*Provisions of Criminal P. C., if affect the Act.*
The Bankers' Books Evidence Act is a special Act dealing with the subject.matter of bankers' books, and being a special Act, the provisions of the Criminal Procedure Code, do not in any way conflict. So a Bank has under S. 6 of the Bankers' Books Evidence Act, a statutory right to object to any order directing inspection to be given of their books though the order is one under S. 94, Criminal Procedure Code. The order must be deemed to have been made under S. 6 of the Banker's Books Evidence Act and where it is made without hearing the Bank, it is not binding on it. *(Beaumont C. J., Rangnekar and Norman JJ.)* CENTRAL BANK OF INDIA LTD. v. P. D. SHAMDASANI,
AIR 1938 Bom 33=39 Bom L R 1187=
10 R B 291=I L R (1938) Bom 119=
172 I C 684=39 Cr L J 207 (SB).

BANKERS' BOOKS EVIDENCE ACT (XVIII of 1891), S. 6

BANKING COMPANIES ACT (X of 1949).
—S. 45A.
——*Ss. 45-A, 45-C—Summary trial.*
The proper and competent Court contemplated by the scheme of the Act would only be the High Court and not the Presidency Magistrate's Court, even if the offence has been tried in a summary way. *(Govinda Menon and Basheer Ahmed Sayeed JJ.)* J. LOOMCHAND SAIT v. THE OFFICIAL LIQUIDATORS,
AIR 1953 Mad 595=
1953-1 M L J 514=(1953) 23 Com Cas 142=
1953 Cr L J 1142.

—S. 45-C.
——Summary trial — Proper Court — *See* ibid, S. 45-A
AIR 1953 Mad 595=
1953 Cr L J 1142.

——*Summary trial.*
Merely because the procedure followed has been that of a warrant case, while the case is being tried in a summary way, it cannot be said that the Judge dealing with proceedings for the winding up of the Banking company was not competent to try the offence. *(Govinda Menon and Basheer Ahmed Sayeed JJ.)* J. LOOMCHAND SAIT v. THE OFFICIAL LIQUIDATORS,
AIR 1953 Mad 595=
1953-1 M L J 514=(1953) 23 Com Cas 142=
1953 Cr L J 1142.

—S. 45-G.
——*Absence of rules.*
It cannot be validly urged that the proceedings that have been instituted and have been investigated into by the Judge sitting on the Original Side and dealing with company matters are without jurisdiction or that they are in any way defective or vitiated by reason of the non-framing of the rules under S. 45G. *(Govinda Menon and Basheer Ahmed Sayeed JJ.)* J. LOOMCHAND SAIT v. THE OFFICIAL LIQUIDATORS
AIR 1953 Mad 595=
1953-1 M L J 514=(1953) 23 Com Cas 142=
1953 Cr L J 1142.

BANKING COMPANIES (AMENDMENT) ACT (XX of 1950).
—S. 11.
——*Scope—Prosecution on direction of winding up Judge, in addition to orders of local Government in respect of offence under S. 477-A, Penal Code—S. 11 does not apply.*
Section 11, Banking Companies (Amendment) Act, 1950, does not require all offences under the Indian Penal Code which are not punishable also under the Companies Act, to be tried by a Judge of the High Court as against a managing director, directors, officers and so on. Offences such as forgery and criminal breach of trust, even if they are disclosed in the course of the winding up have to be tried by the ordinary Courts not inferior to that of a Presidency or First Class Magistrate under S. 278 (1) of the Companies Act, and the procedure under

BANKING COMPANIES (AMENDMENT) ACT (XX of 1950), S. 11

S. 237 (1) for prosecution of such cases on a direction of the winding up Court, by the liquidator is left undisturbed. Whatever "criminal proceedings" may mean, it cannot apply to the case prosecuted on the direction of the winding up Judge in addition to the orders of the local Government and sanction afforded under S. 196-A of the Cr. P. C., in respect of a non-cognizable offence under S. 477-A, I. P. C. *(Mack and Somasundaram JJ.)* N. SWAMINATHA IYER, IN RE,

AIR 1952 Mad 727=
1952 M W N (Cr) 116=1952 M W N 411=
1952 Cr L J 1564.

——*Ss. 11 and 45 (c)—"Which has arisen out of or in the course of such winding up"—Meaning of—Banking Companies Ordinance (1949), S. 3.*

A Court winding up a banking concern has jurisdiction only in those cases which are punishable under the Companies Act and in which the sentence does not exceed two years or fine does not exceed Rs. 1000. In other cases the Court winding up the Company will have no jurisdiction and the trial will have to be in the Court which had jurisdiction to take cognizance of the offence. This being the clear provision as regards cases which arise after the coming into force of the Banking Companies Ordinance and the Banking Companies (Amendment) Act, the transitory provision, contained in S. 3 of the Ordinance and S. 11 of the Act should be deemed not to have any wider significance. Even apart from this consideration the words "which has arisen out of or in the course of such winding up" can only refer to offences which a winding up Court would take cognizance of in the course of the winding up proceedings which would be only offences punishable under the Companies Act as provided for in S. 45 (c) of the said Act. A complaint filed by a private person under Ss. 406 and 420, Penal Code, against the manager and the secretary of a bank is not a matter in which the Official Liquidator is at all interested. In the winding up proceedings, the Official Liquidator cannot take any steps against the manager and the secretary for what they are alleged to have done against the complainant. The case pending in the Court of the Special Magistrate against the manager and the secretary does not stand transferred to the High Court where the winding up proceedings were commenced. *(Malik C. J. and Mushtaq Ahmad J.)* U. P. UNION BANK LTD. v. AKHTAR HUSSAIN,

AIR 1952 All 848=
1952 A W R (HC) 302=1952 A L J 36=
1952 Cr L J 1525.

—S. 45.

——*S. 45 (c)*—"Which has arisen out of or in the course of such winding up"—Meaning of—*See* ibid, S. 11. AIR 1952 All 848=
1952 Cr L J 1525.

BANKING COMPANIES (AMENDMENT) ORDINANCE (23 of 1949)

—S. 3.

——"Which has arisen out of or in the course of such winding up"—Meaning of—*See* Banking Companies (Amendment) Act (1950), Ss. 11 and 45 (c)
AIR 1952 All 848=1952 Cr L J 1525.

BANK NOTES

—Counterfeiting—*See* PENAL CODE (45 OF 1860), S. 489-A.

BAR

—of trial for same offence — *See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 403.

—to fresh trial — *See* CRIMINAL PROCEDURE CODE, S. 403.

—to prosecution — *See* CRIMINAL PROCEDURE CODE, S. 403.

BAR COUNCILS ACT (XXXVIII of 1926).

See also (1) LEGAL PRACTITIONER.
(2) LEGAL PRACTITIONERS ACT.

—S. 1.

——*S. 1 (3)—Applicability to amalgamated High Court at Allahabad.*

The Indian Bar Councils Act, with the exception of certain sections is not applicable to the new High Court established by the U. P. High Courts (Amalgamation) Order, 1948, without a previous notification in terms of S. 1 (3) of that Act. *(Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan and Mukherjea JJ.)* SIR IQBAL AHMAD v. THE ALLAHABAD BENCH OF THE HIGH COURT, ALLAHABAD, AIR 1950 F C 71=
1949 F C R 813=1950 S C J 131=
51 Cr L J 1035 (FC).

——Ex Judge of Allahabad High Court practising as Advocate of Avadh Chief Court—Order by Chief Justice prohibiting him from practising before new High Court sitting at Allahabad—Order is valid.
—*See* U. P. High Courts (Amalgamation) Order (1948), Art. 8. AIR 1950 All 162=
51 Cr L J 513.

——*S. 1 (3)*—Applicability in Mysore—*See* Mysore Legal Practitioners Act S. 11.
AIR 1952 Mys 103.

—S. 3.

——*Ss. 3 to 16*—Applicability in Mysore—*See* Mysore Legal Practitioners Act S. 11.
AIR 1952 Mys 103.

—S. 4.

——*Ss. 4 to 8* — Sections 4, 5, 6, 7 and 8, Bar Councils Act, should be read together. *(Davis J. C. Rupchand Bilaram and Lobo A. J. Cs.)* UDHARAM PAHLAJRAI, IN RE,

AIR 1936 Sind 75=9 R S 9=
163 I C 510 (SB).

—S. 5.

——*S. 5 (2) — Rules under Act — Rr. 21, 16 — Rule 21, if* ultra vires *of S. 5 (2).*

While it is true that under the provisions of S. 5 (2), Bar Councils Act, the term of office of the members of the first Bar Council is to be three years, there is nothing in the section which prevents rules being framed whereby certain members elected to the first Bar Council may continue in office thereafter so that a certain continuity may be maintained between the first Bar Council and its successor; consequently, R. 21, framed under the Act is not *ultra vires* of S. 5 (2). *(Davis J. C., Rupchand Bilaram and Lobo A. J. Cs.)* UDHARAM PAHLAJRAI, IN RE A I R 1936 Sind 75=
9 R S 9=163 I C 510 (S B).

—S. 6.

——*Ss. 6 (1) (b), S. 6 (4)—Rules under—Scope of.*

Under S. 6 (1) (b) and (4) of the Bar Councils Act rules may be made to provide for the retirement of members from office by rotation, and for the manner in which the order of such retirement

shall be determined, and there appears no reason to suppose that the powers conferred by this section and rules made thereunder should not relate to the first Bar Council but only to its successors. *(Davis J. C. Rupchand Bilaram and Lobo A. J. Cs.)* UDHARAM PAHLAJRAI, IN RE
A I R 1936 Sind 75=9 R S 9=163 I C 510 (S B).

——*Rules under — Bar Council (Sind) Rules, R. 16—If restricted to any one member.*

Rule 16 is not restricted only to the election of any one candidate: the singular covers the plural and the validity of the election of all the elected members can be challenged. *(Davis J. C. Rupchand Bilaram and Lobo A. J. Cs.)* UDHARAM PAHLAJRAI, IN RE
A I R 1936 Sind 75=9 R S 9=163 I C 510 (S B).

——*Statutory body must follow law strictly to which it owes its existence.*

It is incumbent upon a statutory body to strictly follow the law to which it owes its creation and existence and the rules which are framed in accordance with the statute creating it and defining its powers and duties. This is all the more incumbent in the case of a learned and professional body like the Bar Council, which must be presumed to know the law and its implications. *(Thom and Harris JJ. and Sir Tej Bahadur Sapru)* ELECTION OF BAR COUNCIL, IN THE MATTER OF
A I R 1935 All 295=8 R A 145=1935 A W R 110=157 I C 220=1935 All L R 747 (S T).

——*When election can be set aside.*

Before a Court will set aside an election because of any irregularities, it must be satisfied that the election was not an election in substance conducted under existing election law according to the rules framed for the holding of the election. *(Thom and Harris JJ. and Sir Tej Bahadur Sapru.)* ELECTION OF BAR COUNCIL, IN THE MATTER OF
A I R 1935 All 295=8 R A 145=1935 A W R 110=157 I C 220=1935 All L R 747 (S T).

——*S. 6 (2)—Omission to follow—Effect.*

Omission on the part of the Bar Council strictly to follow the provisions of the law as laid down in S. 6 (2) is to be regretted. [It was held however, that it did not amount to an illegality and was no more than an irregularily]. *(Thom and Harris JJ., and Sir Tej Bahadur Sapru.)* ELECTION OF BAR COUNCIL, IN THE MATTER OF
A I R 1935 All 295=1935 A W R 110=8 R A 145=157 I C 220=1935 All L R 747 (S T).

—S. 8.

——*Ss. 8 (2), 14 (1) — U. P. High Courts (Amalgamation) Order (1948), Art. 8 (2), Proviso—Absence of Roll of Advocates after Amalgamation Order—Advocates enrolled before Order—Right to practise before new High Court.*

A whose name was on the Roll of Advocates of the old Allahabad High Court, was elevated to the Bench. After his retirement, *A* caused his name to be removed from that roll and enrolled himself as an Advocate of the Chief Court of Oudh. On passing of the U. P. High Courts (Amalgamation) Order, 1948 :

Held that (1) *A* could not lay any claim to statutory right under S. 14 (1) of the Act;

(2) that whatever rights he had acquired, he had acquired under the proviso to Art. 8 (2) of the Order;

(3) that the question of the *A's* rights under the Bar Councils Act being taken away by that Order could not arise. *(Kania C. J., Fazl Ali, Patanjali Sastri; Mahajan and Mukherjea JJ.)* SIR IQBAL AHMAD v. ALLAHABAD BENCH OF THE HIGH COURT, ALLAHABAD
A I R 1950 F C 71=1949 F C R 813=1950 S C J 131=51 Cr L J 1035 (F C).

——*Ss. 8 and 9—Allahabad Bar Council Rules — Refugee Advocates are not debarred from enrolment—Bar Council Rules (Oudh).*

The Avadh Bar Council even after the amalgamation is still functioning and the refugee advocates, who apply for enrolment there, are enrolled under the rules framed by the Avadh Bar Council as advocates of the High Court of Judicature at Allahabad. The Allahabad Bar Council and the Allahabad High Court should not debar the refugees from enrolment simply because they have chosen to apply in Allahabad instead of in Lucknow. *(Malik C. J. and Agarwala J.)* IN THE MATTER OF REFUGEES ADVOCATES
A I R 1949 All 511=1949 A W R H C 1=1949 A L J 1.

——Rangoon Advocates' Admission Rules, 1930, R. 5 (1)—Powers of Supreme Court—Admission of advocate—Application for, before Supreme Court—Bar Council not functioning due to Japanese occupation — No notice sent to it: *Held* that Supreme Court was duly constituted Court exercising functions and powers of High Court, which included power to enrole advocates — Statutory requisite to give notice to Bar Council could be dispensed with under circumstances — Orders of Supreme Court have same effect as orders made by High Court — Present Court as successor Court could not sit over judgment over official act of said Court. *(U On Pe, U San Maung and U Aung Tha Gyaw JJ.)* IN THE MATTER OF U KHIN MAUNG
1948 Bur L R 504.

——*S. 8 (2)* — Person enrolled as advocate in Bombay High Court under S. 8 (2), is entitled to practise in Courts subordinate to Patna High Court—*See* Bar Councils Act (38 of 1926), S. 14 (b)
A I R 1946 Pat 369 (SB).

——*Madras High Court Rules, Rr. 1 (i) and (ii), 16, Proviso—Advocate of Rangoon—Whether can be enrolled as Advocate of Madras.*

The petitioner who was an Advocate of the Rangoon High Court applied for enrolment as an Advocate of the Madras High Court. He was an Indian and was born in Madras but hitherto had only practised in Burma. As the result of the invasion of Burma by the Japanese he returned to the land of his birth and wished to practise his profession in Madras. He held the degree of Bachelor of Arts and the degree of Bachelor of Laws of the University of Rangoon and it was on these qualifications that he was enrolled as an Advocate of the Rangoon High Court some 17 years ago. The Madras Bar Council considered the Advocate's case and recommended to the

BAR COUNCILS ACT (XXXVIII of 1926), S. 8

High Court that he be enrolled without the necessity of complying with the requirement of its rules :

Held, that the Advocate could not claim admission under R. 1 (ii), because the Rangoon High Court had never reciprocated with Madras High Court or in fact with any other Court in British India. Having, however, obtained the law degree of the Rangoon University at a time when that University was a University established by law in British India, the petitioner could claim admission under R. 1 (i).

Held, further that the case was a fit one for granting an exemption under R. 16, Proviso and the petitioner should be enrolled as an Advocate of the Madras High Court. *(Leach C. J., Krishnaswami Ayyangar and Somayya JJ.)* IN RE CHITTOOR KRISHNA SWAMI

A I R 1942 Mad 455=55 M L W 327=(1942) 1 M L J 599=I L R (1942) Mad 663=1942 M W N 763=15 R M 481=202 I C 306 (S B).

——*S. 8 (1)—Rangoon High Court.*

Until the separation of Burma in 1937, the Rangoon High Court was a High Court within the meaning of the Bar Councils Act, but as the result of the separation, the Act no longer applies to it. *(Leach C. J., Krishnaswami Ayyangar and Somayya JJ.)* IN RE CHITTOOR KRISHNASWAMI

A I R 1942 Mad 455=55 M L W 327=(1942) 1 M L J 599=I L R (1942) Mad 663=1942 M W N 763=15 R M 481=202 I C 306 (S B).

—S. 9.

——*Rules under (Allahabad) — R. 1, Proviso 2—"High Court"—Meaning of.*

The Banaras Chief Court cannot be looked upon as a High Court or a Chief Court within the meaning of the Act. *(Sapru and C. B. Agarwalla JJ.)* IN RE BHOLA NATH SRIWASTAVA ADVOCATE

A I R 1952 All 417=1951 R D (H C) 269=1951 A W R (H C) 612=1952 A L J 44.

——*Rules under, R. 1, Proviso 2 (All)—Advocate of other High Court—Non-possession of degree in Arts, Science or commerce of recognized university, if bar to his admission to Allahabad High Court bar.*

The second proviso was intended to provide an exception in the case of a person who happens to be an advocate of not less than two years' standing of any other High Court, provided he is a graduate in Law as referred to in Rule 1, namely, a graduate of a University established by law in India. There is a distinct and separate reference in Rule 1 to the fact that he must be a graduate in Arts, Science or Commerce of any Indian University. Therefore, the words "as referred to in Rule 1" in the second proviso can only mean that the applicant must be a graduate in law of an Indian University and cannot also be taken to mean that he must also be a graduate in Arts, Science or Commerce of such University.

The words "otherwise eligible under the rules" in R. 1, Proviso 2 have reference to eligibility under some rule other than the substantive part of Rule 1. *(Sapru and Agarwala JJ.)* IN RE HOTCHAND SUNDARDAS

A I R 1951 All 856=1951 A L J 574=1951 A W R (H C) 595.

BAR COUNCILS ACT (XXXVIII of 1926), S. 9

——Allahabad Bar Council Rules—Refugee Advocates are not debarred from enrolment—*See also* ibid, Ss. 8 and 9 A I R 1949 All 511.

——*Bar Council Rules (Allahabad), R. 1, Proviso (7) — Recommendation of District Judge for enrolment can be waived.*

The Allahabad High Court, in its discretion, can waive R. 1, Proviso (7), so far as it requires the recommendation of the District Judge for enrolment. *(Malik C. J. and Agarwala J.)* IN THE MATTER OF REFUGEE ADVOCATES

A I R 1949 All 511=1949 A W R H C 1=1949 A L J 1.

——*Bar Council Rules (Allahabad), R. 1, Proviso (2)—"High Court"—Meaning.*

It is not necessary to interpret the word "High Court" in the second proviso to R. 1, as meaning only a High Court to which the Bar Councils Act applied. Any High Court in India, although the Bar Councils Act is not made applicable to it (e. g., Lahore or Peshawar) is included. *(Malik C. J. and Agarwala J.)* IN THE MATTER OF REFUGEES ADVOCATES

A I R 1949 All 511=1949 A W R H C 1=1949 A L J 1.

——*Oudh Civil Rules, Chap. VII, R. 285.*

Expression "Advocate of not less than ten years' standing in Oudh" in R. 285, Oudh Chief Court Civil Rules Chap. VII, should be interpreted to mean an Advocate of the Chief Court who is of not less than ten years' standing as an Advocate in Oudh—Person called to the Bar in January 1933, who has read in the chambers of an Advocate who was enrolled as Advocate of the Chief Court in 1928 and enrolled as first grade pleader in 1916 is not eligible for enrolment as an Advocate of the Chief Court. *(King C. J. and Ziaul Hasan J.)* HARI KRISHNA LAL, IN THE MATTER OF ENROLMENT OF

A I R 1936 Oudh 115=159 I C 261=11 Luck 583=1935 O L R 656=8 R O 168=1935 O W N 1225.

——*Rules by Sind Court.*

An application for admission as Advocate is required to be accompanied by a diploma or a certificate or other proof that the applicant has taken the degree. Certificate from the District Court that he has been allowed to practise there, is not sufficient. *(Ferrers J. C. and Davis A. J. C.)* MUTHUSAMI AIYER GOPALA AIYER, IN THE MATTER OF

A I R 1935 Sind 196=1935 Cr Cas 1061=8 R S 54=158 I C 707.

——*Rules by Karachi Bar Council, Chap. 2, R. 4, Cl. (h)—Application for enrolment as Advocate.*

Before the order for admission can be made, there must be an application. Before that application can be presented, there must be a receipt annexed to it, and before that receipt can be issued there must be payment of fees. Consequently, an application will be dismissed because of absence of this receipt from the applicant. *(Ferrers J. C., Rupchand Bilaram and Davis A. J. Cs.)* RATILAL KHIMSHANKER RAWAL, IN THE MATTER OF

A I R 1935 Sind 180=8 R S 35=158 I C 57 (SB).

—S. 10.

SYNOPSIS

1. Conviction.
2. Discretion of Court.
3. Disciplinary action.

BAR COUNCILS ACT (XXXVIII of 1926), S. 10

4. Duty towards clients.
5. Misconduct—Evidence and proof.
6. Misconduct—General.
7. Misconduct—Instances.
8. Nature of proceedings.
9. Re-admission.
10. Reference to Bar Council.

1. Conviction.

——*Misconduct—Disciplinary action—(Criminal P. C. (1898), S. 162).*

In an enquiry under S. 10 (1), Bar Councils Act, an advocate was charged that (1) he asked for and was supplied with a copy of statement under S. 162, Criminal P. C., of a witness examined by police, even though he was not cited as a witness in the Sessions Court, by misleading the Court into thinking that he was such a witness, and (2) that in a trial for rape, he attempted to put to the prosecutrix some indecent and unnecessary questions which were disallowed by the Court. The High Court held that the action of the advocate mentioned in the first charge was a piece of sharp practice unworthy of a member of the Bar amounting to professional misconduct and that the conduct referred to in the second charge reflected on his capacity as a lawyer. He was, therefore, suspended from practice for six months. On an appeal to Supreme Court:

Held, that regardless of the motive of the Advocate, the Court also had failed to exercise its jurisdiction in not refusing the application in view of the express provisions of S. 162, Criminal P. C., and that the Advocate's conduct in obtaining the copy would not be called a piece of sharp practice justifying suspension from practice.

That with regard to the second charge the subject-matter of the questions and the manner in which they were put did suggest that the Advocate exceeded the legitimate bounds of his privilege to some extent. But in view of all the circumstances of the case, the case did not deserve the severe disciplinary action such as suspension from practice for six months and the ends of justice would be served by letting of the advocate with a warning. *(Mahajan, B. K. Mukherjea, Ghulam Hasan, Bhagwati and Jagannadha Das JJ.)* SHIV NARAIN JAFA v. HON'BLE JUDGES OF THE HIGH COURT (ALLAHABAD)

A I R 1953 S C 368=1953 S C A 636=
1953-2 Mad L J 238=1953 S C J 529=
1953 Cr L J 1459 (S C).

——*Conviction for criminal offence — High Court's discretion.*

Held, (1) that the fact that the Advocates concerned had been convicted of a criminal offence was evidence of their misconduct within the meaning of S. 10 (1) of the Bar Councils Act and this misconduct, though not committed in their professional capacity, entitled the Court to take disciplinary action against them :

(2) that where in the exercise of their statutory discretion, the Judges proceed to consider whether in the circumstances the misconduct so proved called for any disciplinary action, whether in the nature of reprimand, suspension, or removal from practice and decide that it does not, this action in

thus exercising their discretion is not such as can be considered by the Privy Council :

(3) that it was not incumbent on the Advocate-General to adduce evidence of the grounds on which the convictions were based. It was for the Court to decide whether conviction of having been a member and having assisted and managed the operations of an unlawful association having for its object interference with the administration of the law or with the maintenance of law and order and constituting a danger to the public peace, was evidence of such misconduct on the part of an Advocate as to render him unfit for the exercise of his profession, or to call for the Court's censure. It was for the impugned Advocate to adduce any considerations which might induce the Court to refrain from taking disciplinary action :

(4) that Judges did not misdirect themselves in law as to their powers in the exercise of their discretion and, that being so, it would not be fitting to express any opinion by way of agreement or otherwise on the considerations upon which they proceeded in deciding to refrain from any disciplinary action. *(Lords Btanesburgh and Mackmillan and Sir Lancelot Sanderson.)* ADVOCATE-GENERAL OF BOMBAY v. PHIROZ RUSTOMJI BHARUCHA

A I R 1935 P C 168=42 M L W 480=
69 M L J 431=8 R P C 33=1935 O L R 517=
1935 A L R 870=1935 O W N 964=1 B R 828=
1935 M W N 913=37 Bom L R 722=
39 C W N 1281=1935 A L J 1092=
1935 Cr Cas 1059 (2)=59 Bom 676=
62 Ind App 235=157 I C 428 (P C).

——*Criminal offence — Enquiry before prosecution, impropriety of.*

Per *Reilly J.* — When an advocate is accused of a grave criminal offence, for which no private complaint is required, to deal with him under the Bar Councils Act for the misconduct involved in the commission of that offence before he has been tried for the offence is altogether improper. If he is guilty of the criminal offence he should be punished for it as if he was an ordinary member of the public. If he is tried and convicted of it, then on the basis of that conviction he can be dealt with appropriately under the Bar Councils Act. *(Waller, Reilly and Ananthakrishna Ayyar JJ.)* IN THE MATTER OF S. VENKATACHARI

A I R 1932 Mad 131=34 M L W 19=
61 M L J 148=Ind Rul (1931) Mad 785=
54 Mad 857=134 I C 33=32 Cr L J 1085 (FB).

——*Duty of High Court in matter of evidence.*

For the purpose of considering the propriety of the order which has to be passed, the High Court can also take into account the fact that the conviction rested not on direct but on merely circumstantial evidence. *(Wazir Hasan, Raza and Nanavutty JJ.)* IN THE MATTER OF AN ADVOCATE

A I R 1931 Oudh 161=
8 O W N 267=Ind Rul (1931) Oudh 179=
1931 Cr Cas 433=131 I C 67=
32 Cr L J 625 (F B).

——*Cases of Pleader and Advocate — Procedure to be followed.*

The mere fact of a conviction of any criminal offence implying moral turpitude can be a sufficient basis in law for an order of suspension or dismissal of a Pleader or a *mukhtar* only, but not

BAR COUNCILS ACT (XXXVIII of 1926),

S. 10—1. Conviction

of a Vakil whose cases of misconduct are not provided for by the Legal Practitioners' Act but by para. 8 of the Letters Patent. A case of misconduct against an Advocate under the Bar Councils Act must proceed on an inquiry. *(Wazir Hasan, Raza and Nanavutty JJ.)* IN THE MATTER OF AN ADVOCATE A I R 1931 Oudh 161=8 O W N 267=Ind Rul (1931) Oudh 179=1931 Cr Cas 433=131 I C 67=32 Cr L J 625 (F B).

——*S. 10 (2)—Conviction, whether conclusive on question of guilt — Punishment — Discretion of Court.*

Where an Advocate is convicted for an offence, and proceedings are thereupon taken against him for professional misconduct under the Bar Councils Act, 1926, the High Court has no jurisdiction, original or appellate, to decide the question whether the Advocate is guilty of the offence or not. The judgment of the Criminal Court is conclusive on the question.

The mere fact that the person has been convicted of a criminal offence does not make it imperative on the Court to strike him off the roll. The Court has a discretion in the matter and for the purpose of enabling the Court to exercise its discretion in the matter of the propriety of the order or the measure of the disciplinary sentence which it should pass in the particular case the Court has jurisdiction to inquire into the nature of the offence. *(Wazir Hasan, Raza and Nanavutty JJ.)* IN THE MATTER OF AN ADVOCATE A I R 1931 Oudh 161=8 O W N 267=Ind Rul (1931) Oudh 179=1931 Cr Cas 433=131 I C 67=32 Cr L J 625 (F B).

2. Discretion of Court.

——*S. 10 (1)—Jurisdiction of Court to take action—Discretion of Court, exercise of.*

The words professional or other misconduct in S. 10 (1), Bar Councils Act should be read in their plain and natural meaning. By the words aforesaid the Legislature intended to confer on the Court jurisdiction to take action in all cases of misconduct, misconduct in a professional or other capacity. The word "may" in sub-s. (1) of S. 10 of the Act makes it plain, that while the jurisdiction of the Court is not restricted but extends to all cases of misconduct, a discretion is left to Court to take action in suitable cases only. With regard to the exercise of the Court's discretion in a case of this nature, or for the matter of that in any other case, it is not possible to lay down any hard and fast rule, and the exercise of the discretion will often have to be varied with changing conditions. No general principles can or ought to be laid down fettering the Court's discretion, except that it must be exercised judicially. *(Mukerji Ag. J. C., Lort-Williams and S. K. Ghose JJ.)* IN THE MATTER OF N., AN ADVOCATE A I R 1936 Cal 158=40 C W N 366=8 R C 575=1936 Cr Cas 321=63 Cal 867=162 I C 170=37 Cr L J 534 (S B).

3. Disciplinary action.

——*Misconduct of advocate or pleader — Conviction is evidence of misconduct—Court should consider nature of disciplinary action — Pleader defaming police officer by alleging that he had taken money from accused and referred case as undetectable—Reprimand is sufficient.*

The conviction of an advocate or a pleader of a criminal offence is evidence of misconduct within the meaning of S. 10 and it is for the Court to consider whether the disciplinary action called for should be in the nature of a reprimand, suspension or removal from practice :

The offence of defamation committed by a pleader against the investigating Sub-Inspector of Police by alleging in a case in which he was pleader for the complainant, that he had taken money from the other side and referred the case as undetectable and that he would have referred it as false if he had been paid an extra sum does involve moral turpitude, but his action does not involve such a degree of moral turpitude as to warrant the Court in imposing the severe penalty of suspension from practice. Reprimand is sufficient in such a case. *(Leach C. J. and Lakshmana Rao and Kuppuswami Ayyar JJ.)* IN RE A PLEADER A I R 1946 Mad 247=59 L W 63=(1946) 1 M L J 95=1946 M W N 104=225 I C 101=I L R (1946) Mad 459=47 Cr L J 686 (F B).

——*S. 10 (1), (2)—Misconduct of purely professional character and misconduct which also lies within ambit of criminal law.*

The jurisdiction under the Bar Councils Act, 1926, is one which ought to be circumspectly exercised. It is true that the Act by S. 10 (1) gives to the High Court a very wide field of misconduct over which to exercise its jurisdiction. Its jurisdiction extends over "any Advocate of the High Court whom it finds guilty of professional or other misconduct." Though it is true that a deliberate fraud of a criminal character committed on a client must necessarily amount to a professional misconduct in an Advocate, it does not follow, that the special tribunal created by the Bar Councils Act is one which ought necessarily to deal at any rate, in the first place, with every case in which an Advocate is charged with committing a fraud or other crime in relation to his professional practice. A distinction should be drawn between that species of misconduct which is of a purely professional character and misconduct which also lies within the ambit of the criminal law. In the former case, a special tribunal such as that which is contemplated by the Bar Councils Act is a proper one to deal exclusively with purely professional delinquencies. But whether it was the intention of the Act that a tribunal under it should in all cases usurp the functions of a Criminal or Civil Court merely by reason of the accident of the person complained against being an Advocate and the subject-matter of the complaint being a matter connected with his professional practice, is doubtful. In a simple case, such as a charge of misappropriation it is not to exercise the normal functions of a Criminal or Civil Court. To do so in every case would lay the jurisdiction of the Act open to grave abuse. This is a matter which should be dealt with under S. 10, Bar Councils Act, 1926, only after the complainant has taken such steps, if any, as he may be advised to take to establish either the guilt of the practitioner in

question in a Criminal Court or his liability in a Civil Court. Should either of those proceedings be taken and terminate in the framing of the charges levelled by the complainant against the Advocate in question, then it will be possible for him to approach the High Court again under the Bar Councils Act. *(Collister, Bajpai and Braund JJ.)* IN THE MATTER OF H., AN ADVOCATE
A I R 1941 All 280=1941 O W N 841=
1941 A L J 390=I L R (1941) All 592=
14 R A 19=195 I C 116=
42 Cr L J 673 (S B).

——*S. 10 (1)—Legal Practitioners Act (XVIII of 1879), S. 12—Contempt of Court in his capacity as suitor.*

An Advocate or Pleader is punishable in his professional capacity for misconduct other than professional misconduct. The intention of the Legislature in this respect is clear from S. 10, sub-s. (1) of the Bar Councils Act.. Each case should be dealt with according to the circumstances. *(King and Iqbal Ahmad JJ.)* IN RE R., A PLEADER
A I R 1933 All 224=
1933 A L J 251=1933 Cr Cas 385=
55 All 148=6 R A 171=145 I C 847.

——*Advocate acting in personal capacity—Imputations against Judge.*

Where an Advocate makes false allegations involving imputation on the fairness and impartiality of Judicial Officers in proceedings to which the Advocate himself is a party, he should not be dealt with for professional misconduct under the Bar Councils Act.

An Advocate was charged with having verified an application falsely and endeavoured to deceive the Court and to deprive the decree-holder of money due to him. It appeared that the Advocate was not acting for a client in this matter but in his personal capacity in his own litigation, and that the complainant filed the complaint at the instance of a third person who had been engaged in litigation with the Advocate. The Advocate had suffered heavy expenses in defending himself and nobody had suffered by his action :

Held, that under the circumstances suspension of the Advocate from practice for three calendar months would be sufficient punishment. *(Young, Pullan and Niamatullah JJ.)* IN THE MATTER OF ADVOCATE OF BENARES
A I R 1932 All 492=1932 A L J 773=
54 All 912=Ind Rul (1933) All 132=
142 I C 564 (S B).

——As a genegral rule the only step which can be taken against an Advocate who abuses his privilege is for the Court to take disciplinary action. *(Beaumont C. J. and Broomfield J.)* RAMKRISHNA V. DAVAR
A I R 1932 Bom 199=
34 Bom L R 443=1932 Cr Cas 303=
Ind Rul (1932) Bom 401=138 I C 543.

4. Duty towards clients.

——*S. 10 (1)—Duty of advocate—Young advocate taking liberty with client's money — No criminal intention—Reprimand held sufficient.*

An Advocate practising the law is under a triple obligation to his clients to be faithful to them unto the last, an obligation to. the profession not to besmirch its name, or injure its credit by anything

done by him, and an obligation to the Court to be and to remain a dependable part of the machinery through which justice is administered. The clients are entitled to be protected from an Advocate who is lifiely to betray them; the profession cannot afford to have a member who fails in keeping to the required standard of conduct; and the Court cannot overlook breaches of professional faith. Where, therefore, liberty has been taken by an Advocate with money belonging to his clients absence of an intention to misappropriate may be a good answer to a criminal charge, but it is no answer to a charge of professional misconduct which cannot be overlooked. But there are degrees of misconduct and the punishment must in justice be adusted to the needs to the case.

Thus where a young advocate enrolled in 1948 lent the money of his client to his near relation who was in distress for a short period and subsequently made good the money though not in time, and had no criminal intention :

Held that his misconduct could not be overlooked but reprimanding him would be sufficient in the case. *(Chakravartti, K. C. Chunder and P. B. Mukharji J. C.)* IN RE N. K. SEN,
A I R 1952 Cal 551=
1952 Cr L J 1249 (FB).

——*Advocate refusing to examine certain witnesses—No misconduct.*

Until the authority conferred upon the Advocate to act, plead or appear is withdrawn, he can exercise his discretion in examining or refusing to examine any particular witnesses. Although there may be circumstances in which want of *bona fides* may be attributed to an advocate when there are no circumstances showing want of *bona fides* on his part he is perfectly within the scope of his authority in refusing to examine certain witnesses and cannot be blamed for his decision. *(Kunhi Raman C. J., Koshi and Subramania Iyyer JJ.)* IN RE ADVOCATE,
A I R 1952 Tra.-Co. 165=
1952 K L T 177 (FB).

——*Allahabad Bar Council Rules, R. 3—Council consulted by one party when can accept brief for the opposite party.*

An Advocate who has been consulted by one party to a litigation may not appear on behalf of the other party, if the first party has conveyed to him any information of a confidential nature regarding the dispute between the parties. In this connection reference may be made in the first place to R. 3 of the Bar Council Rules framed by the Bar Council of the Allahabad High Court under the Bar Councils Act of 1926. An Advocate who has been consulted by one party is perfectly free to accept a brief against him, if he has not received from him any information of a confidential nature which would be of use against that party in the litigation. The law is not that once an Advocate has been consulted by one party, he may not accept a brief against that party, no matter what may have been the nature of the information conveyed to him during the course of the consultation. No doubt litigants are entitled to protection against unscrupulous members of the legal profession; but the members of the legal profession are equally entitled to protection against unscrupulous litigations and if the law were that once a Counsel was

BAR COUNCILS ACT (XXXVIII of 1926), S. 10 — 4. Duty towards clients

consulted by one party, he could not under any circumstances accept a brief against him, the position of the legal profession would be parlous indeed. The onus of proving that confidential information was conveyed lay, and lay heavily, upon the applicants. *(Thom C. J.)* SAHARANPUR GRAIN CHAMBER LTD., SAHARANPUR v. MAHARAJ SINGH,
A I R 1940 All 233=1940 A L J 170=
13 R A 3=I L R (1940) All 262=
188 I C 376=1940 A W R 165.

——*Advocate accepting brief for prosecution and subsequently accepted brief for defence.*

A great deal has to take place before a Counsel can be said to be engaged by a party to a suit, so that it would be unprofessional for him to appear on the other side. In order to prevent Counsel appearing for the other party, he must have a definite retainer, with a fee paid, or he must have such confidential instructions from one of the parties as would make it improper for him to appear for the other party. Where it appears that the complainant against the conduct of the Advocate has no hesitation in telling lies and he has utterly failed to establish that he had definitely engaged or retained the Advocate and had given him any confidential or proper instructions in the case, no action can be taken against the Advocate. *(Raza, Srivastava and Smith JJ.)* BAIJ NATH v. S., AN ADVOCATE, UNAO,
A I R 1934 Oudh 58=6 R O 360=
11 O W N 23=147 I C 1080=
1934 O L R 274 (SB).

——*Fraud against client.*

Where an Advocate was guilty of two plain cases of fraud against his client but the amounts involved were not large the High Court suspended the Advocate from practice for a period of two years. *(Beaumont C. J. and Baker J.)* IN RE PLEADER, S. R. M.
A I R 1931 Bom 557=
33 Bom L R 1215=
Ind Rul (1932) Bom 102=135 I C 486.

5. Misconduct—Evidence and proof.

——*Misconduct—Necessity of clear proof.*

Charges of professional misconduct must be clearly proved, and should not be inferred from mere ground for suspicion, however reasonable, or what may be mere error of judgment or indiscretion. *(Raza, Srivastava and Smith JJ.)* BAIJ NATH v. S., AN ADVOCATE, UNAO,
A I R 1934 Oudh 58=147 I C 1080=
11 O W N 23=6 R O 360=
1934 O L R 274 (SB).

6. Misconduct—General.

——*S. 10 (1)* — There is no justification for restricting the natural meaning of the words 'professional or other misconduct' in S. 10 (1) of the Bar Councils Act, and that meaning is misconduct in a professional or other capacity. The legislature intended to confer on the Court jurisdiction to take action in all cases of misconduct, and leave it to the discretion of the Court to take action only in suitable cases. *(Beaumont C. J., Rangnekar and Divatia JJ.)* JAMSHED BYRAMJI v. KAIKHUSHRU BOMANJI,
A I R 1935 Bom 1=59 Bom 57=
36 Bom L R 1136=7 R B 331=
154 I C 546(FB).

BAR COUNCILS ACT (XXXVIII of 1926), S. 10

7. Misconduct—Instances.

——Professional misconduct of advocate—Counsel accepting brief when knowing that revision was not competent in the circumstances — *See* Letters Patent (Lah), Cl. 8
Pak L R (1950) Lah 751 (FB).

——*Benami transactions.*

The purchase of a speculative interest in a contemplated litigation by the Advocate, *benami* in the name of his mother, by concealing his identity as the real purchaser, denying the fact of the *benami* purchase, asserting that the real purchase was by his mother and producing false evidence in support of it, amounts to misconduct, which upon a strict view of professional ethics renders him unfit to be a member of the legal profession. *(Thomas C. J. and Ghulam Hasan J.)* PUBLIC PROSECUTOR v. K., AN ADVOCATE, BARA BANKI,
A I R 1943 Oudh 159=1942 O W N 756=
15 R O 342=204 I C 330=
44 Cr L J 197.

——*Misappropriation — Employment of unregistered clerk—Negligence towards client — Refund of stamps not handed over to client — Failure to account for expenses—Gross misconduct.*

An Advocate was engaged to file a suit. The Advocate had employed an unregistered clerk to help him and the plaint in the suit was handed over to him for presentation. The client had given the Advocate certain amount for his fees, for stamps and other incidental expenses.

The clerk, however, did not file the suit and the Advocate did not take care to ascertain that the suit was filed and thus allowed his clerk to cheat his client. The dispute was subsequently compromised between the parties and it was agreed that the suit should be withdrawn. The Advocate subsequently applied for the refund of the unused stamps purchased for the suit but failed to return the money to his client and also failed to account for the money he had taken for other incidental expenses :

Held, that the conduct of the Advocate amounted to gross misconduct. *(Mya Bu, Offg. C. J., Ba U and Dunkley JJ.)* O., A BARRISTER-AT LAW, IN THE MATTER OF,
A I R 1938 Rang 423=11 R Rang 228=
178 I C 398=40 Cr L J 53 (SB).

——*S. 10 (1) — Temporary misappropriation of client's money.*

By majority : — The name of an Advocate who is guilty of even temporary misappropriation of his client's money which he received from court and did not pay to the client will be removed from rolls of Advocates. *(Leach C. J., Varadachariar and Gentle JJ.)* IN THE MATTER OF S., AN ADVOCATE 1937 M W N 1322 (FB).

——*Communal remark by Counsel.*

It is open to any person to complain to the Court as to the undesirability of certain remarks made by a Counsel during the course of a trial. Consequently, a Hindu Association can make a complaint to the High Court for taking action, where a Muhammadan Counsel is alleged to have made a certain communal remark during the course of a trial. *(Davis J. C. and Mehta A. J. C.)* IN RE MOHAMED ASLAM,
A I R 1936 Sind 49=1936 Cr Cas 487=
8 R S 177=162 I C 919=37 Cr L J 783.

BAR COUNCILS ACT (XXXVIII of 1926), S. 10—7. Misconduct—Instances

——*Misconduct—Perjury—Gravity of offence.*

Perjury is an offence the gravity of which cannot be minimised especially when committed by a member of the Bar who knows its full import. At the same time it has many degrees of gravity and there may be several factors which may have the effect of extenuating the gravity of the offence. *(Wazir Hasan, Raza and Nanavutty JJ.)* ADVOCATE, IN THE MATTER OF

A I R 1931 Oudh 161=Ind Rul (1931) Oudh 179=8 O W N 267=1931 Cr Cas 433=131 I C 67=32 Cr L J 625 (FB).

——*Professional Misconduct—Advocate—Acceptance of case without intervention of solicitor—Threat to appear on opposite side.*

An advocate who makes an arrangement with his client without the intervention of any solicitor to do work at a fee of half of that which is the usual charge, is guilty of unprofessional conduct.

Where an advocate, who has settled a plaint in a case, wrote to his client that he would take the case against her, unless he was paid five times the ordinary fee, he is guilty of unprofessional conduct. *(Maclean C. J., Rampini, Harrington, Mitra and Chitty JJ.)* IN RE S. K. H., AN ADVOCATE

6 C L J 55=2 M L T 492=34 Cal 729=6 Cr L J 16 (SB).

8. Nature of Proceedings.

——Proceedings under S. 10 of the Act, in respect of the misconduct of Advocate are not merely administrative but judicial, and orders for the payment of costs of such proceedings can be passed. *(Sulaiman C. J. and King J.)* S., AN ADVOCATE v. JUDGES OF THE HIGH COURT OF JUDICATURE AT ALLAHABAD **A I R 1934 All 898=56 All 702=7 R A 11=1934 A L J 722=150 I C 699=4 A W R 1129.**

9. Re-admission.

——*Removal of Advocate from roll for grave misconduct—Subsequent application for re-admission—Evidence of good character—Admission—Practice of High Court.*

Where the name of an Advocate has been removed from the roll of Advocates of the High Court for grave misconduct and the Advocate applies for being re-admitted, then on such an application it is not the practice of the High Court to act upon certificates regarding the advocate's character, unless the contents thereof are placed in affidavit. Further, in such matters, the High Court does not pay attention to statements as to opinions but only to statements of facts regarding the Advocate's conduct, behaviour and trustworthiness. *(Gentle C. J., Lakshmana Rao and Happell JJ.)* IN THE MATTER OF AN ADVOCATE

A I R 1948 Mad 137=1947-2 M L J 213=60 M L W 508=1947 M W N 475=1947 A W R Sup 97=1947 O S Sup 97 (FB).

10. Reference to Bar Council.

——Under the Bar Councils Act, the Court, when a complaint is made, can only dismiss it summarily or refer it to a Tribunal of the Bar Council to inquire into, and the Court would not generally be justified in dismissing a petition summarily unless it is satisfied that, even if the allegations in the petition be proved, there would be no case for taking action. *(Beaumont C. J. and Broomfield J.)* RAM KRISHNA v. J. D. DAVAR

A I R 1932 Bom 199=34 Bom L R 443=1932 Cr Cas 303=Ind Rul (1932) Bom 401=138 I C 543.

——*Ss. 10 and 19 (2)—Procedure—Notice issued by High Court on 13th June, 1928 — Act coming into force on 1st June — Notice is* ultra vires *— Procedure in S. 10 must be followed — Letters Patent (Allahabad), Cl. 8.*

A notice was issued on 13th June, 1928 by High Court against a pleader calling upon him to show cause why he should not be dealt with under the Legal Practitioners Act for professional misconduct. Objection was taken by the pleader in view of the Bar Councils Act which had come into force on 1st June, 1928 :

Held, that the provisions of the Letters Patent, in so far as they may conflict with the provisions of the Act, were abrogated by S. 19 (2) and therefore it was necessary for the case to be either referred to the Bar Council or at any rate for the Bar Council to be consulted. The Court was not properly seised of the case and that the notice issued to show cause was, as framed *ultra vires* and a nullity. *(Boys, Weir and King JJ.)* A VAKIL OF AZAMGARH, IN THE MATTER OF

A I R 1928 All 439=51 All 76=26 A L J 1039=112 I C 214=29 Cr L J 998 (FB).

—S. 12.

——*S. 12 (6)—Name of advocate struck off the rolls of advocates by order of High Court — High Court can review its order and order reinstatement of advocate — It can consider conduct of advocate subsequent to order under review and admit fresh evidence—Bar Council has no say in the matter.*

Powers of the High Court under S. 12 (6) are not hedged in by any such restrictions as are contained in O. 47, Civil P. C. Under sub-s. (6) of S. 12, it is left entirely to the discretion of a High Court to pass such suitable orders in each case as it considers necessary. The conduct and general behaviour of the applicant subsequent to the removal of his name from the rolls by the order of the Court is the crucial point to be considered in this case. The High Court can admit fresh evidence for this purpose.

The power which the High Court enjoys of varying, modifying, or rescinding orders passed in its disciplinary jurisdiction under the Bar Councils Act is a power which it possessed before the Bar Councils Act and which has not been taken away by the language used by S. 12 of the Act.

In regard to the quantum of action to be taken against any member of the Bar for professional misconduct the Bar Council has no say, as it has in the matter of initial enrolment of the advocate. It is the High Court and High Court alone which has the sole power to decide the nature of the action to be taken against any member of the bar. That being so, without a revision of the Bar Councils Act the High Court cannot seek the advice of the Bar Council on the question whether it should review an order that it had thought suitable at the time the order was passed, though as a

BAR COUNCILS ACT (XXXVIII of 1926), S. 12

matter of courtesy to the Bar Council, it may allow the Bar Council to place the point of view of that professional body before the Court. *(Wali Ullah Ag. C. J., Sapru and Bhargava JJ.)* IN THE MATTER OF RAGHUBIR SARAN ADVOCATE, MEERUT
A I R 1949 All 568=1949 A L J 424=I L R (1950) All 728=50 Cr L J 852 (FB).

——*S. 12 (6)—Re-instatement of advocate removed from rolls for misconduct — Matters to be considered stated — No particular period that should elapse from date of removal is required — Seven months time held too short.*

Section 12 (6) does not prescribe any particular period which should elapse before an application for review can be made; but as an order reprimanding, suspending or removing from practice an advocate can be reviewed mainly on the ground of his subsequent good behaviour and conduct, the application for review should ordinarily be made after a reasonable time has elapsed since the order was made.

In approaching a case like this, the Court cannot be guided by mere considerations that failure to revoke the order would involve continued unemployment in the case of a comparatively elder person with specialised knowledge of law.

Certificates of character and conduct of the applicant by persons, not filed in the form of affidavits, cannot be accepted as evidence of facts deposed to in them.

(Having regard to the nature of misconduct of which the applicant was found guilty (bribery) it was held that he did not allow sufficient time to elapse and acted with undue haste, in applying for reinstatement of his name on the rolls of advocate, about seven months after the order striking off his name from the rolls.) *(Wali Ullah Ag. C. J., Sapru and Bhargava JJ.)* IN THE MATTER OF RAGHUBIR SARAN, ADVOCATE, MEERUT
A I R 1949 All 568=1949 A L J 424=I L R (1950) All 728=50 Cr L J 852 (FB).

——*S. 12 (1) and S. 10 (2) — Rules under Rr. 1 and 2—Enquiry—Tribunal or Court must frame charge.*

Under R. 1 it is obligatory upon the tribunal or Court to which a case is referred for inquiry under S. 10 (2) of the Act to frame a formal charge. Failure to frame a charge vitiates the whole of the proceedings. *(Leach C. J., Lakshmana Rao and Kunhi Raman JJ.)* IN THE MATTER OF ADVOCATE, ELLORE
A I R 1944 Mad 247=57 M L W 97=1944 M W N 129=17 R M 94=1944-1 M L J 124=I L R (1944) Mad 397=213 I C 380=1944 O W N H C 117 (FB).

——*S. 12 (1) — Rules under, framed by Madras High Court, R. 7—Rule is mandatory—Death of member of tribunal—New tribunal should investigate* de novo.

The direction in R. 7, that all the members of the tribunal shall sign their findings is mandatory. If a member of the tribunal dies before the report has been completed, that is, drawn up and signed, the tribunal ceases to be properly constituted and, therefore, its report cannot be considered. In such circumstances another tribunal must be constituted to investigate the charges *de novo. (Leach C. J.,*

BAR COUNCILS ACT (XXXVIII of 1926), S. 12

Mockett and Kuppuswami Ayyar JJ.) V., AN ADVOCATE MADRAS, IN RE
A I R 1942 Mad 267=(1942) 1 M L J 160=55 L W 42=1942 M W N 124 (1)=I L R (1942) Mad 428=14 R M 554=199 I C 149=1942 M Cr C 39 (SB).

——*S. 12 (1)—Rules under, R. 12—Jurisdiction of District Judge—Delegation.*

Where a special jurisdiction is conferred upon a District Judge, the exercise of that jurisdiction by others, upon whom it has not been conferred, is barred. Where, therefore, a complaint against an Advocate is referred for inquiry to the District Court under R. 12 of the rules made under S. 12 (1), Bar Councils Act, and the District Judge delegates it to one of his assistants, the procedure is not proper and the District Judge himself should conduct the enquiry. *(Davis J. C. and Mehta A. J. C.)* IN THE MATTER OF R. A. BAR-AT-LAW
A I R 1937 Sind 98=9 R S 254 (1)=168 I C 992=38 Cr L J 664 (1).

——*S. 12 (4)—Finding of Tribunal.*

Finding of Tribunal not clear as to question of moral delinquency — Case should be sent back to Tribunal. *(Costello, Lort Williams and Henderson JJ.)* IN THE MATTER OF AN ADVOCATE
A I R 1935 Cal 484=62 Cal 158=8 R C 98=1935 Cr Cas 876=157 I C 374=36 Cr L J 1130 (SB).

——*Findings by — Importance given by High Court.*

The High Court usually attaches great weight to the finding of fact of a Committee of the Bar Tribunal. *(Thom, Bennet and Iqbal Ahmad JJ.)* IN THE MATTER OF ADVOCATE, HIGH COURT, ALLAHABAD
A I R 1935 All 503=1935 A W R 291 (n)=7 R A 1017 (1)=155 I C 1054=1935 A L R 496 (SB).

——*S. 12 (6)—Findings by Bar Council.*

Usually the High Court will accept, especially when there is no objection preferred by the Government Advocate, the finding of the Bar Council. The High Court, however, is not bound to accept it. *(Thom, Iqbal Ahmad and Allsop JJ.)* ADVOCATE, CAWNPORE, IN THE MATTER OF
A I R 1935 All 425=7 R A 1007=1935 A L J 759=155 I C 1043=1935 A W R 285=1935 A L R 497 (SB).

——*S. 12 (6) — Legal Practitioners Act (XVIII of 1879), S. 41—Power of review.*

The power of review conferred upon High Courts under sub-s. (6) of S. 12 of the Bar Councils Act cannot be extended to an order passed under S. 41 of the Legal Practitioners Act. *(Wazir Hasan C. J., Srivastava and Smith JJ.)* MOHAMMAD YUSUF HUSAIN KHAN v. EMPEROR
A I R 1934 Oudh 140=6 R O 401=11 O W N 368=(1934) Cr Cas 373=148 I C 299=35 Cr L J 678 (FB).

——*Findings of Tribunal—Report not unanimous —Absence of explicit findings.*

In considering what orders ought to be passed in a case falling within S. 12, Bar Councils Act, the High Court is not in any way fettered by the report of the tribunal of the Bar Council formed to enquire into the charges or of the District Court and although the greatest weight has to be at-

tached to the findings contained in such a report, it is competent for the High Court to go into the facts for itself and to decide whether or not it agrees with those findings.

Where, however, the report is not unanimous and in respect of the more serious charges ambiguous, the value of the report is lessened. In case where the report of the tribunal is ambiguous and not explicit on the findings contained therein, it is not necessary to send it back to the tribunal if the Court after investigation into the facts has no doubt as to the order that it should pass in the case. *(Page C. J. and Mya Bu J.)* IN THE MATTER OF FOY S. R., ADVOCATE

A I R 1933 Rang 10=6 R Rang 150 (2)= 147 I C 139.

——*S. 12 (2), (3) — Letters Patent (Madras), Cl. 10 — Appellate Side Rules (Madras), Rr. 7, 8 — Inquiry — Jurisdiction of Bench of three Judges.*

A Bench of three Judges is competent to hear an enquiry into the conduct of an Advocate under Cl. 10, Letters Patent. It is not necessary that all the Judges of the High Court should sit to hear the matter. *(Waller, Reilly and Anantha Krishna Ayyar JJ.)* IN THE MATTER OF S. VENKATACHARI

A I R 1932 Mad 131=61 M L J 148=Ind Rul (1931) Mad 785=54 Mad 857=34 M L W 19=134 I C 33=32 Cr L J 1085 (FB).

——*Finding of Tribunal — Difference between members of Tribunal—Report of minority.*

Where the members of a tribunal of the Bar Council appointed to submit a report on the alleged misconduct of an Advocate differ in their opinions, the High Court is entitled to consider the reports and findings both of the majority and the minority of the Tribunal.

Per *Ananthakrishna Ayyar J.*—In cases where a statutory body is charged with the duty of giving advice to a final executive authority, the policy would seem to be to require the advice to be put in a definite form and not to be accompanied with the dissenting opinion, if any, of the minority. When, however, the report or findings have to be submitted by one Judicial Tribunal to another Judicial Tribunal, which latter has got jurisdiction and the duty to examine the correctness or otherwise of the report or findings submitted by the former, it would be advisable to have the opinions of all the members of the Tribunal which inquired into the matter in the first instance, so that the final judicial authority may have the benefit of the opinions, reasonings and findings of all the members of the Tribunal on the relevant questions, when the decision of the case in the last resort rests with the higher Judicial Tribunal. *(Waller, Reilly and Anantha Krishna Ayyar JJ.)* IN THE MATTER OF S. VENKATACHARI

A I R 1932 Mad 131=34 M L W 19=61 M L J 148=Ind Rul (1931) Mad 785=54 Mad 857=134 I C 33=32 Cr L J 1085 (FB).

——*Procedure — Petitioner, whether entitled to notice.*

Under S. 12, Bar Councils Act, the correct procedure is for the Advocate-General to open by submitting the report of the Tribunal to the

Court, then the Advocate concerned is entitled to be heard by himself or his Advocate and then if necessary the Advocate-General will have a right to reply. The original petitioner is not entitled to be served with notice or to be heard on the hearing before the Court. *(Beaumont C. J. and Baker J.)* IN RE PLEADER, S. R. M.

A I R 1931 Bom 557=33 Bom L R 1215=Ind Rul (1932) Bom 102=135 I C 486.

——*Power to assess costs.*

Under the rules, the High Court is empowered to assess costs of an enquiry before the Tribunal under the Act but before assessing such costs it may direct an enquiry to be held by the Registrar of what sums have actually been paid by the complainant and the Advocate in respect of costs of the enquiry. *(Rankin C. J., C. C. Ghose and Buckland JJ.)* ABINASH CHANDRA v. HEMANTA KUMAR ROY

A I R 1931 Cal 680=35 C W N 293=Ind Rul (1932) Cal 54=134 I C 1270 (SB).

——*Finding of tribunal—Interference.*

Where the Tribunal constituted under S. 11 of the Act has made a careful investigation, the High Court will not, unless there is very good reason to do so, throw over the findings of fact which have been arrived at by the Tribunal. *(Rankin C. J., C. C. Ghose and Buckland JJ.)* ABINASH CHANDRA v. HEMANTA KUMAR ROY

A I R 1931 Cal 680 (681)=35 C W N 293=Ind Rul (1932) Cal 54=134 I C 1270 (SB).

——*Enquiry—Power of High Court to hear complainant.*

It is open to the High Court in a proceeding under S. 12, Bar Councils Act, to hear the complainant and in an ordinary case it would be its duty to do so. Section 12 (3) of the said Act is not intended to exclude the right of the Court to hear any person other than the persons mentioned in that clause. *(Rankin C. J., C. C. Ghose and Buckland JJ.)* ABINASH CHANDRA v. HEMANTA KUMAR ROY

A I R 1931 Cal 680=Ind Rul (1932) Cal 54=35 C W N 293=134 I C 1270 (SB).

——*Professional misconduct — Procedure in enquiry.*

In an inquiry into the alleged professional misconduct of a pleader, the Court examined two witnesses and also the pleader, on the understanding that the pleader was not then a person on his defence. The pleader was not given any opportunity to cross-examine the witness, and was not allowed to address the Court upon the evidence. The Judge then expressed an opinion, adverse to the pleader that he deliberately made a false statement in Court :

Held, by Jenkins C. J. that having regard to the nature of evidence and the defects in procedure, it would not be safe to accept the opinion of the Court.

Per *Beaman J.*—There was no good evidence upon which the charge could be sustained, since it was doubtful whether reading and criticising depositions or other matter, which if objected to could not be received in evidence, makes those depositions or that matter. evidence unless the objection or objections are expressly waived. *(Sir*

BAR COUNCILS ACT (XXXVIII of 1926), S. 12

Lawrence Jenkins C. J. and Beaman J.) GOVERNMENT PLEADER v. MAGANLAL N. CHOKSI,
9 Bom L R 866=6 Cr L J 216.

—S. 14.

——*S. 14 (1) — Application for permission to appear and plead in criminal case—Nature of proceedings — Appeal — Court-fees Act (1870), Sch. 1, Art. 1.*

An application by an Advocate concerning his right to appear and plead the case of his clients who were parties to a criminal appeal, is not a criminal matter and should be treated as a civil proceeding. An appeal by the Advocate against an adverse order on such application is therefore a civil appeal on which proper court-fees must be paid. *(Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan and Mukherjea JJ.)* SIR IQBAL AHMAD v. THE ALLAHABAD BENCH OF THE HIGH COURT, ALLAHABAD,
AIR 1950 F C 71=
1949 F C R 813=1950 S C J 131=
51 Cr L J 1035 (FC).

——No new Roll of Advocates prepared after passing of Amalgamation Order.—Advocate enrolled before order cannot claim statutory right under S. 14—*See* ibid, S. 8 (2).
AIR 1950 F C 71=51 Cr L J 1035 (FC).

——Ex-Judge of Allahabad High Court practising as advocate of Avadh Chief Court—Order by Chief Justice prohibiting him from practising before new High Court sitting at Allahabad—Order is valid.—*See* U. P. High Courts (Amalgamation) Order (1948), Art. 8,
AIR 1950 All 162=
51 Cr L J 513.

——*Ss. 14 (b) and 8 (2) — Person enrolled as advocate in Bombay High Court under Act is entitled to practise in Courts subordinate to Patna High Court.*

A person enrolled as advocate in Bombay High Court under S. 8 (2) is entitled by reason of S. 14 (b) to practise in Courts subordinate to the Patna High Court, even if he is not regularly practising in the Bombay High Court in which he was enrolled. Section 4, Legal Practitioners Act, does not by reason of S. 38 of that Act apply to him and does not operate as a bar. *(Agarwala Ag. C. J., Imam and Das JJ.)* IN THE MATTER OF DEVASARAN LALL SINHA,
AIR 1946 Pat 369=
12 B R 560=225 I C 147=
1946 P W N 243=25 Pat 468=
27 P L T 313 (SB).

——*S. 14 (1)—Legal Practitioners Act, S. 4—Advocate enrolled under Bar Councils Act—Whether can practise in Subordinate Court of any High Court.*

There is no law for the time being in force which prohibits the Advocates enrolled by any High Court under Bar Councils Act practising in the Subordinate Courts of another High Court, which they are entitled to by virtue of S. 14 (1), Bar Councils Act. Section 4, Legal Practitioners Act, does not apply to Advocates enrolled under Bar Councils Act. *(Leach C. J., Wadsworth and Patanjali Sastri JJ.)* DISTRICT JUDGE OF ANANTAPUR v. K. V. VERMA REDDI,
AIR 1945 Mad 144=(1945) 1 M L J 106=
58 M L W 52=ILR (1945) Mad 464=
1945 M W N 101 (FB).

BAR COUNCILS ACT (XXXVIII of 1926), S. 14

——*Judge of High Court—Right to practise.*

The appellant was enrolled as an Advocate of the High Court of Patna. He was subsequently appointed as a Judge of that High Court. His name, however, remained on the roll of Advocates. He retired from his office as Judge and applied to the High Court to have his name entered on the roll of Advocates under the Bar Councils Act which had been passed in the meantime. The High Court passed an order enrolling him as an Advocate but refusing to allow him to appear in the Courts of the Province of Bihar and Orissa :

Held, that the High Court having admitted the appellant as an Advocate, he had a statutory right to practise in the Courts of the Province, and the High Court had no discretionary power to refuse him to exercise his statutory right.

[Their Lordships refrained from expressing any opinion upon the important question as to the propriety of an ex-Judge practising in the Courts of the Province where he has exercised judicial functions.] *(Lords Atkin and Russell of Killowen and Sir John Wallis)* PRAFULLA RANJAN DAS v. CHIEF JUSTICE AND JUDGES OF PATNA HIGH COURT,
AIR 1931 P C 22=
60 M L J 179=33 Bom L R 409=
8 O W N 255=35 C W N 321=
12 P L T 169=53 C L J 68=
Ind Rul (1931) P C 49=33 M L W 381=
1931 A L J 255=1931 M W N 208=
10 Pat 375=130 I C 305=
58 Ind App 38 (PC).

—S. 15.

——*S. 15 (c) (d) — Rules under (Allahabad) — R. 3 (a)—Compliance with.*

It will be taking a very technical view to hold that in a case where the diary is lost for some reason beyond the control of the candidate the statement of the candidate that the diary was kept by him, if verifiable from other circumstances, should not be accepted as conclusive proof of the fact that the diary was actually maintained by him. *(Sapru and C. B. Agarwala JJ.)* IN RE, BHOLA NATH SRIWASTAVA ADVOCATE,
AIR 1952 All 417=1951 R D (HC) 269=
1951 A W R (HC) 612=1952 A L J 44.

——Prohibition not to enter into contract by way of trade or business—Nature and extent of—Contract entered into by a legal practitioner in course of trade or business is not void under S. 23, Contract Act—*See* Contract Act (1872), S. 23.
1950 A W R 296.

——*S. 15 (b)—Rules—Advocate of one High Court when can be allowed to appear in another High Court.*

The provision that the appearance of stranger Advocates is not permitted save with the permission of the Chief Justice means that the Chief Justice is to use the judicial discretion, that is to say, good reason must be shown for the exercise of the discretion and the permission is not to be granted on mere application. The right of an Advocate of any particular Bar to appear in other High Courts does not exist as a matter of right. The Chief Justice will apply his mind to the circumstances of the application and see whether good reasons have been shown in any particular case. One of these is that the Advocate for whom permission is sought

BAR COUNCILS ACT (XXXVIII of 1926), S. 15

to appear has from the very beginning in the lower Court made a complete study of the case and is familiar with its details. Or it may appear that the litigant has his normal residence and carries on his normal business in another province and habitually consults a lawyer of that other province who is familiar with his business; and in such circumstances again it is reasonable that the Advocate should be allowed to appear. A third circumstance may be the great magnitude of a case, the fact that it raises some extremely new and important questions of principle and of the jurisdiction of the Court in which case again it may be right and proper that one of the more distinguished Advocates in India should be admitted to argue the case.

But the position of the accused as the Acting Chief Manager of a big and important estate is no good reason and the mere fact that the proceedings are in respect of contempt of Court is also not sufficient for granting permission. *(Courtney-Terrell C. J.)* IN THE MATTER OF GIRINDRA MOHAN MISHRA, AIR 1937 Pat 122=17 P L T 861=3 B R 303=9 R P 406=167 I C 486=38 Cr L J 392.

—S. 26.

——Rules under Act—R. 2 (Mad.)—Advocate, if can act as legal adviser of company of which he is director or acts as promoter of trading company.

In England, there is no objection to a practising barrister acting as an ordinary director, but not as a managing director, to companies of good standing carrying on a business which is free from anything of a derogatory nature, although it is regarded as being undesirable to accept a brief for a company of which he is a director. An Advocate in the Madras Presidency is not exactly in the same position as a barrister in England, because there is here only a single agency and the Advocate has to fulfil the functions of both solicitor and barrister. In these circumstances, an Advocate can be allowed to act as the legal adviser of a company of which he is a director subject to his remuneration being fixed beforehand, as stipulated by the Madras Bar Council in its resolution passed on 20th September 1936. The Advocate should not, however, act as a promoter of a trading company. *(Leach C. J., Lakshmana Rao and Happell JJ.)* IN RE A PLEADER, AIR 1943 Mad 665=56 M L W 491=(1943) 2 M L J 273=1943 M W N 587=16 R M 299=ILR (1944) Mad 161=209 I C 247=45 Cr L J 117 (SB).

——Ss. 26, 6 (2)—Rules—Validity.

One of the grounds on which a statutory rule or a bye-law may be treated as *ultra vires* is that it has not been made, sanctioned and published in the manner prescribed by the statute which authorises the making of that rule. Section 18, Bar Councils Act, provides that all rules made under this Act shall be published in the local official Gazette of the province in which the High Court, by which or with whose sanction the rules are made, exercises jurisdiction. It provides only for the manner of the publication of the rules but it does not make the publication of these rules in the local official Gazette a condition precedent to their coming into force.

Where the Bar Council had approved of the rules before they received the sanction of the High Court

BAR COUNCILS ACT (XXXVIII of 1926), S. 26

but the Bar Council did not pass those rules after the sanction :

Held, that the omission, on the part of the Bar Council, which was a statutory body, strictly to follow the provisions of the law as laid down in S. 6 (2) was no doubt to be regretted, but it did not amount to an illegality. It was no more than an irregularity. *(Thom and Harries JJ. and Sir Tej Bahadur Sapru.)* IN THE MATTER OF ELECTION OF BAR COUNCIL, AIR 1935 All 295=1935 A L R 747=8 R A 145=157 I C 220=1935 All L R 747 (ST).

BARRISTER

—*See* LEGAL PRACTITIONER.

BASUTOLAND CRIMINAL PROCEDURE AND EVIDENCE PROCLAMATION (1938 as amended in 1944)

—S. 231.

——Accomplice—Law in Basutoland—Conviction on evidence of accomplice — *See* Evidence Act, S. 133. AIR 1949 P C 172=50 Cr L J 642.

BEING HIRED FOR UNLAWFUL ASSEMBLY

—*See* PENAL CODE (45 OF 1860), S. 158.

BENAMI TRANSACTION.

——Source of purchase money.

In order to ascertain who was the real purchaser under the sale-deed in question, the Courts have to look to the source of the purchase money. *(Thomas C. J. and Ghulam Hasan J.)* PUBLIC PROSECUTOR v. KANHAIYA LAL, AIR 1943 Oudh 159=1942 O W N 756=15 R O 342=204 I C 330=1942 A W R C C 358 (5)=1942 O A 614=44 Cr L J 197.

——Whether a transaction is fair or not depends upon the circumstances of each case. *(Thomas C. J. and Ghulam Hasan J.)* PUBLIC PROSECUTOR v. KANHAIYA LAL, AIR 1943 Oudh 159=1942 O W N 756=15 R O 342=204 I C 330=1942 A W R C C 358 (5)=1942 O A 614=44 Cr L J 197.

——Prosecution for perjury.

So long as a *benamidar* claims to be an ostensible decree-holder he cannot avoid responsibility for acts done in his name and for his apparent benefit and is liable to prosecution for making false statements in a declaration filed by him under O. 21, R. 66, Civil Procedure Code, and verified by him as true to his knowledge. *(Rupchand A. J. C.)* KALUMAL TOLARAM v. AHMED, AIR 1931 Sind 107=Ind Rul (1931) Sind 117=25 S L R 405=134 I C 373.

BENARAS REGULATED TOWN CLOTH RATIONING ORDER (U. P. ORDER OF 1946).

—R. 33.

——Rr. 33 and 34 — District Magistrate is not authorised to delegate his rule-making power to his subordinate — Such power delegated by Rr. 33 and 34—Rules are ultra vires*—Orders under pur-*

BENARAS REGULATED ETC. ORDER (1946), R. 33

ported delegation by Deputy Town Rationing Officer are also ultra vires—*Person cannot be punished for contravention of the order.*

It was under the powers conferred by the U. P. Government Notification No. 6468/C X.-C. D, published in the U. P. Gazette, Extra-Ordinary, dated 22nd December 1941, in exercise of the powers conferred by sub-section (5) of S. 2 of the Defence of India Act 1939 that the District Magistrate promulgated the Benaras Regulated Town Cloth Rationing Order of 1946. As the Defence of India Act expired on the termination of the War on 30th September 1946, the rules and orders passed under the authority of that Act continued to have their effect by reason of the Essential Supplies (Temporary Powers) Ordinance, 1946 (No. XVIII of 1946). This Ordinance was re-enacted with certain modifications in the shape of Central Act No. XXIV of 1946 and by virtue of S. 17 of that Act any order made or deemed to be made under the said Ordinance and in force immediately before the commencement of this Act was to continue in force and was to be deemed to be an order made under this Act. No authority had been conferred on the District Magistrates by these provisions of law to delegate any part of their powers to any subordinate official. Consequently, the District Magistrate could not delegate his rule making powers under Rules 33 and 34 of the Benaras Regulated Town Cloth Rationing Order 1946, to the Deputy Town Rationing Officer. Where therefore in pursuance of the purported delegation under Rr. 33 and 34 the Deputy Town Rationing Officer promulgated an order in the matter of submitting a periodical return of the stock, the conviction of a dealer for breach of the order would be bad. If Rr. 33 and 34 had stood alone, the dealer could not be punished at all because the rules could not be contravened in the absence of the orders passed by the Deputy Town Rationing Officer. Hence in such case the punishment would be for contravening the order of the Rationing Officer and not Rr. 33 and 34, which order was *ultra vires.*

By Rr. 33 and 34 the District Magistrate did not merely relegate certain ministerial functions to be performed by a subordinate official. What had been delegated involved a personal discretion to be exercised on the part of the Deputy Town Rationing Officer. These rules and the orders thereunder by the Deputy Town Rationing officer were therefore *ultra vires* and no conviction could be based upon any contravention thereof. *(Agarwala J.)* KHUNNI LAL v. REX, **AIR 1949 All 32=1943 A W R (H C) 222=ILR (1949) All 195=50 Cr L J 101.**

—R. 34.

——Rule 34 is *ultra vires*—*See* Benaras Regulated Town Cloth Rationing Order, (U. P. Order of 1946) R. 33 **AIR 1949 All 32=50 Cr L J 101.**

BENCH OF MAGISTRATES

—*See* CRIMINAL PROCEDURE CODE, SS. 15-17.

—Change in constitution of Bench—*See* CRIMINAL PROCEDURE CODE (5 OF 1898), S. 350-A.

BENEFIT OF DOUBT

See (1) CRIMINAL P. C. 1898, Ss. 253, 254, 367.
(2) PENAL CODE 1860, S. 302.

—Direction to Jury — Omission when amounts to misdirection—*See* CRIMINAL PROCEDURE CODE (1898), S. 297.

BENGAL, AGRA AND ASSAM CIVIL COURTS ACT (XII OF 1887)

—S. 13.

——Court of Munsif under the Act is one Court though there may be several Munsifs working in same district — Each officer does not constitute separate and different Court. *(Sinha and Das JJ.)* EMPEROR v. BATA KRISHNA PAL
A I R 1947 Pat 54=12 Cut L T 21=25 Pat 273=13 B R 246=228 I C 559=48 Cr L J 258.

—S. 21.

——*S. 21 (3)*—Offence under S. 210 Penal Code in Munsiff's Court—Receiving of appeal from Munsiff's Court assigned to Additional District Judge—Complaint by latter Court under S. 195, Criminal P. C. —Validity—*See* Criminal P. C., S. 195
A I R 1950 Pat 567=51 Cr L J 1568.

—S. 22.

——*Transfer.*

The District Judge is competent to transfer an appeal from an order under S. 476 to a Subordinate Judge. A. I. R. 1927 All 555, *Foll. (Mukerji J.)* KARIMULLAH v. RAMESHAR PRASAD
A I R 1929 All 774=51 All 344=111 I C 595=1929 A L J 55=10 L R A Cr 121=12 A I Cr R 199.

—S. 23.

——*Proceedings referred to in section—Meaning.*

Proceedings referred to in S. 23 do not refer only to proceedings under S. 7 of the Bengal Wills and Intestacy Regulation (1799). *(B. K. Mukherjea and Sharpe JJ.)* P. N. DEB v. B. N. DEB
A I R 1947 Cal 124=225 I C 247=50 C W N 776=81 C L J 430.

—S. 25.

——Power conferred on Munsif to act as Small Cause Court — Seristadar of Munsif can act as ex officio Commissioner of affidavits in respect of matters in Small Cause Court. *(Sinha and Das JJ.)* EMPEROR v. BATA KRISHNA PAL
A I R 1947 Pat 54=12 Cut L T 21=25 Pat 273=13 B R 246=228 I C 559=48 Cr L J 258.

BENGAL AGRICULTURAL DEBTORS ACT (VII of 1936)

—S. 25.

——*Ss. 25 (1) (e), 27 (1) — Board can order usufructuary mortgagee to restore possession to mortgagor.*

Under S. 25 (1) (e), the Board has jurisdiction to give directions subject to the provision of S. 27 (1) as to the manner in which the sum for which the debt had been settled should be paid. The intention of the Legislature in enacting S. 27 (1) was merely to specify the extent to which a mortgage will continue to subsist after an award has been made. Subject to the provisions of this section, the Board has full authority to modify the terms of the original mortgage upon which the loan had been advanced.

Board has, therefore, jurisdiction to order the usufructuary mortgagee to restore possession of the mortgaged property to the mortgagor and thus convert the usufructuary mortgage into a simple mortgage. The amount at which the mortgage debt is settled would however continue to be a charge under S. 27 on the mortgaged property until the terms of the settlement have been ful-

BENGAL AGRICULTURAL DEBTORS ACT (VII of 1936), S. 25

filled. *(Edgley J.)* FAZLUR RAHMAN v. ATAL BEHARY
A I R 1941 Cal 123=
I L R (1940) 2 Cal 203=13 R C 386=
193 I C 254=42 Cr L J 359.

—S. 27.

——*Object of.*

Section 27 (1) merely specifies the extent to which a mortgage will continue to subsist after an award has been made. Subject to the provisions of this section, the Board can, under S. 25 (1) (e), order usufructuary mortgagee to restore possession to mortgagor. *(Edgley J.)* FAZLUR RAHMAN v. ATAL BEHARY
A I R 1941 Cal 123=
I L R (1940) 2 Cal 203=13 R C 386=
193 I C 254=42 Cr L J 359.

—S. 54.

——*Production before tribunal of mortgaged documents falsely endorsed as to re-payments — Sanction of Collector for prosecution.*

Section 54, Bengal Agricultural Debtors Act, creates certain offences which are not included in the Penal Code which may be committed by persons who go before Debt Settlement Boards and, whilst purporting to conform to the procedure there, attempt to deceive the Boards. The production before the appellate tribunal of mortgaged documents falsely endorsed as to the repayments is something more than the offence set out in S. 54 (a) : it is an offence of a more serious and general nature coming under the Penal Code. Consequently, the permission of the Collector to commence prosecution in such an offence is not necessary. *(Derbyshire C. J. and Bartley J.)* SASHI BHUSAN v. FUL KHAN
A I R 1940 Cal 454=ILR (1942) 2 Cal 158=
44 C W N 763=13 R C 186=190 I C 448=
41 Cr L J 951.

BENGAL ALLUVIAL LANDS ACT (V OF 1920)

——*Revision — Order of Sub-Divisional Officer, ordering huts erected on disputed char to be sold is not revisable under Criminal P. C., S. 439.*

Order passed by Collector as such under the Alluvial Lands Act cannot be revised by Criminal Bench of the High Court under S. 439.

Per *Suhrawardy J.* — Order passed by a Sub-Divisional Officer under the Alluvial Lands Act directing that some huts which were erected on the disputed char were to be sold and the sale proceeds credited to the treasury, is not passed in judicial capacity but as an executive officer and as such cannot be revised by the High Court. *(Suhrawardy and Graham JJ.)* OSMAN MUNSHI v. KADIR PRAMANICK
A I R 1929 Cal 768=
33 C W N 836=1929 Cr C 480=
122 I C 640=57 Cal 282=14 A I Cr R 247=
31 Cr L J 44.

—S. 10.

——*Effect of S. 10 is to stay earlier proceedings under S. 145, Criminal P. C. — Criminal P. C., S. 145.*

Some char lands became the subject-matter of proceedings under S. 145, Criminal P. C., and at the time of the proceedings being initiated an attachment order was made against the lands. Various steps were taken in those proceedings and subsequently the Magistrate after reviewing the situation passed an order directing that the lands

BENGAL ALLUVIAL LANDS ACT (V of 1920), S. 10

be released from attachment under S. 145 and decided to replace those proceedings with others under the Bengal Alluvial Lands Act, 1920. It was contended that S. 10 of that Act was intended to apply to proceedings under S. 145 so far as their institution or carrying on was concerned and not to the attachment order made under that section and that once an attachment was made, S. 10 conferred no right on the Collector to make a further attachment under that Act.

Held, that if the contention were sound it would result in nullifying the provisions of the Bengal Alluvial Lands Act of 1920. The provisions of S. 10 were wide enough to apply to all proceedings, including an attachment that may have been had under S. 145. The effect of S. 10, Bengal Alluvial Lands Act, would, therefore, be to stay the earlier proceedings under S. 145, Criminal P. C., 13 C. W. N. 125 and A. I. R. 1921 Cal. 631, *Dist. (Pearson and Mullick JJ.)* DIGENDRA BEHARI ROY v. JANKI NATH ROY
A I R 1929 Cal 646=33 C W N 1115=
1929 Cr C 326=57 Cal 607=125 I C 737=
31 Cr L J 911.

——S. 10 negatives the implied repeal of S. 145 of the Criminal Procedure Code so far as recently formed alluvial lands are concerned. *(Greaves and Duval JJ.)* ABDUL JABBAR MUNSHI v. MUFIZUDDI SARKAR
A I R 1924 Cal 980=
28 C W N 783=81 I C 931=
25 Cr L J 1107.

BENGAL CHILDREN ACT (II OF 1922).

——*Application—Calcutta Suppression of Immoral Traffic Act (Bengal Act XIII of 1923), S. 4 —Act applies to females under S. 16, whether married or not.*

Acts apply whether the female in question is unmarried or married and the whole matter turns not on the status of the female from the point of view of marriage or no marriage but on the question of age. If the word "girl" were limited to mean a young unmarried female, it would be easy for a person who desired to live on the immoral earning of young girls to marry them solely for the purpose of enabling him to put himself outside the provisions of the statutes and to set the whole law at defiance. *(Costello and Lort Williams JJ.)* PANCHU GOPAL SHAW v. EMPEROR
A I R 1929 Cal 99=56 Cal 750=
48 C L J 586=115 I C 266=
Ind Rul (1929) Cal 346=33 C W N 198=
12 A I Cr R 304=30 Cr L J 440.

—S. 20.

——*Charge against child—Procedure—Non-compliance.*

Under S. 20, when the person charged with a criminal offence is a child, attempts must be made to secure the attendance of the parent or guardian of the child during all stages of the proceedings, unless the Court finds that it would be unreasonable to require his attendance. In the absence of parent or guardian or legal adviser, efforts should be made by the Court to explain to the boy what he is charged with and the meaning of pleading guilty to the charge, and further, before recording the plea the Court must ascertain what the child has to say, making it certain all the time that the child understood what was going on. A conviction

BENGAL CHILDREN ACT (II of 1922), S. 20

of the child without complying with these provisions is bad. *(Cuming J.)* ASWINI KUMAR BOSE v. EMPEROR A I R 1931 Cal 522=35 C W N 289=Ind Rul (1931) Cal 686=1931 Cr Cas 674=58 Cal 951=133 I C 334=32 Cr L J 1020.

—S. 40.

——*Evidence.*

The question whether a person has the custody of another within the meaning of S. 40, Bengal Children Act, is purely a question of fact, and no question of lawful custody or legal custody arises. Where in a case there is no evidence whatever to establish that the custody, charge or care of the child allegd to have been ill-treated was with the person convicted under S. 40, the elements of an offence under S. 40, are not established and, therefore, the conviction and sentence cannot be maintained. *(Bartley and Khundkar JJ.)* BHAGWATI DASI v. EMPEROR A I R 1938 Cal 638=42 C W N 983=11 R C 302=177 I C 943=39 Cr L J 974.

BENGAL COTTON CLOTH & YARN CONTROL ORDER (1943).

——*Validity.*

The Bengal Cotton Cloth and Yarn Control Order, made by the Bengal Government on October 19, 1943, is within the powers of R. 81 (2) (*a*) and (*b*) of Defence of India Rules and, therefore, valid. *(Derbyshire C. J. and Gentle J.)* KHETSIDAS GIRDHARILAL v. PROTAPMAL RAMESWAR A I R 1946 Cal 197=49 C W N 595=1945-8 F L J 205.

——*Direction No. 1 (S), dated 2nd April 1945, issued under condition No. 5 of licence granted under—Scope of* (obiter.)

Direction No. 1 (S), dated 2nd April 1945, issued under condition No. 5 of the licence set out in Form B of Schedule to the Bengal Cotton Cloth and Yarn Control Order is effective only in respect of persons who hold licences under the order. *(Derbyshire C. J. and Gentle J.)* KHETSIDAS GIRDHARILAL v. PROTAPMAL RAMESWAR A I R 1946 Cal 197=49 C W N 595=1945-8 F L J 205.

——*(as amended on 2nd April 1945)—Direction No. 1 (S), dated 2nd April 1945, issued under paragraph 5 of the conditions of licence granted under the Order is valid — Direction does not infringe provisions of S. 299 (1), Government of India Act.*

The Bengal Cotton Cloth and Yarn Control Order made by the Government of Bengal comes within the terms and powers of Rule 81 (2) (a) and (b) of the Defence of India Rules. Therefore, the direction No. 1 (S), dated 2nd April 1945, which is in accordance with condition No. 5 of the licence set out in Form B of the Schedule to the Bengal Cotton Cloth and Yarn Control Order, giving a dealer instructions to hand over cloth to one of the handling agents named therein, and prescribing the rates at which he was to be paid is clearly within the powers given in Rule 81 (2) (a) and (b). The fact that the price which the dealer may receive for his cloth may be less than the price which he paid for the cloth is no objection.

Nor does the direction infringe the provisions of S. 299 (1) of the Government of India Act, since if the dealer is deprived of his property by virtue of direction that will be done with authority of law. *(Derbyshire C. J. and Gentle J.)* KHETSIDAS GIRDHARILAL v. PROTAPMAL RAMESWAR A I R 1946 Cal 197=49 C W N 595=1945-8 F L J 205.

BENGAL COTTON CLOTH & YARN CONTROL ORDER (1943)

—S. 7.

——*S. 7 (1) (as amended in April 1945) — Provincial Textile Director, if can fix maximum sale price of cloth.*

The Provincial Textile Director has power to prescribe the maximum sale prices of cloth under S. 7 (1) of the Bengal Cotton Cloth and Yarn Control Order, 1943, as amended on April 2, 1945. *(Derbyshire C. J. and Gentle J.)* KHETSIDAS GIRDHARILAL v. PROTAPMAL RAMESWAR, A I R 1946 Cal 197=49 C W N 595=1945-8 F L J 205.

BENGAL COTTON CLOTH AND YARN CONTROL ORDER (1945).

——*Prosecution—Sanction.*

A prosecution for a contravention of any provision of the Cotton Cloth and Yarn Control Order, 1945, requires the sanction of the Provincial Government. Sanction for prosecution for the contravention of the provisions of Order of 1943 cannot be held to be a sanction for the prosecution for the disobedience of the Order of 1945 which was not in force when the sanction was given, even though the terms of the corresponding paragraph of the Order of 1943 were identical.

Similarly where on the face of the order sanctioning prosecution there is nothing to show for what offence the prosecution was sanctioned and there is no evidence given to show what the sanction was about, the sanction is also of no value : 52 C W N 325, *Rel. on. (Sen J.)* KHAN MAHAMMAD v. THE KING A I R 1950 Cal 108=51 Cr L J 556.

—Para. 18.

——*Para. 18 (2)—"Normal requirement".*

For a prosecution under para. 18 (2), for possessing cloth in excess of normal requirements, unless some kind of standard is fixed by the Order or the Rules thereunder, it cannot be said that the accused were in possession of cloth in excess of their normal requirements. In the absence of anything to show what the normal requirements of the accused and his family at the time were, his conviction cannot stand. 49 Cr L J 31, *Rel. on. (Sen J.)* KHAN MAHAMMAD v. THE KING A I R 1950 Cal 108=51 Cr L J 556.

(BENGAL) COURT OF WARDS ACT — (BENGAL ACT IX of 1879).

—S. 59-A.

——Under S. 59-A, Court of Wards Act, a manager of a Court of Wards is a 'public servant' within meaning of S. 197, Criminal P. C. *(Harries C. J. and Manohar Lall J.)* ANGELO v. KANDAN MANJHI A I R 1940 Pat 316=6 B R 241=12 R P 440=21 P L T 1085=185 I C 738=41 Cr L J 221.

BENGAL CRIMINAL LAW AMENDMENT ACT (1925)

——*Bengal Criminal Law Amendment Act of 1925 is not* ultra vires.

The Bengal Criminal Law Amendment Act of 1925 does not affect Acts of Parliament and is not

BENGAL CRIMINAL LAW AMENDMENT ACT (1925)

ultra vires of the Local Government that passed it. *(Rankin, C. J. and Majumdar, J.)* GIRENDRA NATH BANERJI v. BIRENDRA NATH PAL
A I R 1927 Cal 496=54 Cal 727=31 C W N 593=102 I C 647=8 A I Cr R 121.

—S. 11.

——*Scope — Whether a person is legally detained has to be dealt with under Criminal P. C.*

Bengal Criminal Law Amendment Act is an Act which was intended to supplement the ordinary criminal law in Bengal and the question whether or not a particular person is legally detained under it has to be dealt with, if at all, under the Code of Criminal Procedure. *(Rankin, C. J. and Majumdar, J.)* GIRENDRA NATH BANERJI v. BIRENDRA NATH PAL
A I R 1927 Cal 496=54 Cal 727=31 C W N 593=102 I C 647=8 A I Cr R 121.

BENGAL CRIMINAL LAW AMENDMENT ACT (VI OF 1930)

——Validity—Act is inconsistent with Part III of the constitution and has become void since 26-1-1950 — Act could not be brought back to life by modification or adaptation. — *See* Adaptation of Laws Order (1950), R. 28
A I R 1950 Cal 274=51 Cr L J 1110 (S B).

——Bengal Criminal Law Amendment Act having become void since 26-1-1950, the Preventive Detention (Extension of Duration) Order, 1950, can have no effect on it. It could not be revived by a subsequent order of the President. — *See* Preventive Detention (Extension of Duration) Order, (1950)
A I R 1950 Cal 274=51 Cr L J 1110 (S B).

——*Not* ultra vires.

Bengal Criminal Law Amendment Act is legal and not *ultra vires*. *(Ameer Ali and M. C. Ghose JJ.)* PRATUL CHANDRA MITRA v. COMMANDANT, HIJLI DETENTION CAMP
A I R 1934 Cal 259=38 C W N 299=59 C L J 185=1934 Cr Cas 387=61 Cal 197=7 R C 201 (2)=151 I C 1028=35 Cr L J 1466.

——*Power of Executive, if final.*

Under the Bengal Criminal Law Amendment Act, the executive is invested with the final power to determine which members of a class are to be dealt with under the Statute. *(Ameer Ali and M. C. Ghose JJ.)* PRATUL CHANDRA MITRA v. COMMANDANT, HIJLI DETENTION CAMP
A I R 1934 Cal 259=38 C W N 299=59 C L J 185=1934 Cr Cas 387=61 Cal 197=7 R C 201 (2)=151 I C 1028=35 Cr L J 1466.

——*Question as to whether Local Government was right in detaining persons — Whether one for High Court to determine.*

The question whether the Government was right in detaining a particular person is not one for the High Court to determine as the Statute leaves the decision entirely to the Local Government. It is open to the Local Government to proceed under the Bengal Criminal Law Amendment Act if the Government is of opinion that there are reasonable grounds for so proceeding. There is no discretion left in the High Court to enter into the question whether the Local Government had reasonable grounds for their action. *(Ameer Ali and M. C. Ghose JJ.)* PRATUL CHANDRA MITRA v. COMMANDANT, HIJLI DETENTION CAMP
A I R 1934 Cal 259=38 C W N 299=59 C L J 185=1934 Cr Cas 387=61 Cal 197=7 R C 201 (2)=151 I C 1028=35 Cr L J 1466.

BENGAL CRIMINAL LAW AMENDMENT ACT (VI of 1930)

——*Not* ultra vires.

The Bengal Criminal Law Amendment Act is not *ultra vires* of the Legislature inasmuch as an Act, providing for internment of suspected persons, affects neither the Habeas Corpus Act nor the Bill of Rights, and an Act providing for the detention of suspected persons is in exactly the same position. *(Mallik and Remfry JJ.)* JITENDRA NATH v. CHIEF SECRETARY TO THE BENGAL GOVERNMENT
A I R 1932 Cal 753=36 C W N 1088=1932 Cr Cas 796=Ind Rul (1933) Cal 198=60 Cal 364=141 I C 866=34 Cr L J 245.

——Ultra vires—*Powers of Legislature — High Court's power to consider if Act is within powers of Legislature.*

The High Court can consider and determine whether an Act passed by the Local Legislature is within its powers, but if an Act so passed is within those powers, it is not the province of the Courts to consider the propriety of such legislation, nor have the Courts jurisdiction to alter or modify, in any way, the competent Acts of the Legislature. *(Mallik and Remfry JJ.)* JITENDRA NATH v. CHIEF SECRETARY TO THE BENGAL GOVERNMENT
A I R 1932 Cal 753=36 C W N 1088=1932 Cr Cas 796=Ind Rul (1933) Cal 198=60 Cal 394=141 I C 866=34 Cr L J 245.

——*Not* ultra vires.

The Bengal Criminal Law Amendment Act, 1930, is not *ultra vires* of the Local Legislature under S. 80-A (4), Government of India Act. *(Pankridge and M. C. Ghose. JJ.)* PRAMILA GUPTA v. W. S. HOPKYNS
A I R 1932 Cal 470=36 C W N 669=Ind Rul (1932) Cal 455=1932 Cr Cas 460=59 Cal 1440=138 I C 358=33 Cr L J 609.

—Preamble.

——*Preamble and S. 2.*

Act does not provide for preventive detention—Detenu not produced before Magistrate within 24 hours as required under Art. 22 (2), Constitution of India — Detention order is illegal. *(Sen, Chunder and Lahiri JJ.)* SUNIL KUMAR BOSE v. THE CHIEF SECRETARY TO THE GOVERNMENT OF THE WEST BENGAL
A I R 1950 Cal 274=54 C W N 394=51 Cr L J 1110 (S B).

——*Preamble and S. 2 (1)—As amended by Criminal Law Amendment (Amending) Ordinance, 1949—Act if valid after the passing of the Constitution of India—Constitution of India, Arts. 13 (1), 19 (1) (d) and 19 (5).*

The Bengal Criminal Law Amendment Act, 1930, even if it is an Act providing for preventive detention is void under Art. 13 (1) of the Constitution of India because it is inconsistent with the provisions of Part III of the Constitution. *(Sen,*

BENGAL CRIMINAL LAW AMENDMENT ACT (VI of 1930), Pre.

Chunder and Lahiri JJ.) SUNIL KUMAR BOSE v. THE CHIEF SECRETARY TO THE GOVERNMENT OF THE WEST BENGAL
A I R 1950 Cal 274=54 C W N 394=
51 Cr L J 1110 (S B).

—S. 2.

——Act conflicts with Arts. 19 (1) (d) and 22 (4) of the Constitution and has become void under Art. 13 (1).—*See* ibid, Preamble
A I R 1950 Cal 274=
51 Cr L J 1110 (S B).

——*S. 2 (1) (i)*—Detention without forming opinion whether detenu was at any time member or is member of certain kind of association — Detention is illegal under Act (assuming that the Act is not void). *(Sen, Chunder and Lahiri JJ.)* SUNIL KUMAR BOSE v. THE CHIEF SECRETARY TO THE GOVERNMENT OF THE WEST BENGAL
A I R 1950 Cal 274=54 C W N 394=
51 Cr L J 1110 (S B).

——*S. 2 (1) (i)* — Honest belief of Provincial Government that detained person was member of association is enough—Court cannot go into question whether association was in fact association as contemplated by section — Where the Provincial Government honestly believes that a person is a member of an association which the Government believes has certain objects and certain methods, then an order for detention can be made. Again, if the Provincial Government honestly thinks that a man has done or is doing any act to assist the operations of any such association an order for detention can be made. *(Harries C. J., Sen, Banerjee, Lahiri and J. P. Mitter JJ.)* BHUPENDRA DE v. CHIEF SECRETARY, GOVERNMENT OF WEST BENGAL
A I R 1949 Cal 633=53 C W N 798=
51 Cr L J 169 (FB).

——Effect of, on power of High Court under S. 491, Criminal P. C.—*See* Bengal Criminal Law Amendment (Supplementary) Act (Central Act 8 of 1932), S. 4
A I R 1949 Cal 633=
51 Cr L J 169 (F B).

——*S. 2 (1)—Order not received within time required by law—Disobedience after the period.*

Where the order under S. 2 (1), Criminal Law Amendment Act, for disobedience of which the accused was convicted, was made on January 7, 1933, and amended on May 31, 1933, and a further order was passed on January 14, 1934 :

Held, that since there was no review of the orders dated January 7, 1933, and May 31, 1933, within the time required by law, the order was no longer in force at the time when the accused was alleged to have disobeyed it on July 2, 1934. *(Lort-Williams and Jack JJ.)* HIRANMOY BHOWMIK v. EMPEROR
A I R 1936 Cal 16=
1936 Cr Cas 72=8 R C 452=160 I C 743
37 Cr L J 377.

——*Detention—Test.*

Under the Act, for the detention of any persons, the only test to be applied is whether in the opinion of the Local Government there are reasonable grounds for such detention, and any detention under the Act where there are reasonable grounds in the opinion of the Local Government

BENGAL CRIMINAL LAW AMENDMENT ACT (VI of 1930), S. 2

is legal. *(Mallik and Remfry JJ.)* JITENDRA NATH v. CHIEF SECRETARY TO THE BENGAL GOVERNMENT
A I R 1932 Cal 753=
36 C W N 1088=1932 Cr Cas 796=
Ind Rul (1933) Cal 198=60 Cal 364=
141 I C 866=34 Cr L J 245.

——*S. 2 (1) (f) — Reasons for detention*—Habeas corpus.

Where the executive claims to detain a subject under statutory powers, it must satisfy the Court that the circumstances in which the statute lays down that such powers can be exercised in fact exist. But where it is laid down, as in S. 2 (1), Bengal Criminal Law Amendment Act, that the opinion of the Local Government whether or not there were reasonable grounds for making an order under the section, should be conclusive, it is not open to the Court to go behind an order of detention made by the executive even in respect of a person who has the common law right to a writ of *habeas corpus* or a similar right. *(Panckridge and M. C. Ghose JJ.)* PRAMILA GUPTA v. W. S. HOPKYNS
A I R 1932 Cal 470=
36 C W N 669=Ind Rul (1932) Cal 455=
1932 Cr Cas 460=59 Cal 1440=138 I C 358=
33 Cr L J 609.

—S. 3.

——*S. 3 (2) — Diligence — Local Government is sole judge.*

Under S. 3 (2), the Local Government is the sole judge of the due diligence required by the section. *(Lort-Williams and Jack JJ.)* ANANTA KUMAR CHAKRAVARTY v. EMPEROR
164 Ind Cas 285=62 Cal 1041=
40 C W N 255=9 R C 186=37 Cr L J 922.

——*S. 3 (2)—Order extending period of detention after Rule by High Court—Legality of.*

Where under an order under S. 3 (2), Bengal Criminal Law Amendment Act, the period of detention of a certain person was extended and the final order for detention under S. 2 was made after the rule had been issued by the High Court:

Held, there was no illegality in the procedure. *(Mallik and Remfry JJ.)* JITENDRA NATH v. CHIEF SECRETARY TO THE BENGAL GOVERNMENT
A I R 1932 Cal 753=
36 C W N 1088=1932 Cr Cas 796=
Ind Rul (1933) Cal 198=60 Cal 364=
141 I C 866=34 Cr L J 245.

——*S. 3 (2) — Reference from death sentence — District Magistrate's power.*

A reference under S. 3 (2) is not incompetent merely because the records were submitted by the District Magistrate and not by the Commissioner. *(C. C. Ghose, Jack and M. C. Ghose JJ.)* PRODYOT KUMAR v. EMPEROR
A I R 1933 Cal 1=
Ind Rul (1932) Cal 673=1933 Cr Cas 21=
140 I C 80=33 Cr L J 837 (FB).

——*Only one judgment can be written.*

A trial under the Bengal Criminal Law Amendment Act, 1925, is not a trial under the Criminal P. C., *simpliciter*, before a tribunal of three Judges, but is a trial before a special tribunal under a special Act, and there can be only one single judgment embodying the findings and views of the Commissioners who compose the tribunal. If any of the members of the tribunal does not

BENGAL CRIMINAL LAW AMENDMENT ACT (VI of 1930), S. 3

agree with the others, the only course open to him is to intimate to the others his views and to leave it to them to embody his views in the judgment of the tribunal. He has no right to write a separate judgment. *(C. C. Ghose, Jack and M. C. Ghose JJ.)* PRODYOT KUMAR v. EMPEROR

A I R 1933 Cal 1=1933 Cr Cas 21=
140 I C 80=Ind Rul (1932) Cal 673=
33 Cr L J 837 (F B).

—S. 4.

——*Propriety of detention—Courts, if have power to determine—Fraud on the Act or abuse of powers given by Legislature—Onus of proof.*

There is no right of appeal to any Court of Law to adjudicate as to the merits of any order passed by the Local Government.

The Courts can, however, consider whether a person is 'improperly' detained, i. e., whether although the forms of law have been observed, there has been a fraud on an Act or an abuse of powers granted by the Legislature. But a petitioner alleging fraud or an abuse of the powers against him, must set out his case with the same precision as is essential in alleging fraud against any other litigant, and his case fails unless he can establish it as pleaded. *(Mallik and Remfry JJ.)* JITENDRA NATH v. CHIEF SECRETARY TO BENGAL GOVERNMENT

A I R 1932 Cal 753=36 C W N 1088=
1932 Cr Cas 796=Ind Rul (1933) Cal 198=
60 Cal 364=141 I C 866=34 Cr L J 245.

—S. 6.

——*Notification under S. 6 (2) — Presumption under S. 114 (e), Evidence Act (I of 1872) —* Omnia præsumuntur rite esse acta.

It is not necessary to call any witness to prove that the Government had formed the opinion recited in a Government Notification under S. 6 (2), Bengal Criminal Law Amendment Act. Upon the proof that the notification referred to in S. 6 (2), Bengal Criminal Law Amendment Act, was duly authenticated within the meaning of S. 49 of the Government of India Act and signed by the Additional Secretary to the Government of Bengal, the Court is entitled to presume that judicial and official acts have been regularly performed, by reason of the provisions of S. 114, illust. (e) of the Evidence Act, and the maxim *omnia præsumuntur rite esse acta*, and the recital in the notification that such and such was the opinion of Government comes within the ambit of these provisions. *(Lort-Williams and Jack JJ.)* ANANTA KUMAR CHAKRAVARTY v. EMPEROR

164 I C 285=
62 Cal 1041=40 C W N 255=9 R C 186=
37 Cr L J 922.

——*Strict construction.*

The Bengal Criminal Law Amendment Act being a penal enactment has to be construed strictly. It is not open either to the Commissioners or to the High Court to read S. 6 as it says: Provided that where the Commissioners convict any person of any offence punishable under para. 1 of S. 307, I. P. C., and S. 109, I. P. C. *(Derbyshire C. J., Mukerjee and Costello JJ.)* EMPEROR v. BHAWANI PROSAD BHATTACHARJEE

A I R 1935 Cal 561=39 C W N 334=
62 Cal 433=8 R C 153=1935 Cr Cas 969=
157 I C 1070=36 Cr L J 1275 (S B).

BENGAL CRIMINAL LAW AMENDMENT ACT (VI of 1930), S. 4

——*(As amended up to 1934) — Penal Code (Act XLV of 1860), Ss. 307, 115, 109 — Conspiracy to murder — Attempt by one of the conspirators — Offence—Hurt to some other—Sentence—Abettor not himself taking part—Sentence under S. 6.*

Where in pursuance of a conspiracy to murder the Governor of Bengal, one of the conspirators armed with a loaded revolver attempted to fire with revolver at the Governor with intent to murder him :

Held, that the offence of attempted murder came within S. 307, I. P. C., and by the Bengal Criminal Law Amendment Act of 1925, as amended by the subsequent enactments, the Commissioner could pass on him the sentence of death. The fact that in this attempt to murder the Governor, somebody was hurt has some bearing on the sentence.

Where a member of the conspiracy only aids others who actually attempt to murder, he himself not taking a part under it, a sentence of death cannot be passed on him under the Bengal Criminal Law Amendment Act. The maximum sentence that can be passed against him with regard to that part of the charge which relates to a conspiracy for an attempt to murder is one of 14 years' imprisonment under the power given by S. 307, I. P. C., read with S. 115. *(Derbyshire C. J., Mukerjee and Costello JJ.)* EMPEROR v. BHAWANI PROSAD BHATTACHARJEE

A I R 1935 Cal 561=39 C W N 334=
62 C 433=8 R C 153=1935 Cr Cas 969=
157 I C 1070=36 Cr L J 1275 (S B).

BENGAL CRIMINAL LAW AMENDMENT ORDINANCE (1 of 1947).

—S. 5.

——*Certificate under, validity—Offences alleged to have been committed on 16-11-1946 and 6-1-1947 — Certificates by Commissioner on 14-2-1947 — Certificates are invalid—Trials by Special Bench are without jurisdiction.*

What S. 5 of the Bengal Ordinance I of 1947 as it stood in February 1947 contemplated was a certificate given only if the allegations in the charge sheet or challan showed the offence to have been committed before 30th September 1947. These certificates determined the jurisdiction of the Special Bench constituted under the Ordinance. Where the offences were alleged to have been committed on 16th November 1946 and 6th January 1947 respectively i.e., after the 30th September 1946, and the Commissioner of Police issued certificates in respect of them on 14th February 1947, it was held that the Commissioner could not on that date validly give the certificates in respect of these offences and hence the trials based on the certificates by the Special Bench were entirely without jurisdiction. *(Harries C. J. and Blank J.)* ABDUL RAHIM v. THE KING

I L R (1949) 1 Cal 79.

——*S. 5 (proviso)—Notifications dated 22-3-1947 and 19-11-1947 extending period—Whether retrospective.*

There is nothing to suggest that the notifications dated 22-3-1947 and 19-11-1947 extending the period in the Proviso to S. 5 of the Ordinance were ever intended to affect certificates given before

BENGAL CRIMINAL LAW AMENDMENT ORDINANCE (I of 1947), S. 5

these notifications were made. *(Harries C. J. and Blank J.)* ABDUL RAHIM v. THE KING
I L R (1949) 1 Cal 79.

——*Special Bench—Jurisdiction of — Certificate and allegations in charge sheet determine the jurisdiction.*

What determines the jurisdiction of Court ordinarily is the charge sheet and not what is ultimately proved. In the same way, what determines the jurisdiction of the Special Tribunal under the Ordinance is the certificate of the Commissioner of Police under S. 5 of the Ordinance and the allegations in the charge sheet or challan that the offence was committed before 30th September 1946 : AIR 1938 P C 130, *Ref. (Harries C. J. and Blank J.)* ABDUL RAHIM v. THE KING
I L R (1949) 1 Cal 79.

——*Certificate under — Date of — Presumption as to.*

Unless there is any evidence as to the existence of some circumstances causing a mistake, no Court can possibly hold that the certificate was given on any other date than on the date it bears. *(Harries C. J. and Blank J.)* ABDUL RAHIM v. THE KING
ILR (1949) 1 Cal 79.

BENGAL CRIMINAL LAW AMENDMENT (SUPPLEMENTARY) ACT (CENTRAL ACT VIII of 1932)..

—S. 4.

——*Power of Court under S. 491, Criminal P. C., to question detention under Bengal Criminal Law Amendment Act, 1930.*

Section 4, Bengal Criminal Law Amendment (Supplementary) Act, 1932, only takes away Court's right to interfere where an order is made under the Bengal Criminal Law Amendment Act, 1930. However, if the Court comes to the conclusion that the order was mala fide or made in bad faith it can interfere under S. 491 of the Code of Criminal Procedure : A I R 1944 Lah 373, *Rel. on.*

It would be necessary for the petitioner under S. 491, Criminal P. C., therefore, to set out grounds upon which it could be said that the order was mala fide.

Order under the Bengal Criminal Law Amendment Act would not be mala fide merely because it was made with the intention of justifying detention which had been declared by the High Court by its decision in a certain case to be unlawful, detention being under an Act which had expired and which could not validly be extended.

If in the case the Court had not expressed any opinion on the question whether there existed any grounds justifying detention, but merely held that the detention under Act which had expired and which could not be validly extended, was illegal, the subsequent orders of detention passed under Bengal Criminal Law Amendment Act with the undoubted intention to nullify the effect of the decision would not be mala fide. *(Harries C. J., Sen, Bannerjee, Lahiri and J. P. Mitter JJ.)* BHUPENDRA DE v. CHIEF SECRETARY, GOVERNMENT OF WEST BENGAL
A I R 1949 Cal 633=53 C W N 798=
51 Cr L J 169 (FB).

BENGAL CRUELTY TO ANIMALS ACT (I of 1920).

—S. 6.

——*'Phuka' operation — Meaning of — Note of Bengal Government Veterinary Adviser — Admissibility.*

In the Act itself, there is no attempt to define the practice of '*phuka*', which is made punishable under S. 6. In a trial for an offence under S. 6, in the absence of any other authoritative document to describe that process, a note by the Veterinary Adviser to the Government of Bengal, dated the 11th March 1930, describing that practice, is admissible in evidence to show what the Legislature meant by that process.

The words "the operation called phuka" in S. 6 clearly refer to some process in which by use of physical means to milch animals they are induced to produce more milk than they would otherwise have produced if the means were not employed. *(Roxburgh and Blank JJ.)* SUBOL CHANDRA v. EMPEROR
A I R 1949 Cal 90=
50 Cr L J 157.

——*Phuka—Conviction for being owner of animal upon which phuka was performed while in his possession.*

Accused charged under S. 6, Bengal Cruelty to Animals Act, for performing *phuka* on a milch-buffalo, cannot be convicted for being the owner of the animal on which the *phuka* was performed while in his possession, when there was no such allegation and the trial had not proceeded on any such footing, without being called upon to show cause against such conviction.

[In the interest of justice new trial was ordered.] *(Khundkar and Edgley JJ.)* DARAGALI MIAH v. EMPEROR
A I R 1940 Cal 328=
71 C L J 179=44 C W N 398=
13 R C 111=189 I C 369=41 Cr L J 736.

BENGAL DISORDERLY HOUSES ACT (III of 1906).

——*S. 2—Scope.*

If a prostitute lives with a man *en famille* she does not necessarily come within the category of disorderly persons. *(Macpherson J.)* MUNSHI MIAN v. EMPEROR
A I R 1929 Pat 406=10 P L T 523=
12 A I Cr R 325=1929 Cr C 199=
115 I C 690=30 Cr L J 517.

——*S. 2 (2) creates offence under S. 4 (o), Criminal P. C., and so must be tried in accordance with provision of Criminal Procedure Code, S. 244.*

Section 2 (2), Bengal Disorderly Houses Act creates an offence within the definition of S. 4 (o), Criminal Procedure Code and under S. 5 of that Code the offence is triable according to the provisions of that Code since there is nothing in the Act itself which regulates the manner of trying the offence. The trial must, therefore, be held in accordance with S. 244 of the Code. *(Macpherson J.)* MUNSHI MIAN v. EMPEROR
A I R 1929 Pat 406=115 I C 690=
10 P L T 523=12 A I Cr R 325=
1929 Cr C 199=30 Cr L J 517.

——*Proceedings under — Malicious prosecution— Damages — Libel — Limitation Act, Arts. 23 and 24.*

Proceedings under the Disorderly Houses Act cannot be said to be prosecutions and a suit for damages in respect of such proceedings is not a

BENGAL DISORDERLY HOUSES ACT (III of 1906), S. 2

suit for malicious prosecution governed by Art. 23 of the Limitation Act but is one for compensation for libel governed by Art. 24 of the Limitation Act. 24 All. 368, *Rel. on. (Mookerjee and Beachcroft JJ.)* DHIRAJ BALA DASI v. GOPAL CHANDRA MUKERJEE
18 C L J 352=20 I C 768.

——*Brothel—Habitual prostitution.*

Unless it is shown that the house is in the vicinity of an educational institution or a boarding house, hostel, or mess, and secondly, that it is used as a brothel for the purpose of habitual prostitution or is used by disorderly persons of any description a case would not fall under S. 2 of the Act. Where what is proved is that a house is occupied by a male and the members of his family two of whom are kept mistresses of gentlemen and that they sing songs sometimes of an obscence character, the house is not used as a brothel or for the purpose of habitual prostitution. *(Mitra and Fletcher, JJ.)* KOKIL RAM v. EMPEROR
6 C L J 710=6 Cr L J 423.

BENGAL EMBANKMENT ACT (II of 1882)

——*Object.*

The system of embankments in North Bihar is very complex, and it is extremely hazardous to interfere with them in any way without the advice of a competent engineer and full inquiry. The Bengal Embankment Act is largely composed of provisions designed for the maintenance of the *status quo* and to prevent interference therewith except by competent persons or under competent advice and sanction. *(Rowland J.)* RAMADHIKARI SINGH v. EMPEROR,
A I R 1937 Pat 14=9 R P 337=3 B R 214=166 I C 699=38 Cr L J 266.

——*Cases should be heard by experienced Magistrates.*

Cases under the Bengal Embankment Act ought preferably to be heard by Magistrate of experience. *(Macpherson J.)* KAMESHWAR SINGH v. EMPEROR.
A I R 1936 Pat 413=17 P L T 412=2 B R 688=9 R P 74=1936 Cr Cas 660=163 I C 965=37 Cr L J 875.

—S. 3.

——*Water course.*

The definition of "water-course" is not exhaustive. It includes a line of drainage, weir, culvert, pipe or other channel whether natural or artificial, for the passage of water. *(Edgley J.)* PASUPATI KARMAKAR v. EMPEROR,
A I R 1939 Cal 528=I L R (1939) 1 Cal 334=43 C W N 391=12 R C 162=183 I C 470=40 Cr L J 803.

—S. 6.

——*Ss. 6, 76 (b) — Publication of notification under S. 6 — Presumption under S. 114, cls. (e) and (f), Evidence Act (I of 1872).*

Apart from the difficulty of getting direct proof of local publication of a notification under S. 6, Bengal Embankment Act, after an interval of time exceeding 25 years, the Crown can be permitted to rely on the presumption under S. 114, cls. (e) and (f), Evidence Act, namely that judicial and official acts have been regularly performed and that the common course of business has been followed in particular cases. *(Rowland J.)* RAMADHIKARI SINGH v. EMPEROR,
A I R 1937 Pat 14=9 R P 337=3 B R 214=166 I C 699=38 Cr L J 266.

BENGAL EMBANKMENT ACT (II of 1882), S. 6

——*Ss. 6, 80 — Provision whether directory or mandatory.*

The provisions of the latter part of S. 6 and S. 80, Bengal Embankment Act, for publication of the notification are merely directory and not mandatory.

A magistrate acquitted a person charged under S. 76-B of the Bengal Embankment Act without coming to any conclusion as to whether the accused had in fact added to or erected an embankment on the ground that the accused could not be convicted inasmuch as the notification under S. 6 had not been published in the mode prescribed by the latter part of that section and S. 80 of the Act. It appeared, however, that a specific notice had been served on the accused and they had been asked to remove the embankment and that it was not the first time that they had built the embankment nor the first time that it had been removed by order of the Government :

Held, that the omission to publish the notification was immaterial in the circumstances and the Magistrate should have decided the question whether the accused in fact committed the offence alleged against them under S. 76-B. *(Lort-Williams and S. K. Ghosh JJ.)* SUPDT. & REM. OF L. A., BENGAL v. HARAKALI BISWAS,
A I R 1931 Cal 435=58 Cal 874=35 C W N 163=Ind Rul (1931) Cal 507=1931 Cr Cas 587=131 I C 859=32 Cr L J 813.

——*Ss. 6, 76, 79 and 80—Lease — Permission to erect embankment — Supersession of an existing embankment.*

The Act supersedes any previous stipulations in lease about embankments contrary to its provisions. "Existing embankments" mean embankments existing at the date of addition and need not be one existing at the date of notification under S. 6. The last clause of S. 6 of the Act is directory and not mandatory. *(Richardson and Shamsul Huda JJ.)* LAKSHMIKANT v. EMPEROR,
A I R 1919 Cal 669=46 Cal 825=23 C W N 572=50 I C 669=29 C L J 328=20 Cr L J 333.

—S. 43.

——*Ss. 43, 68, 56, 57 — Removal of Sch. 'D' embankment and construction of new one in its place—Notification under S. 43.*

Where upon an application being made to the Collector for shifting a Sch. 'D' embankment, the Govt. orders by a notification that the embankment should be removed and a new one with drainage sluices be constructed in its place but by a subsequent notification the Government orders that a portion of the original Sch. 'D' embankment should be removed from the Sch. 'D' then unless the Government by a notification issued under S. 43, Bengal Embankment Act declares that portion of the embankment as included in the Sch. 'D', such portion of the new embankment does not become a Sch. 'D' embankment. The mere fact that it eplaced a Sch. 'D' embankment does not necesa r ily mean that it must be included in the Sch. 'D' it hout any further notification. *(B. K. Mukherjea*

BENGAL EMBANKMENT ACT (II of 1882), S. 43

and Latifur Rahman JJ.) JADUNATH BANERJEE v. SECRETARY OF STATE,
A I R 1939 Cal 617=I L R (1939) 2 Cal 268=43 C W N 1021=12 R C 581=187 I C 477.

—S. 59.

——*Ss. 59, 68, 74, 86 — Sale of tenure to various persons—Recognition by* zamindar*—Embankment charges allotted to transferors — Sale of tenure against original tenure-holders—Validity — Purchasers, whether bound by sale.*

A *mourasi mokarrari* was held by *A* and *B*. They sold specific plots of the land to various persons. The *zemindar* landlords recognised these different sales and constituted the different plots of land as sold into different tenures bearing separate shares of the original rent. There were dues under the Bengal Embankment Act, 1882, and the Collector made certain allotments as payable by *A* and *B*. The latter allowed their share of the charges to fall into arrears and the *zemindars* thereupon proceeded to sell the entire original tenure under the Embankment Act. The tenure was stated to comprise the original lands in the possession of the heirs of *A* and *B* and was sold and purchased by defendant No. 10. The original puchasers, however, remained in possession and resisted defendant No. 10 :

Held, (1) that under the proviso to S. 74, Bengal Embankment Act, the rights and interests of the original purchasers were not affected by the sale;

(2) that as the *zemindars* had split up the original tenure into several tenures, they had no right to bring all the tenures to sale by taking proceedings against *A* and *B* who held only some of them;

(3) that the original transfers were not invalid simply because *kharij* fees had not been paid to the *zemindars*. *(B. B. Ghose and S. K. Ghose JJ.)* SUDHINKUMAR PAL v. ASGAR,
A I R 1930 Cal 797=57 Cal 1001=Ind Rul (1931) Cal 246=129 I C 774.

—S. 68.

——*Apportionment—Notice under S. 56 or S. 57.*

A notice under S. 56 or S. 57, Bengal Embankment Act is a condition precedent to creation of liability of the proprietor or the tenure-holder as the case may be under the Act, and unless and until due publication or service of the notice is proved the very foundation of the liability is taken away. *(B. K. Mukherjea and Latifur Rahman JJ.)* JADUNATH BANERJEE v. SECRETARY OF STATE,
A I R 1939 Cal 617=I L R (1939) 2 Cal 268=43 C W N 1021=12 R C 581=187 I C 477.

——*Proper course for aggrieved party.*

A Civil Court cannot enquire into the question whether Collector has apportioned cost on land not liable to be charged. The apportionment of costs by Collector on lands which he should not have done under the provisions of the Bengal Embankment Act is at the most an erroneous decision or an irregular exercise of the jurisdiction which the Collector undoubtedly possesses and in no sense it can be said to be a usurpation of jurisdiction by the Collector which would make the order a nullity or without jurisdiction. It is open to the party aggrieved to take an appeal against that order to the Commissioner as provided for in S. 84 or to

BENGAL EMBANKMENT ACT (II of 1882), S. 68

invoke the powers vested in the Commissioner and the Government as provided for in S. 85 of the Act. *(B. K. Mukherjea and Latifur Rahman JJ.)* JADUNATH BANERJEE v. SECRETARY OF STATE,
A I R 1939 Cal 617=ILR (1939) 2 Cal 268=43 C W N 1021=12 R C 581=187 I C 477.

——*Ss. 68, 56, 57 — Recovery of costs of repairs of several years—Notification for each repair, if necessary.*

Where the costs of embankment which the Government seeks to recover are the costs of repairs of several years, for each particular repair there must be a notification upon the parties interested, their objection must be heard, and then only can an order of apportionment be passed by the Collector under the provisions of S. 68. *(B. K. Mukherjea and Latifur Rahman JJ.)* JADUNATH BANERJEE v. SECRETARY OF STATE,
A I R 1939 Cal 617=ILR (1939) 2 Cal 268=43 C W N 1021=12 R C 581=187 I C 477.

——*Sale for embankment charges.*

All the provisions relating to *patni* sales are not applicable to sales for recovery of embankment charges. *(B. B. Ghose and S. K. Ghose JJ.)* SUDHINKUMAR PAL v. ASGAR,
AIR 1930 Cal 797=57 Cal 1001=Ind. Rul. (1931) Cal. 246=129 I C 774.

—S. 69.

——*Notice, whether condition precedent.*

Notice under S. 69 is not essential for fixing liability for embankment costs. *(Mitter and Patterson JJ.)* SASI SEKHAR SEN v. BIR BIKRAM,
AIR 1932 Cal 267=35 C W N 1239=59 Cal 255=Ind. Rul. (1932) Cal. 270=137 I C 147.

——*Liability for embankment charges—Contract to the contrary.*

A provision in an engagement that no demand shall be made either for any excess *jama* or for any other imposition over and above the aforesaid *mokarari jama* is not sufficient to preclude the *zemindar* from recovering embankment costs which are subsequently imposed by Statute on the tenure-holder. *(Mitter and Patterson JJ.)* SASI SEKHAR SEN v. BIR BIKRAM,
AIR 1932 Cal 267=35 C W N 1239=59 Cal 255=Ind. Rul. (1932) Cal 270=137 I C 147.

—S. 74.

——*Transferee from defaulter.*

The words 'from the defaulter' in S. 74, Bengal Embankment Act, are wider than the words 'under the defaulter' and include a transferee from the defaulter. *(B. B. Ghose and S. K. Ghose JJ.)* SUDHINKUMAR PAL v. ASGAR,
AIR 1930 Cal 797=57 Cal 1001=Ind. Rul. 1931 Cal 246=129 I C 774.

—S. 76.

——*S. 76 (b)—No offence.*

Where in a prosecution for the creation of a new bund, the defence succeeded in proving the grant of permission but the prosecution though contending that the bund under construction deviated from the bund for the erection of which the permission had been granted, failed to prove that map was sent with the permission, held that no offence was

BENGAL EMBANKMENT ACT (II of 1882), S. 76

committed. *(Lodge and Ormond JJ.)* METOO MANDAL v. EMPEROR, 1946 Cal Rul 158= 223 I C 133=47 Cr L J 365.

——*S. 76 (b) — River, whether water-course — S. 76 (b), if applies to diversion or obstruction of river.*

The definition of "water-course" in the Bengal Embankment Act includes a line of drainage, weir, culvert, pipe or other channel, whether natural or artificial, for the passage of water. The definition is not exhaustive. It only mentions certain items by the word "includes". In ordinary language, every river is a water-course. Therefore, S. 76 (b) of the Act clearly applies in a case in which there has been a diversion or obstruction of a river. *(Edgley J.)* PASUPATI KARMAKAR v. EMPEROR, AIR 1939 Cal 528=I L R (1939) 1 Cal 334= 43 C W N 391=12 R C 162=183 I C 470= 40 Cr L J 808.

——*S. 76 (b)—Proper order to pass.*

The proper order to be passed in the case of persons erecting new embankment is one directing them to demolish so much of the embankment as is new embankment and to remove so much of the new earth as is addition to existing embankment, thus restoring the locality as nearly as possible to its *status quo ante* and not to convict them under S. 76 (b). *(Rowland J.)* RAMADHIKARI SINGH v. EMPEROR, AIR 1937 Pat 14= 9 R P 337=3 B R 214=166 I C 699= 38 Cr L J 266.

——*S. 76 (b)* — Prosecution under S. 283, Penal Code—Acquittal — Subsequent prosecution under S. 76 (b), Bengal Embankment Act, for meddling with the embankment.

Held, meddling is not a distinct offence and the principle of *autrefois acquit* operated. *(Cunliffe and Henderson JJ.)* SHIB CHANDRA v. EMPEROR, AIR 1936 Cal 686=1936 Cr Cas 946= 9 R C 461=165 I C 847=38 Cr L J 1.

——*Ss. 76 (a) (b), 80—Making repairs and placing sluice—Conviction — Prohibitory notification —'Existing embankment,' meaning of.*

Two persons were convicted of offences under S. 76, cls. *(b)* and *(c)* respectively of the Bengal Embankment Act. It was urged on their behalf that there was no proof that the notification under S. 76 *(b)* had been published as required by S. 80 of the Act, and that the accused did not 'add to any existing embankment' on the ground that the words 'existing embankment' meant the embankment as it existed in 1911, when the notification was made:

Held, *(i)* that S. 6 of the Act made it clear that the notification applying S. 76 *(b)* would come into effect the month after the date of its appearance in the *Calcutta Gazette* irrespective of further publication under the last part of S. 6 and in the manner set out in S. 80 which publication is directory merely and not mandatory;

(ii) that the expression 'existing embankment' in S. 76 *(b)* was in contradistinction to 'new embankment' and meant an embankment existing at the time when the addition was made.

A sluice annexed to an embankment is under the definition included in the term 'embankment' as used in the Act.

(iii) that the accused in making the repairs and in making a sluice to the *bandh* rendered themselves liable to punishment under S. 76 *(b)*. *(Macpherson J.)* DAMODAR NARAYAN v. EMPEROR, AIR 1933 Pat 40= Ind. Rul. (1933) Pat 108=13 P L T 652= 1933 Cr Cas 56=142 I C 35= 34 Cr L J 275.

——*S. 76 (b)—Existing embankment.*

'Existing embankment' in S. 76, cl. *(b)* of the Bengal Embankment Act, 1882, means the embankment as it existed at the date when the additions were made, and permission of the Collector is necessary even for repairs if these repairs involve additions to the embankment in the state that it is in when these repairs begin. *(Panckridge J.)* HATU NAIK v. EMPEROR, AIR 1933 Cal 3= 56 C L J 15=36 C W N 877= Ind. Rul. (1933) Cal 159 (2)=60 Cal 131= 1933 Cr Cas 23=141 I C 647= 34 Cr L J 195.

——*Ss. 76 (a) and 91—Scope.*

S. 76, Embankment Act, has no application in the case of river coming under the operation of the Canal Act. *(C. C. Ghose and Jack JJ.)* HEMCHANDRA v. EMPEROR, 33 C W N 88= 118 I C 355=30 Cr L J 914.

——*S. 76 (a) and (b)—Scope of.*

There is no proviso to cl. (b) as is attached to cl. (a) of S. 76. The only offence constituted by cl. (b) as distinguished from cl. (a) is the omission to obtain the sanction of the Collector to the addition to an existing embankment within a prohibited area. *(Holmwood and Sharfuddin JJ.)* RAMANATH v. EMPEROR, 38 Cal 413= 13 C L J 333=9 I C 360=12 Cr L J 65.

——*Adding to old bundhs.*

S. 76 prohibits, not only the construction of new *bundhs*, but adding to old *bundhs* so as to obstruct the flow of water. *(Rampini and Sharfuddin JJ.)* DWARKA NATH MANJI v. EMPEROR, 12 C W N 344=7 C L J 239= 7 Cr L J 185.

—S. 78.

——*Act of accused need not be* mala fide.

In order to support a conviction under S. 78 on the ground that the accused by any wilful act destroyed or diminished the efficiency of an embankment, it is not necessary that there should be a finding that the accused acted *mala fide*. *(Newbould and B. B. Ghose JJ.)* EXECUTIVE ENGINEER, NADIA RIVER DIVISION v. ASHUTOSH SAHA, AIR 1925 Cal 921=52 Cal 573= 89 I C 719=26 Cr L J 1407.

—S. 79.

——*Accidental breach filled up without sanction —Technical offence.*

When there is an accidental breach in the embankment and a technical offence is committed by filling up the breach without sanction, and it appears that the Collector was not averse to the repair of the breaches in itself, if his formal sanction had been taken, an order under S. 79, Bengal Embankment Act, is not appropriate. *(Macpherson J.)* KAMESHWAR SINGH v. EMPEROR, AIR 1936 Pat 413=17 P L T 412= 2 B R 688=9 R P 74=1936 Cr Cas 660= 163 I C 965=37 Cr L J 875.

BENGAL EMBANKMENT ACT (II of 1882)

—S. 80.

——*Publication under S. 80, nature of.*

The publication under S. 80, is directory and not mandatory. *(Rowland J.)* RAMADHIKARI SINGH v. EMPEROR A I R 1937 Pat 14=9 R P 337=3 B R 214=166 I C 699=38 Cr L J 266.

—S. 89.

——*Order of Subordinate Court set aside otherwise than in appeal — Whether one passed with jurisdiction.*

An order of the District Magistrate under the Bengal Embankment Act, passed otherwise than in appeal that an order of the Subordinate Court need not be carried out, is without jurisdiction and will be set aside. *(Macpherson J.)* KAMESHWAR SINGH v. EMPEROR A I R 1936 Pat 413=17 P L T 412=2 B R 688=9 R P 74=1936 Cr Cas 660=163 I C 965=37 Cr L J 875.

—S. 91.

——*'Water course', meaning of.*

The definition of 'water course' in the Bengal Embankment Act is not exhaustive. It only mentions certain items by the word "includes." In ordinary language every river is a water course. It is the portion between the highest water line and the lowest water line which is under the protection of the Embankment Act. *(M. C. Ghose J.)* EMPEROR v. LAKSHMI NARAIN AUDDY A I R 1934 Cal 836=1934 Cr Cas 1357 (2)=38 C W N 926=7 R C 398 (2)=153 I C 771=36 Cr L J 390.

——Where a river at a certain place comes within the operation of Bengal Irrigation Act, it cannot come at the same time within the Embankment Act. The River Ganges at Hooghli does not come under Irrigation Act. *(M. C. Ghose J.)* EMPEROR v. LAKSHMI NARAIN AUDDY A I R 1934 Cal 836=1934 Cr Cas 1357 (2)=38 C W N 926=7 R C 398 (2)=153 I C 771=36 Cr L J 390.

BENGAL EMERGENCY POWERS ORDINANCE (XI of 1931).

—S. 30.

——*Ss. 30, 34 — Special procedure under S. 30—Trials excepted from application of.*

Under S. 34, only those trials which were going on at the date of the promulgation of the Ordinance are excepted from the application of the special procedure laid down by S. 30. Trials which were commenced before the promulgation of the Ordinance but were going on at the direction of the Government making the special procedure applicable are not excepted under the section. *(Rankin C. J. and Costello J.)* SUDHINDRA KUMAR v. EMPEROR A I R 1933 Cal 354=37 C W N 312=Ind Rul (1933) Cal 450=60 Cal 643=143 I C 593=34 Cr L J 611.

——*Bengal Emergency Powers Ordinance, 1932, S. 4(1)—Expiry of Ordinance of 1931 before commencement of re-trial—Jurisdiction to re-try.*

Having regard to the scheme and purpose of the Bengal Emergency Powers Ordinance, 1931, an order for the trial of any person by a Special Magistrate made under S. 30, clothes such Magistrate with jurisdiction to re-try the case where an appellate Court directs a re-trial by him under

BENGAL EMERGENCY POWERS ORDINANCE (XI of 1931), S. 30

S. 423 (1) (f), Criminal Procedure Code. The trial cannot be said to be completed until the Magistrate has carried out the direction of the Appellate Court and finally disposed of the case.

Therefore, the fact that the Ordinance lapsed immediately after the order for re-trial was made does not deprive the Magistrate of his jurisdiction to re-try the case. *(Panckridge and Patterson JJ.)* JIBAN MOLLA v. EMPEROR A I R 1933 Cal 551=Ind Rul (1933) Cal 500=37 C W N 906=1933 Cr Cas 911=144 I C 90=34 Cr L J 684 (2).

—S. 31.

——*Cases under Ordinance.*

The expression "Cases under the Ordinance," as used in S. 31 of the Ordinance, clearly relates to the trial of cases by Special Magistrates appointed under the Ordinance, and does not mean the same thing as the expression "offences punishable under the Ordinance" as used in Ss. 30 and 31. *(Mallik and Patterson JJ.)* JOGENDRA MOHAN v. EMPEROR A I R 1933 Cal 516=60 C 545=6 R C 68=1933 Cr Cas 860=144 I C 957=34 Cr L J 879.

——*Sentence—Validity after expiry of Ordinance.*

If the conviction and sentence were legal at the time the Magistrate delivered his judgment, the continued detention of the appellant will not become illegal by reason of the expiry of the term of the Ordinance. *(Mallik and Patterson JJ.)* JOGENDRA MOHAN v. EMPEROR A I R 1933 Cal 516=60 Cal 545=6 R C 68=1933 Cr Cas 860=144 I C 957=34 Cr L J 879.

—S. 33.

——*Appeal — High Court exercising original criminal jurisdiction.*

The High Court exercising Original Criminal jurisdiction is not a Sessions Court within the meaning of the Criminal Procedure Code.

Consequently, no appeal lies to the High Court from a sentence of four years' rigorous imprisonment under S. 33 of the Bengal Emergency Powers Ordinance, XI of 1931. *(Jack J.)* SUKUMAR MAJUMDAR v. EMPEROR A I R 1932 Cal 867=59 Cal 1248=1932 Cr Cas 891 (2)=Ind Rul (1933) Cal 65 (1)=140 I C 891=34 Cr L J 107 (1).

—S. 34.

——*Framing of charge sheet on Nov. 24, 1931 — Trial directed to begin on December 9, 1931—Trial by Special Magistrate—Legality of.*

Where, on a charge sheet sent in on November 24, 1931, the Magistrate directed the trial to begin on December 9, 1931, and the prosecution not being ready on that date, various adjournments were taken till February 2, 1932, and then it was directed that the case would be taken up by the Additional District Magistrate as a Special Magistrate under Ordinance XI of 1931, which was promulgated on December 1, 1931, and it was contended that the Special Magistrate had no jurisdiction to try the case under S. 34 of the Ordinance :

Held, that as the accused were not being tried in any Court on December 1, 1931, the trial before the Special Magistrate did not offend against S. 34.

BENGAL EMERGENCY POWERS ORDINANCE (XI of 1931), S. 34

(Rankin C. J. and Costello J.) DHARNIKANTA v. EMPEROR A I R 1933 Cal 594=57 C L J 57=6 R C 285=146 I C 1051=35 Cr L J 226.

——The words 'for which he was being tried' in S. 34, do not include commitment proceedings before the Magistrate. The correct way of applying the phrase is to see whether the proceedings indicated by S. 271, Criminal P. C., had commenced or not. *(Rankin C. J. and Costello J.)* SUDHINDRA KUMAR v. EMPEROR A I R 1933 Cal 354=37 C W N 312=Ind Rul (1933) Cal 450=60 Cal 643=143 I C 593=34 Cr L J 611.

BENGAL EMERGENCY POWERS (SUPPLEMENTARY) ORDINANCE (I of 1932). —S. 4.

——The very fact that the Court of a Special Magistrate has passed an order convicting a peaceful picket under S. 4, shows that the Court was of opinion that the act constituting the offence was committed in furtherance of a movement prejudicial to the public safety or peace, as otherwise the Court would have had no jurisdiction. *(Jack and M. C. Ghose JJ.)* PRABODH CHANDRA v. EMPEROR A I R 1933 Cal 186=36 C W N 1158=Ind Rul (1933) Cal 273=60 Cal 351=142 I C 351 (2)=34 Cr L J 345.

(BENGAL) ESTATES PARTITION ACT (V of 1897) —S. 99.

——The section merely lays down what the rights of encumbrancers will be—It does not operate automatically to dispossess the encumbrancer in possession if the encumbrancer does not voluntarily give up his possession. *(Reuben J.)* SIRAM MAHTO v. EMPEROR A I R 1948 Pat 75=229 I C 451=13 B R 378=48 Cr L J 386.

—Chap. VI.

——No presumption of correctness attaches to entry made in Collectorate partition proceedings—The entry is admissible as piece of evidence: 63 I C 194 (Pat), *Disting. (Reuben J.)* SIRAM MAHTO v. EMPEROR A I R 1948 Pat 75=229 I C 451=13 B R 378=48 Cr L J 386.

BENGAL EXCISE ACT (V of 1909).

——*Search under—Criminal Procedure Code, Ss. 102 and 103, applicability of.*

Ss. 102 and 103, Criminal Procedure Code, do not apply to the search made under the Bengal Excise Act. *(Suhrawardy and Mitter JJ.)* HARBHAJJAN SAO v. EMPEROR A I R 1927 Cal 527=54 Cal 601=102 I C 547 = 31 C W N 667=8 A I Cr R 114=28 Cr L J 579.

—S. 2.

——*Diluted mixture.*

Opium diluted in water cannot be held to be an admixture for the purpose of smoking : AIR 1914 Cal 603, *Ref. (C. C. Ghose and Duval JJ.)* DWARIKA NATH MISRA v. EMPEROR A I R 1926 Cal 1120=44 C L J 111=30 C W N 984=97 I C 653=27 Cr L J 1133.

——*S. 2 (15)* — "Manufacture" is a process and mere dilution of denatured spirit with water cannot be such a process under the Act. By dilution, spirit does not become intoxicating liquor. *(Mookerjee and Beachcroft JJ.)* U. N. BISWAS v. EMPEROR A I R 1914 Cal 603=19 C L J 53=18 C W N 486=22 I C 425=41 Cal 694=15 Cr L J 73.

BENGAL EXCISE ACT (V of 1909), S. 2

——*Ss. 2 (14), (20), 9 (2), 10, 46, 52, 55 and 57—Excisable liquor—Tinctures—Prevention of smuggling — 'Juice drawn from any cocoanut'—Order of foreign goods—Abetment of transport.*

The definition of 'excisable liquor' in the Excise Act of 1909 prevents chemists and vendors of drugs selling or otherwise dealing with intoxicating liquors. Tinctures of cinchona or cardamom or ginger and spirits of Nitric ether are not excisable liquor. The smuggling of drugs prepared in French territory with French spirits and brought into British territory can be prevented under the Customs law. Therefore, those articles, ought to be dealt with by Customs authorities, but the omission of these authorities to do so does not render the accused liable to punishment under the Excise Act. 'Juice drawn from any cocoanut' in S. 2, cl. 20 of the Excise Act, does not refer to the milk of the cocoanut itself, but means the juice of the palm tree of whatever species and not its fruit. The act of taking an order for foreign goods does not constitute an abetment of their import : 24 C. 157, *Appr. (Holmwood and Imam JJ.)* EMPEROR v. MOTILAL CHANDER 15 I C 961 = 39 Cal 1053=16 C W N 785=13 Cr L J 545.

—S. 9.

See ibid, S. 2.

—S. 10.

See ibid, S. 2.

—S. 46.

See also ibid, S. 2.

——*Ss. 46, 62*—Prosecution under S. 46 (a)—Previous conviction — Accused liable to conviction exceeding six months — Procedure in warant case should be followed—Magistrate following summons case procedure — Trial is vitiated—Irregularity is not curable under Criminal Procedure Code, 1898, S. 537 because the difference between two forms of trials is of sufficient importance to lead to an almost indefeasible presumption of prejudice to the accused. *(Biswas J.)* SUFAL GOLAI v. EMPEROR A I R 1938 Cal 205=42 C W N 222=10 R C 674=174 I C 454=39 Cr L J 438.

——*Ss. 46 and 83 (a) — Complaint by police officer below the station house officer in rank — Jurisdiction of Magistrate — Criminal Procedure Code, Ss. 530 (p) and 537.*

On the report of a junior officer below the rank of an officer in charge of a Police Station, a Magistrate took cognizance of a case under S. 46 of the Bengal Excise Act and convicted the offender :

Held, that the Magistrate's proceedings were void under clause (p) of S. 530 of the Criminal Procedure Code inasmuch as he was debarred by S. 83 (a) of the Bengal Excise Act from taking cognizance of the case on such a report or complaint. The defect in the proceedings was not a mere irregularity to which S. 537 of the Criminal Procedure Code applied. *(Richardson and Huda JJ.)* JALALUDDIN PESHAWARI v. EMPEROR AIR 1918 Cal 50=47 I C 813=19 Cr L J 961.

BENGAL EXCISE ACT (V of 1909), S. 46

——*Ss. 46 and 90 — Medicinal preparation — Exemption.*

A preparation containing alcohol though a medicinal preparation and may be used for medicinal purpose only is within the provisions of the Bengal Excise Act. *(Teunon and Newbould JJ.)* GANESH CHANDRA SIKDAR v. EMPEROR
A I R 1918 Cal 822=26 C L J 342=22 C W N 348=40 I C 740=45 Cal 82=18 Cr L J 740.

——*Cocaine—Illicit possession—Burden of proof of authority.*

The burden of proving under what authority the accused obtained cocaine and beyond the prescribed quantity lies upon the accused. *(Holmwood and Sharfuddin JJ.)* MAKUND SAHU v. EMPEROR
A I R 1914 Cal 634=23 I C 470=18 C W N 1023=15 Cr L J 262.

——*Ss. 46 and 52—Conviction under.*

A person cannot be convicted under Ss. 46 and 52 if the person has no dominion or control over the goods. *(Mookerjee and Beachcroft JJ.)* KALI CHARAN MUKHERJEE v. EMPEROR
A I R 1914 Cal 473=22 I C 148=41 Cal 537=18 C L J 514=18 C W N 309=15 Cr L J 4.

——*Ss. 46 and 56—Offence by servant — Removing ganja—Acting on behalf of master—Liability of master.*

A master is not criminally responsible for the wrongful act of a servant unless he can be shown to have expressly authorised it. 6 W. R. (Cr.) 60, *Ref.* Under S. 56 of the Bengal Excise Act, the prosecution must show that the servant was not only in the employ of his master but also acted on his behalf in committing the offence. The expression, 'on behalf of' connotes some benefit to the person on whose behalf another person may act. When a servant does anything within the scope of his employment for that purpose, his action will be binding on his master and the master will be criminally liable for any wrongful act of the servant. *(Caspersz and Sharfuddin JJ.)* UTTAM CHAND v. EMPEROR 39 Cal 344=15 C L J 401=15 I C 1007=16 C W N 551=13 Cr L J 591.

—S. 48.

——*Conviction under—Essentials of.*

Under S. 48 two things must be proved to support a conviction : (i) that the spirit is denatured and (ii) that the accused attempted to render such spirit, fit for human consumption. Denatured spirit does not mean one for consumption. The Act makes an attempt punishable but not a successful attempt (i. e.) completed act. So the accused who succeeded in his attempt cannot be convicted. *(Mookerjee and Beachcroft JJ.)* U. N. BISWAS v. EMPEROR A I R 1914 Cal 603=19 C L J 53=18 C W N 486=22 I C 425=41 Cal 694=15 Cr L J 73.

—S. 52.

See ibid, S. 2.

—S. 54.

——*Offence under S. 54 (b)*—Challan *by Inspector of Police—Proceedings, validity of.*

Police reported an offence under S. 54 (b), Bengal Excise Act, to the Collector of Excise who wrote to the Deputy Commissioner of Police, saying that he sanctioned the prosecution of the two accused and

BENGAL EXCISE ACT (V of 1909), S. 54

that he authorized an officer of the Police Department to investigate the cases and to submit a report to the Magistrate under S. 83 (b) of the said Act. The Magistrate took cognizance on a *challan* submitted by the Inspector of Police :

Held, that it could not be said that the Police Officer who filed the *challan* of which cognizance was taken answered to the description required by S. 83, namely "an excise officer authorized by the Collector in this behalf." In the circumstances the whole proceedings were void. *(Roxburgh J.)* FAKIR MAHAMMAD v. EMPEROR
A I R 1941 Cal 246=72 C L J 611=45 C W N 112=14 R C 18=194 I C 777=42 Cr L J 619.

——"*License.*"

The license spoken of in S. 54 is license to a person and not for a specific area. *(Holmwood and Fletcher JJ.)* AROJ ALI v. EMPEROR
13 C L J 217=9 I C 707=12 Cr L J 117.

—S. 55.

See ibid, S. 2.

—S. 56.

See also ibid, S. 46.

——*Master and servant—Liability.*

Under this section the prosecution must prove that the servant acted on behalf of the master in committing the offence. *(Caspersz and Sharfuddin JJ.)* UTTAM CHAND v. EMPEROR
15 I C 1007=39 Cal 344=16 C W N 551=15 C L J 401=13 Cr L J 591.

—S. 57.

See ibid, S. 2.

—S. 61.

——*Ss. 61 and 46 (a) and 2 (12) — Import of cocaine—Offence.*

Under S. 61 read with S. 46 (a) and S. 2 (12) an accused can be convicted if he attempts to import cocaine against rules. *(Mookerjee and Beachcroft JJ.)* KALI CHARAN MOOKERJEE v. EMPEROR
A I R 1914 Cal 473=41 Cal 537=18 C L J 514=18 C W N 309=22 I C 148=15 Cr L J 4.

—S. 63.

——*Only identity of possessor is material under S. 63.*

What is material under S. 63, is not identity of premises but identity of the possessor. *(Bartley and Narsing Rau JJ.)* J. E. GUBBAY v. EMPEROR A I R 1940 Cal 205=12 R C 668=188 I C 267=41 Cr L J 556.

——*Liquor in Excise and Customs bond—Confiscation of.*

Liquor in Excise and Customs bond is not liable to confiscation under any of the provisions of the Bengal Excise Act. *(Bartley and Narsing Rau JJ.)* J. E. GUBBAY v. EMPEROR
A I R 1940 Cal 205=12 R C 668=188 I C 267=41 Cr L J 556.

——"*Possession*"—*Dual possession.*

Possession implies full and uncontrolled physical dominion. One quantity of liquor cannot be said to be "had in possession along with or in addition to" another, unless the possessor of both is the same. Liquor which is in the dual possession of the revenue authorities and the company from whom it is sought to be seized cannot be said to be in "possession" of the company within the meaning

BENGAL EXCISE ACT (V of 1909), S. 63

of S. 63 (2) and therefore is not liable to confiscation under S. 63 (2) and where there is no evidence that any portion of it is illicit, it is not liable to confiscation under S. 63 (1) either. *(Bartley and Rau JJ.)* EZEKIEL EPHRAIM EZEKIEL v. EMPEROR
A I R 1939 Cal 346=43 C W N 522=11 R C 875=I L R (1939) 1 Cal 549=181 I C 955=40 Cr L J 608.

——*Jurisdiction.*

On the true construction of S. 64 (1), the Magistrate who tries the case has power to order confiscation of anything in Bengal which is liable to confiscation under S. 63, whether it is within or without the district where the case is tried. *(Bartley and Rau JJ.)* EZEKIEL EPHRAIM EZEKIEL v. EMPEROR
A I R 1939 Cal 346=43 C W N 522=11 R C 875=I L R (1939) 1 Cal 549=181 I C 955=40 Cr L J 608.

——*Any liquor "lawfully had in possession along with and in addition to" liquor liable to confiscation—Offence—Licit liquor on different premises.*

Under S. 63, any liquor lawfully "had in possession along with or in addition to" any liquor liable to confiscation under S. 63 (1) is likewise liable to confiscation. It is immaterial who is the person in possession ; all that the sub-section requires is that some person should be in possession at some point of time subsequent to the commission of an excise offence, both of the Illicit liquor and also of some licit liquor. When this condition is fulfilled, the licit liquor is confiscated equally with the illicit. The sub-section does not say that the person in possession need be guilty of any offence, and the Proviso to the sub-section distinctly implies that in the case of liquor even the owner need not be guilty. The whole of S. 63 is in very wide terms and it is not difficult to imagine cases where it may operate harshly. But revenue laws are often very harsh, because revenue offences are often very profitable. These, however, are extraneous considerations which can hardly affect the interpretation of S. 63. The section has to be construed according to its plain language. The fact that the licit liquor was on different premises from illicit is immaterial ; the point is that it was lawfully "had in possession in addition to" the illicit liquor. Therefore, the additional liquor is liable to confiscation under S. 63 (2). The fact that the person in possession of licit liquor has not been prosecuted for or convicted of any offence is entirely irrelevant to the construction of S. 63 (2). *(Bartley and Rau JJ.)* EZEKIEL EPHRAIM EZEKIEL v. EMPEROR
A I R 1939 Cal 346=43 C W N 522=11 R C 875=I L R (1939) 1 Cal 549=181 I C 955=40 Cr L J 608.

—S. 64.

——*S. 64 (1)—Parties not heard — Omission, if fatal.*

Before a Magistrate can make an order of confiscation under S. 64 (1) of the Bengal Excise Act, he has to decide that the articles in question are liable to confiscation under S. 63. A decision necessarily implies the hearing of parties. In ordinary circumstances the omission is fatal to the order of confiscation ; but where facts sufficient for a decision on the question of liability to confiscation are

BENGAL EXCISE ACT (V of 1909), S. 64

stated by the petitioners themselves in the application, the omission cannot be said to have caused any real prejudice. *(Bartley and Rau JJ.)* EZEKIEL EPHRAIM EZEKIEL v. EMPEROR
A I R 1939 Cal 346=43 C W N 522=11 R C 875=I L R (1939) 1 Cal 549=181 I C 955=40 Cr L J 608.

—S. 67.

——*Excise officers assaulted before entry — Search in accordance with law.*

Where certain excise officers came to inspect the premises on report received of illicit distilling of liquor and saw the accused removing the apparatus, but were assaulted before they had entered the house or arrested :

Held, they were acting under S. 67 and though no search was made it could not be said there was a search not in accordance with law. *(Holmwood and Sharfuddin JJ.)* PRAKASH CHANDRA v. EMPEROR
A I R 1914 Cal 675=41 Cal 836=23 I C 203=18 C W N 19=15 Cr L J 251.

—S. 73.

——Section provides that certain Excise Officers may investigate offences. *(Lort-Williams and S. K. Ghosh JJ.)* IBRAHIM AHMAD v. EMPEROR
A I R 1931 Cal 350=35 C W N 601=1931 Cr Cas 414=58 Cal 1260=131 I C 113=32 Cr L J 640.

—S. 74.

——*Ss. 74, 81 — Identification of Prisoners Act (XXXIII of 1920), Ss. 2, 5—Power to direct accused to be photographed for purposes of investigation.*

The provisions contained in S. 74 and S. 81, Bengal Excise Act, make the provisions of the Criminal Procedure Code applicable to investigations by Excise Officers. The Bengal Excise Act does not lay down a complete procedure for investigation of offences under the Act, and the provisions of Ch. IX of the Act relating to the procedure in the matter of detection, investigation and other matters including trial of offences, in which Ss. 74 and 81 referred to above find place, leave no doubt that it was mainly the procedure laid down in the Criminal Procedure Code that has to be followed in investigation into offences under the Bengal Excise Act. Consequently, there can be no question as to the applicability of S. 5, Identification of Prisoners Act, under which a Magistrate is empowered to order a person to be measured and photographed for the purpose of any investigation or proceeding under the Criminal Procedure Code. *(Guha and Bartley JJ.)* J. E. GUBBAY v. EMPEROR
A I R 1936 Cal 65=40 C W N 415=8 R C 499=1936 Cr Cas 196=63 Cal 780=161 I C 238=37 Cr L J 438.

——*Statement to Excise Officer — Criminal Procedure Code (Act V of 1898), S. 162.*

Section 74 refers specifically to S. 162, Criminal Procedure Code, and there can be little doubt that it was intended that this section should also apply to an Excise Officer investigating an excise case. Although S. 162 refers only to statements made in the course of investigation under Chap. XIV, Criminal Procedure Code, it is clear that it was intended that in making an investigation under the Excise Act, the Excise Sub-Inspector should

BENGAL EXCISE ACT (V of 1909), S. 74

have the status of a Police Officer and, therefore, a statement made to him in the course of an investigation would also be inadmissible under the provisions of S. 162. *(Lort-Williams and Jack JJ.)* JOGENDRA NATH GORAI v. EMPEROR
A I R 1935 Cal 621=63 Cal 419=
1935 Cr Cas 1044=8 R C 181=
40 C W N 29=158 I C 385=
36 Cr L J 1366.

——*S. 74 (3)*—Under S. 74 (3), an officer investigating an offence under the Excise Act, V of 1909 is a Police Officer. *(Mukerji, Costello, Mallik, Jack and S. K. Ghose JJ.)* AMIN SHARIF v. EMPEROR
A I R 1934 Cal 580=7 R C 9=
38 C W N 930=1934 Cr Cas 841=
59 C L J 555=61 Cal 607=150 I C 561 (2)=
35 Cr L J 1071 (FB).

——Section 74 prescribes the powers and duties of Excise Officers investigating offences and the provision shows that such officers are virtually deemed to be the Police Officers. *(Lort-Williams and S. K. Ghosh JJ.)* IBRAHIM AHMAD v. EMPEROR
A I R 1931 Cal 350=58 Cal 260=
35 C W N 601=1931 Cr Cas 414=
131 I C 113=32 Cr L J 640.

——*S. 74 (4)—Report—Criminal Procedure Code, S. 250—Report of an Excise Sub-Inspector is not police report for S. 250 — Criminal Procedure Code, S. 190.*

The report of a Sub-Inspector of Excise to a Magistrate is a police report only for the purposes of S. 190, Criminal Procedure Code. The report is not a police report for other purposes. *(Cuming and Gregory JJ.)* RADHIKA MOHAN DAS v. HAMED ALI A I R 1927 Cal 405=
54 Cal 371=100 I C 540=28 Cr L J 316.

—S. 75.

——*Ss. 75 and 81*—Proceedings before a Collector are governed by Ss. 75 and 81 but the Criminal Procedure Code has a restricted application to proceedings taken under this Act. *(Mookerjee and Beachcroft JJ.)* U. N. BISWAS v. EMPEROR
A I R 1914 Cal 603=19 C L J 53=
18 C W N 486=22 I C 425=41 Cal 694=
15 Cr L J 73.

—S. 81.

——Provisions of Ss. 74 and 81 make the provisions of Criminal Procedure Code applicable to investigations by Excise Officers. Consequently, S. 5, Identification of Prisoners Act, also applies to investigations by the Excise Officers. *(Guha and Bartley JJ.)* J. E. GUBBAY v. EMPEROR
A I R 1936 Cal 65=40 C W N 415=
8 R C 499=1936 Cr Cas 196=
63 Cal 780=161 I C 238=37 Cr L J 438.

—S. 83.

——*S. 83 (b)—Non-compliance with S. 83 (b).*

Offence under S. 54 (b) of the Act — Cognizance taken on challan submitted by Inspector of Police :

Held, that the proceedings did not comply with S. 83 (b) and were therefore void. *(Roxburgh J.)* FAKIR MAHAMMAD v. EMPEROR
A I R 1941 Cal 246=72 C L J 611=
45 C W N 112=14 R C 18=194 I C 777=
42 Cr L J 619.

BENGAL EXCISE AND LICENSING ACT (VII of 1878)

——*Rules under—Rule 16—License—Nature of.*

A license granted under the Excise rules is a personal matter and is not transferable or assignable. *(Coxe and Rives JJ.)* RAKHAL CHANDRA SHAH v. DAMODHAR SAHA 15 C W N 169=
9 I C 115=12 Cr L J 11.

—S. 53.

——*Ss. 53, 61—Liability of servant.*

Where the master sold the *ganja*, received the money for it and ordered the servant to deliver the *ganja* to the purchaser and further where the master was found in possession of the *ganja* the servant who was in his employer's house at that time cannot be regarded as having been in possession of the *ganja*. *(Rampini and Sharfuddin JJ.)* GOSHTO BEHARI SHAH v. EMPEROR
12 C W N 461=7 C L J 377=
7 Cr L J 344.

——*Ss. 53, 59 and 61 — License for sale and possession at a certain place—Sale at different place.*

Where a person having a license for the sale and possession of *ganja* at a certain place sells it at a different place, he is liable to be dealt with under S. 59 and not under Ss. 53 and 61. *(Rampini and Sharfuddin JJ.)* GOSHTA BEHARI SAHA v. EMPEROR 12 C W N 461=7 C L J 377=
7 Cr L J 344.

—S. 54.

——*License—Area not covered by license.*

The license spoken of in S. 54 is a license to a person, and not a license for a specific area. *(Holmwood and Fletcher JJ.)* AROJ ALI MANDAL v. KING-EMPEROR 13 C L J 217=
9 Ind Cas 707=12 Cr L J 117.

—S. 59.

——License for sale at one place—Sale at another place—*See* Bengal Excise and Licensing Act (7 of 1878), Ss. 53, 59, 61. 7 Cr L J 344 (Cal).

—S. 61.

——License for sale at one place—Sale at different place—*See* Bengal Excise and Licensing Act (7 of 1878), Ss. 53, 59, 61. 7 Cr L J 344 (Cal).

——Liability of servant — *See* Bengal Excise and Licensing Act (7 of 1878), Ss. 53, 61.
7 Cr L J 344 (Cal).

—S. 75.

——*Applicability — Confiscation of boat without implication of its owner in offence.*

The boat in which excisable articles are carried in contravention of the excise law should not be confiscated under the provisions of S. 75 of the Bengal Excise and Licensing Act (VII B. C. 1878), unless it is found that the owner of the boat was in some way implicated in the offence under the excise law. *(Caspersz and Chitty JJ.)* GOLAP SAHA v. EMPEROR 12 C W N 139=
6 Cr L J 433.

BENGAL FACTORIES RULES (1940)

—R. 24.

——Necessity for fencing when can be dispensed with—*See* Factories Act, S. 24.
A I R 1949 Cal 604=51 Cr L J 144.

BENGAL FERRIES ACT (I of 1885)

——*Scope of.*

Act I of 1885 only regulates the control of ferries which are public ferries. It does not prevent establishment of right to a franchise of a ferry. *(Wort Ag. C. J. and Kulwant Sahay JJ.)* KIRTYANAND SINGH v. DEONANDAN PRASAD
A I R 1933 Pat 533=6 R P 533=
14 P L T 761=148 I C 1101.

BENGAL FERRIES ACT (I of 1885)

—S. 5.

——*'Ferry'—Two points on two sides of the river for conveying persons and property are necessary.*

In order to constitute a ferry such as is contemplated by the Act, it is necessary that there should be two points on both sides of the river so that people and property may be conveyed from one side of the river to the other. It must be connected on both sides with land on the bank of the river. *(Jwala Prasad J.)* JEOBARAN SINGH v. RAMKISHUN LAL, AIR 1925 Pat 623=4 Pat 503=92 I C 871=7 P L T 734=27 Cr L J 359.

—S. 6.

——*Right to embark or disembark passengers and cargo.*

When the Crown grants a ferry and purports to declare the limits within which it is to run, the termini must be on places over which the public may have the right to embark or disembark. And the whole question, therefore, is whether the Legislature assuming that it is competent to convert all lands within such limits into highways, has, by what it has said in the Act, expressed any such intention. There is very great difficulty in presuming in favour of any such intention. Such conversion would in effect amount to confiscation of private property without a corresponding award of compensation, and would be tantamount to a declaration in favour of the public of an incorporeal hereditament over private property over which no such right accrued under the ordinary laws of the land. Such words as are contained either in the definition of ferry (S. 5, Bengal Ferries Act) or the defining of the limits (S. 6), do not express any intention of taking away rights of private individuals or vesting any rights in the public. And unless such intention is very clearly expressed, no inference of such intention would be permissible. The land if it is to be converted into a highway has to be converted under the law as it stands either by obtaining a dedication absolute or restricted or by acquisition voluntary or compulsory. By merely calling a piece of land a ferry or a landing stage the Legislature cannot be taken to have affected private rights of individuals. Therefore, the notification under S. 6 the whole scope of which is to define the limits of the ferry, taken along with the definition of ferry as including a landing stage, does not confer any right to embark or disembark the passengers and cargo of the ferry so long as the lands to be used as landing stages have not been made into highways by such means as the law allows. *(Derbyshire C. J. and D. N. Mitter J.)* CHAIRMAN, MIDNAPORE DISTRICT BOARD v. MONMOTHA NATH MONDAL, AIR 1937 Cal 289=10 R C 312=171 I C 815.

——*S. 6 (b) — Private right interfered under statute—Cause of action.*

Where the Government takes possession of the plaintiff's ferry by virtue of the powers vested in them under S. 6 of the Bengal Ferries Act, and in this the Government does not act arbitrarily or carelessly, the plaintiff has no cause of action. *(Macpherson and Mohammad Noor JJ.)* SECRETARY OF STATE v. KAMESHWAR SINGH BAHADUR, AIR 1936 Pat 87=16 P L T 877=2 B R 252=8 R P 387=15 Pat 246=160 I C 915.

BENGAL FERRIES ACT (I of 1885), S. 6

——*S. 6 (d)—Actual maintenance of boat—Limits of ferry.*

The existence of a ferry depends not on the actual maintenance of a boat and provision of facilities for crossing but on the existence of a right to obtain them. It is not necessary for the limits of a ferry to be defined by notification. Where the limits are well-known, a notification is unnecessary. It can be proved by oral evidence what are the limits between which the ferry plies. Section 6 *(d)*, Bengal Ferries Act, would meet the case where this is doubtful and a notification under S. 6 *(d)* would obviate the necessity of adducing oral evidence as to what the limits are. In the absence of a notification it should be proved by oral evidence what the limits of the ferry, in each particular case, are. *(Rowland C. J.)* ABDUL GHANI v. EMPEROR, AIR 1933 Pat 603=1933 Cr Cas 1365=6 R P 278=14 P L T 720=146 I C 605=35 Cr L J 128.

——*S. 6 (d)—Mere name of* ghat *with evidence of situation of village — Whether sufficient to locate limits of ferry.*

A ferry may be named from a village in whose neighbourhood it is, though actually the starting of the ferry may be in another village. The mere name of the *ghat* coupled with evidence as to the situation of the village is not sufficient in the absence of definite evidence of the ferry *ghat* being located at a particular point. *(Rowland J.)* ABDUL GHANI v. EMPEROR, AIR 1933 Pat 603=1933 Cr Cas 1365=6 R P 278=14 P L T 720=146 I C 605=35 Cr L J 128.

——*Ss. 6, 16, 28 — Absence of declaration under S. 6—Conviction for plying private ferry within specified distance.*

In the absence of a declaration that a ferry is a public ferry under S. 6 of the Bengal Ferries Act, conviction under Ss. 16 and 28 of the Act for plying a private ferry, within the specified distance of the ferry cannot be made. *(Stephen and Carnduff JJ.)* MAHARAJ MANDAL v. POKAK SINGH, 6 Ind Cas 198=37 Cal 543=12 C L J 21=11 Cr L J 293.

—S. 7.

——*Settlement of ferries—Appeal—Forum.*

The District Magistrate is not interested in the matter of settlements of ferries by the District Board. Such settlements are sanctioned by the Divisional Commissioner and appeals from the action of the District Board do not lie to the District Magistrate. *(Macpherson and Dhavle JJ.)* MANU KHAN v. SUNDER SINGH, AIR 1934 Pat 313=1934 Cr Cas 734=7 R P 136=15 P L T 216=151 I C 835.

—S. 8.

——Sections 16 and 28 are not made conditional on the fulfilment of conditions imposed by S. 8. *(Rowland J.)* ABDUL GHANI v. EMPEROR, AIR 1933 Pat 603=1933 Cr Cas 1365=6 R P 278=14 P L T 720=146 I C 605=35 Cr L J 128.

—S. 9.

——*Jurisdiction of Commissioner.*

The approval of the Commissioner is limited to the term of the lease and not to the whole lease.

BENGAL FERRIES ACT (I of 1885), S. 9

(Mullick and Ross JJ.) SHEODHAR PRASAD SINGH v. RAMSAROOP SINGH,
AIR 1926 Pat 318=7 P L T 337=96 I C 623.

—S. 16.

See also ibid, S. 6.

——*Ss. 16, 28 — Persons liable—Proprietor who merely leases out ferries.*

The person who is liable under Ss. 16 and 28, is the person who conveys passengers for hire. In other words, the persons really liable under the Act are the lessees or farmers of the *ghat* who collected tolls and conveyed passengers across the river by means of their hired boatmen. The proprietor of a village who merely leases out the ferry to lessees but does neither convey passengers nor collect tolls from them is not liable. *(James and Varma JJ.)* ABDUL GHANI v. EMPEROR,
AIR 1937 Pat 144=15 Pat 655=17 P L T 845=9 R P 425=3 B R 328=167 I C 757=38 Cr L J 454.

——*Ss. 16 and 28, if conditional on fulfilment of duties imposed by S. 8.*

Sections 16 and 28, Bengal Ferries Act are not made conditional on the fulfilment of conditions imposed by S. 8. *(Rowland J.)* ABDUL GHANI v. EMPEROR
A I R 1933 Pat 608=1933 Cr Cas 1365=6 R P 278=14 P L T 720=146 I C 605=35 Cr L J 128.

——*Ss. 16 and 18—"Distance" meaning — How measured.*

The land "distance" in S. 16 means distance by river. The distance must be measured by reference to the water frontage and not by land. *Blissett* v. *Hart*, (1744) 125 E R 1923; *Huzzey and Field.* 150 E R 186 and *Anderson* v. *Jellet*, (1883) 9 S C R 10 *Ref. (C. C. Ghose and Pearson JJ.)* CHAIRMAN, SERAJGANJ LOCAL BOARD v. BUDHISWAR PATNI,
A I R 1930 Cal 281=57 Cal 1261=127 I C 799=51 C L J 199=34 C W N 422=1930 Cr C 361=32 Cr L J 38.

——*Limits of the ferry should be known.*

For the purposes of a prosecution under S. 16 read with S. 28, it is important that the limits of each ferry should be known. *(Adami J.)* JEOBARAN SINGH v. RAMKISHUN LAL
A I R 1926 Pat 520=96 I C 522=27 Cr L J 970.

——*Ss. 16 and 6—Public ferry—What is declared to be so under S. 6 or Regulation VI of 1819, or Bengal Act I of 1866.*

No ferry is a public ferry unless there has been a notification to that effect under S. 6 with regard to it, or unless the ferry has previous to 1885 been determined or declared to be a public ferry under Regulation VI of 1819 or Bengal Act I of 1866. *(Adami J.)* JEOBARAN SINGH v. RAMKISHUN LAL,
A I R 1926 Pat 520=96 I C 522=27 Cr L J 970.

——*Ss. 16 and 28—Ferry—Only maintenance of ferry is not criminally punishable — Conveying persons and property in addition is an offence—Each trip is separate offence.*

The maintenance of a private ferry is in contravention of S. 16 of the Act for which the person maintaining it may be liable for damages and also

BENGAL FERRIES ACT (I of 1885), S. 16

an injunction may issue against him. If, in addition, to maintaining such a prohibited private ferry he carries passengers and property for hire he is liable criminally under S. 28 of the Act and each trip is a separate offence. *(Jwala Prasad J.)* JEOBARAN SINGH v. RAMKISHUN LAL,
A I R 1925 Pat 623=4 Pat 503=92 I C 871=7 P L T 734=27 Cr L J 359.

—S. 17.

——*Recovery of compensation.*

Section 17 refers to the assessment of compensasation in the first instance and has no relation to the question of recovery of compensation. *(Wort J.)* DISTRICT BOARD OF DARBHANGA v. SURAJ NARAIN SINHA,
A I R 1936 Pat 198=14 Pat 633=2 B R 53=8 R P 245=16 P L T 819=159 I C 173.

——*Magistrate's power under S. 17—Illegal tolls ignored—Revision.*

Section 17 gives authority to the Magistrate to ascertain the average net profit. He has ample power to investigate the nature of the income of the ferry and if he finds that the *mustajir* offered bids not only on the basis of the income from the ferry but on the expectation of also realising illegal tolls during the dry season, he has full power to ignore such illegal income accruing through the offence of extortion and to find out what the actual income from the ferry is and his order is not revisable by the Civil Court. *(Macpherson and Mohammad Noor JJ.)* SECRETARY OF STATE v. KAMESHWAR SINGH BAHADUR,
A I R 1936 Pat 87=16 P L T 877=2 B R 252=8 R P 387=15 Pat 246=160 I C 915.

—S. 18.

——*Ss. 18 and 16 — Plying — Plying along one bank if offence.*

The plying of a boat for hire along the one bank of the river would be no offence. *(Adami J.)* JEOBARAN SINGH v. RAMKISHUN LAL,
A I R 1926 Pat 520=96 I C 522=27 Cr L J 970.

—S. 28.

——Proprietor of a village who merely leases out the ferry to lessees but does neither convey passengers nor collect tolls from them is not liable under Ss. 16 and 28. *(James and Varma JJ.)* ABDUL GHANI v. EMPEROR,
A I R 1937 Pat 144=15 Pat 655=17 P L T 845=9 R P 425=3 B R 328=167 I C 757=38 Cr L J 454.

——Sections 16 and 28 are not made conditional on the fulfilment of conditions imposed by S. 8. *(Rowland J.)* ABDUL GHANI v. EMPEROR,
A I R 1933 Pat 603=1933 Cr Cas 1365=6 R P 278=14 P L T 720=146 I C 605=35 Cr L J 128.

——*Ss. 28 and 16—Ferry — Person maintaining ferry and carrying persons for hire is guilty and not his servants.*

The person intended to be punished by the section primarily is the person who maintains a ferry in contravention of S. 16 and who, in working such ferry, conveys for hire any passengers, animal, vehicle or other thing. His servants or other persons helping him cannot be said to be doing so for hire because the hire does not belong to them, nor can they be said to contravene the

BENGAL FERRIES ACT (I of 1885), S. 28

provisions of S. 16, the ferry not being maintained by them but only by the former. *(Adami J.)* JEOBARAN SINGH v. RAMKISHUN LAL,
A I R 1926 Pat 520=96 I C 522=
27 Cr L J 970.

——Absence of declaration under S. 6—Conviction for plying private ferry within specified distance.—*See* ibid, S. 16. 11 Cr L J 293 (Cal).

BENGAL FOOD ADULTERATION ACT (VI of 1919)

—S. 4.

——*"Conditions"*.

The word "condition" is quite obviously very wide. It embraces a multitude of things. It may range over such matters as storing, packing, temperature, standard of purity, physical condition and chemical condition. *(Henderson and Khundkar JJ.)* NOWRANGA LAL MARWARI v. CHAIRMAN, MIDNAPORE MUNICIPALITY,
A I R 1940 Cal 324=ILR (1940) 2 Cal 82=
44 C W N 615=13 R C 152=190 I C 186=
41 Cr L J 849.

——*Presumption under.*

The presumption under S. 4 only applies to those articles of which the normal constituents have actually been declared. One presumption arising is that the article is not genuine, that is to say, that it had constituents other than those covered by the declaration. *(Henderson and Khundkar JJ.)* NOWRANGA LAL MARWARI v. CHAIRMAN MIDNAPORE MUNICIPALITY,
A I R 1940 Cal 324=ILR (1940) 2 Cal 82=
44 C W N 615=13 R C 152=190 I C 186=
41 Cr L J 849.

——Ghee—*Presumption under S. 4 — Additional constituents—Duty of prosecution.*

In the case of *ghee*, the relevant part of Provincial Government's declaration is in these terms: "*Ghee* is the pure clarified milk fat of cow or buffalo or cow and buffalo." The presumption in case of prosecution for sale of adulterated *ghee* would accordingly be that the *ghee* in the sample contained some substance other than the milk fat of cows or buffaloes. But inasmuch as in the case of *ghee* the notification is more severe than the conditions laid down in S. 6 the presumption would be of very little help to the prosecution. Under S. 6 *ghee* may contain curds and the prosecution would have to show that the additional constituents presumed to be present were something other than curds.

The essential thing is that the rules under the Act should refer to deficiencies in or additions to any article of food, that is to say, they must lay down the absence of something or the presence of something.

The prosecution under S. 6 may prove either that the *ghee* does not fulfil the conditions laid down in S. 6 or that it does not fulfil such conditions as are prescribed by the Local Government. Although the *ghee* may be unadulterated, it may still be of poor quality and S. 4 applies to such a case. *(Henderson and Khundkar JJ.)* NOWRANGA LAL MARWARI v. CHAIRMAN, MIDNAPORE MUNICIPALITY,
A I R 1940 Cal 324=ILR (1940) 2 Cal 82=
44 C W N 615=13 R C 152=190 I C 186=
41 Cr L J 849.

BENGAL FOOD ADULTERATION ACT (VI of 1919), S. 4

——*Notification under S. 6 fixing standard of quality of articles of food is* intra vires *of Local Government.*

It is *intra vires* of the Local Government to fix a standard of quality and in so doing to prescribe conditions within the meaning of S. 6. *(Henderson and Khundkar JJ.)* NOWRANGA LAL MARWARI v. CHAIRMAN, MIDNAPORE MUNICIPALITY,
A I R 1940 Cal 324=ILR (1940) 2 Cal 82=
44 C W N 615=13 R C 152=190 I C 186=
41 Cr L J 849.

——*Ss. 4 and 6, scope of.*

There is nothing in the terms of S. 4, Bengal Food Adulteration Act itself to suggest that articles mentioned in S. 6, *viz.*, milk, butter, *ghee*, wheat, flour and mustard oil are excluded. The section provides that the Local Government may declare the normal constituents of any article of food. Sections 4 and 6 are really dealing with different matters. The former is concerned merely with the constituents of different articles of food and the latter with the conditions under which they may be sold. Certain constituents are only mentioned in S. 6 in order to ensure a certain standard of purity in any article put on the market. *(Henderson and Khundkar JJ.)* NOWRANGA LAL MARWARI v. CHAIRMAN, MIDNAPORE MUNICIPALITY
A I R 1940 Cal 324=ILR (1940) 2 Cal 82=
44 C W N 615=13 R C 152=190 I C 186=
41 Cr L J 849.

——*Mustard oil — Presumption — Rebuttal — Method for his defence.*

The contention that the presumption that the mustard oil is not genuine can only be rebutted by following the oil from the mustard seeds throughout the process of manufacture right up to its arrival in the shop of the accused and demonstrating that no deleterious substance had been introduced, is wrong. There is no warrant for the proposition that the accused person can be tied down to any particular method for establishing his defence. It is equally wrong to argue that when the accused shows that none of the common adulterants was present, the Court must hold that the presumption has been rebutted. The presumption is rebutted if the accused calls evidence which satisfies the Court that the article in question is derived exclusively from mustard seeds.

Where the analysts have found that the saponification value was excessive, the presumption that the oil was not genuine mustard oil should be raised. But where it has been proved that none of the common adulterants was present and the Chemical Assistant in the Government Test House who made the analysis has formed the opinion that the mustard oil was genuine explaining that different mustard seeds give different saponification value owing to the peculiar properties of the seeds, the presumption is rebutted. *(Henderson and Khundkar JJ.)* SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. KSHITISH CHANDRA BANERJEE
A I R 1939 Cal 667=43 C W N 1030=
12 R C 229=I L R (1939) 2 Cal 465=
184 I C 423.

—S. 5.

——*S. 5 (1) (b)* — S. 6 (1) (v) is not governed by S. 5 (1) (b)—*See* ibid, S. 6 (1) (v)
A I R 1950 Cal 303=51 Cr L J 1149.

BENGAL FOOD ADULTERATION ACT (VI of 1919), S. 5

——*Ss. 5, 6 and 7 — Adulteration — It is no defence for accused to say that he had advertised that he was not selling pure foods and that purchaser knew the fact.*

The Food Adulteration Act is intended to protect the public from using adulterated articles and therefore it has made it penal to sell these adulterated articles irrespective of the fact whether the purchaser knew the article to be adulterated or otherwise. Articles mentioned in S. 6 are ordinarily articles of food and it is no defence to say that these articles can be adulterated and sold in market with the publication of the fact that they are adulterated. *(Suhrawardy J.)* RAKHAL CHANDRA v. PURNA CHANDRA

A I R 1930 Cal 273=57 Cal 1123=
127 I C 57=34 C W N 281=
54 C L J 227=1930 Cr Cas 353=
31 Cr L J 1151.

—S. 6.

——*Storing for sale.*

One can quite understand compulsory acquisition by exercise of statutory authority from being held not to be a sale at all but if without any such compulsion there has been a transfer of property in goods for price, it does not appear that there is any reason why it should be taken out of the Act. In case of storing there is no question of actual sale and therefore there is no question of compulsory acquisition vitiating any sale. The gist of the offence is in the storing itself. The purpose of the storing is that it is for future sale. Storing is storing whether the article is sold or not sold to the Sanitary Inspector. In a case where the sanction was general covering all the offences under S. 6, the Magistrate must consider the case of storing for sale. *(K. C. Chunder J.)* MAKHANLAL BHOWMIK v. RAM BHAKAT SHARMA

A I R 1953 Cal 485=1953 Cr L J 1134.

——*Ss. 6 (1) (v), 5 (1) (b) — Section 6 (1) (v) if governed by S. 5 (1) (b).*

Section 6 (1) (v) is not governed by S. 5 (1) (b). Section 6 (1) (v) is a distinct and separate section and has nothing to do with saponification value or the iodine content of the oil nor has the Court, to consider when a presumption of adulteration should arise. *(Sen and Chunder JJ.)* B. N. ROY v. SHYAM SUNDAR A I R 1950 Cal 303=
85 C L J 229=I L R (1951) 1 Cal 380=
51 Cr L J 1149.

——*Ghee seized at Railway Station and found adulterated.*

Two tins of *ghee* consigned to a firm of which the accused was a partner were seized at the Railway Station and were found to be adulterated. The accused was convicted under S. 6 :

Held, that it could not be said that the accused was storing ghee for sale at Railway Station and he could not be convicted under S. 6. *(Henderson J.)* CHAIRMAN, DISTRICT BOARD v. SREENIBASH PUROHIT A I R 1941 Cal 491=
14 R C 359=197 I C 68=
43 Cr L J 107.

——*S. 6 (1) — Accused taking consignment of mustard oil at Railway Station for sale — Fact that accused had no time to examine goods, if good defence.*

The accused took delivery of some tins of mustard oil at the Railway Station for the purpose

BENGAL FOOD ADULTERATION ACT (VI of 1919), S. 6

of selling them. On the same day while the goods were actually on the railway premises a sample was taken from these tins by the Sanitary Inspector and it was found that the mustard oil contained therein was adulterated :

Held, that although the goods had actually left the railway premises, they were nevertheless being stored for sale by the accused within the meaning of S. 6 (1) of the Bengal Food Adulteration Act. The requisite initial onus had been discharged by the prosecution. The accused came into physical possession of the consignment as soon as he took delivery thereof at the Railway Station and from the moment that he took such delivery until the goods were actually exposed for sale in his shop there could be no doubt that he was actually storing them with a view to their ultimate disposal by sale. The fact that he could have had no opportunity to examine the nature of the goods between the time when he took delivery of them and the time when a sample was taken was no defence in view of S. 6 (3). *(Edgley J.)* HARI RAKSHAK DUTT v. CHAIRMAN, DISTRICT BOARD, BIRBHUM A I R 1941 Cal 150=
72 C L J 531=44 C W N 1139=
13 R C 492=194 I C 136=42 Cr L J 522.

——*S. 6 renders presumption under S. 4 superfluous.*

Section 6 enacts an absolute prohibition and renders any presumption, arising under S. 4 and the rules made thereunder that the *ghee* is not genuine or is injurious to health, entirely superfluous. *(Henderson and Khundkar JJ.)* NOWRANGA LAL MARWARI v. CHAIRMAN, MIDNAPORE MUNICIPALITY A I R 1940 Cal 324=
I L R (1940) 2 Cal 82=44 C W N 615=
13 R C 152=190 I C 186=41 Cr L J 849.

——*Goods in transit whether "stored for sale."*

Where consignment of adulterated mustard oil is found by the Sanitary Inspector in possession of the accused's carter when it was in transit to the accused's shop in the ordinary sense of the expression, the goods in question were not being "stored for sale" under S. 6. Presumption under S. 6 (4) does not arise in such a case as the possession of the accused is merely constructive and not actual. *(Edgley J.)* SACHI NANDAN PIRI v. CHAIRMAN, MIDNAPORE DISTRICT BOARD

A I R 1940 Cal 213=44 C W N 173=
I L R (1940) 1 Cal 333=13 R C 10=
188 I C 398=41 Cr L J 582.

——*Ss. 6, 13 (2)—Constructive possession.*

Where a person is prosecuted for storing adulterated food for sale, it must ordinarily be proved affirmatively that such food is actually being stored and, such storage cannot be taken to include transit to a place of storage unless the adulterated food in question is actually in the physical possession of a person to whom sub-s. (4) of S. 6, Bengal Food Adulteration Act, expressly applies. "Possession" in sub-s. (4) must mean actual physical possession and cannot be extended to include constructive possession. *(Edgley J.)* SACHI NANDAN PIRI v. CHAIRMAN, MIDNAPORE DISTRICT BOARD

A I R 1940 Cal 213=44 C W N 173=
41 C L J 582=I L R (1940) 1 Cal 333=
13 R C 10=188 I C 398=41 Cr L J 582.

——*S. 6 (4) — S. 511, Penal Code (Act XLV of 1860).*

BENGAL FOOD ADULTERATION ACT (VI of 1919), S. 6

Section 511, Penal Code, can have no application to an attempt to commit an offence under the Bengal Food Adulteration Act. *(Biswas J.)* RAM CHARITA RAM BHAKAT v. CHAIRMAN, DISTRICT BOARD, RAJSHAHI A I R 1937 Cal 710=41 C W N 1213=10 R C 469=I L R (1938) 1 Cal 420=172 I C 869=39 Cr L J 252.

——*S. 6 (4) — Constructive possession —* Ghee *in transit.*

"Possession" in sub-s. (4) of S. 6, Bengal Food Adulteration Act, must mean actual physical possession. Mere possession of any of the articles referred to therein is not an offence under the Act, but from the fact of possession a presumption is to be drawn which will establish an offence. That being so the word "possession" must be given a strict interpretation, and cannot be extended to include "constructive possession."

The fact that the *ghee* was in a cart for the purpose of being carried and was not deposited in any place for the purpose of sale, in other words, that it was in transit, need not militate against the presumption of storing for sale. *(Biswas J.)* RAM CHARITA RAM BHAKAT v. CHAIRMAN OF DISTRICT BOARD, RAJSHAHI A I R 1937 Cal 710=41 C W N 1213=10 R C 469=I L R (1938) 1 Cal 420=172 I C 869=39 Cr L J 252.

——*S. 6 (4)—Interpretation.*

Sub-section (4) of S. 6, reverses the ordinary rule of evidence which rests the onus of proof in a criminal trial on the prosecution: It will, therefore, have to be strictly construed. *(Biswas J.)* RAM CHARITA RAM BHAKAT v. CHAIRMAN OF DISTRICT BOARD, RAJSHAHI A I R 1937 Cal 710=41 C W N 1213=10 R C 469=I L R (1938) 1 Cal 420=172 I C 869=39 Cr L J 252.

——*S. 6 (4) Presumption under S. 6 (4).*

The person against whom the presumption under S. 6 (4) is to be drawn must be shown to be a person who is in the habit of storing *ghee* for sale. *(Biswas J.)* RAM CHARITA RAM BHAKAT v. CHAIRMAN OF DISTRICT BOARD, RAJSHAHI A I R 1937 Cal 710=41 C W N 1213=10 R C 469=I L R (1938) 1 Cal 420==172 I C 869=39 Cr L J 252.

——*Ss. 6, 5—S. 6, if to be read with S. 5.*

Section 6, Bengal Food Adulteration Act, is an entirely distinct and self-contained section, and ought to be interpreted as it stands without the help of S. 5 of the Act. "All that the prosecution is required to establish in order to secure a conviction based on S. 6 read with S. 21 of the Act is that the two samples of mustard oil which were admittedly in the shop and which were admittedly sold were not derived exclusively from mustard seed. *(Patterson and Khundkar JJ.)* SAWAL RAM AGARWALA v. EMPEROR A I R 1934 Cal 858=1934 Cr Cas 1372=7 R C 389=62 Cal 374=153 I C 632=36 Cr L J 372.

——*S. 6 (1)—Mustard oil mixed with linseed oil—Sale with a view to human consumption.*

The effect of S. 6 (1), sub-cl. (v) proviso, in the Bengal Food Adulteration Act, read with the main part of the section is that no person shall directly or indirectly, himself or by any other person on his behalf, sell, expose for sale or manufacture or store for sale, mustard oil unless it shall be derived exclusively from mustard seed. When a person stores for sale in his shop mustard oil which does not conform to the standard required by the section, he exposes himself to the penalty provided by the law, even though he has marked it as 'fuel oil'.

It is not an essential part of the offence under the Act that what is done, viz., the storing etc., should be done with a view to or for the purpose of human consumption. *(Costello J.)* CHAIRMAN, DISTRICT BOARD, MIDNAPORE v. ATUL CHANDRA PAL A I R 1933 Cal 619=37 C W N 511=57 C L J 429=1933 Cr Cas 998=6 R C 146=145 I C 841=34 Cr L J 1081.

——*S. 6 (1) — Adulteration — Both owner and servant selling come under S. 6 (1).*

Section 6 (1) applies, not only to master or owner of the adulterated article sold, but also the servant or agent who sells such article. BROWN v. FOOT, (1892) 66 L T 649 and HOTCHIN v. HINDMARSH, (1899) 2 Q B 181, Ref. *(Rankin C. J. and Pearson J.)* PEARY MOHAN v. HARENDRA NATH A I R 1930 Cal 295=57 Cal 1084=125 I C 660=34 C W N 114=1930 Cr C 383=31 Cr L J 907.

——*Ss. 6 and 15—Adulteration—Bengal Municipal Act (1884), S. 44—Municipal Chairman cannot grant leave to prosecute under S. 15 of the Act of 1919.*

Section 44 of the Bengal Municipal Act (1884) would not empower the Chairman to sanction prosecution under S. 6 of the Act VI of 1919. *(Newbould and Suhrawardy JJ.)* RAGHUNATH MODY v. KURSEONG MUNICIPALITY A I R 1923 Cal 561=76 I C 394=25 Cr L J 170.

—S. 9.

——*Ss. 9, 10, 11 — Sanitary Inspector not authorised taking samples and sending them to Public Analyst—Notification under S. 11.*

A municipal Sanitary Inspector took some samples from a *ghee* shop and sent them to Public Analyst. The Inspector was not specially authorised under S. 10, Bengal Food Adulteration Act, to act under Ss. 10 and 12 of the Act :

Held, that he could take the samples and send them to public analyst for examination as a private individual under S. 9.

The person buying the articles is bound by the statute to notify to the seller his intention to have the article analysed. But no particular form of words is required, nor even any words at all. What is necessary is that the seller must know that samples are to be taken for the purpose of analysis, so that he may see that the samples are to be fairly taken. *(Henderson and R. C. Mitter JJ.)* MANINDRA NATH BANERJEE v. JYOTISH CHANDRA DUTTA A I R 1937 Cal 60=9 R C 910=I L R (1937) 1 Cal 765=169 I C 251=38 Cr L J 745.

—S. 10.

——*Ss. 10 and 21 — Compulsory sale — (Municipalities — Calcutta Municipal Act (3 of 1923), Ss. 424 and 488).*

Section 424 of the Calcutta Municipal Act corresponding to S. 10 of the Bengal Food Adulteration

BENGAL FOOD ADULTERATION ACT (VI of 1919), S. 10

Act compels a man to sell to the officer concerned if he exercises his statutory powers. If no question arises of exercising of any such statutory powers the sale cannot be called a compulsory sale or it cannot be held to be a sale prohibited by punishment under S. 488, Calcutta Municipal Act, or under S. 21, Bengal Food Adulteration Act. *(K. C. Chunder J.)* MAKHANLAL BHOWMIK v. RAM BHAKAT SHARMA

A I R 1953 Cal 485=1953 Cr L J 1134.

—S. 11.

——Safeguards which the Act lays down in S. 11 should be complied with. *(Patterson and Khundkar JJ.)* SAWAL RAM AGARWALA v. EMPEROR

A I R 1934 Cal 858=1934 Cr Cas 1372=7 R C 389=62 Cal 374=153 I C 632=36 Cr L J 372.

—S. 12.

——*Ss. 12 (2), 21 — Bengal Municipal Act (III of 1884), S. 44 — Penal Code (Act XLV of 1860), S. 21, Explanation (2), S. 186—Sanitary Inspector authorised by Chairman to inspect and examine food—Resistance to inspection—Offence.*

Under the Bengal Food Adulteration Act the Chairman of a Municipality has no power to authorise a Sanitary Inspector to perform the duties mentioned in Ss. 10 and 12 of the said Act. Section 44 of the Bengal Municipal Act is not applicable to such a case.

A Sanitary Inspector who is merely directed by the Chairman to perform the duties of a Health Officer cannot be regarded as a Health Officer within the meaning of R. 5 of the rules under the said Act.

Therefore, a person who resists a Sanitary Inspector who has been so authorised by the Chairman in his attempt to inspect and examine food cannot be convicted under S. 21 of the Bengal Food Adulteration Act. But he can be convicted under S. 186, Penal Code, in view of Expl. (2) to S. 21, Penal Code. *(Panckridge J.)* SAILESH CHANDRA v. NEHAL CHAND **A I R 1932 Cal 462=36 C W N 134=59 Cal 234=Ind Rul (1932) Cal 384=1932 Cr Cas 452=137 I C 812=33 Cr L J 521.**

—S. 13.

——*S. 13 (2) — Food stuff containing all tins of one brand — Taking sample from one of them showing adulterated substance — Whole consignment can be seized and forfeited.*

Where all the tins of one consignment of food are of the same brand it would be unreasonable to expect the Sanitary Inspector to take a sample from each tin and if a sample taken from one of the tins is found to contain adulterated substance, the Sanitary Inspector is entitled to seize the whole consignment and its forfeiture under S. 13 (2) is valid. *(Edgley J.)* SACHI NANDAN PIRI v. CHAIRMAN, MIDNAPORE DISTRICT BOARD

A I R 1940 Cal 213=44 C W N 173=I L R (1940) 1 Cal 333=13 R C 10=188 I C 398=41 Cr L J 582.

——The law does not authorise the Magistrate to order destruction or other disposal of seized adulterated article except at the cost of the person in possession of the same at the time of seizure. Cri. Ref. Nos. 43 and 44 of 1951 (Cal), *Dissented from. (K. C. Chunder J.)* MAKHANLAL BHOWMIK v. RAM BHAKAT SHARMA,

AIR 1953 Cal 485=1953 Cr L J 1134.

BENGAL FOOD ADULTERATION ACT (VI of 1919), S. 13

—S. 14.

——*S. 14 (2)—Certificate of analyst—Presumption of correctness.*

Under S. 14 (2) the certificate of the analyst is made evidence without formal proof, but there is no presumption that it is accurate. *(Henderson and Khundkar JJ.)* SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. KSHITISH CHANDRA BANERJEE,

AIR 1939 Cal 667=43 C W N 1030=12 R C 229=I L R (1939) 2 Cal 465=184 I C 423.

——*Report of Analyst, if admissible.*

Even if the Sanitary Inspector, who submits the samples to the Analyst, is not proved to be authorised to exercise those powers in that particular place, samples submitted for analysis must be deemed to have been submitted under the Act and the special rule of evidence contained in S. 14 under which the Public Analyst's certificate is made admissible in evidence without formal proof will apply. It is immaterial whether the Sanitary Inspector, be he regarded as an official or as a private individual, obtained possession of the samples in strict accordance with the provisions of the Act or not. What is important is that the safeguards which the Act lays down in S. 11 should be complied with. *(Patterson and Khundkar JJ.)* SAWAL RAM AGARWALA v. EMPEROR,

AIR 1934 Cal 858=1934 Cr Cas 1372=7 R C 389=62 Cal 374=153 I C 632=36 Cr L J 372.

——*S. 14 (2)—Certificate of Public Analyst not in the prescribed form is not admissible.*

Under S. 14 (2) the Public Analyst should submit his certificates in the form prescribed in the schedule to this Act. Where no such certificate was submitted, but the Public Analyst reported on the case by a letter in the ordinary official form.

Held, his letter was not admissible in evidence without proof of the truth of its contents. *(Newbould and Suhrawardy JJ.)* RAGHUNATH MODY v. KURSEONG MUNICIPALITY,

AIR 1923 Cal 561=76 I C 394=25 Cr L J 170.

—S. 21.

——Compulsory sale to officer—Sale prohibited by punishment under S. 21—*See* ibid, S. 10.

AIR 1953 Cal 485=1953 Cr L J 1134.

——A person resisting a Sanitary Inspector who has been authorised by the Chairman of the Municipality to perform the duties under Ss. 10 and 12 of the Act, (which authorisation is beyond the powers of the Chairman) in his attempt to inspect and examine food cannot be convicted under S. 21, Food Adult. Act, though, however, he can be convicted under S. 186, I. P. C. in view of Expl. (2) to S. 21, I. P. C. *(Panckridge J.)* SAILESH CHANDRA v. NEHAL CHAND, **AIR 1932 Cal 462=36 C W N 134=59 Cal 234=Ind. Rul. (1932) Cal 384=1932 Cr Cas 452=137 I C 812=33 Cr L J 521.**

——*Ss. 21 and 15—Procedure—Prosecution under S. 21 without sanction under S. 15 does not bar subsequent trial under Criminal Procedure Code, S. 403.*

BENGAL FOOD ADULTERATION ACT (VI of 1919), S. 21

Prosecution of an accused under S. 21 of Bengal Food Adulteration Act without any order or consent in writing of the Municipal Commissioners within the meaning of S. 15 of the Act, and his subsequent acquittal under S. 245, Criminal P. C., is no bar to his subsequent trial on the same facts for the same offence. *(C. C. Ghose and Duval JJ.)* P. BANERJEE v. BEPIN BEHARY,
AIR 1926 Cal 691=43 C L J 110=
30 C W N 382=95 I C 79=
27 Cr L J 751.

BENGAL FOODGRAINS CONTROL ORDER (1945).

—Cl. 2.

——*Cl. 2 (b) — Accused found in possession of paddy—Evidence Act (1872), S. 114.*

That the accused was a person dealing in the sale of foodgrain or at least in the storing of foodgrain for sale can reasonably be inferred from the fact that he was found in boat in charge of 130 maunds of paddy when the boat was moving down stream. *(Das Gupta and Lahiri JJ.)* KALIPADA NANDI v. THE STATE, AIR 1950 Cal 427.

——*Cl. 2 (b), 3 (1)—Dealer — Burden of proof—Evidence Act (1872), Ss. 101 to 103.*

The burden of proving that the accused is a "dealer" is on the prosecution. The prosecution is bound to prove not only that he deals in the purchase or sale of foodgrain or storing in foodgrain for sale, but also that he is not a producer—The prosecution may succeed in showing that he is a dealer even though he is a producer by further showing that the foodgrain in which he was dealing was not the foodgrain produced by himself. *(Das Gupta and Lahiri JJ.)* KALIPADA NANDI v. THE STATE, AIR 1950 Cal 427.

——*Cls. 2 (c), 3 (1), 10 (1)—Powdered rice—Possession of, without permit, or licence.*

Powdered rice is not 'foodgrain' within the meaning of the word in Cl. 2 (c) of the Order and therefore possession of a large quantity of powdered rice without a permit or licence is not a contravention of the Order. Consequently, it is not an offence under S. 7 of the Essential Supplies Act, 1946, unless it is established that the accused ground the rice into powder because his possession before the grinding would be possession of husked rice. *(Harries C. J. and Bose J.)* SUPDT. OF LEGAL AFFAIRS, WEST BENGAL v. KUNJALAL GADIA, AIR 1950 Cal 573.

——*Cl. 2 (c) — "By-product" if means only product.*

The word "by-product" in Cl. 2 (c) cannot be construed as product only because by-product is a secondary product produced incidentally in the course of the production of some other commodity which is the primary object of the process or manufacture. *(Harries C. J. and Bose J.)* SUPDT. OF LEGAL AFFAIRS WEST BENGAL v. KUNJALAL GADIA, AIR 1950 Cal 573.

—Cl. 3.

——Powdered rice if foodgrain — Possession of, without permit or licence—*See* ibid, Cl. 2 (c).
AIR 1950 Cal 573.

——*Cl. 3 (1)*—'Dealer'—Burden of proof to prove that a person is a dealer is on prosecution—*See* ibid (1), Cl. 2 (b). AIR 1950 Cal 427.

BENGAL FOODGRAINS CONTROL ORDER (1945), Cl. 3

——*Purchase of wholesale quantities of flour described as unfit for human consumption—Flour turning out to be fit for human consumption—Mens rea on part of purchaser not established—Purchaser held committed no offence under para 3.*

Petitioner purchased in wholesale quantities flour unfit for human consumption and stored the same—Most of the flour purchased by the petitioner turned out to be flour fit for human consumption. He was charged under para 3 of the Order :

Held that flour unfit for human consumption could not fall within the ambit of the Food Grains Control Order which applied to grains fit for food or grain products fit for food. That being so, in the absence of *mens rea* on the part of the petitioner being shown by the prosecution, the petitioner purchased or stored or believed that he was purchasing or storing, something not covered by the Order. He was, therefore, not liable for an offence under Para 3: AIR 1947 P C 135, *Applied. (Harries C. J. and Blank J.)* MAHAMMAD AZAM KHAN v. EMPEROR, AIR 1948 Cal 287=
52 C W N 617=1948 A W R Sup 114=
49 Cr L J 509.

—Cl. 10.

——*Cl. 10 (1)*—Powdered rice if foodgrain — Possession of, without permit or licence—*See* ibid, Cl. 2 (c). AIR 1950 Cal 573.

BENGAL FOODGRAINS (DISPOSAL AND ACQUISITION) ORDER (1947)

—Cl. 3.

——*Cls. 3 (1) and (2)—"Specify the price", "make allowance", meaning of—(Constitution of India, Art. 226 — Thing not in existence — Order for return will not be passed.)*

A directive issued under the Order stating the price to be "not exceeding Rs. 7-8-0 per maund for paddy subject to deduction on account of poorness of quality and cost of transportation and other incidental charges incurred by the Government", does not cease to be a directive merely because it seeks to reduce the price by making deductions. The words "make allowance" occurring in the proviso to cl. 3 (1) of the Order mean that deduction in or abatement of the price to be paid by the Government can be allowed by the Requiring Authority if the quality of the paddy is found to be poor or it is found that the Government has to incur any transport or other charges such as packing or weighing charges which the seller should normally bear in any particular case. It also gives a discretion to the Requiring Authority to allow extra sums to the seller if in any case the seller has to incur any transport or other charges in putting through the transactions of sale or in carrying out the directive. What the directive meant was that the price of the paddy per maund was to be Rs. 7-8-0 or less (if there was occasion for any deduction on grounds stated in the directive). The basis on which the price was to be determined had been stated in the directive.

To construe the words "Specify the price" to mean that a definite or fixed or unalterable amount must be set out in the directive as the price, is too rigid a construction to be put on the terms of Cl. 3 (2) of the Bengal Foodgrains Order, 1947. If a definite basis for ascertaining the price was indi-

BENGAL FOODGRAINS (DISPOSAL AND ACQUISITION) ORDER (1947), Cl. 3

cated there was sufficient compliance with the statute.

[But following the earlier ruling of a Division Bench in (1951) 55 C W N 674, holding that a directive worded in similar words as the directive in the case was not in accordance with the provisions of Cls. 3 (1) and 3 (2) of the Order, which decision was binding on his Lordship, his Lordship held the directive bad.]

But since the Court would not make an order under Art. 226, which could not be carried out and since the paddy seized had already been disposed of and was no longer in existence, the Court did not make an order for the return of the paddy, but cancelled the order for requisition and seizures. It was, however, remarked that the petitioner was at liberty to take such steps as he might be advised for illegal seizure and wrongful disposal of the stock of paddy. *(Bose J.)* RAM CHANDRA v. HIRAMBA KUMAR A I R 1952 Cal 502=55 C W N 686.

——*S. 3 (2), Proviso*—Directive being not according to provisions — Non-compliance is no offence. *(Das Gupta and P. N. Mookerji JJ.)* ABDUL JABBAR v. THE STATE 55 C W N 674.

BENGAL GENERAL CLAUSES ACT (I of 1899)

—S. 3.

——*S. 3 (32)*—'Person' includes a limited liability company—*See* Calcutta Municipal Act (3 of 1923), S. 407. A I R 1952 Cal 759=1952 Cr L J 1480.

—S. 8.

——*S. 8, Cls. (d) and (e)—Repeal of penal statute pending trial—(General Clauses Act (1897), S. 6) —(Calcutta Municipal Act (3 of 1923), S. 406)—(Calcutta Municipal Act (33 of 1951), S. 461).*

Prosecution under Calcutta Municipal Act (1923) —Statute repealed pending conclusion of trial and replaced by new Act (W. B. Act, 33 of 1951) — Proceedings do not lapse—Old offences can be dealt with under old Act even if new Act has made changes in procedure for prosecution. *(P. N. Mookerjee J.)* NLISHIKANTA GHOSH v. CORPORATION OF CALCUTTA A I R 1953 Cal 401=1953 Cr L J 818.

——*Effect of—Calcutta Municipal Act (III of 1923), B. C.), Ss. 363, 364 — Calcutta Municipal Act (III of 1899, B. C.), S. 449—Effect of saving —Demolition order for building built without sanction before the new Calcutta Municipal Act, 1923 — Sanction by General Committee to proceed under S. 449 of the old Municipal Act, re-affirmed by the new Corporation — Demolition order is not valid.*

A prosecution had been sanctioned by the General Committee under S. 449 of the old Act (III B. C. of 1899), but the case was actually started under the new Act (III B. C. of 1923) by the new Corporation and notice upon the party was issued and an order of demolition was passed :

Held, that whether the proceedings were under S. 363 or 364 of Act III, B. C. of 1923, they were irregular and the order of the Municipal Magistrate was not justified as the party had not been heard by the Corporation before sanction for prosecution was given :

BENGAL GENERAL CLAUSES ACT (I of 1899), S. 8

Held further that the proceedings under S. 449 of the Calcutta Municipal Act (III B. C. of 1899) could only be started by the General Committee and, therefore, in respect of unauthorized structures which existed before 1st April 1924, when the Calcutta Municipal Act of 1923 came into force, there was, after the passing of the latter Act, nobody competent to take proceedings under S. 449 of the Act of 1899. *(Sanderson C. J. and Pantom J.)* RAM GOPAL GOENKA v. CORPORATION OF CALCUTTA A I R 1925 Cal 1251=52 Cal 962=90 I C 317=29 C W N 898=26 Cr L J 1533.

—S. 25.

——*Prosecution of a person within the Howrah Municipal area under Ss. 466 and 574, Calcutta Municipal Act of 1899, which had been extended to Howrah under a Government notification — Acquittal on the ground that the Act was repealed and no notification had been issued extending any part of the new Act to Howrah—Acquittal opposed on the ground that prosecution was competent under S. 25, General Clauses Act — Acquittal was held to be proper as any prosecution founded upon the notification must be under the new Act.*

A person, who was charged in respect of an offence under Ss. 466 (d) and 574, Calcutta Municipal Act (Act III of 1899), was acquitted on a preliminary objection that the prosecution did not lie, inasmuch as, though the provisions of Ss. 466 and 574 of the Act in question had been extended to Howrah by a notification under Act III of 1899, that Act had been repealed and re-enacted by the Calcutta Municipal Act (Act III of 1923), and no fresh notification had been issued extending any part of the new Act to Howrah. It was contended on behalf of the opposite party that though the Act of 1899 had been repealed, a prosecution under it was competent by virtue of provisions of S. 25, Bengal General Clauses Act (I of 1899) :

Held, that the provisions of S. 25, Bengal General Clauses Act, indicated that the notification is attracted to the provisions so re-enacted, and that any prosecution founded upon it must be under the new Act. Therefore prosecution under the old Act was not competent. *(Chotzner and Gregory JJ.)* S. MUKHERJEE v. HARUN TAR MAHAMED & Co. A I R 1928 Cal 484=Ind Rul (1929) Cal 230=55 Cal 1206=114 I C 406=32 C W N 476=12 A I Cr R 134=30 Cr L J 298.

—S. 26.

——By virtue of S. 26, the provisions of Ss. 63 to 70, Penal Code, apply to Calcutta Municipal Act—*See* Penal Code (1860), Ss. 40 to 42.

A I R 1953 Cal 41=1953 Cr L J 196.

BENGAL GOONDAS ACT (I of 1923).

—S. 4.

——*Warrant of arrest—Arresting officer cannot enquire whether person under arrest is good for the amount of security or other sureties shall be able to control him.*

Refusal of bail on the ground that the person arrested is not good for the amount of security required or that the other sureties would not be able to keep control over the person would be an illegal abuse of law, on general principles as well as on the face of Goondas Act and the warrant issued under it. On such a warrant the business of the

BENGAL GOONDAS ACT (I of 1923), S. 4

officer who fixes the sum of money is to see that he fixes a reasonable sum of money having regard to all the circumstances and that it is not an excessive one and it is sufficient, so far as the person under arrest is concerned, that he is willing to execute a bond in that amount. *(Rankin and Duval, JJ.)* BISSESWAR ROY v. EMPEROR
A I R 1926 Cal 961=53 Cal 962=
30 C W N 791=99 I C 42=
28 Cr L J 10.

——*Powers of High Court—Warrant—Secretary to Local Government issuing warrant is not Court subordinate to High Court—High Court can interfere only if case falls under Criminal Procedure Code, S. 491.*

The Commissioner of Police acting under warrant issued by Secretary to Local Government under S. 4, Goondas Act, is not acting under the Criminal P. C. The Secretary to the Government in such cases is not in the position of a subordinate or inferior Court to the High Court (A. I. R. 1924 Cal. 698, *Rel. on.*) and, therefore, the High Court will look at the question only from the point of view that the proceedings of the executive are armed with certain special powers and will interfere only if the case falls under S. 491, Criminal P. C. *(Rankin and Duval JJ.)* BISSESWAR ROY v. EMPEROR
A I R 1926 Cal 961=
53 Cal 962=99 I C 42=30 C W N 791=
28 Cr L J 10.

(BENGAL) HIGH COURTS ORDER (1947).

——*Art. 13 (3)—Court of origin—Appeal.*

The accused was produced under arrest before the Additional District Magistrate of Chittagong in East Bengal under S. 420/120B, Penal Code. The case was then transferred to Sub-Divisional Officer for disposal. The case was adjourned from time to time for sanction of the Government of India under S. 196A, Criminal P. C. Ultimately the sanction accorded directed the prosecution of accused before the First Special Tribunal Calcutta before whom the case was tried:

Held that no Court in Chittagong could take cognizance legally of the case; the 'Court of origin' within S. 13 (3) of the Order was not the Court in Chittagong but the Court of First Special Tribunal, Calcutta and the appeal therefrom must be heard by the Calcutta High Court. *(Ellis and Amin Ahmed JJ.)* EMPEROR v. FARID AHMED CHOWDHURY
53 C W N (1 D R) 82.

BENGAL HIGHWAYS ACT (III of 1925)

—S. 5.

——*Fine in anticipation.*

Where the Magistrate imposed a fine for the obstruction and then proceeded to direct the accused to remove forthwith the obstruction and the unauthorised structure failing which the accused shall pay a daily fine of Re. 1/- for every day during which the breach was continued after the conviction, this part of the order imposing a daily fine in anticipation was not justified by section 5 itself. What was necessary was that the Magistrate must have before him a specific charge of continuance in the offence for a specific number of days which must be proved to his satisfaction. *(K. C. Chunder J.)* STATE v. HARISH CHANDRA
A I R 1952 Cal 576=56 C W N 163=
1952 Cr L J 1275.

BENGAL IRRIGATION ACT (III of 1876).

——*Scope — S. 91, Bengal Embankment Act — River Ganges at Hoogli.*

Where a river at a certain place comes within the operation of the Bengal Irrigation Act it cannot at the same time come within the operation of the Bengal Embankment Act having regard to the provisions of S. 91, Bengal Embankment Act. The river Ganges at Hoogli does not come under the Bengal Irrigation Act. *(M. C. Ghose J.)* EMPEROR v. LAKSHMI NARAIN
A I R 1934 Cal 836=
1934 Cr Cas 1357 (2)=38 C W N 926=
7 R C 398 (2)=153 I C 771=
36 Cr L J 390.

—S. 47.

——*Scope of.*

S. 47 is directory and does not require registration of village canals. *(Atkinson J.)* GHURA SINGH v. MANDI SINGH
A I R 1917 Pat 228=2 Pat L W 178=
42 I C 732=(1917) P H C C 168=
18 Cr L J 1004.

—S. 93.

——*Scope.*

S. 93 applies to registered as well as unregistered canals. *(Atkinson J.)* GHURA SINGH v. MANDI SINGH
A I R 1917 Pat 228=
(1917) P H C C 168=2 Pat L W 178=
42 I C 732=18 Cr L J 1004.

(BENGAL) LAND REGISTRATION ACT (VII of 1876).

——*Alteration of Register under the Land Registration Act.*

The action of a Collector in altering the register kept under the Land Registration Act for the mutation of names, by striking out the name of the registered owner and substituting that of another, without a proper proceeding or enquiry and without notice to the party whose name is struck out, condemned. *(Wilson and Porter JJ.)* GOPINATH PARYAH v. EMPRESS
2 C L J 555=
10 C W N 82=3 Cr L J 169.

—S. 52.

——*Ss. 52 and 84*—False statement in proceedings before Land Registration Collector—Offence — *See* Penal Code, Ss. 191 and 193
2 Cr L J 15 (Cal).

—S. 84.

——*Ss. 84 and 52*—False statement in proceedings before Land Registration Collector—Offence — *See* Penal Code, Ss. 191 and 193 2 Cr L J 15 (Cal).

—S. 88.

——*Board of Revenue, rule passed by—Deposition of a witness not taken in accordance with rule—Effect.*

Rules passed in the course of a proceeding of the Board of Revenue, and not drawn up by the Board under S. 88 of the Land Registration Act have not the force of law. Hence the deposition of a witness, which was not read over and interpreted to the witness, as required by a rule, which has not the force of law under S. 88 is not inadmissible in evidence. *(Rampini and Gupta JJ.)* DEBI SARAN MISSER v. EMPEROR
11 C W N 470=
5 Cr L J 281.

BENGAL LAND REVENUE SALES ACT (XI of 1859)

—S. 29.

——*Delivery of possession.*

Where possession has been delivered to the auction-purchaser by the Collector under S. 29 the

BENGAL LAND REVENUE SALES ACT (XI of 1859), S. 29

auction-purchaser gets actual possession and not merely a right to possession in the eye of the law. *(Panckridge and Patterson JJ.)* MEHER ALI MIA v. BIDYUT BARAN MUKERJEE
A I R 1933 Cal 424=37 C W N 652=1933 Cr Cas 622=6 R C 1=144 I C 708=34 Cr L J 810.

—S. 37.

——*Ss. 37, 29—Sale of entire estate—Effect.*

The language of S. 37, Bengal Land Revenue Sales Act, shows that the effect of a revenue sale of an entire estate is to avoid all encumbrances *ipso facto*, but undertenures have to be avoided. Though a formal suit for avoiding encumbrances may not be necessary, there must be an actual ouster of the encumbrancer by the order of the Collector as contemplated in S. 29 of the Bengal Land Revenue Sales Act. A mere formal delivery of possession will not perhaps entitle the auction-purchaser to go and forcibly oust an encumbrancer who is not willing to vacate. An order to turn him out must be passed by the Collector *(Muhammad Noor J.)* GURSAHAI SINGH v. MEGHU MAHATON
A I R 1935 Pat 83=16 P L T 19=7 R P 471=1935 Cr Cas 143 (2)=154 I C 426 (2)=36 Cr L J 513.

BENGAL LAND REVENUE SETTLEMENT REGULATION (VII of 1822)

—S. 34.

——Dispute as to possession of property—Proceedings under S. 145, Criminal P. C.—Attachment proceedings adjourned sine die on ground of pending settlement of area — Nothing to show that Magistrate followed instructions laid down in S. 34 of Regulation — Propriety of adjournment — *See* Criminal P. C., S. 145 9 Cr L J 35 (Cal).

BENGAL LICENSED WAREHOUSE AND FIRE BRIGADE ACT (I of 1893).

—S. 3.

——*Ss. 3 (5), 14—Company, if can be prosecuted.*

A company may be prosecuted in a suitable case. It follows from S. 3 (5), Bengal Licensed Warehouse and Fire Brigade Act, read with S. 14 of that Act, that ordinarily a company which used an unlicensed warehouse would render itself liable to prosecution under that Act. *(Edgley J.)* R. E. MARRIOTT v. MUNICIPALITY OF HOWRAH
A I R 1941 Cal 319=I L R (1941) 1 Cal 345=14 R C 236=45 C W N 347=196 I C 394=42 Cr L J 855.

—S. 14.

——Railway cannot be legally prosecuted under S. 14, for using unlicensed warehouses even if they were being used for the purpose of storing customers' goods. *(Edgley J.)* R. E. MARRIOTT v. MUNICIPALITY OF HOWRAH
A I R 1941 Cal 319=I L R (1941) 1 Cal 345=45 C W N 347=14 R C 236=196 I C 394=42 Cr L J 855.

BENGAL LOCAL SELF-GOVERNMENT ACT (III of 1885)

—S. 31A.

——*Ss. 31A, 141—Sanction, sufficiency of.*

Before a Court can take cognizance of an offence for breach of the bye-laws of the Act it must be proved conclusively that the sanction of the Board or its Chairman has been taken. The sanction by the District Engineer is not sufficient. Mere engagement of Mukhtar by the Chairman does not necessarily amount to sanction for a prosecution. The Mukhtar may be engaged also for the purpose of going into the facts and giving his opinion as to whether there should be a prosecution or not. *(Sen J.)* MANSAD MONDAL v. THE KING
A I R 1951 Cal 411=86 C L J 305=52 Cr L J 650.

—S. 76.

——*Channel—Property of private person—District Board.*

A District Board can bring a private channel under its control and administration only by making an agreement with the person in whom the property in any channel is vested under S. 76 of the Bengal Local Self-Government Act. The fact that the District Board had entered the channel in its books and had spent money therein is not sufficient to bring the channel under the control and administration of the District Board and the persons erecting the weirs and fishing in it with the permission of the owners, committed no offence against the District Board's bye-laws. *(Carnduff and Imam JJ.)* SHASHI BHUSHAN GUPTA v. EMPEROR 15 I C 996=13 Cr L J 580 (Cal).

—S. 78.

See ibid, S. 139.

—S. 100A.

——Magistrate holding wrongly that District Board had no power to insist on license for holding *mela* other than for agricultural purposes under S. 100A —High Court will interfere with an order of acquittal—*See* Criminal P. C., S. 438
A I R 1949 Cal 658=51 Cr L J 33.

——*Ss, 100A and 100D—Prosecution for holding mela without license is prosecution for breach of statutory enactment and not for breach of any bye-law.*

A prosecution for holding a mela without a license from the District Board is a prosecution for breach of the statutory enactment (a breach of S. 100A) and is not a prosecution for breach of any bye-law. Such prosecution is one expressly permitted by S. 100D. *(Harries C. J. and J. P. Mitter J.)* CHAIRMAN OF THE DISTRICT BOARD, HOOGHLY v. BAGALA KUMAR CHATTERJEE
A I R 1949 Cal 658=51 Cr L J 33.

—S. 100D.

——Prosecution for breach of S. 100A—*See* Criminal P. C. 1898, S. 438 A I R 1949 Cal 658=51 Cr L J 33.

——Prosecution for holding mela without license is prosecution for breach of statutory enactment and not for breach of any bye-law — *See* ibid, S. 100A A I R 1949 Cal 658=51 Cr L J 33.

—S. 138.

——*Bye-laws—Force of law—Exposing goods.*

The District Boards are authorised under S. 138, Bengal Local Self-Government Act to frame bye-laws for the purposes of administering the Act. It is their duty to control, preserve and maintain public thoroughfares under their charge and, therefore, they are entitled to frame bye-laws in order to enable them to carry out the duties imposed upon them by law. These bye-laws have the force of law and the exposure of goods as mentioned in

BENGAL LOCAL SELF-GOVT. ACT (III of 1885), S. 138

the bye-law will be an offence and as such punishable. The District Board has power of stopping the holding of shops by prosecuting those who do so. *(Mohammad Noor J.)* NAZIR MIAN v. EMPEROR
A I R 1935 Pat 155=16 P L T 115=1935 Cr Cas 395=7 R P 718=156 I C 15 (2)=36 Cr L J 906.

—S. 139.

——*Ss. 139, 140 and 78 — Encroachments—Bye-law prohibiting encroachment — Imposition of penalty—Validity.*

The District Board has impliedly, if not expressly, power to provide for, by its by-laws, the punishment for encroachments over its roads in order to carry out the provisions of S. 78 of the Act, namely, to provide for the repair and maintenance of its road. 11 C W N 175 (notes), Diss. *(Jwala Prasad and Adami JJ.)* MAHESH SHAH v. DARBARI HUSSAIN
A I R 1922 Pat 545=1 Pat 251=65 I C 571=3 Pat L T 464=23 Cr L J 139.

——*Ss. 139 and 78 — Bye-law making encroachment on road an offence—Validity.*

The bye-law which amongst other things has made the construction of building or structure on any road without the permission of the chairman an offence is not *ultra vires* of the District Board, which has power, under S. 139 read with S. 78 of the Bengal Local Self-Government Act, to make such a bye-law. The building of the part of a house over part of a public road, without the permission of the Chairman of the District Board, is punishable under the bye-law. *(Stephen and Coxe JJ.)* RAMANTAR SAHU v. ARRAH MUNICIPAL BOARD
11 C W N 1099=6 Cr L J 319.

—S. 140.

——*Bye-law made for maintenance of road—Contravention—Daily fine if can be imposed.*

The District Board may admittedly have only a right of maintaining a road and no proprietary right in the road or the land on which its slopes or side ditches stand still it has power to make bye-laws for maintaining the road. Therefore, where it made a bye-law prohibiting the erection of a fence on the road, slopes or side ditches and the accused erected a fence on the slopes it was held that it amounted to an offence. Held however that after the date of the imposition of fine therefor no daily fine for every day on which the offence was likely to be continued thereafter could legally be imposed. *(Stephen and Carnduff JJ.)* NILMANI GHATAK v. EMPEROR
7 Ind Cas 931=37 Cal 671=11 Cr L J 540.

—S. 141.

——Sanction, sufficiency of—*See* ibid, S. 31A
A I R 1951 Cal 411=52 Cr L J 650.

BENGAL MOTOR-CAR AND CYCLE ACT (III of 1903)

—Bye-law 4.

——*Bye-law, No. 4, Rr. 4, 20—Driving recklessly or negligently — Liability of owner for act of chauffeur.*

The owner of a motor car is responsible for the act of his servant whom he permits to use his motor-car. The master is liable if the servant drives the car recklessly or negligently. But the master will be liable only in cases where there is his permission express or implied, to the servant to use his car; and any misuse of the car, while that permission lasts, is punishable and the owner is responsible. A general injunction to the chauffeur never to drive the car beyond the regulation speed is not sufficient to get rid of the owner's responsibility. *(Holmwood and Sharf-ud-Din JJ.)* EDWARD THORNTON v. EMPEROR
15 C W N 390=9 Ind Cas 480=13 C L J 335=38 C 415=12 Cr L J 89.

BENGAL MOTOR-CAR AND CYCLE ACT (III of 1903), Bye-law 4

that permission lasts, is punishable and the owner is responsible. A general injunction to the chauffeur never to drive the car beyond the regulation speed is not sufficient to get rid of the owner's responsibility. *(Holmwood and Sharf-ud-Din JJ.)* EDWARD THORNTON v. EMPEROR
15 C W N 390=9 Ind Cas 480=13 C L J 335=38 C 415=12 Cr L J 89.

BENGAL MOTOR VEHICLES RULES (1940)

—R. 96.

——*R. 96 (b) (i) — Refusal to accept fare when car is not on authorised stand or otherwise stationary is no offence even if indicator flag is vertical.*

In order to constitute an offence under the rule, at the time when the driver refuses to accept a fare, not only should the indicator flag of the taxi meter be in a vertical position, but the motor cab must also be on an authorised stand or otherwise stationary. A taxi driver who refuses a fare when the cab is driven slowly along a street with the indicator flag of the taxi meter in a vertical position does not commit an offence under the rule. *(Lodge J.)* JATA SANKAR v. EMPEROR,
A I R 1946 Cal 449=224 I C 439=47 Cr L J 705.

BENGAL MOTOR VEHICLES TAX ACT (I of 1932)

—S. 9

——*Ss. 9, 12—Delivery of token—Non-exhibition of token in cars.*

It is for the person paying the tax to obtain delivery of the token at the time when the tax was paid to the Taxing Officer under the Bengal Motor Vehicles Tax Act, 1932. So far as the Taxing Officer is concerned, the requirements of the law are fulfilled if he does anything which has the effect of putting the token in the possession of the person paying the tax or of any person authorised by him. It is not intended by the provisions of the Statute and the rules framed under the statute, which are not in any way *ultra vires*, that the Taxing Officer is to send the token to the person paying the tax. Consequently, the failure on the part of a person to exhibit the token on the car resulting from his not obtaining delivery of the same from the Taxing Officer after tax had been paid, is an offence under the law. *(Nanavutty J.)* R. C. CURTIES v. EMPEROR,
A I R 1935 Cal 242=39 C W N 56=62 Cal 169=7 R C 616=1935 Cr Cas 305=155 I C 710=36 Cr L J 842 (2).

—Rules under.

——*Rules 10, 12, 13, under the Act, whether* ultra vires.

There is nothing contained in Rr. 10, 12 and 13 of the rules under Bengal Motor Vehicles Tax Act which is *ultra vires* of the Local Government having regard to Ss. 9 and 12, Bengal Motor Vehicles Tax Act, 1932, by which it is clearly intended that delivery of the token has to be obtained, and the token exhibited on the car, in the manner provided by the rules. *(Nanavutty J.)* R. C. CURTIES v. EMPEROR,
A I R 1935 Cal 242=39 C W N 56=62 Cal 169=1935 Cr Cas 305=7 R C 616=155 I C 710=36 Cr L J 842 (2).

BENGAL MUNICIPAL ACT (III of 1884)

——*Prosecution — Sanction to prosecute for one offence—Conviction for another offence is illegal.*

A Magistrate cannot convict persons of an alternative or disjunctive offence mentioned in bye-law No. 80 when sanction was by the Municipal authorities to prosecute the accused in connection with another offence. Where sanction was given to prosecute for the offence of "singing with a high sounding instrument" a conviction for the offence of "playing on a drum" was held illegal. *(Bucknill J.)* RAHIM v. EMPEROR,

A I R 1924 Pat 377=72 I C 894=
1 Pat L R Cr 45=24 Cr L J 478.

——*Offences under — Notice to accused by Vice-Chairman, when legal.*

A notice to the accused issued on the authority of the Vice-Chairman without delegation of authority by the Chairman by a written order, was not invalid if the consent of the Chairman was obtained subsequently. *(Chitty and Walmsley JJ.)* KISTOLAL v. CHAIRMAN OF HOOGLI CHINSURAH MUNICIPALITY, A I R 1917 Cal 260=37 I C 515=
20 C W N 824=24 C L J 57=
18 Cr L J 147.

—S. 6.

——*S. 6 (11)—Mahant of an* akhra *— Benefit of exemption—Sentence of fine.*

The *mahant* of an *akhra* is entitled to the benefits of the provisions of S. 6, cl. (11), Bengal Municipal Act, which lays down that in the absence of sufficient funds in the hands of the manager, agent or trustee as contemplated in the said section, no fine could be imposed upon him for his omission to comply with any requisition of the Municipality.

Where the funds obtained by the *mahant* from the properties of the *akhra* are not sufficient to do the required acts, it will not be just or proper to sentence him to a fine. *(M. C. Ghose J.)* KANAI DAS MOHANTA v. NARAYANGANJ MUNICIPALITY,
A I R 1933 Cal 553=37 C W N 362=
6 R C 136=1933 Cr Cas 906=
145 I C 692=34 Cr L J 1068.

——*Ss. 6 (4), 204 and 218—'House' meaning of*

"House" in S. 6 (4) of the Act includes the land or premises engaged or held with the building. *(Richardson and Beachcroft JJ.)* BUSHAN CHANDRA DUTTA v. CHAIRMAN OF THE KOTECHANDPUR MUNICIPALITY,
A I R 1918 Cal 280=22 C W N 376=
46 I C 298=19 Cr L J 714.

——*S. 6 (4)—Building—Meaning of.*

Building according to S. 6 (4) includes erections, structures or buildings such as masonry walls. *(Sharfuddin and Teunon JJ.)* MAHANT MOHABIR DAS v. GAYA MUNICIPALITY,
A I R 1915 Cal 806=26 I C 651=
16 Cr L J 59.

—S. 21.

——*S. 21 (1)—Status of members.*

Members of the Committee for preparing an electoral roll as contemplated by S. 21 (1) are not Municipal Officers or servants within the meaning of S. 28 (2) and their functions are not covered by the expression "official duty" in S. 197, Criminal P. C. *(Lort-Williams and Khundkar JJ.)* NUR AHMAD v. JOGESH CHANDRA SEN,
A I R 1934 Cal 838=1934 Cr Cas 1359=
39 C W N 20=7 R C 392=62 Cal 275=
153 I C 657=36 Cr L J 385.

BENGAL MUNICIPAL ACT (III of 1884)

—S. 28.

——*S. 28 (1)—Persons dealing with electoral roll in course of official duty.*

The persons contemplated by sub-s. (1) to S. 28, Bengal Municipal Act, are persons who fall outside the category of those who have to deal with the electoral roll in the course of their official duty. *(Lort Williams and Khundkar JJ.)* NUR AHMAD v. JOGESH CHANDRA SEN,
A I R 1934 Cal 838=1934 Cr Cas 1359=
39 C W N 20=7 R C 392=62 Cal 275=
153 I C 657=36 Cr L J 385.

——*Ss. 28 (1), 21 (1)—Committee under S. 21 (1)—Members, if Municipal Officers—Criminal Procedure Code (Act V of 1898), S. 197 — Municipal Commissioners—Prosecution of—Sanction.*

The members of the Committee for preparing an electoral roll as contemplated by S. 21 (1), are not Municipal Officers or servants within the meaning of sub-s. (2) of S. 28. A prosecution for offences under S. 28, Bengal Municipal Act, is therefore not maintainable against them. The term 'official duty' need not refer to duty properly attaching to the office from which only the Local Government or some higher authority can remove the officer or by sanction permit his removal. Occasions when public servants are called upon to perform, and do properly and legally perform, duties which do not fall strictly and literally within the tasks appertaining to the particular appointment of office which they may at the moment be holding are also included in the term 'official duty'. The functions of the Committee appointed under S. 21 (1), Bengal Municipal Act, are covered by the expression 'official duty' in S. 197, Criminal P. C., and as no person can be appointed to such a Committee unless he was in the first instance a Commissioner, an office from which his removal could be effected only by or with the sanction of the Local Government S. 197, Criminal P. C., operates as a bar to any prosecution of Municipal Commissioners for anything done while acting or purporting to act in the discharge of their official duty except with the previous sanction of the Local Government. *(Lort-Williams and Khundkar JJ.)* NUR AHMAD v. JOGESH CHANDRA SEN,
A I R 1934 Cal 838=1934 Cr Cas 1359=
39 C W N 20=7 R C 392=62 Cal 275=
153 I C 657=36 Cr L J 385.

—S. 30.

——*Ss. 30, 234 and 235 — Scope — Municipality has no right to levy rent, etc., from the persons exposing goods for sale on the Municipal road—Preventing lessee of such rents from realising it is no offence—Penal Code, S. 143.*

Section 234 of the Municipal Act is a section of emergency referring to deposit of moveable property on the road-side. The right of the Municipality as to the road is governed by S. 30 by which the property in roads is vested in the Commissioners for the purposes given in the Act. Under S. 30 Municipality has no right to lease out its rights for the purpose of carrying on shops or exposing goods for sale. There is no right to collect rent, toll or any tax, unless there is a contract creating the relationship of landlord and tenant between the parties. If the provisions of S. 335 of the Municipal Act do not apply to any place like Lohardagga, accused who prevented the lessee of the Municipality of Lohardagga from realising

BENGAL MUNICIPAL ACT (III of 1884), S. 30

rent from the shop-keepers or persons exposing their goods for sale along the road, not on a Municipal market nor on a market to which the provisions of Part X applied were not guilty of an offence under S. 143, Penal Code. *(Jwala Prasad J.)* DHUNMUN CHOWDHURY v. EMPEROR

A I R 1922 Pat 286=3 Pat L T 339=
76 I C 178=25 Cr L J 114.

—S. 44.

——*Delegation of powers.*

Chairman has no power to authorise Sanitary Inspector to perform the duties under Ss. 10 and 12, Food Adulteration Act. Section 44 is not applicable to such a case. *(Panckridge J.)* SAILESH CHANDRA v. NIHAL CHAND

A I R 1932 Cal 462=36 C W N 134=
59 Cal 234=Ind Rul (1932) Cal 384=
1932 Cr Cas 452=137 I C 812=33 Cr L J 521.

——A distinction is drawn between acts done by "the Commissioners" and acts done by "the Commissioners at a meeting. *(Suhrawardy and Graham JJ.)* CHAIRMAN HOWRAH MUNICIPALITY v. RAMSARUP SEROUGEE

A I R 1926 Cal 1073=95 I C 726.

—S. 45.

——*Chairman—Delegation of power.*

Under S. 45 of the Act, a Chairman cannot delegate to the Vice-Chairman his powers under the Licensed Warehouse and Fire Brigade Act. *(Newbould and Suhrawardy JJ.)* SUPT. AND REMEMBRANCER OF LEGAL AFFAIRS v. MULL

A I R 1921 Cal 469=25 C W N 960=
66 I C 428=34 C L J 203=23 Cr L J 284.

——*Ss. 45, 210—Delegation of powers—Notice by Vice-Chairman.*

When the Vice-Chairman has only such powers as are delegated under S. 45, it is for the person who alleges that he has such powers to prove that he has them. When the objection is raised no mere presumption under S. 114, Evidence Act, that official acts have been rightly done can dispose of the objection. Where there is no evidence that the Vice-Chairman was empowered to issue notice under S. 210 it must be held to be bad. *(Pargiter J.)* HARENDRA NATH MUKERJI v. THE CHAIRMAN OF THE BIRNAGAR MUNICIPALITY

1 C L J 51=2 Cr L J 144.

—S. 60.

——*Municipal servant—Conviction — Appeal—District Magistrate—When debarred from hearing.*

A District Magistrate, who has merely received proceedings of a Municipality, is not debarred from hearing an appeal against the conviction of a Municipal servant unless he is in any way concerned with the Municipality. *(Jwala Prasad J.)* TEJ NARAIN SINGH v. EMPEROR

3 U P L R (Pat) 54=61 I C 515=
22 Cr L J 387.

—S. 202.

——*Applicability to Howrah.*

Section 202, Bengal Municipal Act, was not repealed so far as Howrah was concerned when in 1904, the Government extended S. 342 of the then Calcutta Municipal Act, III of 1899, to Howrah, and consequently, there is no foundation for the suggestion that by reason of the non-existence of S. 242 in the present Calcutta Municipal Act, S. 202, must be considered to have been revived.

What was done at the time when the latter section was extended to Howrah was to clothe the

BENGAL MUNICIPAL ACT (III of 1884), S. 202

Municipality of Howrah with the summary or dictatorial powers which the Legislature thought fit to confer upon the Chairman of the Corporation of Calcutta in addition to the powers which the Municipality already had under S. 202, Bengal Municipal Act. *(C. C. Ghose Ag. C. J. and Pearson J.)* RAJENDRA KUMAR ROY v. BAL GOVIND

A I R 1932 Cal 65=59 Cal 811=
36 C W N 51=1932 Cr Cas 71=
Ind Rul (1932) Cal 255=136 I C 903=
33 Cr L J 371.

——*Notice, sufficiency of.*

The only requirement of S. 202 of the Bengal Municipal Act is that the Commissioners shall issue a notice which shall show to the opposite party, in a way in which he can understand, what the obstruction or the encroachment is that he is required to remove. The fact that they describe it as road side land and not a road has no importance at all provided always that it is found as a fact that the obstruction is an obstruction of the public road in the sense defined in the Act. *(Rankin C. J. and Graham J.)* INDUBHUSHAN MUKHERJI v. NILMANI GHOSH

A I R 1931 Cal 808 (2)=
35 C W N 659=58 Cal 1135=
Ind Rul (1931) Cal 865 (1)=
1931 Cr Cal 1072=134 I C 753 (1)=
32 Cr L J 1244.

——*Procedure—Orders under the section without hearing parties — Orders are illegal and must be set aside.*

The Legislature do not intend to enable a Magistrate to deprive a person of his right to a civil action for acts done by the Commissioners in excess of their powers except by a judicial order passed after hearing the parties concerned. Where a Magistrate passed orders under S. 202 of the Bengal Municipal Act without giving the parties concerned an opportunity of being heard :

Held, that the orders were illegal since the Magistrate did not act judicially and that they must be set aside. *(Newbould and B. B. Ghose JJ.)* NABADWIP MUNICIPALITY v. PURNA CHANDRA MUKERJI

A I R 1925 Cal 934=
52 Cal 670=88 I C 862=41 C L J 611=
29 C W N 817=26 Cr L J 1246.

——*Proceedings under the section are not criminal—No procedure is given by the section—Application of C. P. Code, is not wrong.*

A Magistrate exercising his power under S. 202 is not engaged in a criminal proceeding. No procedure is prescribed by the section. He would not be wrong in following, so far as they seem applicable, the provisions of the Code of Civil Procedure. *(Newbould and B. B. Ghose JJ.)* NABADWIP MUNICIPALITY v. PURNA CHANDRA MUKERJI

A I R 1925 Cal 934=52 Cal 670=
88 I C 862=41 C L J 611=
29 C W N 817=26 Cr L J 1246.

——*Nature of proceedings — Proceedings under the section is a judicial proceeding which can be revised by High Court.*

An order made by a Magistrate under S. 202 of the Bengal Municipal Act, 1884, is a judicial proceeding and the High Court has power to revise the order. *(Newbould and B. B. Ghose JJ.)* NABADWIP MUNICIPALITY v. PURNA CHANDRA MUKERJI

A I R 1925 Cal 934=52 Cal 670=
88 I C 862=41 C L J 611=
29 C W N 817=26 Cr L J 1246.

BENGAL MUNICIPAL ACT (III of 1884), S. 202

——*Ss. 202, 204, 218 and 353 — Non-compliance with requisition—Limitation.*

On a failure to comply with a requisition under Ss. 202, 204 of the Act the limitation of 6 months under S. 353 begins to run from the date of the expiry of the period allowed for compliance with such requisition. *(Adami and Bucknill JJ.)* GULAM RASUL v. EMPEROR

A I R 1921 Pat 11=61 I C 715=2 Pat L T 390=6 P L J 174=22 Cr L J 427.

——*S. 202—Applicability — Dispute as to title—High Court—Power to interfere.*

Section 202 of the Act cannot be applied where there is a dispute between any person and the Municipality with regard to the title to any land. Such a dispute must be decided in the ordinary way by a Civil Court. An order by a Magistrate under S. 202 of the Act is a judicial proceeding and the High Court has power to revise such an order. *(N. R. Chatterjea and Cuming JJ.)* ALOKE MOHAN SAHA v. NARAYANGANJ MUNICIPALITY **59 I C 137=22 Cr L J 25 (Cal).**

——*Ss. 202, 218—Removal of a wall and a privy—Requisition or notice to remove—Service on whom.*

The notice under S. 202 for the removal of any wall or other obstruction erected on any road or drain should be served upon the person, who may have erected the same whether he is lessee or the owner, and on failure to comply with such requisition, he alone is liable to a prosecution under S. 218. So, where a wall and a privy were erected by the lessee, the lessee alone is liable to a prosecution for non-compliance with a requisition issued to remove such wall and privy. *(Geidt and Mookerjee JJ.)* SHAMA BIBEE v. JADAB CHUNDER BANERJEE, **2 C L J 226=2 Cr L J 613.**

—S. 209.

——*Requisition — Municipality accepting gift of land on condition of erecting fencing at their own cost—Donor is not guilty of breach of requisition.*

The accused was served with a requisition under S. 209 of the Municipal Act requiring him to cause a fence to be erected for the protection of passengers and pedestrians over the bank of a tank belonging to the accused. The accused disobeyed this requisition, his grounds being that in 1898 certain land on the side of the tank was made over by him to the municipality and conditions were imposed by him on the municipality at the time to the effect that if in future any fencing had to be erected or was required on the side of the tank the municipality would erect such a fencing at their own cost. In 1914, the municipality caused certain departmental estimates to be prepared for fencing and for acquiring the extra strip of land on the side of the tank but that inasmuch as the funds did not permit of this work being done at once the work was left in abeyance and in September, 1922, the requisition, referred to above, was served on the accused under S. 209 of the Bengal Municipal Act.

Held, that there is nothing in the Municipal Act itself which can remotely suggest that the Municipality is incompetent to enter into a binding engagement of this description and therefore the Municipality is not in the circumstances of the particular case, competent to require the accused to cause a fencing to be erected at his own cost. *(C. C. Ghosh and Cuming JJ.)* SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. NARAYAN CHANDRA BANERJI,

AIR 1924 Cal 101=38 C L J 13=73 I C 776=24 Cr L J 680.

—S. 210.

——Notice issued by vice-Chairman—Validity — Bengal Municipal Act (3 of 1884), Ss. 45, 210.

2 Cr L J 144 (Cal).

——*Ss. 210, 219 — Unstamped petition of objection.*

The Municipality should, as prudent men for their own interests, take notice that an objection that notice under S. 210 was bad in law, though made by a petition which is not stamped, was advanced and satisfy themselves that they were proceeding in accordance with law. In such a case the accused can challenge the conviction under S. 219 on the ground that the notice was bad in law. *(Pargiter J.)* HARENDRANATH v. CHAIRMAN OF BIRNAGAR MUNICIPALITY, **1 C L J 51=2 Cr L J 144.**

—S. 217.

——*Public road.*

A road within S. 217 should include a public right of way. *(Stephen and Carnduff JJ.)* NANDO LAL v. BEJOY CHANDRA, **22 C W N 599=46 I C 518=19 Cr L J 742.**

——*Ss. 217, 273 and 353 — Prosecution—Consent of Commissioners—Evidence of sanction — Public authority—Consent in writing.*

The only evidence of sanction of prosecution by a public authority is writing under the seal and signature of that authority. Where in a tabular form called the 'prosecution form' in the remarks column the words 'I have seen' occurred and it was signed by the Commissioner and where in another form there was the word 'prosecute.'

Held that this was not authority, written or otherwise, showing the consent of the Commissioners, or the Vice-Chairman on their behalf to a prosecution within S. 353 of the Act, (1884). The authority which the Vice-Chairman has, is to convey the sanction of the Commissioners and not to pass any orders of any kind, and he must convey that sanction under his own seal, and signature to the Magistrate. *(Holmwood and Imam JJ.)* RASLU BAKSH v. THE MUNICIPAL BOARD OF CHAPRA, **16 C W N 934=15 I C 796=13 Cr L J 524.**

—S. 218.

——*Conviction under—Legality.*

A conviction under S. 218 cannot be sustained when the essential preliminary steps according to Ss. 175, 176, 178 and 179 of the Act have not been observed before an application was made to the Magistrate under S. 202 of the Act for the criminal prosecution. *(Mookerjee and Sheepshanks JJ.)* NABIN CHANDRA AICH v. NOAKHALI MUNICIPALITY, **AIR 1916 Cal 455=28 C L J 598=34 I C 985=21 C W N 470=17 Cr L J 265.**

——*Ss. 202, 218*—Removal of privy—Requisition or notice to remove — Service on person who has built—Failure to comply with requisition—Liability—*See* Bengal Municipal Act, 1884, S. 202.

2 Cr L J 613 (Cal).

—S. 219.

——Objection that notice under S. 210 was bad—Application of objection interpreted—*See* Bengal Municipal Act (3 of 1884), Ss. 210, 219.

2 Cr L J 144 (Cal).

BEEGAL MUNICIPAL ACT (III of 1884), S. 219

——*S. 219—Daily fine in anticipation.*

The law does not allow a daily fine to be imposed in anticipation of an offence being committed. *(Pargiter J.)* HARENDRA NATH MUKERJI v. CHAIRMAN OF BIRNAGAR MUNICIPALITY,
1 C L J 51=2 Cr L J 144.

—S. 230.

——*Ss. 230, 271 and 353 — Inspector's report signed by Chairman, if complaint.*

Where a report of Municipal Inspector with a recommendation to prosecute a party for offences under Ss. 230 and 271 of the Act was signed by the Chairman and bore an 8 anna stamp.

Held, that the document was not a petition of complaint but was a consent by the Chairman to the prosecution, under S. 353 of the Act and was sufficient for the purpose of the prosecution *(Chitty and Walmsley JJ.)* KRISTOLAL v. CHAIRMAN OF HOOGLI CHINSURAH MUNICIPALITY,
AIR 1917 Cal 260=37 I C 515=
20 C W N 824=24 C L J 57=
18 Cr L J 147.

—S. 238.

——*Ss. 238 and 240 — Building of new masonry wall—Whether erection of a house.*

The building of a new and additional masonry wall which materially enlarges a courtyard does constitute the erecting of a house within Ss. 238 and 240 and its erection without sanction of the Commissioner is an offence. *(Sharfuddin and Teunon JJ.)* MAHANT MOHABIR DAS v. GAYA MUNICIPALITY, AIR 1915 Cal 806=
26 I C 651=16 Cr L J 59.

—S. 241.

——*Ss. 241 and 273—Building below plinth level —Conviction.*

The evidence for the prosecution showed that the accused had only laid the foundation a few feet below, the ground-level, the brick work of which had not even reached the plinth level and there was no evidence to show the kind of building he was going to construct.

Held, that a conviction under S. 234 of the Act could not be maintained, because there was in fact no building in existence and it was not shown whether and where the building would be erected. *(Atkinson and Jwala Prasad JJ.)* SHIV DUTT RAY v. BABU SATISH CHANDRA,
AIR 1919 Pat 490=52 I C 386=
20 Cr L J 626.

—S. 243.

——*Action of Magistrate—Liability of the Municipality.*

Where on the recommendation of the Municipality the Magistrate had a full enquiry made and passed an order under S. 144, Criminal P. C., to demolish a hut as being dangerous to the Municipality, he is in no way responsible for any damage caused thereby even if his order was wrong. *(Holmwood and Chapman JJ.)* HARI CHARAN v. SURENDRA NATH, 18 I C 84 (Cal)

——*Ss. 243, 244, 267—Scope and applicability—Erection of hut without notice.*

Section 243 of the Bengal Municipal Act forbids the erection of a hut within a Municipality, without a month's notice to the Commissioners and if any one erects a house without such notice he is liable to punishment under the first portion of S. 267. The Commissioners can take action under

BENGAL MUNICIPAL ACT (III of 1884), S. 243

S. 244 but they are not bound tc do so. Section 267 of the Act provides for two distinct classes of offences, namely, (1) erecting a hut without a month's notice to the Commissioners, and (2) failing to remove a hut, erected without such notice, when required to do so, the latter only being an offence of a continuous nature, liable to be punished with a daily fine. Notice to remove the hut is not a condition precedent to a conviction for the first class of offences mentioned above. *(Coxe and Doss JJ.)* CHAIRMAN, HOWRAH MUNICIPALITY v. GOLAPI BEWA 10 C L J 16=2 I C 939=
10 Cr L J 191.

—S. 244.

——*Ss. 243, 244 and 267*—Scope and applicability —*See* ibid, S. 243. 10 Cr L J 191 (Cal).

—S. 250.

——*Ghee not for sale seized — Ghee in the custody of the bailee with consent of owner — Return to bailee.*

Where a bailee of goods has parted with possession with the consent of the owner, he cannot claim them back. Where ghee at the time it was seized was not put up for sale as fit for human consumption, it could not be seized under S. 250 of the Bengal Municipal Act. *(Jwala Prasad J.)* RAM CHAND MARHATIA v. RAM PRATAB
A I R 1917 Pat 129=43 I C 796=
4 Pat L W 62=19 Cr L J 220.

—S. 261.

——*'Kiln'—Means a permanent structure.*

The word kiln points to a structure which is of a permanent nature. The words of the section ought not to be strained unduly against the defendant. If it had been intended to prohibit the manufacture of bricks not only by means of a kiln but also by means of the older system of clamp, it would have been sufficient for the Legislature to provide that no place shall be used without a license from the commissioners for the purposes of making bricks; the words "no place shall be used as a kiln for making bricks" were advisedly used by the Legislature having regard to the ordinary meaning of the word, "kiln" as distinguished from "clamps". *(Sanderson C. J. and Panton J.)* SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. TRAILOKYA NATH CHATTERJEE A I R 1922 Cal 194=
49 Cal 1014=26 C W N 926=72 I C 356=
36 C L J 168=24 Cr L J 356.

——*Scope — Section covers cases of place of business from which offensive smell may arise.*

Section 261, Bengal Municipal Act, applies not only to a manufactory or business or trade *per se* offensive or unwholesome but it also covers the case of a manufactory or place of business from which offensive or unwholesome smells may arise. There is a clear distinction between the English and the Indian statutes, as the former apply only to manufactory or business *per se* offensive. *Withington Local Board of Health* v. *Corporation of Manchester*: (1893) 2 Ch 19: *Wanstead Local Board of Health* v. *William Hill*: 13 Common B. R. (new series) 479, *Disting. (Chatterjee and Panton JJ.)* GOVINDA CHARAN v. CHAIRMAN OF THE HOOGHLY CHINSURA MUNICIPALITY AIR 1922 Cal 99=
26 C W N 994=65 I C 518.

BENGAL MUNICIPAL ACT (III of 1884), S. 261

——*"Wood"—Includes timber.*

The word "wood" in S. 261 of the Act includes timber. A timber yard requires a license under the section. *(Miller C. J. and Coutts J.)* EMPEROR v. TAR MUHAMMED JAN A I R 1921 Pat 178=6 Pat L J 363=63 I C 327=2 Pat L T 722=22 Cr L J 631.

—S. 267.

——*Ss. 243, 244 and 267—Scope and applicability—See* ibid, S. 243. 10 Cr L J 191 (Cal).

—S. 271.

——*Prosecution—Disposal of the objection under S. 178 is condition precedent.*

A prosecution under S. 271 of the Act is not justified unless the objection is disposed of according to terms of the law laid down under S. 178. A person need not comply with the orders mentioned in the notice under S. 178 if he has filed an objection. If the objection is decided in his favour then the notice is cancelled. If it is decided against him, then the decision cannot have the retrospective effect of punishing him for the default committed by him with respect to the first notice. *(Jwala Prasad J.)* RAMPARTAP LAL v. BARH MUNICIPALITY A I R 1922 Pat 183=3 Pat L T 301=66 I C 417=23 Cr L J 273.

—S. 273.

——*Municipality not proving publication of prohibition.*

Where in a charge under S. 273 (2), Bengal Municipal Act, the Municipality has not proved that any publication has been made under S. 234 of the Municipal Act of 1876, it cannot be said that the prohibition for making tiles is in force legally and a person making tiles without license is not guilty under S. 273 (2). *(S. K. Ghose J.)* HOOGHLY-CHINSURA MUNICIPALITY v. KESHAB CHANDRA PAL A I R 1933 Cal 347=56 C L J 583=Ind Rul (1933) Cal 395=1933 Cr Cas 419=143 I C 285=34 Cr L J 549.

——*S. 273 (2)—Burden of proof.*

The fact that the accused applied for license to sell meat within the limits of the Municipality in a previous year does not throw the onus upon him to show negatively that there was no promulgation as is required by law. *(Jack J.)* KHURSHID CHIK v. RANIGANJ MUNICIPALITY A I R 1932 Cal 833=36 C W N 823=Ind Rul (1932) Cal 558=1934 Cr Cas 860=139 I C 134.

——*Ss. 273 (2), 222—No proof as to due promulgation of order.*

Where it was not proved that the order applying Part VI of the Bengal Municipal Act to a particular Municipality was promulgated under the provisions of S. 222 of the Act :

Held, that a conviction under S. 273 (2), Bengal Municipal Act, was bad and that liability to punishment would arise only on proof by the prosecution of such promulgation. *(Jack J.)* KHURSHID CHICK v. RANIGANJ MUNICIPALITY A I R 1932 Cal 833=36 C W N 823=Ind Rul (1932) Cal 558=1932 Cr Cas 860=139 I C 134.

BENGAL MUNICIPAL ACT (III of 1884) —S. 326.

——*Cubical capacity of building.*

Clause (2) of S. 326, Bengal Municipal Act, only refers to increase in cubical capacity of a building or any part thereof.

Mere removing of the partition wall and thus increasing the area of the room, does not necessarily result in the increase of the cubical capacity of the building as distinguished from the rooms within the building. Unless it is shown that the cubical capacity of the building has been altered, the accused cannot come under the provisions of S. 326. *(Jack J.)* RAM RATAN LALL v. CHAIRMAN OF THE ASANSOLE MUNICIPALITY A I R 1937 Cal 556=10 R C 484=41 C W N 1316=173 I C 63=39 Cr L J 258.

—S. 345.

——*Conviction—Proof.*

To sustain conviction under S. 345 the prosecution must prove that the place is closed as a market place by Magistrate on the Commissioner's report. *(Chitty and Walmsley JJ.)* PUTIKAHARINI v. VICE-CHAIRMAN VISHUNUPUR MUNICIPALITY A I R 1917 Cal 206=20 C W N 1015=38 I C 336=18 Cr L J 304.

—S. 350.

——*Bye-law No. 80—Tabla is not a high sounding instrument.*

Under no circumstances can the playing of the *Tabla* be regarded as "singing with a high sounding instrument" within the Bye-law No. 80. *(Bucknill J.)* RAHIM v. EMPEROR A I R 1924 Pat 377=1 Pat L R Cr 45=72 I C 894=24 Cr L J 478.

—S. 356.

——*Warrant — Brother of owner in possession and paying taxes on behalf of owner — Service of warrant on brother of owner is sufficient.*

Where the house was not in the occupation of the recorded owner but his brother and, although the Municipal taxes were levied on the owner, they were collected from his brother.

Held, the service of the distress warrant on the brother of the owner was a proper service. *(Dawson Miller C. J. and Ross J.)* GOVT. ADVOCATE, BIHAR AND ORISSA v. GANGA PRASAD A I R 1922 Pat 532=1 Pat 423=3 Pat L T 559=75 I C 719=25 Cr L J 31.

—Sch. IV.

——*Warrant—Date of return is not necessary to be mentioned.*

A distress warrant issued in the form provided in Schedule IV does not require that the date of return of warrant should be mentioned. *(Dawson Miller C. J. and Ross J.)* GOVERNMENT ADVOCATE, BIHAR AND ORISSA v. GANGA PRASAD A I R 1922 Pat 532=1 Pat 423=75 I C 719=3 Pat L T 559=25 Cr L J 31.

BENGAL MUNICIPAL ACT (XV of 1932). —S. 2.

——*Ss. 2, 317—Sanction lapsed before new Act.*

If the sanction had lapsed before the new Bengal Municipal Act came into force, there is nothing which could be preserved under S. 2. *(Henderson and Mohamed Akram JJ.)* AMULYA CHARAN PAUL v. CHAIRMAN KANCHARAPARA MUNICIPALITY A I R 1940 Cal 336=71 C L J 588=13 R C 129=189 I C 773=41 Cr L J 801.

BENGAL MUNICIPAL ACT (XV of 1932) —S. 3.

——*Ss. 3 (54), 330 — Order under S. 330 without jurisdiction.*

The definition of a "Magistrate" in S. 3 (54), Bengal Municipal Act, is exhaustive and hence an order under S. 330, passed by a Magistrate to whom the District Magistrate has not made over any duties under the Act is without jurisdiction and must be set aside. *(Lodge and Roxburgh JJ.)* CHAIRMAN TOLLYGANJ MUNICIPALITY v. M. MASIH AHMED A I R 1942 Cal 288=74 C L J 499=40 C W N 316=I L R (1942) 1 Cal 530=14 R C 691=199 I C 792=43 Cr L J 593.

—S. 28.

——*S. 28 (1)—Revising Authority.*

A member of the Revising Authority is neither a Municipal Officer nor servant. *(Mukerji and Bartley JJ.)* HEM CHANDRA DAS v. SUBODH CHANDRA DAS A I R 1934 Cal 498=7 R C 171 (2)=38 C W N 360=61 Cal 361=59 C L J 379=151 I C 718=35 Cr L J 1399.

——*S. 28 (1)—Revising Authority.*

Clause (1) of S. 28, Bengal Municipal Act, cannot apply to persons who constitute the Revising Authority, who are vested with the powers of holding summary enquiry into claims and objections preferred in connection with the revision of the Preliminary Electoral Roll, and their orders allowing or disallowing such claims and objections are to be mechanically followed in amending the said Roll. *(Mukerji and Bartley JJ.)* HEM CHANDRA DAS v. SUBODH CHANDRA DAS A I R 1934 Cal 498=7 R C 171 (2)=59 C L J 379=38 C W N 360=61 Cal 361=151 I C 718=35 Cr L J 1399.

—S. 34.

——*Offence under S. 471, Penal Code (Act XLV of 1860), for filing forged nomination paper—S. 34 if applies — Complaint by Chairman or District Magistrate for prosecution, if essential.*

Where the act complained of does not constitute an offence punishable under the Bengal Municipal Act but it constitutes offence punishable under the I. P. C. only, being an offence under S. 471, I. P. C., for filing a nomination paper with a forged signature, the trial must be held according to the provisions of the Criminal P. C., and nothing contained in S. 34 of the Bengal Municipal Act can apply to such a trial.

For such prosecution no complaint by the Chairman or the District Magistrate is necessary, inasmuch as the Chairman rejecting the nomination paper and the District Magistrate who hears the appeal therefrom under the Rules framed under the Municipal Act are not "Courts" within the meaning of S. 195 (1) (c), Criminal P. C. *(Edgley and Sen JJ.)* BIBHUTI BHUSAN BANERJEE v. DWARIKANATH BHATTACHARJEE A I R 1943 Cal 574=47 C W N 676=16 R C 112=77 C L J 265=207 I C 415=44 Cr L J 601.

——*"Electoral roll" refers to whole of Municipality.*

The "electoral roll" refers to the whole Municipality and any person whose name is on it, is entitled to make a complaint under S. 34, Bengal Municipal Act. It does not refer to voters' list of a particular ward in which election has taken place.

BENGAL MUNICIPAL ACT (XV of 1932), S. 34

(Henderson and Khundkar JJ.) ALI HAIDAR v. UPENDRA NATH KUNDU A I R 1939 Cal 662=43 C W N 1063=12 R C 234=I L R (1939) 2 Cal 442=18 I C 451 (2)=41 Cr L J 17 (2).

——*Period for offences in connection with election.*

The period of 14 days relates to offences committed in connection with an election and the shorter period of 7 days to other offences. *(Henderson and Khundkar JJ.)* ALI HAIDER v. UPENDRA NATH KUNDU A I R 1939 Cal 662=43 C W N 1063=12 R C 234=I L R (1939) 2 Cal 442=184 I C 451 (2)=41 Cr L J 17 (2).

——*S. 34 (c) — Deposit whether condition precedent.*

The deposit of Rs. 50 is a condition precedent to the entertaining of a complaint, though, of course, a complaint dismissed merely on the ground of such non-deposit may be revived on the deposit being subsequently made, if the complaint is otherwise in order. *(Mukerji and Bartley JJ.)* HEM CHANDRA DAS v. SUBODH CHANDRA DAS A I R 1934 Cal 498=61 Cal 361=38 C W N 360=59 C L J 379=7 R C 171 (2)=151 I C 718=35 Cr L J 1399.

—S. 71.

——Offence under S. 71, is not a continuing offence. *(Henderson and Latifur Rahman JJ.)* BHAGIA v. CHITTAGONG MUNICIPALITY A I R 1939 Cal 608=12 R C 246 (1)=44 C W N 481=184 I C 585 (1)=41 Cr L J 47.

—S. 71.

——*S. 71 (2) — Prosecution must prove date of offence—Offence under, if continuing offence.*

It is the business of the prosecution to establish on what date the alleged offence under S. 71, Bengal Municipal Act, was committed. Offence under the section is not a continuing offence. *(Henderson and Latifur Rahman JJ.)* BHAGIA v. CHITTAGONG MUNICIPALITY A I R 1939 Cal 608=12 R C 246 (1)=44 C W N 481=184 I C 585 (1)=41 Cr L J 47.

—S. 198.

——*"Keeping" if includes "plying" — Ferry — Meaning of.*

The word "keeping" does not include the word "plying." They are really totally different things.

Quære.—Whether the term "ferry" connotes (1) carrying persons from a fixed point on one bank of a river to a fixed point on the other and (2) charging a fixed toll. *(Henderson J.)* DULA MIA v. DACCA MUNICIPALITY A I R 1944 Cal 160=48 C W N 271=I L R (1944) 1 Cal 438=212 I C 600=45 Cr L J 646.

——**S. 240.**

——*Ss. 240 (1) (b), 500, 533 — Starting point of the offence.*

When the offence complained of is the offence committed by failing to comply with the requisition to remove obstruction served under S. 240 (1) (b), the starting point of the offence is the date on which there was such failure to comply with the requisition and not the date on which the hut or the obstruction was erected. *(Mitter and Sen JJ.)* MUNICIPAL COMMISSIONERS OF RANIGANJ v. KEDAR KALWAR A I R 1954 Cal 27=57 C W N 704=1953 Cr L J 1874.

BENGAL MUNICIPAL ACT (XV of 1932), S. 240

——*Ss. 240 (1) (b), 500—Defective notice.*

In the form of notice both the words "days" and "hours" occurring after "3" had been penned through so that the receiver of the notice or requisition would not know within what period he was actually directed to remove the encroachment:

Held that the notice being defective, it could not be held that there was an offence committed by failing to comply with the same. *(Mitter and Sen JJ.)* MUNICIPAL COMMISSIONERS, RANIGANJ v. KEDAR KALWAR A I R 1954 Cal 27=57 C W N 704=1953 Cr L J 1874.

—Ss. 241, 240.

——*Encroachment by entire shop.*

Where an encroachment on the Municipal road is made by practically the entire shop and not a part of it, the encroachment is one to which S. 241 of the Bengal Municipal Act applies and not S. 240. *(Guha and Bartley JJ.)* PURAN CHANDRA BAGCHI, NABADWIP MUNICIPALITY v. SATIS CHANDRA MODAK A I R 1935 Cal 116 (2) (117)=38 C W N 1099=7 R C 450=1935 Cr Cas 154=154 I C 417=36 Cr L J 512.

—S. 312.

——When the conditions contained in proviso to S. 312 were operative, no special notification under S. 312 (1) and (2) would be required. *(Edgley and Blank JJ.)* KISHOREGUNJ MUNICIPALITY v. RADHIKA MOHAN A I R 1944 Cal 377=I L R (1944) 1 Cal 199=17 R C 95=215 I C 212=46 Cr L J 70.

—S. 317.

——*Person starting to erect surreptitious building, being caught red-handed.*

Section 317 applies to persons who intend to erect a building. It has nothing to do with persons who start to erect surreptitious buildings, and are caught red-handed and then stopped. *(Henderson and Mohamed Akram JJ.)* AMULYA CHARAN PAUL v. CHAIRMAN, KANCHARAPARA MUNICIPALITY A I R 1940 Cal 336=71 C L J 588=13 R C 129=189 I C 773=41 Cr L J 801.

—S. 318.

——Prosecution for non-compliance with S. 318—The prosecution must show that S. 318 was in operation in the municipality of that area at the time when the prosecution was instituted. *(Edgley and Blank JJ.)* KISHOREGUNJ MUNICIPALITY v. RADHIKAMOHAN A I R 1944 Cal 377=I L R (1944) 1 Cal 199=17 R C 95=215 I C 212=46 Cr L J 70.

—S. 330.

——*Time limit for application for order of removal.*

The order of removal of unauthorised structure provided in S. 330 is quite a distinct order from a prosecution. There is no time limit fixed in the Act for such an application viz., for removal under S. 330. *(Sen and Chunder JJ.)* RAM KUMAR SHAW v. BHATPARA MUNICIPALITY A I R 1951 Cal 311.

——*S. 330 (1) — Application for demolition if ancillary to prosecution.*

The words "in addition to any prosecution that may be instituted under this Act" in S. 330 (1) cannot be construed to mean that an application for demolition is ancillary to a prosecution. The Commissioners are really given two remedies which

BENGAL MUNICIPAL ACT (XV of 1932), S. 330

are independent of each other and the second is not an appendage to the first. *(Henderson J.)* DURGA CHARAN BISWAS v. PURNA CHANDRA SAHA 230 I C 435=48 Cr L J 655 (Cal).

—S. 431.

——Order under Ss. 431 and 432 — Nature of—It is not an order of forfeiture of property—*See* (Calcutta) Rules of the High Court, Part I, Chap. II, R. 9, Proviso A I R 1953 S C 248=1953 Cr L J 1101 (SC).

— S. 432.

——Order under—Nature of—It is not an order of forfeiture of property—*See* (Calcutta) Rules of the High Court, Part I, Chap. II, R. 9, Proviso A I R 1953 S C 248=1953 Cr L J 1101 (SC).

—S. 500.

——Starting point of the offence of failure to comply with requisition to remove obstruction served under S. 240 (1) (b)—*See* ibid, S. 240 (1) (b) A I R 1954 Cal 27=1953 Cr L J 1874.

—S. 533.

——Starting point of the offence of failure to comply with requisition to remove obstruction served under S. 240 (1) (b)—*See* ibid, S. 240 (1) A I R 1954 Cal 27=1953 Cr L J 1874.

BENGAL, N. W. P. AND ASSAM CIVIL COURTS ACT (XII of 1887)

See BENGAL, AGRA AND ASSAM CIVIL COURTS ACT (XII OF 1887).

BENGAL PATNI TALUQS REGULATION (VIII of 1819)

—S. 11.

——*Ss. 11 and 15* — Sale of patni taluk — Darputnidar wrongfully collecting rent and resisting purchaser — Proceedings under S. 107, Criminal P. C.—*See* Criminal P. C., S. 107 2 Cr L J 415 (Cal).

— S. 14.

——The Collector holding investigation under the Regulation is a tribunal which would come within the meaning of S. 195, Criminal P. C. *(Mukerji and S. K. Ghose JJ.)* BIBHUTI BHUSAN v. KHEMCHAND A I R 1934 Cal 457=6 R C 568=38 C W N 578=149 I C 363=61 Cal 792=35 Cr L J 946.

—S. 15.

——*Ss. 15 and 11* — Sale of patni taluq — Resistance to purchaser — Proceedings under S. 107, Criminal P. C.—*See* Criminal P. C., S. 107 2 Cr L J 415 (Cal).

—S. 16.

A purchaser at a *patni* sale gets the *patni* as it existed at the time of its creation. Tenures created prior to the creation of the *patni* are not affected. It cannot, therefore, be said that merely because a proclamation under S. 15 (2) was issued and steps were taken to give effect to the proclamation, the owners of tenures created before the *patni* were dispossessed. *(Edgley and Sen JJ.)* USHA PROVA DEY v. HRIDAY BASHINI A I R 1944 Cal 389=I L R (1943) 2 Cal 436=17 R C 96=216 I C 48=46 Cr L J 138.

BENGAL PERMANENT SETTLEMENT REGULATION (Beng. Reg. I of 1793)

——*Settlement of ghats—Rights.*

Settlement of *ghats* not only means the right to collect tolls or ferry dues but also includes the

BENGAL PERMANENT SETTLEMENT REGULATION (Beng. Reg. I of 1793)

right to mooring dues. *(Dawson-Miller, C. J. and Foster, J.)* MAHARAJADHIRAJ OF DHARBHANGA v. COMMISSIONER OF INCOME-TAX
A I R 1925 Pat 313=6 P L T 355=
2 Pat L R Cr 242=1952 P H C C 49=
92 I C 338.

——*Variation of terms of Settlement — Right of Government — Effect of Income-tax Act—Imposition of income-tax on profits arising out of jalkar etc.*

Per *Dawson-Miller, C. J.* — Though the legislature has power to vary or modify the bargain entered into between the Government and the proprietors by the Permanent Settlement, yet this can only be done by clear and specific language in a statute and not by general implication. The applications for settlement made by the proprietors at the time of Permanent Settlement were, as a rule, a counterpart of the actual settlement made and were part of a single transaction completed at the same time, just as a kabuliyat is a counterpart of a patta. The Income-tax Act, if and in so far as it charges income derived from property included in the original settlement with the proprietor and assessed to revenue, varies the terms of Reg. I of 1793. The Income-tax Act of 1922 is not explicit enough in its terms to repeal the exemption created by the Permanent Settlement Regulation; for such repeal cannot be effected merely by words of general import or by implication. By the Permanent Settlement it was the revenue or rent payable to Government as the paramount landlord that was fixed in perpetuity. The effect of the imposition of income-tax on the profits arising out of *jalkar*, *hat*, and *ghatlag* is in fact to increase the revenue under another name. The jama permanently fixed at the date of the settlement was calculated on a percentage of the rents and profits at that time derived from the ownership of the land. Income-tax is based upon the same rent and profits as they now exist and it is impossible to escape from the conclusion that a tax under whatever name upon the same sources of income would increase the duty payable under the name of revenue and which by the Permanent Settlement it was agreed should then be fixed for ever. (AIR 1922 Mad 325, *Foll.*) *(Dawson-Miller, C. J. and Mullick, J.)* MAHARAJADHIRAJ OF DHARBHANGA v. COMMISSIONER OF INCOME-TAX A I R 1924 Pat 474=
3 Pat 470=2 Pat L R Cr 25=1924 P H C C 69=
5 Pat L T 459=78 I C 783.

—Art. 6.

——*General taxes on estates—Liability to income-tax.*

C. C. Ghose J.—Buckland and Panton JJ. concurring. — The clear purport of the declaration made in Regulation I of 1793 is that the re-assessment of the estates dealt with therein was for ever barred. In other words, the land assessment then formed was to be considered the permanent and unalterable revenue of the territorial possessions of the East India Company in Bengal so that no discretion might be exercised by the Company's servants in any case of introducing alteration whatsoever. The Regulation of 1793 was so framed as to operate as an ample and complete guarantee that no resettlement of the estates referred to therein should ever take effect. But no guarantee was ever given that the proprietors of those estates should never, at any time, be called upon to aid in

BENGAL PERMANENT SETTLEMENT REGULATION (Beng. Reg. I of 1793), Art. 6

the relief of the future necessities of the Government of the land and there was no promise or engagement of any description whatsoever by which the Government of the day surrendered their right to levy a 'general' tax upon incomes of all persons irrespective of the fact whether they are zamindars with whom the Permanent Settlement was concluded or not. A 'general' tax is no doubt a public demand but it is one which is levied upon a wholly different principle and in respect of a wholly different kind of liability ; such a 'public demand' is no doubt a demand made upon zamindars with whom the Permanent Settlement was concluded, but it is made upon them in company with other classes of the community and with no exclusive reference to the source from which their incomes are derived.

Mukerji J. and Suhrawardy J., concurring. — The public assessment could be augmented in any way, so long as the method adopted did not mean to take away a portion of this income or profits *qua* such income or profits. Although by the Permanent Settlement right to taxation generally was not given up the income or profits derivable from the lands was not to be taxed as such. Whether a portion is taken as revenue and another under the head of income-tax, both are demands of the State, and when in assessing the revenue, a guarantee was given of its fixity and a declaration was made that the balance will not be altered at any time, to impose a further tax on the income or profits does away with that fixity and alters that which was guaranteed to be unalterable. The object of the Settlement in exempting from further burden income which has already paid toll to the State in the shape of land revenue was primarily to protect and improve agriculture, as that then was the chief source of income, and the exemption of agricultural income from the operation of the Income-tax Act perhaps indicates a continuity of policy on the part of the legislature in that respect. The words of the Settlement, however, are clear enough as indicating an intention to leave untouched for all times to come the surplus that the landholder will be able to derive as income or profits from the lands of his estate. *(C. C. Ghose, Buckland, Suhrawardy, Panton and Mukerji JJ.)* KING-EMPEROR v. RAJA PROBHAT CHANDRA,
AIR 1927 Cal 432=
54 Cal 863=45 C L J 323=
31 C W N 765=102 I C 845 (FB).

BENGAL POLICE ACT (BENGAL ACT 7 of 1869)

—S. 30.

——*Ss. 30, 32—License for procession.*

The District Superintendent of Police has power to issue notification requiring a licence for processions and assemblies which becomes as much a part of the law as any law embodied in the Statute book. *(Mullick, Coutts and Dass JJ.)* EMPEROR v. DR. ABDUL HAMID, AIR 1923 Pat 1=
3 Pat L T 585=1922 P H C C 274=
68 I C 945=2 Pat 134=
1 Pat L R (Cr) 199=23 Cr L J 625.

BENGAL POLICE REGULATION

—R. 88.

——*R. 88 (b)—Criminal proceeding.*

An investigation into a crime which does not go beyond Police enquiry, and results in a final report

BENGAL POLICE REGULATION, R. 88

on which no action could be taken under the law, so far as the commission of a crime was concerned, and which did not come before any Criminal Court, cannot be held to be a criminal proceeding as contemplated by the rule of procedure to be followed in the matter of infliction of punishment on a Police Officer, who is departmentally charged with having taken bribes or illegal gratification in connection with the investigation of a reported commission of a crime. *(Guha and Bartley JJ.)* SECRETARY OF STATE v. PROMATHANATH GANGULI, AIR 1935 Cal 552=8 R C 164=157 I C 1116.

—R. 173.

——Maps and plans prepared by police of spot inspection for purposes of case — Duty of, to mark only the things observed — *See* Criminal P. C. S. 174, 26 Cr L J 1298 and 26 Cr L J 350.

—R. 1067.

——Rule 1067 of the Bengal Police Regulation is *ultra vires. (Cuming J.)* RAM GOPAL v. EMPEROR, AIR 1932 Cal 285=58 Cal 1132=Ind. Rul. (1931) Cal 891=35 C W N 547=134 I C 891=1932 Cri Cas 153=33 Cr L J 15.

BENGAL PRIVATE FISHERIES PROTECTION ACT (II of 1889).

—S. 3.

——*S. 3, Proviso* — The complaint filed by the zamindar that the villagers had no right to fish in a sheet of water within his zamindari was dismissed by the criminal Court as it was found on enquiry that the villagers had a right to fish in the said waters. Subsequently the accused who were some of the villagers were prosecuted for fishing in the aforesaid waters. Held that the claim of the accused that they had caught fish in a *bona fide* claim of right was correct and they were protected under S. 3 proviso. *(Das J.)* MEGHA PALAI v. EMPEROR, AIR 1947 Pat 105=12 Cut L T 27=13 B R 289=229 I C 165=48 Cr L J 424.

——The first part of the proviso to S. 3 is not necessarily confined to acts done in a navigable river or any portion thereof. The protection of the proviso extends to all acts done in exercise of *bona fide* claim of right whether in private waters other than a navigable river or in any portion of a navigable river in which there may be private rights. *(Das J.)* MEGHA PALAI v. EMPEROR, AIR 1947 Pat 105=12 Cut L T 27=13 B R 289=229 I C 165=48 Cr L J 424.

BENGAL PUBLIC GAMBLING ACT (II of 1867)

——*Distinction between gaming and betting.*

The difference between gaming and betting depends on the nature of the event on which the bet is made. If the event is brought about solely for the purpose of being betted about, betting on it is gaming, otherwise it is not. The popular and not the scientific or the historical meaning of the terms is to be considered. *(Ghose and Stephen JJ.)* HARI SINGH v. JADU NANDAN SINGH, 31 Cal 542=8 C W N 458=1 Cr L J 349.

—S. 2.

——*Question whether game is of pure chance or one in which skill preponderates is no longer pertinent.*

BENGAL PUBLIC GAMBLING ACT (II of 1867), S. 2

The question as to whether a game is one of pure chance or one in which the element of skill preponderates are no longer pertinent under the Act as it stands now. What is to be seen is whether the game is covered by what is meant by "gaming"; if it is, it is hit by the Act unless it is a game of mere skill. 6 C L J 708, *Expl. (Mukerji J.)* ARJOON SINGH v. EMPEROR, AIR 1929 Cal 769=57 Cal 520=125 I C 643=1929 Cr C 513=33 C W N 910=31 Cr L J 901.

——*S. 2 (as amended by Act IV of 1913)—Gaming—Definition of gaming is only descriptive—To bring case under "gaming" it must be established that game was for money staked on result of game.*

The definition in the Act does not really define gaming but merely indicates what it is like and excludes wagering or betting on some particular occasion and in some particular circumstances and also excludes "lottery." To bring the case within the meaning of "gaming" all that has to be seen is whether the game that was going on was for money which was staked on the result of the game which was to be lost or won according to the success or failure of the person who has staked provided of course that it was not a lottery. 31 Cal 542; 39 Cal 968 ; A I R 1917 Cal 124, *Ref. (Mukerji J.)* ARJOON SINGH v. EMPEROR, AIR 1929 Cal 769=57 Cal 520=125 I C 643=1929 Cr C 513=33 C W N 910=31 Cr L J 901.

—S. 3.

——*Prosecution must prove that instruments of gaming found in place were used for profit of lessee.*

In order to sustain a conviction under S. 3, Bengal Public Gambling Act (II of 1867), the Magistrate must first find that the premises in question were being used as a common gaming house within the meaning of the definition in S. 1. In order to establish this point, the prosecution would have to prove that the instruments of gaming found in the place were kept or used for the profit of the lessee of the premises. *(Henderson J.)* S. K. ABDUL v. EMPEROR, AIR 1943 Cal 121=15 R C 392=75 C L J 95=202 I C 677=43 Cr L J 887.

——*Ss. 3, 4, 5 and 6—Applicability—Presumption under S. 6 arises only under peculiar circumstances mentioned by statute itself — Magistrate not satisfied that premises are used as common gaming house—No presumption under S. 6 arises.*

The presumption of law under S. 6 arises only in the peculiar circumstances mentioned by the statute itself, *i. e.*, if the warrant authorises a search on the footing of the premises being a common gaming house and when the search results in a find of instruments of gaming. When the requirements of S. 5 are not strictly complied with inasmuch as the Magistrate does not say anywhere in the proceedings that the premises were used for a common gaming house, the presumption under S. 6 does not arise, and if there is no evidence showing that the premises had been kept for the profit or gain of the accused, they cannot be convicted under S. 3 or S. 4. *(Mukerji J.)* GANGADAS BANERJI v. EMPEROR, A I R 1930 Cal 365=126 I C 134=51 C L J 224=51 C L J 396=1930 Cr C 541=31 Cr L J 999.

BENGAL PUBLIC GAMBLING ACT (II of 1867), S. 3

——*Ss. 3, 10—Game of chance, or skill — Ring game.*

A game of skill is not an offence under the Act. A game of mere chance, is. A game which requires skill in the main is no offence, merely because there is an element of chance in it. *(Mitra and Fletcher JJ.)* HARI SINGH v. KING-EMPEROR,
6 C L J 708=6 Cr L J 421.

—S. 4.

——*Common gambling house.*

The premises left in charge of durwans could not be regarded as a "common gambling house," even though the *durwans* might have made some profit out of the gambling which went on there for months together while the owner of the premises was absent. *(Rampini and Gupta JJ.)* MOHESH NARAIN PANDEY v. EMPEROR,
11 C W N 972=6 Cr L J 228.

—S. 5.

——*Ss. 5, 6 — Issue of warrant under S. 5 — —Requirements of — Presumption under S. 6— Warrant.*

In view of the terms of S. 5 of the Bengal Public Gambling Act, it is not legal to issue a warrant under this section, if the Magistrate concerned merely has reason to believe that a house is used for cotton gambling or indeed for any other kind of gambling as such. According to S. 5, the Magistrate must upon credible information, and after such inquiry as he may think necessary, have reason to believe that such house is used as a common gaming house, or, in other words, as a house which is used by its owner or occupier for the purpose of making profit out of gambling transactions which take place therein, and it is only if the house has been entered, or searched under a warrant, properly and validly issued, under the provisions of S. 5 that the presumption which is raised under S. 6 can arise. The warrants issued under S. 5, are illegal, if they do not indicate that the Magistrate had any reason to believe that the houses which he directed to be searched were used as common gaming-houses. In such a case it is not open to the Court to draw any presumption under S. 6 of the Act in respect of the instruments of gaming which were found on the premises. *(Edgley J.)* JITENDRA BHUSAN DAS v. EMPEROR, **A I R 1941 Cal 413= I L R (1941) 1 Cal 58=45 C W N 24= 14 R C 39=195 I C 7=42 Cr L J 643.**

——*Ss. 5, 6—Warrant.*

"A common gaming house" has a special meaning under the Public Gambling Act, and unless that expression is used in a warrant under S. 5 the prosecution cannot avail themselves of the special provision of S. 6. Hence, a warrant under S. 5 which does not state that the Magistrate who granted it had reason to believe that the premises were used as a common gaming house is defective even if it says that he was led to believe that they were used for the purpose of bucket shop gambling on race horses. *(Edgley J.)* EMPEROR v. GOBINDA CHANDRA DAS,
A I R 1940 Cal 586=71 C L J 542= 44 C W N 1123=13 R C 304=192 I C 182= 42 Cr L J 253.

—S. 6.

——*When can be invoked.*

Before S. 6 can be invoked in aid of the prosecution it must be established that before the search

BENGAL PUBLIC GAMBLING ACT (II of 1867), S. 6

the Police Officer had reason to believe that the premises in question were used as common gaming house. It is not enough for him to say that he had reason to believe that gambling was going on there. Section 6 merely provides that the finding of the instruments of gaming shall be evidence that the premises used is a common gaming house. It is for the Magistrate to say whether he was prepared to come to such a finding or not. *(Henderson J.)* ABDUL v. EMPEROR,
A I R 1943 Cal 121=15 R C 392= 202 I C 677=75 C L J 95=43 Cr L J 887.

——*Notice under S. 5, illegal — Presumption under.*

Where the search warrants under S. 5 are illegal, inasmuch as they do not indicate that the Magistrate had any reason to believe that the houses which he directed to be searched were used as common gaming houses, it is not open to the Courts to draw any presumption under S. 6, in respect of instruments of gaming which were found on the premises. *(Edgley J.)* JITENDRA BHUSAN DAS v. EMPEROR, **A I R 1941 Cal 413= I L R (1941) 1 Cal 58=45 C W N 24= 14 R C 39=195 I C 7=42 Cr L J 643.**

——*Race books and betting slips.*

Under S. 6 the fact that certain race-books and betting slips were found in the house is quite insufficient to show in fact that the house had been used as a common gaming house. *(Edgley J.)* BENOY KRISHNA ROY v. EMPEROR,
A I R 1941 Cal 32=13 R C 344= 192 I C 736=42 Cr L J 319.

——*Warrant defective—Presumption under S. 6, illegal.*

Where the warrant under S. 5 is defective, prosecution cannot avail of provisions of S. 6. *(Edgley J.)* EMPEROR v. GOBINDA CHANDRA DAS,
A I R 1940 Cal 586=71 C L J 542= 44 C W N 1123=13 R C 304= 192 I C 182=42 Cr L J 253.

—S. 8.

——*Ss. 8 and 11 — Conviction for unauthorised betting—Forfeiture of money found on accused.*

There is no authority under the Gambling Act (Bengal II of 1867) for a Magistrate to direct the forfeiture of the money found with the accused convicted for unauthorised betting at a race-course. *(Roxburgh and Ellis JJ.)* SUKUMAR BOSE v. EMPEROR, **A I R 1948 Cal 116 (1)= 229 I C 157=48 Cr L J 256.**

—S. 10.

——*Ss. 10 and 11 — Ring game — "Mere skill" explained.*

"Mere skill" in S. 10 means "pure skill" so that a ring game where the element of chance is present in a greater degree than the element of skill is not a game of mere skill falling under exception to S. 10. Games of skill in S. 10 refer to games where two parties pit their skill against each other, so that a ring game kept by a man for profit who does not pit his skill against anybody does not fall within the exception to S. 10. *(Holmwood and Sharfuddin JJ.)* RAM NEWA LAL v. EMPEROR,
A I R 1914 Cal 532=23 I C 484= 15 Cr L J 276.

——Game of chance or skill—Game requiring chiefly skill with just an element of chance whether offence.—*See* ibid, S. 3.
6 Cr L J 421 (Cal).

BENGAL PUBLIC GAMBLING ACT (II of 1867)
—S. 11.

——Unauthorised betting—Forfeiture — Legality. —*See* Bengal Public Gambling Act (2 of 1867), S. 8
AIR 1948 Cal 116 (1)=48 Cr L J 256.

——*Possessing racing guides and notes on horses —Inference.*

Having racing guides and notes on horses does not necessarily justify the inference that the persons possessing them were taking unauthorized bets. It is not unlawful for men to possess racing guides and notes on horses specially when they are on their way to the race course to attend the races. *(M. C. Ghose J.)* PRAFULLA KUMAR MUKHERJEE v. EMPEROR, **A I R 1938 Cal 713=11 R C 357=178 I C 412=40 Cr L J 60.**

——*Counter-foil receipts bearing names of horses —Whether instruments of gaming.*

It is doubtful as to whether the counterfoil receipts bearing names of certain horses on which bets had apparently been made, found in possession of the accused while he was arrested, are instruments of gaming within the meaning of S. 11, Bengal Public Gambling Act, and in the absence of any clear evidence as to what the accused was really doing at the time of his arrest, he cannot be convicted under the section. *(Patterson J.)* AMULYA DHONE GHOSE v. RAM SUNDAR SINGH **A I R 1938 Cal 422=10 R C 803=175 I C 446.**

——*Presumption as to persons present.*

All the persons present in such an enclosed place as a common gaming house, may naturally be supposed to be members of the gaming party. But in dealing with a public place where the gravamen of the offence may be said to be the danger of corrupting the morals of the innocent passer-by, the presumption regarding anyone found present (unless something further is proved against him) is that he is such an innocent passer-by. The mere fact of running away is not sufficient to support the presumption that the persons who ran away were actually gambling. *(Rowland J.)* RAMJANAK PATWA v. EMPEROR **A I R 1937 Pat 276=3 B R 499=18 P L T 352=9 R P 518=168 I C 840=38 Cr L J 608.**

——*Public place—Essentials of.*

A public place of gambling need not be public property but if it is private property, the public must have access to it; nor is it sufficient that the place should be accessible to the public; it must be a place to which the public do in fact resort. Where the public has no access, the place is not public place. *(Rowland J.)* RAMJANAK PATWA v. EMPEROR **A I R 1937 Pat 276=18 P L T 352=3 B R 499=9 R P 518=168 I C 840=38 Cr L J 608.**

——*Ss. 11, 11 (a) — "Ring game" — Whether a game of skill or chance is a finding of fact.*

A finding whether the "ring game" is a game of skill or chance is a finding of fact and unless there is a grave error, the High Court will not interfere. *(Jwala Prasad J.)* DAMRI MIAN v. EMPEROR **3 U P L R (Pat) 55=61 I C 518=22 Cr L J 390.**

BENGAL PUBLIC GAMBLING ACT (II of 1867), S. 11

——*Public place*—Osara *enclosed on all sides with doors opening towards the road.*

The place in which the gambling was held, was an *osara*, enclosed on all sides, with doors opening towards the road, and with a platform between the *osara* and the road, and was a part of a building, the private property of certain individuals. It was used during the day as a shop, but not so in the night. The gambling in question took place after midnight on a certain day.

Held, that the place was not a public place within the meaning of S. 11 of the Act. *(Ghose J.)* DURGA PRASAD KALWAR v. EMPEROR
31 Cal 910=8 C W N 592=1 Cr L J 531.

——*Instruments of gaming—Public place—Horse raising machine called "little horses" — "Public place," defined.*

A machine known as "little horses" which consisted of metal figures of horses which could be made to move in concentric circles by turning a handle was kept by the accused. The horse, which occupied a certain position when the machine halted after being thus set in motion, was the winning horse. The public staked their money on any of the horses before the machine was started. The accused took all the stakes returning four times their stakes to those who had staked on the winning horse. The place, in which the machine was kept, was an open piece of ground near a bazzar and was not separated from it by any wall or fence, although it was private property.

Held, that the machine was an instrument of gaming as the event betted on was a matter of mere chance and not of skill.

Held further that the place where the machine was kept was a public place.

A place may be a public place, though it may be the private property of an individual. Where a place is in any way dedicated to the use of the public, it is of course a public place. But when it is owned privately, and such dedication has taken place, the question whether it is a public place seems to depend on the character of the place itself and the use actually made of it. If the place is an open piece of ground, the presumption that it is a public place is naturally more easily created than where it is a building, or is surrounded by a wall. *(Ghose and Stephen JJ.)* HARI SINGH v. JADU NANDAN SINGH **31 Cal 542=8 C W N 458=1 Cr L J 349.**

BENGAL PUBLIC GAMBLING (AMENDMENT) ACT (IV of 1913)

——*Racing in partnership—Validity.*

It cannot be held that persons who enter into partnership for the purpose of making agreements not forbidden but recognized by law, though unenforceable at law, are persons who conduct a business, the very nature of which disentitles them to have recourse to Courts of law to recover the claims otherwise sustainable. *(Buckland J.)* LEICESTER CO. v. S. P. MALIK
A I R 1923 Cal 445=27 C W N 442=80 I C 498.

BENGAL PUBLIC GAMBLING (AMENDMENT) ACT (IV of 1913)

—S. 2.

——*Gambling—Definition governs interpretation of Calcutta Police Act (IV of 1866), S. 45.*

Section 45, Calcutta Police Act must be read having regard to the definition of gambling in S. 2 of the Bengal Public Gambling Act. *(Sanderson C. J. and Richardson J.)* BAJRANGA LAL KADIA v. EMPEROR
A I R 1921 Cal 719=25 C W N 428=33 C L J 287=62 I C 871=22 Cr L J 599.

BENGAL RATIONING ORDER (1943)

—Cl. 3

——*Cl. 3 (4) (iii)*—Establishment providing food—Person residing in it, whether can draw separate rations on his own ration card — *See* Calcutta Industrial Area Rationing Regulation (1943), Cl. 10 (2)
AIR 1952 Cal 565=1952 Cr L J 1257.

—Cl. 6.

——*Cls. 6, 7 and 9—Food-Inspector, under S. 424, Calcutta Municipal Act, requiring manager of ration shop to sell to him sample of* atta *for analysis — Refusal to sell without ration-card — Refusal is wrong.*

Clauses 6, 7 and 9 of Bengal Rationing Order are subject to the exception mentioned in R. 4 of the Defence of India Rules.

Consequently, where a Food Inspector of the Corporation, who is a public officer within the meaning of S. 554 of the Calcutta Municipal Act, demands in the course of his duty within the meaning of R. 4 of the Defence of India Rules, on sale a sample of rationed *atta* under S. 423 of the Municipal Act, the dealer cannot refuse to sell it without a ration card, taking his stand under Cls. 6, 7 and 9 of the Rationing Order. Refusal would amount to an offence under S. 488 read with S. 424 of the Calcutta Municipal Act. *(Derbyshire C. J. and Ellis J.)* CORPORATION OF CALCUTTA v. PRANABESH BHOWMICK
A I R 1946 Cal 71=49 C W N 704=223 I C 511=47 Cr L J 529.

BENGAL SPECIAL POWERS ORDINANCE (VI of 1946)

—S. 2

——*S. 2 (3) (a) — Clause (a) connotes generality of effect.*

The provision in cl. (a) of S. 2 (3) connotes a generality of the effect and unless it can be said that the writing concerned would lead to a fairly general dissatisfaction or disaffection on the part of a considerable body of the members of the police force, it cannot come within the mischief of cl. (a) of S. 2 (3). *(Chakravartti J).* RAMANI MOHAN SARKAR v. EMPEROR
A I R 1948 Cal 247=49 Cr L J 410.

—S. 7.

——*S. 7 (3) — Offence under — Prosecution for, after expiry of Ordinance is valid.*

It is well-settled that if a temporary statute creates an offence and an offence is committed when such statute is in force, the mere expiry of the statute does not prevent a prosecution for the offence committed, although at the time of the prosecution the statute may no longer be in force : (1946) 2 All E. R. 529, *Rel. on.*

BENGAL SPECIAL POWERS ORDINANCE (VI of 1946), S. 7

The Bengal Special Powers Ordinance expired on 15th March 1947, but the Legislature by Bengal Act 1 of 1947 which came into force on 16th March 1947 continued the operation of the Ordinance for a further period of six months. Prosecution for an offence committed on 14th December 1946, under S. 7 (3) was started on 20th April 1947:

Held, that in effect the Ordinance had always been the law since it was promulgated whether in the shape of an Ordinance or in the shape of an Act adopted by the Legislature. But even if the Ordinance was not validly and effectively continued by the Act, the prosecution was still good. *(Chakravartti J.)* RAMANI MOHAN SARKAR v. EMPEROR
A I R 1948 Cal 247=49 Cr L J 410.

—S. 10A.

——*As amended by Ordinance (II of 1947)—Person can be detained with a condition of hard labour.*

Section 10A (4) clearly allows that Government may impose as a condition of detention of any person under the Ordinance that he shall in all respects, including the liability to work, be treated as a prisoner sentenced to rigorous imprisonment.

Labour, as such, is in no way distinguishable from other conditions of detention in jail, and has no special characteristic of its own as punishment which takes it out quite apart from all other conditions and therefore gives it a character such that provision for it cannot be made under S. 10A (4) as one of the conditions of detention of a person against whom an order has been made under the Ordinance.

The question as to whether a person detained is to be required to work or not is one of the imprisonment conditions necessary to be laid down from the point of view of the Jailor. The mere fact that the effect of the conditions laid down is that so far as the person detained is concerned, he spends his time exactly as if he had been sentenced to a term of rigorous imprisonment, is no basis for the contention that such conditions of detention cannot be laid down. Nor is there any substance in the contention that the terms of detention with labour can only be provided for as a punishment by an order of a Court. *(Roxburgh and Chakravartti JJ.)* ABDUR RAHIM v. THE KING
A I R 1949 Cal 59=52 C W N 655=49 Cr L J 655.

——As amended by Ordinance (II of 1947) — Government has power to pass an order under S. 10A against person against whom an order under S. 18 was originally passed. *(Roxburgh and Chakravartti JJ.)* ABDUR RAHIM v. THE KING
A I R 1949 Cal 59=52 C W N 655=49 Cr L J 655.

—S. 18.

——*Order of detention—Validity.*

The period of 15 days mentioned in proviso (1) to S. 18 (2) is to be reckoned from the date of arrest. However, an order of detention for 14 days after the expiry of the period of 15 days can be passed by the Governor. *(Roxburgh and Chunder JJ.)* RAHMAN MISTRI v. EMPEROR
I L R (1948) 2 Cal 115.

——Under Ordinance police can keep arrested person in custody for 15 days — Report has to be

BENGAL SPECIAL POWERS ORDINANCE (VI of 1946), S. 18

made forthwith to Government — Government cannot order detention for more than two months from date of arrest. *(Sharpe and Chunder JJ.)* HAJI GOALA v. EMPEROR

I L R (1948) 2 Cal 113.

—S. 19.

——*S. 19 (1)—Omission of officer making report to read for himself article complained of, is immaterial.*

An omission on the part of the officer making the report under S. 19 (1) to read the article complained of for himself, is quite immaterial, inasmuch as S. 19 (1) does not impose on the officer making the report any duty of exercising his own discretion in the matter of choosing the subject-matter of the charge. *(Chakravartti J.)* RAMANI MOHAN SARKAR v. EMPEROR

A I R 1948 Cal 247=49 Cr L J 410.

BENGAL STATE PRISONERS REGULATION (III of 1818)

——As adapted by Bengal State Prisoners Regulation (Adaptation) Order, 1947 — Bengal State Prisoners Regulation (Adaptation) Order (1947) is not *ultra vires* — Detention under Bengal State Prisoners Regulation (III of 1818 as adapted by Adaptation Order, 1947), cannot be questioned under Criminal Procedure Code, S. 491, by virtue of sub-s. (3) thereof — *See* Bengal State Prisoners Regulation (Adaptation) Order, 1947.

A I R 1950 All 11=1949 A L J 587=51 Cr L J 269 (F B).

——Warrant under issued before 15-8-1947 for reasons connected with discharge of functions of Crown in its relations with Indian States—Detention after 15-8-1947 is outside Regulation as it now stands—High Court entitled to exercise powers under S. 491, Criminal P. C.—*See* Criminal P. C. (1898), S. 491 **A I R 1949 Bom 161.**

——*As adapted by Bengal State Prisoners Regulation (Adaptation) Order, 1947—Scope—Provides for preventive detention and not arbitrary detention.*

Wali Ullah Ag. C. J.—The nature of detention provided for in the Regulation cannot be said to be different from "preventive detention". In substance, in regard to Indian States, what the Regulation provides is that a person who acts in a manner which may embitter relations between the Dominion of India and an acceding State may be placed under personal restraint ; such a detention is not different from "preventive detention" and cannot be called arbitrary detention. It may be that the powers given to the executive to issue orders of personal restraint against individuals are very wide and it may be said that the Regulation as it stands may enable the executive to make serious inroads on the liberty of a citizen, but it should not be forgotten that the Regulation has remained on the statute book for more than century without any attempt on the part of the Legislature to circumscribe limits within which the power of detention is to be exercised. It has also been preserved on the statute book as an existing Indian law, both by the Government of India Act, 1935, and the Indian Independence Act, 1947.

Adaptation of the Regulation, 1818, falls within Entry I, List I of Sch. 7 of the Government of India Act, 1935.

BENGAL STATE PRISONERS REGULATION (III of 1818)

Sapru J.—The scope of preventive detention is different in nature from both punitive detention and arbitrary detention ; that preventive detention means detention the aim of which is to prevent person from doing something which is likely to endanger the public peace, cause public disorder or lead to a situation which might become critical from a defence, external affairs or law and order point of view ; and that, therefore, it is not to be confounded with punitive detention which is meant to punish a person for what he has done or arbitrary detention which empowers the executive to arrest at will without any reason whatever. There is little doubt that Regulation III of 1818 is not in accordance with the notion of preventive detention as used in the Government of India Act, 1935. It would thus seem to have provided not only for preventive but also arbitrary or punitive detention. It is, however, a regulation which was preserved as an existing British Indian law on the statute book both by the Government of India Act, 1935, and the Indian Independence Act, 1947. For this reason no relief can be given on the ground that the Regulation in question is not altogether in harmony with the notion of preventive detention.

Bind Basni Prasad J. — The Regulation lays down the reasons for which a person may be detained under it. It is true that the existence of those reasons cannot be adjudicated upon by the Courts of law. Nevertheless it casts upon the Executive a duty to determine the existence of those reasons and only when it is satisfied of their existence then can it issue an order of commitment. The forms of commitment given at the end of the Regulation point to this fact. The presumption is that the Regulation will be administered in good faith by those who are armed with powers under it. Moreover, the Regulation has been in existence for one hundred and thirty-one years. Its legality has been questioned in the past, but it has been upheld as valid. It provides for preventive detention for reasons mentioned there. An arbitrary detention is a detention without any reason. The Regulation as adapted does not contemplate detention without any reason. Various considerations may render it desirable that such cases may not go to Court e. g., undesirability of giving publicity to the facts, the necessity of prompt and quick action, the fact that strict legal proof may not be available although there may be a moral certainty of the facts. The motive behind the law is irrelevant for the Courts. Courts have only to see whether a valid law was made or not. With aforesaid change in the Government of India Act, 1935, the insertion of the impugned words in the Regulation did not trespass the ambits of adaptation. *(Wali Ullah Ag. C. J., Sapru and Bind Basni Prasad JJ.)* SIR GULAB SINGH v. DISTRICT MAGISTRATE OF DEHRA DUN

A I R 1950 All 11=1949 A L J 587=51 Cr L J 269 (F B).

—S. 7A.

——Section 7A does not conflict with Government of India Act, 1935, S. 2 — Validity of amendment cannot be challenged in Courts. *(Harries C. J., Abdur Rahman and Munir JJ.)* DR. P. N. SETH v. EMPEROR **A I R 1945 Lah 274=I L R (1946) Lah 71=47 P L R 265=1947 A W R Sup 33=1947 O A Sup 33=227 I C 377=48 Cr L J 5 (FB).**

BENGAL SUPPRESSION OF TERRORIST OUTRAGES ACT (XII of 1932), S. 25

Henderson JJ.) NETAI CHANDRA JANA v. EMPEROR A I R 1936 Cal 529=40 C W N 959=1936 Cr Cas 785=9 R C 351=64 C L J 421=I L R (1937) 1 Cal 169=195 I C 162=37 Cr L J 1092.

——Bengal Government's order under S. 25, directing prosecution of certain person under Arms Act affixed with Government seal is not a copy and cannot be called into question. *(Cunliffe and Henderson JJ.)* KALIJIBAN BHATTACHARJEE v. EMPEROR A I R 1936 Cal 316=8 R C 714=63 C L J 232=1936 Cr Cas 532=63 Cal 1053=163 I C 41=37 Cr L J 775.

——*Criminal Procedure Code—Applicability of.*

The provisions of the Criminal P. C., in so far as they are inconsistent with Bengal Suppression of Terrorist Outrages Act, XII of 1932, do not apply to trials by Special Magistrate. *(Ghose and Henderson, JJ.)* MOHAMMAD SALEUDDIN v. EMPEROR A I R 1935 Cal 281=39 C W N 698=7 R C 695=156 I C 238=1935 Cr Cas 391=36 Cr L J 884.

—S. 35.

——*Ss. 35 (b), 38 as amended by Act VII of 1934—Possession of proscribed book — Presumption — Accused prominent Congress worker.*

In a prosecution under S. 35 (b), Bengal Suppression of Terrorist Outrages Act, for possessing a proscribed book, it may safely be said that the trying Magistrate, before he comes to the judicial consideration of a case, is well aware that responsible persons have made up their minds that there is a *prima facie* presumption of guilt against the person who has been prosecuted.

A mere statement in a newspaper that the accused is a prominent Congress worker cannot, in the absence of evidence, have any significance to prove that the accused has connection with the terrorist movement, and more so, when the statement appears in reference to a melancholy incident in his life, to wit, the funeral of his mother. *(Cunliffe and Henderson JJ.)* RABINDRA NATH CHANDRA v. EMPEROR A I R 1937 Cal 652=64 C L J 417=10 R C 341=172 I C 133=39 Cr L J 61.

——*"Knowingly", qualifies "possession" and not "notification."*

The word "knowingly" in S. 35, Bengal Suppression of Terrorist Outrages Act, qualifies the word "possession." Constructive possession on the part of the person charged is not enough. If a book is in a room occupied by the person charged, he is no doubt in the eye of law in possession of the book, because he has possession of the room, but to sustain a conviction under the section the Crown must prove that he knew that the book was in his room. It is immaterial whether the person had knowledge of the notification or not. *(Henderson and R. C. Mitter JJ.)* HARIPADA SEN GUPTA v. EMPEROR A I R 1937 Cal 49=9 R C 889=I L R (1937) 1 Cal 774=169 I C 60=38 Cr L J 691.

——*Sentence.*

For the purpose of deciding what sentence ought to be passed under S. 35 of the Act, it is the duty

BENGAL SUPPRESSION OF TERRORIST OUTRAGES ACT (XII of 1932), S. 35.

of the Court to take into account the character of the book. If the book in question is a violent one advocating terrorism or terrorist crimes, the sentence ought to be substantial. If it is an innocent one in the sense that it does not encourage terrorism, it may be unfortunate that authority to file a complaint has been given by the District Magistrate, but the Court must take the character of the book into consideration in passing sentence. *(Henderson and R. C. Mitter JJ.)* HARIPADA SEN GUPTA v. EMPEROR, AIR 1937 Cal 49=9 R C 889=ILR (1937) 1 Cal 774=169 I C 60=38 Cr L J 691.

——*S. 35 (a)—Offence in respect of book.*

An offence under S. 35 *(a)*, Bengal Suppression of Terrorist Outrages Act, in respect of a book is committed if it could have been rightfully seized by the Chief Customs Officer at the time of its importation under the Sea Customs Act, 1878. *(Henderson and R. C. Mitter JJ.)* HARIPADA SEN GUPTA v. EMPEROR, AIR 1937 Cal 49=9 R C 889=ILR (1937) 1 Cal 774=169 I C 60=38 Cr L J 691.

——*S. 35 (a)—Sanction.*

A prosecution can be started only on the sanction of the Local Government or of an authorised District Magistrate. Whether the sanctioning authority would authorize a prosecution for an alleged offence punishable under S. 35 *(a)* or not is a matter for that authority to decide. No doubt the Legislature enjoins the Local Government or the District Magistrate to satisfy themselves that the book in question contains words, etc., which tend to further or encourage terrorism or terrorist crimes, but once the prosecution is authorised, the trying Court cannot go behind the sanction or question the propriety of the judgment of the sanctioning authority. *(Henderson and R. C. Mitter JJ.)* HARIPADA SEN GUPTA v. EMPEROR, AIR 1937 Cal 49=9 R C 889=ILR (1937) 1 Cal 774=169 I C 60=38 Cr L J 691.

——*Appeal from conviction—Government of India Act, 1919 (5 & 6 Geo. V, C. 61), S. 107.*

The Ben. Suppression of Terrorist Outrages Act, 1932, must be read with the Supplementary Act, which contains various definitions and directions with regard to appeals and so on and no appeal lies from a conviction and sentence passed by a Special Magistrate under the local Act, nor can the High Court interfere with such conviction and sentence under the power of superintendence given by S. 107, Government of India Act. *(Cunliffe and Henderson JJ.)* MADAN MOHAN ROY v. EMPEROR, 164 I C 798=63 Cal 1086=40 C W N 735=9 R C 282=37 Cr L J 1025.

BENGAL SUPPRESSION OF TERRORIST OUTRAGES (SUPPLEMENTARY) ACT (XXIV of 1932)

—S. 35.

——*Construction.*

Bengal Act XII of 1932 must be read with the Supplementary Act XXIV of 1932. *(Cunliffe and Henderson JJ.)* MADAN MOHAN ROY v. EMPEROR, 164 I C 798=40 C W N 735=9 R C 282=63 Cal 1086=37 Cr L J 1025.

BENGAL SURVEY ACT (V of 1875)

—S. 41.

——*Order of Collector—Criminal Procedure Code, S. 145.*

Order of Collector under S. 41 is equal to a decree of a Civil Court and the Magistrate should pay regard to it in proceedings under S. 145, Criminal P. C. *(Teunon and Beachcroft JJ.)* SRIVATH ROY v. PROBHAT CHANDRA,
AIR 1917 Cal 100=38 I C 333=
18 Cr L J 301.

——Order passed by survey Court is order of competent civil Court for purposes of bringing to an end attachment under S. 146, Criminal P. C.—*See* Criminal P. C. (1898), S. 146.
11 Cr L J 372 (Cal).

BENGAL TENANCY ACT (VIII of 1885)

——Zarpeshgi *lease.*

A *zarpeshgi* lessee is certainly an encumbrancer within the meaningtof the Bengal Tenancy Act but he is perhaps not so under the Bengal Land Revenue Sales Act. A *zarpeshgi* lease though in one sense a mortgage, is a lease all the same and as such a tenure. *(Muhammad Noor J.)* GURSAHAI SINGH v. MEGHU MAHATON,
AIR 1935 Pat 83=16 P L T 19=
7 R P 471=1935 Cr Cas 143 (2)=
154 I C 426 (2)=36 Cr L J 513.

—S. 23.

——*Tenant's right to trees.*

The settled interpretation of S. 23, Ben. Ten. Act, is that the occupancy *raiyat* is entitled to cut down trees standing on his holding unless the landlord can establish a custom prohibiting the cutting down of such trees, and where there may arise difficult questions of what a tenant may or may not do to trees standing on his own holding, the criminal law is not the appropriate law to apply. *(Dhavle J.)* RAM BRICH LAL v. EMPEROR,
AIR 1935 Pat 472=16 P L T 645=
1935 Cr Cas 1174=2 B R 77=8 R P 272=
159 IC 346=37 Cr L J 91 (1).

—S. 58.

——*S. 58 (3)—Collector, enquiry by, into case of withholding receipt by landlord—Transfer of enquiry to Sub-Divisional officer—Jurisdiction—Criminal P. C., S. 476.*

A Collector can transfer an enquiry under S. 58 (3) of the Act into a case of withholding receipts by a landlord to a Sub-divisional officer who is authorized by the Government to discharge functions of the Collector under that section; consequently the Sub-divisional officer is within his powers if in that enquiry he records a proceeding under S. 476 of the Criminal P. C. *(Sharfuddin and Coxe JJ.)* PHANINDAR SINGH v. EMPEROR,
40 Cal 465=18 I C 891=17 C W N 571=
14 Cr L J 139.

——*S. 58 (3)—Criminal Procedure Code (1898), Ss. 4 (o), 29 (2) — Jurisdiction of Magistrate to try a landlord for the act specified in S. 58 (3).*

Reading the definition of "offence" in S. 4 (o) with S. 29 (2), and the last entry in Sch. II, Criminal P. C., a Magistrate has jurisdiction to try a landlord for the act specified in S. 58 (3) of the Bengal Tenancy Act, namely, failure to prepare and retain counterfoils and rent receipts.

BENGAL TENANCY ACT (VIII of 1885), S. 58

But he should try the case in the same way as he would try a summons case. A conviction under S. 58 (3), after the examination of the accused landlord on oath based merely on an admission alleged to have been made by him and recorded in a report written by a Police officer in another case, after the examination of the accused on oath, when there was no plea of guilty is wholly irregular. *(Geidt and Mookerji JJ.)* EMPEROR v. MOHUNT RAMDAS,
9 C W N 816=
2 Cr L J 532.

—S. 121.

——*Ss. 121 and 54 (3)—Distraint—Rent payable on 1st December—Distraint order and attachment made three days after is legal — Penal Code, Ss. 143, 424.*

Where the rent is payable on the 1st December it is in arrear on the 2nd December and a distraint order and attachment made on the 2nd and 4th December are legal. Hence if the raiyat's crops are attached and he goes to the land and cuts the crops in spite of the attachment and protest of the attaching Officer, he is liable to be prosecuted under Ss. 143 and 424 of the Penal Code. *(Sanderson C. J. and Mookerjee J.)* SUPDT. AND REMEMBRANCER OF LEGAL AFFAIRS v. KAJAL HOALDAR,
AIR 1921 Cal 361=33 C L J 24=
25 C W N 209=62 I C 187=
22 Cr L J 491.

—S. 188.

——*Ss. 188-90.*—Where one of the two co-sharer-landlords makes measurements of lands without the consent of the other as required by S. 188 and the latter objects to the measurement being carried out but does not use force, the objecting cosharer is not to be bound down under S. 107, Criminal P. C. *(Henderson and Geidt JJ.)* BHABATARAN GHOSE v. BANKUTESH LAL MITRA,
9 C W N 618=2 Cr L J 338.

BENGAL TROOPS TRANSPORT REGULATION (VI of 1825)

—S. 2.

——*Power of Joint Magistrate to impose fine — Legality—Power of Sessions Judge to make reference.*

The Collector alone can take action and impose a fine under the Bengal Reg. VI of 1825. The Joint Magistrate to whom the District Magistrate makes over the proceeding under the Regulation has no jurisdiction to proceed under S. 2 of the Regulation. If under such circumstances, the Joint Magistrate proceeded with the proceedings under S. 2 of the Regulation, he deals with the case as a Magistrate, and the Sessions Judge could take action under S. 435, Criminal P. C. *(Chamier J.)* MUHAMMAD ALAM v. KING-EMPEROR,
7 A L J 983=7 Ind Cas 389=
11 Cr L J 476.

BENGAL VILLAGE CHAUKIDARI ACT (VI of 1870)

—S. 26.

——Distress warrant for arrears of *chaukidari* tax including instalment not due is without jurisdiction. Such warrant issued without first publishing a defaulter's list is also without jurisdiction. The defect in the first case is not cured by S. 34. In

BENGAL VILLAGE CHAUKIDARI ACT (VI of 1870), S. 26

the latter case it is not cured by personal notice on the defaulter.

Consequently, resistance to execution of such warrant is no offence under S. 186, Penal Code. *(Henderson J.)* DHARANI DHAR v. KEDARNATHDAS, AIR 1945 Cal 48=ILR (1944) 1 Cal 309=47 C W N 935=218 I C 371=46 Cr L J 498.

—S. 27.

——Assessor *panch* has to act strictly in accordance with procedure prescribed under S. 27, which authorises him to issue warrant. Any formal defects in the warrant are curable under S. 34 but the omission of any authorisation to any one to execute the warrant is not a formal defect as would be remedied by S. 34. Resistance to such a warrant is not an offence and conviction therefor cannot be sustained. *(Meredith J.)* GOPAL v. EMPEROR A I R 1941 Pat 161=21 P L T 716=6 B R 914=13 R P 182=190 I C 98=41 Cr L J 819.

——*S. 27 is mandatory.*

Section 27, Choukidari Act, is mandatory and prescribes the procedure which must be followed in realizing arrears by warrant. It affords no scope for the contention that an Assessor *Panch*, if he chooses to act himself instead of authorizing some one else, can act arbitrarily, or irregularly. *(Meredith J.)* GOPAL MAHTON v. EMPEROR A I R 1941 Pat 161=21 P L T 716=6 B R 914=13 R P 182=190 I C 98=41 Cr L J 819.

—S. 34.

——*Strict and narrow construction—Only formal defect is cured.*

A section like S. 34, must be construed very strictly and narrowly, as, to a certain extent, it detracts from the fundamental right of the subject to protection from any act of the executive authorities, which is not entirely lawful and regular, or is in any way arbitrary. The words "any defect in the power or writing" in S. 34 must be read with the words "want of form," and must, therefore, be taken as covering only formal defects. The fact that the signature of the Assessor *Panch* is placed wrongly at the bottom of the form instead of in the place provided for the purpose is only a formal defect, and would be covered by S. 34. Similarly, it may be that the omission of any date in the proper place is also a formal defect. With regard, however, to the complete omission of any authorization to any one to execute the warrant, this is not a formal defect such as can be remedied by S. 34. *(Meredith J.)* GOPAL MAHTON v. EMPEROR A I R 1941 Pat 161=21 P L T 716=6 B R 914=13 R P 182=190 I C 98=41 Cr L J 819.

—S. 39.

——*S. 39 Cl. 2*—Commission of theft — Arrest by Daffadar after completion of theft. — *See* Penal Code (1860), Ss. 225 and 353 7 Cr L J 188 (Cal)

—S. 45.

——Warrant under—Form and contents—Delegation of authority to execute — Resistance to—Offence under S. 186, Penal Code, when constituted —*See* Penal Code, S. 186 11 Cr L J 128 (2) (Cal).

BENGAL VILLAGE SELF-GOVERNMENT ACT (V of 1919)

—S. 41.

——*Ss. 41 and 101, Rules under, R. 18—Warrant for two quarters—Defaulter's list not published — Warrant, if legal.*

Under R. 18 a warrant cannot be issued for the recovery of arrears for more than one quarter. Such a warrant would be illegal. Under the same rule the publication of the defaulter's list is a condition precedent to the issue of a warrant for the recovery of arrears. A warrant issued without publication of the defaulter's list is illegal. A warrant which includes a demand for two quarters and which is issued without the previous publication of the defaulter's list is illegal and the person resisting execution thereof cannot be convicted under S. 332, Penal Code. *(Henderson J.)* AHMED SUBHAN v. EMPEROR 230 I C 326=48 Cr L J 616 (Cal).

—S. 65.

——*Ss. 65, 71, 93—Order passed by Union Bench constituted under Act—Whether can be challenged by invoking revisional jurisdiction of High Court.*

The right to challenge decision by a Union Bench is not taken away by Ss. 71 and 93, Bengal Village Self-Government Act, but it must be exercised in the manner provided in the Act itself. There cannot be any challenge by way of invocation of the revisional jurisdiction of the High Court, the jurisdiction invoked in all such cases being a jurisdiction derived from the Code of Criminal Procedure, and outside Chap. XXXIII of that Code. *(Bartley and Khundkar JJ.)* HARI SADHAN ROY v. PROBHAKAR RAY A I R 1939 Cal 259=I L R (1938) 2 Cal 523=11 R C 684=180 I C 408=40 Cr L J 359.

—S. 101.

——Warrant for two quarters—Defaulter's list not published—Warrant, if legal — *See* Bengal Village Self Government Act (5 of 1919), S. 41 48 Cri L J 616 (Cal).

BERAR COTTON MARKET RULES

—R. 56.

——*R. 56 (1)—Person purchasing cotton in market through agent — Principal if not registered as trader can be convicted for breach of R. 56 (1).*

The proper inference, in the absence of any evidence to the contrary, is that where a purchase is by an *adatya*, the *adatya* buys on behalf of the principal and when the purchase takes place through the agent in the market proper, the principal must be deemed to be buying within the market, and if the principal has not got himself registered as a trader he is liable to be convicted for breach of R. 56 (1), Berar Cotton Market Rules, even if the purchase is through the registered agent. *(Stone C. J. and Grille J.)* EMPEROR v. P. R. MEHTA JAIN BANYA A I R 1940 Nag 385=I L R (1940) Nag 615=1940 N L J 443=13 R N 163=191 I C 54=42 Cr L J 66.

BERAR MUNICIPAL LAW (1886).

—S. 32.

——*Ss. 32 and 33 — Balcony — Encroachment—Daily fine.*

A balcony eleven feet high above the street level is not an encroachment within S. 132 of the Act. Section 133 does not justify a daily fine but only one fine extending up to Rs. 50. The policy of the

BERAR MUNICIPAL LAW (1886), S. 32

Municipal Law is not to authorise a daily fine except in case of contumacy i. e., disobedience of a lawful order. *(Mitra A. J. C.)* RADHA KISAN v. MUNICIPAL COMMITTEE, AMRAOTI
A I R 1917 Nag 65=44 I C 744=
14 N L R 157=19 Cr L J 392.

—S. 79.

——*Ss. 79 and 116—Bye-law depriving public of a right*—Ultra vires — *Approval by Local Government.*

Section 116 (1) (j) of the Berar Municipal Law does not even by implication, authorise a committee to make a bye-law depriving the public of a right of way for a particular class of traffic long enjoyed by it; such bye-law is illegal and *ultra vires* and a conviction for the breach of its terms could not be maintained. The mere fact of the Local Government having signified its approval to a bye-law would not render the bye-law valid. *(Mitra A. J. C.)* MAHOMED SARWAR v. SECRETARY CAMP MUNICIPALITY, AMRAOTI
A I R 1919 Nag 111=51 I C 341=
15 N L R 105=20 Cr L J 453.

—S. 85.

——*Ss. 85, 86, 116 and 130 — Application for permission — Absence of orders on — Erection on balcony—Encroachment — Notice to show cause—Fine—Propriety of.*

Section 86, cl. (2) of the Act contemplates a notice issued personally to an individual and a notice to show cause why a balcony should not be removed as an obstruction is not a notice to remove the obstruction as required by S. 86, cl. (2) of the Act. The mere fact that a Municipal Committee did not pass any orders on the application of a person to build, does not place the applicant in the same position as if written permission was accorded to him by the Committee as required by S. 86. So far as encroachments dealt with by S. 86 are concerned, they are *per se* not punishable by that section but it is disobedience to the order of the Committee for their removal that is punishable. *(Mitra A. J. C.)* RADHAKISAN v. MUNICIPAL COMMITTEE, AMRAOTI
A I R 1917 Nag 65=44 I C 744=
14 N L R 157=19 Cr L J 392.

—S. 116.

——*Rules under—Validity of.*

Rules framed under S. 116 of the Municipal Law must be consistent with the Act. The effect of Rule 10 framed under S. 10 and S. 116 is to do away with the notice required by S. 138 and the rule is therefore *ultra vires. (Mitra A. J. C.)* RADHAKISAN v. MUNICIPAL COMMITTEE, AMRAOTI
A I R 1917 Nag 65=44 I C 744=
14 N L R 157=19 Cr L J 392.

—S. 146.

——*S. 146 (1)* — Member of Municipal Committee advancing money to Municipal contractor for municipal works—Offence—*See* Penal Code, S. 168
12 Cr L J 281 (Nag).

——*Violation of — Nature of offence—Complaint under S. 151 if necessary to give jurisdiction to Magistrate to take cognizance.*

A violation of the prohibition contained in S. 146 (1) of the Berar Municipal Law constitutes an offence under S. 168, Penal Code. Such a case is not governed by S. 151 which applies only to what are known as Municipal offences and in which

BERAR MUNICIPAL LAW (1886), S. 146

the Magistrate cannot take cognizance until there is a complaint by the Municipal Committee. *(Stanyon A. J. C.)* NARAYAN v. EMPEROR
6 N L R 114=8 I C 274=11 Cr L J 613.

—S. 151.

——Applicability—*See* ibid, S. 146
11 Cr L J 613 (Nag).

BETTING

See (1) CONTRACT ACT, S. 30.
(2) GAMBLING ACTS (LOCAL AND CENTRAL).

BETTING ACT (ENGLISH) (1853) (C. 119)

—S. 3.

——*Gambling in public place—Book-maker habitually taking bets in bar of public house, commits offence under S. 3, Betting Act (English).*

If a book-maker makes a habit of using a bar of a public house for the purposes of betting, he commits an offence against S. 3, Betting Act (Eng.), 1853, the bar being a room for the purposes of the Act. It is not necessary to prove that the licensee of the bar knew that the book-maker was there or that he permitted him to be there. Nor is it necessary to constitute the offence for him always to stand in a particultar place in the bar. *(Lord Goddard C. J., Humphreys and Birkett JJ.)* R. v. PORTER
1949-1 All E R 646.

BHOPAL AND VINDHYA PRADESH (COURTS) ACT (XLI of 1950)

—S. 7.

——*Appeal from decision of Special Judge's Court created by V. P. Ordinance 56 of 1949—If lies to Judicial Commissioner's Court—Competency of Single Judge to hear it—Interpretation of Statutes—V. P. Ordinance 56 of 1949.*

The High Court referred to in Special Courts Ordinance (V. P. Ordinance 56 of 1949) is the highest appellate and revisional Court of criminal jurisdiction in the V. P. which, since 25-1-1950 has been called the Judicial Commissioner's Court and which in powers and jurisdiction is identical with the defunct High Court.

The Judicial Commissioner's Court is the High Court of the Vindhya Pradesh as far as the highest appellate and revisional powers are concerned. This is also the High Court referred to in S. 6, Special Courts Ordinance.

An appeal lies to the Judicial Commissioner's Court from the decision of the Special Judge, whether of acquittal or of conviction.

There is no legal right of hearing of such an appeal by a Bench. Hence, a Single Judge is competent to hear it.

A vested right of an appellant or respondent to a particular procedure and a particular forum for appeal is something hitherto unheard of. There is no fundamental right given by the Constitution that a party to an appeal before the High Court is entitled to get it heard by a Bench and not by a Single Judge. *(Krishnan J. C.)* STATE OF V. P. v. SHIVA BAHADUR SINGH
AIR 1951 Vind P 17=52 Cr L J 561.

BHOPAL COTTON CLOTH DEALERS' LICENSING ORDER (XVIII of 1949)

—Cl. 20

——*Validity—Clause if infringes Art. 19 (1) (g), Constitution of India — Applicant not challeng-*

BHOPAL COTTON CLOTH DEALERS' LICENSING ORDER (XVIII of 1949), Cl. 20

ing parent Act under which Order was issued—Right to challenge Order how far affected.

Where the applicant has not challenged the Essential Supplies (Temporary Powers) Act, 1946, he cannot urge that he had any unaffected fundamental right under Art. 19 (1) (g) of the Constitution to carry on any trade or business at his sweet will. In this view it is not open to him to contend that Cl. 20 of the Licensing Order 18 of 1949, which must be deemed to have been issued under that Act, was void because it did not fall within the purview of Art. 19 (6), Constitution of India.

'*Obiter*' : It cannot be said that Cl. 20 was, in any way, void as placing any unreasonable restrictions as against the fundamental right under Art. 19 (1) (g) of the Constitution.

Simply because Cl. 20 gave unfettered powers to the Chief Commissioner or the Licensing Authority to pass an order without following any procedure before such an order was passed it cannot be said that Cl. 20 contains an unreasonable restriction.

It cannot be said that Cl. 20 of the Licensing Order No. 18 of 1949, in any way, affords powers to the Licensing authority beyond the powers of a grantor of a license under the general law. That being so it cannot be said that even on the procedural matter Cl. 20 was, in any way, unreasonable. *(Sathye J. C.)* JAGANNATH NATHMAL v. THE STATE OF BHOPAL **A I R 1951 Bhopal 5=1952 Cr L J 57.**

BIGAMY

See (1) BOMBAY PREVENTION OF HINDU BIGAMOUS MARRIAGES ACT (25 OF 1946).
(2) CRIMINAL P. C. (1898), S. 198.
(3) MADRAS HINDU (BIGAMY PREVENTION AND DIVORCE) ACT (6 OF 1949).
(4) PENAL CODE, SS. 494, 495, 496.

BIHAR AGRICULTURISTS LEVY ORDER (1950)

——Validity—Order does not violate the guarantee under Art. 14, Constitution of India—*See* Constitution of India, Art. 14

A I R 1952 Pat 220=31 Pat 203=1952 Cr L J 710.

BIHAR AND ORISSA CO-OPERATIVE SOCIETIES ACT (VI of 1935)

—S. 2.

——*S. 2 (9)* — Manager functions as a statutory person—*See* Criminal P. C. (1898), S. 198

A I R 1950 Pat 545.

BIHAR AND ORISSA EXCISE ACT (II of 1915)

——A village *chaukidar* is regarded a member of the village Police and therefore is a village Police Officer. *(Dhavle and Chatterjee JJ.)* EMPEROR v. JAGIA **A I R 1938 Pat 308=19 P L T 268=10 R P 531=4 B R 451=17 Pat 369=174 I C 524=39 Cr L J 428.**

—S. 2

——*S. 2 (6) and (14) — Excisability—Medicines containing alcohol are excisable.*

The Statement of Objects and Reasons of the new enactment in Bihar and Orissa seems to indicate the intention of the Legislature to make a medicinal preparation containing alcohol an excisable article : 4 Cal 157, Not foll.; A I R 1918 Cal 822, Rel. on.

BIHAR AND ORISSA EXCISE ACT (II of 1915), S. 2

(Jwala Prasad and James JJ.) EMPEROR v. GOBIND PANDEY **A I R 1929 Pat 302=10 P L T 316=8 Pat 884=120 I C 759=1929 Cr C 74.**

—S. 11

——*S. 11 as amended by Government of India (Adaptation of Laws) Order, 1937.*

Section 11 of the original Bihar and Orissa Excise Act as amended by Government of India (Adaptation of Laws) Order, 1937, strongly suggests that S. 297 (1), Government of India Act, 1935, was never intended to apply to dangerous articles such as intoxicating liquors or narcotic or dangerous drugs. *(Harries C. J. and Fazl Ali J.)* EMPEROR v. BHOLA PRASAD **A I R 1942 Pat 351=8 B R 249=21 Pat 178=14 R P 359=197 I C 618=43 Cr L J 220.**

—S. 19

——*S. 19 (4)* — "*Any person*" *means designated person.*

The words "any person" in S. 19 (4), Bihar and Orissa Excise Act, 1915, mean any designated person and a notification which purports to apply to all persons in a particular area is *ultra vires*. *(Agarwala J.)* SHIVA PRASAD MARWARI v. EMPEROR **A I R 1943 Pat 358=24 P L T 91=10 B R 297=16 R P 207=210 I C 563=45 Cr L J 281.**

——*S. 19 (4)—Legislature in 1915 had in mind possible use of Act for promotion of total or partial prohibition : A I R 1941 Pat 53 = 42 Cr L J 273 (SB) and A I R 1940 Bom 273 = 41 Cr L J 834 (SB),* **Impliedly overruled.**

It cannot be said that the Legislature of Bihar and Orissa in 1915 never had in mind the possible use of the Bihar and Orissa Excise Act, 1915, for the promotion of a policy of total or partial prohibition. There is no reason in theory or principle why an Excise Act should not have a double object, the benefit of the revenue and the improvement of public health or morals by a greater control of liquor trade. Section 19 (4) was intended for the purpose of promoting the cause of temperance, whether by means of the policy which used to be known as local option or by means of total prohibition : A I R 1941 Pat 53=42 Cr L J 273 (SB) and A I R 1940 Bom 273 = 41 Cr L J 834 (SB), Impliedly overruled. *(Gwayer C. J., Varadachariar and Zafrulla Khan JJ.)* BHOLA PRASAD v. EMPEROR **A I R 1942 F C 17=I L R (1942) K (FC) 21=44 P L R 261=46 C W N F C 32= 1942 O W N 411=(1942) 2 M L J 6=21 Pat 587=23 P L T 253=1942 M W N 378=199 I C 322=43 Cr L J 481 (FC).**

——*S. 19 (4)—Amendment of 1940, if* ultra vires *Government of India Act, 1935 — Notification No. 3914 L. S. G. of November 18, 1940 under S. 19 (4) introducing partial prohibition—Validity.*

The power to legislate with respect to the production, manufacture, possession, transport, purchase and sale of intoxicating liquors and narcotic drugs is vested solely in the Provincial Legislature and prohibiting possession of certain forms of intoxicating liquor in specified areas is nothing more than legislation with respect to possession or transport of such intoxicating liquor in such areas. Even if it were held that the Provincial Legislature has no power to prohibit the possession of intoxi-

BIHAR AND ORISSA EXCISE ACT (II of 1915), S. 19

cating liquors generally throughout the whole province, it has power to prohibit possession of some forms of liquor in some parts of the province. Where a Provincial Legislature has exceeded its powers it by no means follows that the whole Act is illegal and *ultra vires*. It may be perfectly legal and valid to a limited extent.

Consequently, the Notification No. 3914-L. S. G. issued on November 18, 1940, by the Governor of Bihar and Orissa in exercise of powers conferred by S. 19 (4) of Bihar and Orissa Excise Act, 1915, as amended by Bihar and Orissa Excise (Amendment) Act (VIII of 1940), prohibiting possession of certain forms of intoxicating liquor in certain areas in the province is nothing more than legislation with respect to the possession of intoxicating liquors and, therefore, is within the powers of the Provincial Legislature and, therefore, valid. The Amending Act of 1940, in so far as it enables partial prohibition to be enforced in parts of the province, is not *ultra vires* the powers of the Provincial Legislature and the Governor, and the notification in question cannot be impugned as being one beyond the power of the Governor to issue.

Quaere.—Whether total prohibition of all intoxicating liquors throughout the whole province could be introduced by notification under the amended S. 19 (4), Bihar and Orissa Excise Act, 1915. *(Harries C. J. and Fazl Ali J.)* EMPEROR v. BHOLA PRASAD **A I R 1942 Pat 351=8 B R 249=21 Pat 178=14 R P 359=197 I C 618=43 Cr L J 220.**

——*Ss. 19, 19 (4), 90 (9) — Interpretation of — "Any person", interpretation of — S. 19 (4), if empowers Local Government to prohibit public generally from possessing liquor.*

When the phrase "any person or class of persons" in S. 19 (4) and S. 90 (9), Bihar and Orissa Excise Act is read as a whole and given its ordinary and natural meaning, it means any designated person or class of persons that is, any person or class of persons designated by name or description. The phrase cannot mean the public generally in the province or in any particular area therein and is wholly inappropriate to convey such a meaning. Hence, S. 19 (4) cannot be read as empowering the Local Government by notification to prohibit the public generally from being in possession of intoxicants or any form thereof.

Reading S. 19 as a whole, it means, that all persons other than licensees under the Act may possess certain limited quantities of intoxicants, but in special cases the Provincial Government may prohibit particular person or class of persons from possessing any intoxicants whatsoever or from possessing such intoxicants except upon certain conditions. In other words sub-s. (4) is an exception to the other provisions of S. 19 and the powers contained therein would appear to have been inserted to meet special cases such as habitual drunkards, addicts, classes of persons addicted to drink or drugs or such like. The fact that this power is found where it is strongly suggests that it was never the intention of the Legislature to confer upon the Provincial Government the power of total or partial prohibition. There is nothing in the title of the Act or in the Preamble to suggest that total or partial prohibition of intoxicants was one of its objects. The object of the Act is clearly

BIHAR AND ORISSA EXCISE ACT (II of 1915), S. 19

the raising of revenue and the regulations and governance of the liquor trade and a right to prohibit generally cannot be inferred in the absence of express and clear words. *(Harries C. J., Fazl Ali, Varma, Manohar Lall and Shearer JJ.)* KANHAISAHU v. EMPEROR **A I R 1941 Pat 53=21 P L T 1042=7 B R 375=13 R P 486=20 Pat 181=192 I C 307=42 Cr L J 273 (SB).**

[Impliedly Overruled in A I R 1942 F C 17=199 I C 322.]

——*Ss. 19, 19 (4), 90 (9)* — Local Government by notification may prohibit the public generally from possessing intoxicants. **A I R 1941 Pat 53=21 P L T 1042=7 B R 375=13 R P 486=192 I C 307=20 Pat 181=42 Cr L J 273 (SB).**

[Impliedly Overruled in A I R 1942 F C 17=I L R (1942) Ker (FC) 21=43 Cr L J 481.]

—S. 47.

——*Ss. 47, 57 and 87—Sale of liquor at place not specified in licence.*

Where a license-holder for sale of liquor sells Government licensed liquor at a place other than one specified in his license, he is guilty under S. 47 (a). Hence, S. 57 is not applicable and non-compliance with the provisions of S. 87 (b) will not vitiate the prosecution. *(Ray J. C.)* APPANNA v. STATE **A I R 1951 Orissa 29=16 Cut L T 195=52 Cr L J 119.**

——*S. 47 (a)—Traveller from non-prohibited area going to prohibited area, by taking return ticket with intention of a short stay in prohibited area—Possession of liquor—Whether* bona fide *traveller.*

Where a person travels from one non-prohibited area to another prohibited area by taking out a return railway ticket, with the intention of returning to the non-prohibited area after a short stay at a prohibited area, he cannot be said to be a *bona fide* traveller on a journey from one non-prohibited area to another non-prohibited area within the meaning of the notification of November 18, 1940, issued under S. 19 (4) of the amended Bihar and Orissa Excise Act, 1915. The possession by such traveller of two bottles of country liquor at a station of destination which is within prohibited area is, therefore, clearly contrary to the terms of the notification, and such a person is guilty under S. 47 (a) of the Act read with the Notification. *(Harries C. J. and Fazl Ali J.)* EMPEROR v. BHOLA PRASAD **A I R 1942 Pat 351=8 B R 249=21 Pat 178=14 R P 359=197 I C 618=43 Cr L J 220.**

——*S. 47 (a)—Conviction when can be sustained.*

To sustain a conviction under S. 47 (a) the notification must be one which the Provincial Government is empowered by statute to make. *(Harries C. J., Fazl Ali, Varma, Manohar Lall and Shearer JJ.)* KANHAISAHU v. EMPEROR **A I R 1941 Pat 53=21 P L T 1042=7 B R 375=13 R P 486=20 Pat 181=192 I C 307=42 Cr L J 273 (SB).**

——*Ss. 47, 87—Offence under S. 47—Cognizance taken by First Class Magistrate not especially empowered by Local Government — Absence of report of Excise Officer.*

Under S. 87, Bihar and Orissa Act, a Magistrate cannot take cognizance of an offence under S. 47 of the Act except on his own knowledge or suspicion or on the complaint or report of an Excise

BIHAR AND ORISSA EXCISE ACT (II of 1915), S. 47

Officer. The power to take cognizance on his own knowledge or suspicion is not one of the ordinary powers of a Magistrate of the First Class. Where, therefore, a Magistrate of the First Class who has not been especially empowered by the Local Government takes cognizance of the offence, his proceedings are void. Consequently where cognizance has been taken by such a Magistrate of an offence under S. 47, the proceedings are bad in law in the absence of a proper report from an Excise Officer. *(Rowland J.)* SHEONANDAN RAM v. EMPEROR

159 I C 719=2 B R 107=8 R P 303=17 P L T 105=37 Cr L J 150 (2).

——*Ss. 47 (a), 48—Search—Witnesses not signing immediately and on the spot—Circumstances raising doubt as to accused's guilt.*

When the signature of search witnesses is not taken on the search list immediately it is drawn out at the spot but is taken only on the following day, the search list is not properly prepared. It may not be a very serious irregularity ordinarily, but in a prosecution under the Excise Act when S. 48 of the Excise Act throws the onus upon the accused to explain the possession of certain excisable articles, it is not safe to base a conviction when the strict rules of the search are not followed at the time of seizing the articles, possession of which is illegal under the Excise Act.

Although the circumstances as to absence of explanation as to why the spy when he went to inform about an offence under the Excise Act did not inform the Excise Officers within whose jurisdiction this particular type of case falls and that the Excise Officer examined as a defence witness said that when he tested the amount of *ganja* in the shop of the accused he did not notice any decrease in the amount of *ganja* that ought to have been in his shop on that particular date, are not by themselves of much importance, yet taken in conjunction with the failure to weigh the *ganja* separately and the preparation of the search list irregularly raise some doubt about the guilt of the accused. *(Varma J.)* RAMNEWAS RAM v. EMPEROR

A I R 1935 Pat 128=7 R P 394=1935 Cr Cas 328=16 P L T 358=153 I C 1028=36 Cr L J 458.

——*Ss. 47 (a), 48 — Possession of* ganja *in excess of quantity allowed—Packets weighed along with paper.*

A person cannot be convicted under S. 47 (*a*), Bihar and Orissa Excise Act when the weight of the packets of *ganja* along with the papers in which it is wrapped exceeds three *tolas*, as it is, in such a case, impossible to know what the actual weight of the *ganja* is. *(Varma J.)* RAMNESWAS RAM v. EMPEROR

A I R 1935 Pat 128=7 R P 394=1935 Cr Cas 328=16 P L T 358=153 I C 1028=36 Cr L J 458.

——*Ss. 47, 48 — Prosecution under S. 47 (a) — Presumption under S. 48.*

Where a person is prosecuted under S. 47 (*a*), Bihar and Orissa Excise Act, it is for the prosecution to prove beyond reasonable doubt or at any rate up to a high degree of probability that the articles had been kept, where they were found, by the accused or with his knowledge. Although S. 48 indicates that in prosecutions under S. 47 it may be presumed that the accused has committed an

BIHAR AND ORISSA EXCISE ACT (II o 1915), S. 47

offence in respect of any excisable article etc., for the possession of which he fails to account satisfactorily, yet before the presumption can arise possession itself must be proved. The section does not say and does not mean that possession is to be presumed. *(Rowland J.)* BABU CHAND TELI v. EMPEROR

A I R 1933 Pat 689=14 P L T 620=1933 Cr Cas 1539=6 R P 409=147 I C 1207=35 Cr L J 572.

——*Ss. 47, 70 and 78—Arrest — Sub-Inspector of Excise can arrest without warrant person found committing offence under S. 47 — S. 78 has no application to such case.*

Under S. 70 of the Act, the Sub-Inspector of Excise is entitled to arrest without a warrant a person found committing an offence punishable under S. 47 of the Act and S. 78 has no application to such a case. *(James J.)* BECHU MIAN v. EMPEROR

A I R 1930 Pat 344=12 Pat L T 312=1930 Cr C 716=123 I C 68=31 Cr L J 465.

——*S. 47 (a) (f) and S. 92—Punishment — Circulars not published in Gazette, exempting any excisable article, are not law—Under such unpublished circulars respectable ayurvedic practitioners selling medicines containing alcohol may not be prosecuted—But if prosecuted even under misapprehension they must suffer at least technical punishment.*

Section 94 empowers the Local Government to exempt any excisable article from the provisions of the Act either throughout the province or in any specified area or as regards any specified class of persons. Under S. 92, such notification when published in the Bihar and Orissa Gazette shall have the effect as if enacted in the Act. Not so published the circulars in question have not the force of law. Therefore, though according to instructions contained in unpublished circulars the excise authorities would not prosecute a respectable medical practitioner (Kaviraj) of repute who sells medicinal preparations containing alcohol unless he is endeavouring to cheat the Government of excise revenue, yet if a prosecution is started even under misapprehension, the Courts have to inflict some punishment. *(Jwala Prasad and James JJ.)* EMPEROR v. GOBIND PANDEY

A I R 1929 Pat 302=10 P L T 316=8 Pat 884=120 I C 759=1929 Cr C 74.

——*Possession during journey.*

Possession of excisable articles with license to carry them from one place to another, is not illegal though the person halts at a place in his journey, for which place, he had no license. *(Jwala Prasad J.)* MULCHAND v. EMPEROR

A I R 1920 Pat 248=1 Pat L T 82=2 U P L R (Pat) 37=57 I C 99=(1920) P H C C 135=21 Cr L J 579.

——*S. 47 (a)—Cocaine — Illegal possession of — Accessability of place.*

To convict a person of being in illegal possession of contraband goods it is necessary to fix him with knowledge of their existence in the place where they are found. If the place is one in which several persons have an equal right of access the goods cannot be said to be in possession of any one of them. *(Dass, J.)* RAMCHANDRA MARWARI v. EMPEROR

A I R 1920 Pat 432=54 I C 780=21 Cr L J 172.

BIHAR AND ORISSA EXCISE ACT (II of 1915), S. 47

——*Ss. 47, 48 and 55 — Report under S. 47 (h) —Offences under S. 47 (a) or S. 55—Presumption under S. 48—Removal of liquor.*

Where the report of an Excise Inspector asked for prosecution only under S. 47 (*h*) of the Bihar and Orissa Excise Act, but the accused was in addition tried and convicted under Ss. 47 (a) and 55 of the Act. *Held*, that such a proceeding was not illegal, as the report disclosed facts constituting offences under the other sections. S. 48 of the Bihar and Orissa Excise Act does not apply to a case of the removal of liquor and the presumption created by that section is not to be used in the trial of an offence. *(Coutts J.)* MAHABIR SINGH v. EMPEROR

A I R 1919 Pat 305=51 I C 471= 20 Cr L J 487.

—S. 48.

——In prosecution under S. 47 although it may be presumed that the accused has committed an offence in respect of any excisable article for the possession of which he fails to account satisfactorily yet before the presumption can arise possession itself must be proved. The section does not say or mean that that possession is to be presumed. *(Rowland J.)* BABU CHAND TELI v. EMPEROR

A I R 1933 Pat 689=14 P L T 620= 1933 Cr Cas 1539=6 R P 409= 147 I C 1207=35 Cr L J 572.

—S. 57.

——Applicability—*See* ibid, S. 47.

A I R 1951 Orissa 29=52 Cr L J 119.

——*Rules under, S. 89—Rule 143—Agreement to make over excise shop in return for certain profit —Agreement is transfer void under R. 143 and punishable under S. 57—Licensee is not entitled to claim back amount paid.*

An agreement by liquor contractor whereby the entire charge of the excise shop is given to a third person on the latter agreeing to pay the former the advance licence fee, the price of the stock and certain profit every year, amounts to a transfer and perhaps also a sub-lease of the license.

Such an agreement is void being contrary to R. 143, framed under S. 89. It is also punishable as a crime under S. 57. Section 65, Contract Act, will not be of any avail to the liquor contractor as both the parties who entered into the agreement must have known at the time that they were entering into a void agreement, because everybody must be supposed to know the law *i. e.*, when the persons and parties to the contract are themselves in *pari delicto* in procuring this illegality, and hence he is not entitled to claim a refund of the advance license fee and price of the stocks. *(Agarwala and Chatterji JJ.)* HAIBANDHU BEHERA v. GOPAL SAHU

A I R 1943 Pat 374= 22 Pat 334= 10 B R 230=16 R P 171= 210 I C 289.

—S. 59.

——*Essentials to be proved.*

In order to support a conviction under S. 59 of the Bihar and Orissa Excise Act, it is necessary to show not only that the servant was in the employ of the master, but also that he was acting within the scope of his employment and for the benefit of the master. *(Luby J.)* ABDUL GAFUR v. EMPEROR

A I R 1935 Pat 17=15 P L T 676= 7 R P 317=1935 Cr Cas 57=153 I C 236= 36 Cr L J 290.

BIHAR AND ORISSA EXCISE ACT (II of 1915), S. 59

——*Ss. 59, 47 — Charge under S. 59 read with S. 47—Previous sanction, if necessary — Conviction of licensee for smuggling by servants — Absence of proof of servants acting for benefit of master.*

A person who held a license was prosecuted, and convicted under S. 59, Bihar and Orissa Excise Act for being privy to smuggling of liquor by his servants.

Held, that previous sanction for prosecution was not necessary and as there was nothing to show that the servants while smuggling the liquor were acting within the scope of their employment or for the benefit of their master, nor was there anything to show that the accused (the master) was privy to the smuggling, S. 59 was wrongly applied and the conviction was not maintainable. *(Luby J.)* ABDUL GAFUR v. EMPEROR

A I R 1935 Pat 17=15 P L T 676= 7 R P 317=1935 Cr Cas 57=153 I C 236= 36 Cr L J 290.

—S. 61.

——The offence under Section 220, Penal Code is not identical with that under S. 61 of the Bihar and Orissa Excise Act. The illegal act dealt with by the Excise Act is only "unnecessary or vexatious" arrest or detention and the Act prescribes a penalty of only three months' imprisonment therefor, whereas Section 220, Penal Code provides for a more serious offence, namely when the officer acts *corruptly or maliciously*, and prescribes a more severe penalty. This offence not being one under the Excise Act or under any other law relating to excise revenue, in the prosecution of an Excise Sub-Inspector under Section 220, Penal Code, the objection based on S. 96 of the Excise Act is untenable. *(Gwyer C. J. Varadachariar and Ameer Ali JJ.)* AFZALUR RAHMAN v. KING-EMPEROR

A I R1943 F C 18= 15 R F C 22=9 B R 310= 47 C W N F C 5=22 Pat 349= 1943 M W N 315=24 P L T 139= (1943) 2 M L J 62=ILR (1943) Kar F C 2= (1943) 5 F C R 7=206 I C 232= 44 Cr L J 466 (FC).

——*S. 61 (c) — Liability under Penal Code, Ss. 161 and 220, if affected.*

Per *Agarwala J.* — The liability imposed by S. 61 (c) does not affect the liability under the general law and in particular the liability under Ss. 161 and 220, Penal Code. *(Agarwala and Varma JJ.)* AFZALUR KHAN v. EMPEROR

A I R 1943 Pat 229=22 Pat 76.

—S. 74.

——Search under S. 74 can be made during day or night. *(Mohammad Noor J.)* CHANDAR PRASAD v. EMPEROR

A I R 1937 Pat 501=3 B R 786= 18 P L T 398=10 R P 156 (1)= 170 I C 784=38 Cr L J 982.

—S. 87.

——Sale of liquor at place not specified in license —Non-compliance with — Prosecution not vitiated —*See* ibid, S. 47.

A I R 1951 Orissa 29= 52 Cr L J 119.

——Under S. 87, a Magistrate cannot take cognizance of an offence under S. 47 of the Act except on his own knowledge or suspicion or on the com-

BIHAR AND ORISSA EXCISE ACT (II of 1915), S. 87

plaint or report of an excise officer. *(Rowland J.)* SHEONANDAN RAM v. EMPEROR
159 I C 719=2 B R 107=8 R P 303=17 P L T 105=37 Cr L J 150 (2).

—S. 96.

——Section 96 of the Bihar and Orissa Excise Act has no application to the case, where the charge against the Excise Sub-Inspector is not one under the Excise Act or under any other law relating to the excise revenue but under Ss. 161 and 220 of the Penal Code. *(Gwyer C. J., Varadachariar and Ameer Ali JJ.)* AFZALUR RAHMAN v. KING-EMPEROR
A I R 1943 F C 18=15 R F C 22=9 B R 310=47 C W N F C 5=1943 M W N 315=22 Pat 349=24 P L T 139=(1943) 2 M L J 62=I L R (1943) Kar F C 2=206 I C 232=(1943) 5 F C R 7=44 Cr L J 466 (F C).

——*Does not impose bar on Court of Session.*

Per *Agarwala J.*—Section 96 merely imposes a bar to a Magistrate taking cognizance of any charge without the sanction of the Local Government unless the complaint is made within six months of the act complained of. It imposes no bar on a Court of Session. *(Agarwala and Varma JJ.)* AFZALUR KHAN v. EMPEROR
A I R 1943 Pat 229=22 Pat 76.

BIHAR AND ORISSA FOOD ADULTERATION ACT (II OF 1919)

See BIHAR AND ORISSA PREVENTION OF ADULTERATION ACT (II OF 1919).

BIHAR AND ORISSA GENERAL CLAUSES ACT (I OF 1917)

—S. 27.

——Extension of Act for further period—Effect—
See Bihar Maintenance of Public Order Act (V of 1947), S. 1 (3) proviso
A I R 1949 Pat 369=50 Cr L J 730 (F B).

—S. 30.

——*Scope.*

Section contemplates an act or omission for which the offender is prosecuted. Prosecution implies the trial of a person accused of an offence. The section, therefore, does not apply when there is no trial. *(Agarwala J.)* MADAN LAL BRIJU LAL v. EMPEROR
A I R 1934 Pat 113=7 R P 457=154 I C 367=36 Cr L J 496.

BIHAR AND ORISSA HIGHWAYS ACT (III OF 1926)

—S. 4.

——*Rule under—If can be used for punishment of existing construction.*

The rule contemplated by S. 4, Bihar and Orissa Highways Act is a rule for the "prevention" of obstruction and a rule under that section cannot be construed as a rule providing for the punishment of the existing constructions. *(Agarwala J.)* PRABHU CHARAN RAM v. EMPEROR
A I R 1935 Pat 218=16 P L T 153=1935 Cr Cas 580=1 B R 712 (1)=8 R P 89 (1)=157 I C 91=36 Cr L J 1094 (1).

——*Applicability to encroachment in existence before passing of the Act.*

Where the encroachment has been in existence for the last 40 or 50 years, it is not an encroachment to which the Act applies. The Bihar and Orissa Highways Act was enacted in 1926 and there are no provisions in that Act which apply to constructions which have been in existence for so long a period before the passing of the Act. *(Agarwala J.)* RAM RATTAN SAO v. EMPEROR
A I R 1935 Pat 229=16 P L T 142=1935 Cr Cas 619 (1)=1 B R 707=8 R P 85 (1)=157 I C 78 (1)=36 Cr L J 1095 (1).

——*Side drains on Government road — Rules under S. 4, R. 2 (2)—Act, whether restrospective.*

A 'Government road' is defined as a road vested in, or under the control and administration of the Public Works Department, and includes (among many other things) the side-drains on any such road.

As there are no provisions in the Bihar and Orissa Highways Act, applying to constructions in existence before the passing of the Act any obstruction or encroachment on Government road caused prior to the Act cannot be penalized. *(Macpherson and James JJ.)* BAL KISHAN DAS MARWARI v. EMPEROR
A I R 1935 Pat 208=16 P L T 154=8 R P 53=14 Pat 455=156 I C 1001=36 Cr L J 1048 (2).

BIHAR AND ORISSA LOCAL SELF-GOVERNMENT ACT (III OF 1885)

—S. 141.

——*Breach of bye-law—Prosecution with sanction of Chairman—Validity.*

In the absence of any evidence showing that the Chairman of a Local Board was authorised by the District or the Local Board to sanction prosecutions for the breach of a bye-law of the District Board, prosecution started on the sanction of the Chairman is defective *ab initio* under S. 141.

(Practice of inadequate preparation by those in charge of prosecutions for placing before the Court the materials essential to enable the Court to assume jurisdiction of the matter placed before it or to exercise its power properly, when the institution of a prosecution is confined to a particular person or a body or when a thing is directed to be done in a particular way deprecated. *(Agarwala Ag. C. J. and Das J.)* RAMAUTAR v. RAMBRICH
A I R 1948 Pat 255=26 Pat 147=49 Cr L J 513.

BIHAR AND ORISSA MICA ACT (I OF 1930)

—S. 17.

——*Ss. 17 (2), 23, 24 — Prosecution under S. 17 (2) (a), for possessing mica not shown in account books—Mica so found, if can be confiscated.*

It was found by the Inspector of Mica Accounts, on verification of the stock of mica kept in the godown of a holder of mica-mineral's licence, that some amount of crude mica had not been entered in the stock book but had been kept in a separate room not ordinarily used for storing mica. He seized the excess amount of mica and on the basis of his report the licensee was prosecuted under S. 17 (2) (a), Bihar and Orissa Mica Act. He pleaded guilty and was sentenced to pay a fine of Rs. 90 or in default to suffer one month's simple imprisonment without recording any evidence. After the disposal of the case the licensee asked

BIHAR AND ORISSA MICA ACT (I of 1930), S. 17.

for the return of the mica which had been taken into custody but there was opposition by the Inspector of Mica Accounts who asked for its confiscation under S. 517, Criminal P. C. :

Held, that an offence under S. 17 (2) (a) when committed is in respect to the account book and not in respect to the excess amount of Mica found;

Held also, that there was no evidence recorded and the Mica which was seized was not made an exhibit. Sections 23 and 24 did not apply to an offence under S. 17 (2) (a). The accused was not charged in respect of an offence of possessing illicit Mica, and hence the Mica could not be confiscated under S. 517, Criminal P. C. *(Agarwala and Varma JJ.)* MANIRAM v. EMPEROR

A I R 1937 Pat 257=3 B R 486=9 R P 505 (2)=18 P L T 146=16 Pat 323=168 I C 795=38 Cr L J 602 (2).

BIHAR AND ORISSA MINING SETTLEMENTS ACT (IV OF 1920) —S. 19.

——*S. 19 (2)—'Take certain order' meaning of—Notice not to erect structures without furnishing plan—Non-compliance—Power of Board to order specific individual not to erect building without consent of Board.*

Sub-section (2) of S. 19, Bihar and Orissa Mining Settlements Act, is *ejusdem generis* with the first sub-section and the words "take such orders" clearly refer to positive acts of construction or destruction in relation to the property concerned which may be required in furtherance of the measures of the Board.

The phrase 'take certain order' in S. 19 (2) refers to a positive act which the Board has directed and the words "prevent or abate a nuisance" refer to a specific nuisance which the Act required will prevent or abate. *(Courtney-Terrell C. J.)* ABDUL RAUF v. BANARSI LAL

A I R 1932 Pat 281=13 P L T 461=Ind Rul (1932) Pat 233=1932 Cr Cas 725=139 I C 493=33 Cr L J 775 (2).

—S. 25.

——*S. 25 (1)—Bye-laws framed by Jharia Mines Board of Health, S. 2, Part III, validity—Word 'nuisance' meaning of.*

Section 2 of Part III of the bye-laws framed by the Jharia Mines Board of Health under S. 25 (1) of the Bihar and Orissa Mining Settlements Act, is valid. It is quite consistent with the provision of S. 25 (1) (x) of the Mining Settlements Act. Though in that section of the bye-laws the word 'nuisance' only has been used, it must be understood to mean "nuisance affecting the public health." *(Chatterji J.)* JHARIA MINES BOARD v. KARTAR AD-DHARMI **A I R 1941 Pat 482=7 B R 760=14 R P 9=194 I C 403=42 Cr L J 578.**

—S. 26.

——*S. 26 (3) — Act itself, whether punishes nuisance as such.*

It cannot be said that the Mining Settlements Act itself does not punish nuisance as such. Section 26 (3) (b) of the Act clearly makes punishable any contravention of any bye-law. Any bye-law framed under the Act has the same force and validity as the provisions of the Act itself.

BIHAR AND ORISSA MINING SETTLEMENTS ACT (IV of 1920), S. 26

(Chatterji J.) JAHARIA MINES BOARD v. KARTAR AD-DHARMI **A I R 1941 Pat 482=7 B R 760=14 R P 9=194 I C 403=42 Cr L J 578.**

——*Ss. 26 (3) (b), 25 (1) — Bye-laws framed under, by Jharia Mines Board of Health, S. 1 (h), Part III, S. 2 — Definition of 'nuisance' in S. 1 (h).*

The definition of nuisance in S. 1 (h) of the bye-laws framed under S. 25 (1) of the Bihar and Orissa Mining Settlements Act by the Jharia Mines Board of Health is not exhaustive. The definition is no doubt unreasonable in so far as it makes the Medical Officer of Health the sole judge of 'nuisance' and leaves no option to the Court but blindly to act upon his opinion. But as the definition is not exhaustive the Court must in each case find out whether there has been any nuisance affecting the public health. *(Chatterji J.)* JHARIA MINES BOARD v. KARTAR AD-DHARMI

A I R 1941 Pat 482=7 B R 760=14 R P 9=194 I C 403=42 Cr L J 578.

——*S. 26 (3), (a) — Bye-law 25 (1), framed by Jharia Mines Board of Health — Order directing supply of wholesome water held not* ultra vires.

The Jharia Mines Board of Health, issued a notice to the owner of the North Jharia Colliery calling upon him to provide on or before December 25, 1933, a supply of wholesome water for drinking and domestic purposes from the main of the Jharia Water Board and distribute and deliver such supplies by a number of adequate standposts. No such supply was provided or distribution made and the prosecution was instituted. The defence of the petitioner-owner was that he could not get a supply of water from the Jharia Water Board:

Held, on consideration of documents, that the report of the Medical Officer and the resolution in which the Board recorded its opinion were by themselves a substantial compliance with the provisions of bye-law 25 and the provisions of S. 19 of the Bihar and Orissa Mining Settlements Act and that the order calling upon the owner to supply water was not *ultra vires*.

Held, further that the defence that no supply could be had from the Water Board, could not be sustained. *(Macpherson J.)* KESHAVLAL MADHAVJI v. JHARIA MINES BOARD OF HEALTH

157 I C 72=1 B R 708=8 R P 87=36 Cr L J 1088.

——*S. 26 (3)*—There is no justification under the Act for the claim on the part of the Board to issue an order to a specific individual that he shall not in future erect a building without the consent of the Board and then to treat the erection of a building which otherwise does not infringe any rule or bye-law as an offence under sub-s. (3) of S. 26. It is, however, open to the Board if any person shall infringe a by-law or rule or if he shall fail to comply with a requisition under S. 19 to take appropriate proceedings.

Where there has been no requisition under S. 19, no offence under S. 26 (3) is committed. *(Courtney-Terrell C. J.)* ABDUL RAUF v. BANARSI LAL

A I R 1932 Pat 281=13 P L T 461=Ind Rul (1932) Pat 233=1932 Cr Cas 725=139 I C 493=33 Cr L J 775 (2).

BIHAR AND ORISSA MUNICIPAL ACT (VII of 1922).

—S. 3.

——*S. 3 (19)*—Part of building—Compound wall is a part of a building. *(Sinha J.)* DHRUBA PRASAD PAL v. CHAIRMAN PURULIA MUNICIPALITY
A I R 1953 Pat 63=1953 Cr L J 531.

——*S. 3 (12)—Second Class Magistrate.*

A Magistrate with second class powers does not come within the purview of S. 3 (12), Bihar and Orissa Municipal Act. *(Dhavle J.)* CHAIRMAN, BIHAR MUNICIPALITY v. RAMNANDI KUER
A I R 1941 Pat 548=22 P L T 510=
8 B R 145=14 R P 266=197 I C 74=
43 Cr L J 110.

—S. 4.

——*Ss. 4 (38), 287, 288—Exposure of food unfit for human consumption.*

When food unfit for consumption is exposed for sale, the exposure constitutes an offence under S. 273, Penal Code, and the person in possession of such food is one who is punishable under the Bihar and Orissa Municipal Act. *(Agarwala J.)* MADAN LAL BRIJU LAL v. EMPEROR
A I R 1934 Pat 113=7 R P 457=
154 I C 367=36 Cr L J 496.

—S. 24.

——*Encroachment — Chairman of Municipality can institute prosecution.*

Although S. 375 of the Municipal Act bars a prosecution for an offence under the Act unless instituted by order or with the consent of the Commissioners, yet by virtue of S. 24 of the Act, the Chairman of a Municipality can exercise all the powers vested by the Act in the Commissioners and has, therefore, power to institute a prosecution for encroachment. *(Agarwala J.)* GOPAL LAL TATAK v. COMMRS. OF GAYA MUNICIPALITY
230 I C 320=48 Cr L J 609 (Pat).

——Proof of delegation of power to prosecute — Necessity of—*See* Bihar and Orissa Municipal Act (7 of 1922), S. 374. 1953 B L J R 660 (Pat).

—S. 82.

——*S. 82 (2)—Resolution of the Commissioners.*

There is nothing in the Bihar and Orissa Municipal Act requiring any other authority than a resolution of the Commissioners at a meeting to impose the obligation on the owners of platforms to take out a license. *(Rowland J.)* GHADSIRAM v. VICE-CHAIRMAN, SAMBALPUR MUNICIPALITY
A I R 1936 Pat 101=1936 Cr Cas 122=
17 P L T 148=2 B R 280=8 R P 415=
160 I C 1076=37 Cr L J 374.

—S. 180.

——*Ss. 180 (2), 80 (2)—Platforms old or new.*

Sub-section (2), S. 180, Bihar and Orissa Municipal Act, contains nothing to distinguish between the cases of new platforms and old platforms and the intention appears to be that while old platforms will be allowed to be retained their owners must take out licenses. *(Rowland J.)* GHADSIRAM v. VICE-CHAIRMAN, SAMBALPUR MUNICIPALITY
A I R 1936 Pat 101=17 P L T 148=
1936 Cr Cas 122=2 B R 280=8 R P 415=
160 I C 1076=37 Cr L J 374.

—S. 186.

——*Ss. 186 (3), cl. (a), 192—Opening new door to building without notice to Municipality.*

Where the accused was convicted under S. 192, Bihar and Orissa Municipal Act for having made material alterations in a building by opening a new door without notice to the Municipality and it appeared that the alteration had none of the effects mentioned in cl. (a) of sub-s. (3) of S. 186 of the Act :

Held, that the making of the new door was not an alteration in a building requiring notice to the Municipality under S. 186. *(Saunders J.)* RAM KIRPAL v. CHAIRMAN, JAMALPORE MUNICIPALITY
A I R 1933 Pat 585=1933 Cr Cas 1346=
6 R P 149=145 I C 262 (1)=
34 Cr L J 925 (1).

——*S. 192* — While convicting, Magistrate cannot order demolition of building. *(Sinha J.)* DHRUBA PRASAD PAL v. CHAIRMAN PURULIA MUNICIPALITY A I R 1953 Pat 63=1953 Cr L J 531.

——Chairman refusing sanction to build—Building started without sanction and in spite of order to demolish — Offence under S. 192 is committed—The fact that appeal against chairman's refusal to sanction is pending has nothing to do with it and will not affect prosecution — This fact may, however, be taken into consideration in awarding sentence. *(Sinha J.)* DHRUBA PRASAD PAL v. CHAIRMAN PURULIA MUNICIPALITY
A I R 1953 Pat 63—1953 Cr L J 531.

——*Offence under—Sentence—Rigorous imprisonment in default of payment of fine.*

A person committing an offence under S. 192 of the Bihar and Orissa Municipal Act is liable to be fined but is not liable to imprisonment otherwise than in default of payment of the fine. Therefore, by reason of S. 67 of the I. P. C., the imprisonment to be awarded in default of payment of the fine must be 'simple'. *(Agarwala J.)* PANDEY PARASNATH RAI OF UPPER BAZAR RANCHI v. THE MUNICIPAL CORPORATION OF RANCHI
A I R 1941 Pat 401=7 B R 731=
13 R P 695=194 I C 213=42 Cr L J 533.

—S. 194.

——*Ss. 194 (2), 360—Notice to demolish—Defence that requisition to demolish was unnecessary—Non-compliance with notice—Objection under S. 360—Objection enquired into—Prosecution for original non-compliance—Legality.*

The contention that the requisition for demolition was unnecessary, is no defence to a charge under S. 194 (2), Bihar and Orissa Municipal Act, for failure to comply with notice to demolish. It is for the Municipal Commissioners to decide whether the issue of a requisition is necessary and the accused can prefer an objection to such notice under S. 360 of the Act.

Where the accused preferred an objection to notice under S. 194 though at a late date but it was entertained, enquired into and a report was prepared by the Municipal Commissioner :

Held, that the prosecution for the non-compliance with original requisition was contrary to law. *(Dhavle and Rowland JJ.)* DWARKA MAHTON v. PATNA CITY MUNICIPALITY
A I R 1936 Pat 282=15 Pat 36=
17 P L T 123=8 R P 541=
1936 Cr Cas 398=2 B R 466=
162 I C 550=37 Cr L J 634 (2).

—S. 196.

——*Ss. 196, 197 — Suit by Municipality for removal of structure built by person on land claimed by Municipality—Person claiming land to be his —Title.*

BIHAR AND ORISSA MUNICIPAL ACT (VII of 1922), S. 196

Title can only be acquired by a person to a plot of land against a Municipality under a proper title-deed or by adverse possession. The fact that on a previous occasion the Municipal Commissioners had failed in their responsibilities in the matter is no bar to the action taken subsequently by the Municipality to remove any structure on the land. *(Madan J.)* BRINDABAN PRASAD v. GAYA MUNICIPALITY A I R 1937 Pat 640=10 R P 331=4 B R 154=172 I C 215=39 Cr L J 136.

——*Scope.*

In order that S. 196 may come into operation there must be proof that the property had vested in the Commissioners. *(Ross J.)* RADHA KISHUN MARWARI v. EMPEROR A I R 1927 Pat 52=97 I C 423=27 Cr L J 1111.

—S. 198.

——*Order of Magistrate—Revision under S. 439, Criminal Procedure Code.*

Even if the Magistrate under S. 198 belongs to the class *persona designata*, that need not necessarily prevent him from being an inferior Court. The function he discharges under the section is discharged in the course of his judicial duty. It is not a function that can be assigned to anybody except a Magistrate. The Criminal Procedure Code, for the sake of brevity uses the terms 'Court' and 'Magistrate' generally, if not always, as convertible terms. Hence the Magistrate being an inferior Court, his order under S. 198 is open to revision under S. 439, Criminal P. C. *(Dhavle J.)* CHAIRMAN, BIHAR MUNICIPALITY v. RAMNANDI KUER A I R 1941 Pat 548=22 P L T 510=8 B R 145=14 R P 266=197 I C 74=43 Cr L J 110.

——*Question of acquittal or conviction under S. 198—Application of S. 245, Criminal Procedure Code.*

There can be no question of any acquittal or any conviction under S. 198, Bihar and Orissa Municipal Act. Hence there is no scope for the application of S. 245, Criminal P. C. *(Dhavle J.)* CHAIRMAN, BIHAR MUNICIPALITY v. RAMNANDI KUER A I R 1941 Pat 548=22 P L T 510=8 B R 145=14 R P 266=197 I C 74=43 Cr L J 110.

— S. 203.

——*S. 203 (2)*—Where the Magistrate directs that if a person does not remove his stair-case within a fortnight from the date of his order, he will be liable to pay a certain fine for every day thereafter that the stair-case is allowed to remain, the order is illegal as in effect, it amounts to imposing a sentence in anticipation of the commission of an offence. *(Shearer and Jamuar JJ.)* SUMAN TAWAFF v. GAYA MUNICIPALITY A I R 1952 Pat 45=30 Pat 95=1952 Cr L J 238.

——Magistrate holding local inspection but omitting to record any memorandum—Irregularity does not vitiate trial. *(Shearer and Jamuar JJ.)* SUMAN TAWAFF v. GAYA MUNICIPALITY A I R 1952 Pat 45=30 Pat 95=1952 Cr L J 238.

——*S. 203 (2) and S. 196—Operation.*

Failure to comply with a requisition issued by the Commissioners under S. 196 is a condition precedent to a person's liability to fine under S. 203. *(Ross J.)* RADHA KISHUN MARWARI v. EMPEROR, A I R 1927 Pat 52=97 I C 423=27 Cr L J 1111.

—S. 218.

——*Ss. 218 and 375* — Making of privy without permission of municipality is not a continuing offence—Prosecution after period prescribed under S. 375—Conviction under S. 218 is not sustainable. *(Sinha J.)* RAJKUMAR RAM v. CHAIRMAN, SASARAM MUNICIPALITY A I R 1950 Pat 510.

—S. 228.

——*Notice to repair — Notice calling upon rate-payer to face well with cement and surround it with platform and coping — Notice is not one to repair well within the meaning of S. 228 in absence of evidence of damage to pre-existing facing, platform or coping.*

Where a notice issued to the rate-payer purporting to be under S. 228 calls upon him to face the well in his holding with cement and surround it with a pucca platform and coping, it cannot be construed as a notice to repair the well within the meaning of S. 228, in the absence of any evidence that the well had been previously faced and the facing had broken or cracked, or a pre-existing platform or coping had become damaged or destroyed, and the rate-payer cannot be prosecuted for failing to comply with it. *(Agarwala J.)* JANAK SAHU v. RANCHI MUNICIPALITY A I R 1947 Pat 167=1946 P W N 282=1947 A W R Sup 10=1947 O A Sup 10=48 Cr L J 836.

—S. 238.

——*Ss. 238, 359 (2), 217—Notice under S. 258 — Specification not supplied—Notice is defective.*

Where notice under S. 238, Bihar and Orissa Municipal Act was served upon the Manager of an Estate asking him to improve drains within a month, but the alternative that if he did not do it, the Municipal Commissioners would get it done themselves was not mentioned in the notice :

Held, that the notice was illegal due to non-compliance with the imperative provisions of S. 359 (2) and hence no prosecution could be based on it. Further as nothing was expressed therein as to what was the proper type of drains to be constructed the notice was vague and it was also defective from the point of view of S. 217 as no specification had been supplied. *(Varma J.)* MANAGER, DALBHUM ESTATE v. OVERSEER, JUGSALAI NOTIFIED AREA COMMITTEE A I R 1937 Pat 224=18 P L T 559=3 B R 511=9 R P 538=169 I C 38=38 Cr L J 685.

—S. 259.

——*Ss. 259 (1), (3), 264, 354 — Resolutions by Municipality requiring licences and fixing its fee, for working* surkhi *mill — Whether rules or bye-laws — If require confirmation under S. 354.*

Resolutions passed by a Municipality under power conferred by S. 259 (1) and (3), Bihar and Orissa Municipal Act fixing local limits and requiring licences to be taken out in respect of working *surkhi* mill are not matters of the same nature as the matters to be provided for by bye-laws under S. 264, and can neither be regarded as bye-laws

BIHAR AND ORISSA MUNICIPAL ACT (VII of 1922), S. 259

nor as rules but are of the nature of an order applying a section of the Act. Hence these orders did not require under S. 354 of the Municipal Act to be confirmed by the Local Government as a condition precedent to their taking effect. *(Rowland J.)* MUZAFFARPUR MUNICIPALITY v. TARA PRASAD
A I R 1940 Pat 313=6 B R 226=12 R P 433=185 I C 630=41 Cr L J 217.

——*S. 259 (1) (14)—Notification—It is necessary for a municipality to notify to the public that a certain offence has been created under a certain resolution — Person cannot be convicted for the breach of the resolution in the absence of such notification.*

If an offence is to be created by a by-law or order or notice, then it is necessary for those who have power under the Act to create such offence to publish the fact so that the public at large may know that such an offence has been created. A meeting of the commissioners of a municipality resolved under S. 259 that certain trade should not be carried on within the area of the municipality without a license but no notification whatever to the public was made of this resolution. Prosecution of a certain person was commenced for a breach of this resolution.

Held, that conviction could not stand as it was necessary for the municipality, to notify to the public that such an offence had been created. *(Wort J.)* LAL SINGH v. ARRAH MUNICIPALITY
A I R 1928 Pat 506=11 A I Cr R 25=110 I C 788=10 P L T 393=29 Cr L J 756.

——*S. 259 (1) (14) — Interpretation — "Manufacture" does not cover the use of an oil engine.*

The plain meaning of the words "manufacture, process or business" used in cl. 1, sub-cl. (14) of S. 259 does not contemplate the use of an oil engine. *(Wort J.)* LAL SINGH v. ARRAH MUNICIPALITY
A I R 1928 Pat 506=11 A I Cr R 25=110 I C 788=10 P L T 393=29 Cr L J 756.

——*S. 259—Legality—Renewal of license refused—No reason assigned—Refusal is not illegal.*

The provisions of sub-s. 2 of S. 259 of the Municipal Act themselves supply the only reason for which refusals of certain licenses can be made. But the omission of the commissioners to give the only reason which they could give for such refusal cannot be regarded as making their refusal illegal.

The Municipality has the right to declare that within the whole area of the municipality, certain offensive or dangerous trades cannot be carried on without a license : 17 C W N 531, Foll. *(Bucknill and Ross JJ.)* MADARAN KASSAB v. EMPEROR
A I R 1925 Pat 540=4 Pat 311=86 I C 964=3 Pat L R Cr 150=6 P L T 528=1925 P H C C 44=26 Cr L J 900.

—S. 263

——*Offensive Trade — Pounding of tobacco leaf for the manufacture of hooka tobacco is not an offensive trade.*

BIHAR AND ORISSA MUNICIPAL ACT (VII of 1922), S. 263

Where it has been found that the manufacture of hooka tobacco is not one giving rise to offensive or unwholesome smells, a person cannot be prosecuted under S. 263 for not taking out a license for carrying on the pounding of tobacco leaf for the manufacture of hooka tobacco. *(Mullick J.)* CHAIRMAN PURULIA MUNICIPALITY v. BISHUN SAO
A I R 1928 Pat 193=112 I C 345=11 A I Cr R 270=29 Cr L J 1017.

—S. 285

——*Ss. 285, 286 — Power of Municipal Commissioners to seize articles described in S. 285 while in transit — Articles found to warrant complaint under Bihar and Orissa Food Adulteration Act (2 of 1919), S. 3—Complaint—Legality—Formal examination of complainant, if necessary—Criminal Procedure Code (Act 5 of 1898), Ss. 300, 527—Cognizance.*

Articles of the kind described in S. 285, Bihar and Orissa Municipal Act, intended for sale within the Municipality, which are in course of transit in public roads can be seized by the Commissioners in virtue of the general powers given to them by S. 285 of the Municipal Act. But if these articles were not intended for sale within the Municipality, they cannot be legally seized under S. 286 of the Act. Articles of the kind described by S. 285 of the Municipal Act cannot be inspected by the Commissioners merely because they are within Municipal limits *in transitu*. But when they are seized and it is found that their condition warranted a complaint of an offence punishable under S. 3 of the Food Adulteration Act, committed within the Municipal area, there is nothing to prevent the Commissioners from making a complaint in proper form before a Magistrate. When such a complaint is filed, the complainant ought to be examined under S. 200, Criminal P. C. before issuing process, although the omission to examine the complainant must at the worst be regarded as an irregularity which is to be disregarded by virtue of the provisions of S. 537 (a) of the Criminal P. C., as the formal examination of the complainant cannot have benefited the opposite party. *(James J.)* RAMJAS MARWARI v. PURULIA MUNICIPALITY
A I R 1936 Pat 145=17 P L T 258=1936 Cr Cas 231=2 B R 185=8 R P 353=160 I C 343=37 Cr L J 289.

——*Ss. 285, 286 — Articles unfit for human consumption — Sanitary Inspector, if has power to seize and remove — Owner of shop declining to allow removal — Penal Code (Act 45 of 1860), S. 186.*

Section 285, Bihar and Orissa Municipal Act merely authorises the "inspection and examination" and not the seizure of such articles of food or drink as may be found in a shop which the Commissioners enter. There is no power under that section to seize any of the articles. Under S. 286 it is the Commissioners alone who may seize and remove articles unfit for human consumption and not, as in the case of S. 285, any person authorised by the Commissioners. Consequently, when a Sanitary Inspector who is not authorized

BIHAR AND ORISSA MUNICIPAL ACT (VII of 1922), S. 285

to seize the oil which is unfit for human consumption, the owner of the shop will be within his rights in declining to allow the oil to be taken from his shop. Conviction of the owner of the shop under S. 186, I. P. C., will, therefore, be illegal. *(Agarwala and Varma JJ.)* EMPEROR v. BHARAT PRASAD SINGH
A I R 1935 Pat 73=7 R P 431=154 I C 187.

—S. 287

——*Destruction of food under S. 287—Penal Code (Act 45 of 1860), S. 273—Prosecution.*

Section 287, Bihar and Orissa Municipal Act, does not contemplate judicial proceedings, but merely executive action and its object is not the punishment of the person in possession of the noxious food but prevention of its sale to the public. Destruction of the food is no bar to prosecution under S. 273, I. P. C. *(Agarwala J.)* MADAN LAL BRIJA LAL v. EMPEROR
A I R 1934 Pat 113=7 R P 457=154 I C 367=36 Cr L J 496.

——*Ss. 287, 288 — Persons exposing noxious food for sale—Penal Code (Act 45 of 1860), S. 273.*

The object of Ss. 287 and 288 of the Bihar and Orissa Municipal Act is not so much the punishment of the persons in possession of the noxious food as the prevention of its sale to the public and such action cannot affect the liability of a person found selling such food to be proceeded against under S. 273, I. P. C. The same action could be taken after the conviction of the accused person and merely because it was taken before the conviction, it does not make his conviction illegal. *(Fazl Ali J.)* MADAN LAL v. EMPEROR
147 I C 457=14 P L T 669=6 R P 354=35 Cr L J 431.

—S. 354

——Resolutions by Municipality requiring licence and fixing its fee, for working *surkhi* mill are in the nature of orders and they do not require to be confirmed by the Local Government as a condition precedent to their taking effect. *(Rowland J.)* MUZAFFARPUR MUNICIPALITY v. TARA PRASAD
A I R 1940 Pat 313=6 B R 226=12 R P 433=185 I C 630=41 Cr L J 217.

—S. 356

——*Interpretation—"Directed" means a direction by the body who are granted the power to make by-laws.*

The word "directed" in S. 356 does not refer to a direction by the Act, but it means a direction by the people or the body, who are granted the power to make by-laws, order or to issue notices. *(Wort J.)* LAL SINGH v. ARRAH MUNICIPALITY
A I R 1928 Pat 506=11 A I Cr R 25=110 I C 788=10 P L T 393=29 Cr L J 756.

—S. 359

——The provisions of the section are imperative and no prosecution can be barred if the notice under S. 328 is illegal due to the non-compliance of those provisions. *(Varma J.)* MANAGER, DHALBHUM ESTATE v. OVERSEER JUGSALAI NOTIFIED AREA COMMITTEE
A I R 1937 Pat 224=3 B R 511=9 R P 538=18 P L T 559=169 I C 38=38 Cr L J 685.

BIHAR AND ORISSA MUNICIPAL ACT (VII of 1922), S. 359

—S. 360

——*Notice not giving choice between demolition and repair—Legality.*

The scheme of the Bihar and Orissa Municipal Act is that it is for the Municipality to decide not only whether a building is in a ruinous condition or is dangerous to person or property, but also whether demolition is necessary or repairs would suffice. The decision of the Municipality is not one to be questioned in the Courts, but the rate-payer is not absolutely helpless for he has the alternative of preferring an objection under S. 360 of the Act. Therefore, the notice is not contrary to law where it does not give him the choice between demolition and repair. *(Dhavle and Rowland JJ.)* DWARKA MEHTON v. PATNA CITY MUNICIPALITY
A I R 1936 Pat 282=15 Pat 36=17 P L T 123=8 R P 541=1936 Cr Cas 398=2 B R 466=162 I C 550=37 Cr L J 634 (2).

—S. 374.

——*Ss. 374, 25 — Proof of delegation of power to prosecute — Necessity of — (Evidence Act (1872), S. 3).*

Where it was not proved that the authority to direct the prosecution under S. 374 was legally delegated by a resolution under S. 25 to the Municipal Commissioner who had signed the petition of complaint and there was merely an oral statement by the tax Daroga to the effect that this was done.

Held that the mere oral statement was not sufficient and the proof of resolution was necessary for conviction. *(Reuben C. J. and Misra J.)* STATE OF BIHAR v. HARI PRASAD,
1953 B L J R 660 (Pat).

—S. 375.

——Making of privy without permission—Prosecution after period prescribed under S. 375—Sustainability of conviction—*See* ibid, S. 218.
AIR 1950 Pat 510.

——*Continuous offence — Prosecution for encroachment — Municipality's right to land encroached upon not extinguished by adverse possession on date of institution of prosecution—Offence does not cease to be continuous.*

Where the right of the Municipality to the land encroached upon is not extinguished by adverse possession at the date of the institution of the prosecution for encroachment, the offence does not cease to be a continuous one and if the prosecution is instituted within six months of the date on which the commission or existence of the offence was first brought to the notice of the Chairman, it is not barred by limitation : A I R 1941 Pat 181, *Ref. (Agarwala J.)* GOPAL LAL TATAK v. COMMRS. OF GAYA MUNICIPALITY,
230 I C 320=48 Cr L J 609 (Pat).

—S. 385.

——*Ss. 385 and 386—Distinction between Ss. 385 and 386.*

There is a significant difference between Ss. 385 and 386; while S. 385 provides for supersession when the Commissioners make default in performance of duties imposed upon them under the

BIHAR AND ORISSA MUNICIPAL ACT (VII of 1922), S. 385

Municipal Act or "otherwise by law", the words "otherwise by law" are absent from S. 386, with the result that the Special Officer appointed under S. 386 cannot exercise powers and duties exercised and performed by the Municipal Commissioners under other Acts. *(Ahmed and Sahai JJ.)* PURSOTTAM DASS v. STATE, 1953 B L J R 695= 33 Pat 33.

—S. 386.

——Distinction between Ss. 385 and 386 — *See* Municipalities—Bihar and Orissa Municipal Act (7 of 1922), S. 385. 33 Pat 33.

——Local authority — Special Officer appointed under S. 386 of B. & O. Municipal Act — Power to file complaint — *See* Bihar Prevention of Food Adulteration Act (5 of 1948), S. 3 (e) (i). 33 Pat 33.

BIHAR AND ORISSA OPIUM SMOKING ACT (II of 1928)

—S. 12.

——*Rules framed under, R. 11*, ultra vires.

Bihar and Orissa Opium Smoking Act does not provide for any penalty for the breach of the conditions and restrictions subject to which a registered smoker may manufacture, possess or smoke prepared opium. Rule 11, made under S. 12 is *ultra vires* inasmuch as an authority on whom the rule making power has been conferred is not authorized to create an offence and impose a penalty for breach of the rules. *(Agarwala and Varma JJ.)* EMPEROR v. NEMU SINGH,
AIR 1937 Pat 226=18 P L T 118=
3 B R 418=9 R P 479=16 Pat 244=
168 I C 332=38 Cr L J 540.

BIHAR AND ORISSA PREVENTION OF ADULTERATION ACT (II of 1919).

There is nothing in the Food Adulteration Act which prohibits a Magistrate from taking cognisance on complaint of an offence punishable under the Act wherever that offence may have been discovered. *(James J.)* RAMJAS MARWARI v. PURULIA MUNICIPALITY, AIR 1936 Pat 145=
2 B R 185=8 R P 353=17 P L T 258=
160 I C 343=37 Cr L J 289.

——*Offence under Act—Nature of proof required.*

Under the Bihar and Orissa Food Adulteration Act, the prosecution need not prove that the adulterated food stuff would be injurious to public health. It is sufficient to show that the article is not what it purports to be or that it is not of the standard required by rule. *(James J.)* RAMESHWAR CHAUDHURY v. PURULIA MUNICIPALITY,
AIR 1933 Pat 193=14 P L T 146=
Ind. Rul. (1933) Pat 190=1933 Cr Cas 586=
143 I C 65 (2)=34 Cr L J 572.

—S. 3.

——Charge only under S. 3 — Conviction under S. 273, Penal Code—Legality—*See* CRIMINAL P. C. S. 237. AIR 1952 Pat 77=
1952 Cr L J 295.

——*Ss. 3 (1), 14—Firm of four partners—Servant of firm selling adulterated* ghee — *Partner not sitting in shop nor carrying on business, if liable.*

The only exception in the case of a prosecution under S. 3 (1) is to be found in S. 14 and the enactment should be construed according to the plain meaning of the words in S. 3 (1). Hence, where a servant of the firm consisting of four partners has sold *ghee* that was not genuine, the partner who does not sit in the shop and actually carry on the business himself is not liable to criminal prosecution under S. 3 (1). *(Verma J.)* RAMCHAND RAM v. GAYA MUNICIPALITY,
AIR 1945 Pat 264=26 P L T 17=
11 B R 462=18 R P 165=220 I C 95=
46 Cr L J 655.

——*Question that Act was not notified in local area, cannot be entertained.*

In proceedings under Bihar and Orissa Prevention of Adulteration Act, the question that it has not been shown that the Act has been brought in force in the particular local area by a notification of the Local Government, is a question which ought to be raised and determined before the Court of facts and not in revision. *(Rowland J.)* SARUP LAL v. EMPEROR, AIR 1936 Pat 636=
3 B R 137=9 R P 264=17 P L T 953=
1936 Cr Cas 1067=166 I C 206=
38 Cr L J 192.

——*S. 3, cl. (2)—Accused under impression that it was lawful to manufacture mixed oil.*

Held, that in view of the fact that the accused may have been under the impression that it was lawful to manufacture and sell mixed oil under the description of a mixed mustard oil and in view of the previous record of the accused, it would be inappropriate to impose on the accused the maximum sentence which could be imposed by law for a first offence. *(Rowland J.)* KARNIDAN SARDA v. EMPEROR, AIR 1935 Pat 521=
16 P L T 655=2 B R 8=8 R P 205=
1935 Cr Cas 1279=158 I C 728=
36 Cr L J 1439.

——*S. 3, Cl. (2)—Selling mustard oil not conforming to standard prescribed—Adjectival description preceding substantive name.*

What S. 3, cl. (2), Bihar and Orissa Food Adulteration Act, means is that the name "mustard oil" with or without prefixes is not to be used for an article which is not mustard oil of the standard prescribed by rule under the Act. Where there are in the description of the article the words "mustard oil" as the concluding and substantive portion of the description with some adjectival description preceding the substantive name although the preliminary adjectival description may give the intending purchaser notice that what he is getting is not pure mustard oil yet this is not a compliance with the law. *(Rowland J.)* KARNIDAN SARDA v. EMPEROR, AIR 1935 Pat 521=
16 P L T 655=2 B R 8=8 R P 205=
1935 Cr Cas 1279=158 I C 728=
36 Cr L J 1439.

——*S. 3 (2)—Adulterated article for human consumption — Nature of proof required for conviction — Indication by placard that article is unfit for human consumption.*

Under the Bihar and Orissa Food Adulteration Act, the prosecution need not prove that the adulterated food stuff would be injurious to public health. It is sufficient to show that the article is not what it purports to be or that it is not of the standard required by rule.

BIHAR AND ORISSA PREVENTION OF ADULTERATION ACT (II of 1919), S. 3

Where the oil which was sold was actually found on analysis to be not genuine in the sense that it was not the article which it purported to be or was represented to be, or if it fell below the standard prescribed by rule, under sub-s. (2) of S. 3 of the Act, the vendors would become liable to penalty. Such a case is not affected by the placing of a placard outside the shop to indicate that mixed oil was obtainable therein which was not fit for human consumption. *(James J.)* RAMESHWAR CHAUDHURY MARWARI v. PURULIA MUNICIPALITY,
AIR 1933 Pat 193=Ind. Rul.(1933) Pat 190=14 P L T 146=1933 Cr Cas 586=143 I C 65 (2)=34 Cr L J 572.

——*S. 3 (2)—Sale of goods in unopened and duly labelled tins obtained from reputed whole-sale dealer.*

Where a person obtains goods from a reputed whole-sale dealer and sells them in unopened tins duly labelled in the condition in which they are received, he is not liable to be punished under the Bihar and Orissa Prevention of Food Adulteration Act unless there is reason to believe that he did not believe goods to be genuine. The dealer is not bound to make some experiment to test the quality of the goods. *(James J.)* PRANJIVAN v. EMPEROR,
AIR 1931 Pat 337(1)=12 P L T 470=Ind. Rul. (1931) Pat 221=1931 Cr Cas 785 (1)=131 I C 541=32 Cr L J 741.

—S. 4.

——The Courts have to apply their mind to the question whether the admixture of foreign matter was so large that it could not be explained otherwise than by fraud. *(Rowland J.)* SARUP LAL v. EMPEROR,
A I R 1936 Pat 636=3 B R 137=9 R P 264=17 P L T 953=166 I C 206=38 Cr L J 192.

——*S. 4 (b)—Court must determine first whether foreign matter has been added fraudulently.*

What the Court has to determine before applying S. 4 *(b)* is that some matter or ingredient has been added fraudulently. The mere presence of some foreign matter in small quantity is not necessarily an offence. The exception specially excludes the case where without fraud any extraneous material has in the process of collection, preparation or conveyance unavoidably become mixed with the food. *(Rowland J.)* SARUP LAL v. EMPEROR,
AIR 1936 Pat 636=3 B R 137=9 R P 264=17 P L T 953=1936 Cr Cas 1067=166 I C 206=38 Cr L J 192.

—S. 9.

——*S. 9 (2)—Proviso—Procedure—Application to have sample analysed refused — Magistrate was wrong in refusing application for analysis of sample in custody of local authority.*

A complaint was lodged against the applicant, based on an inspection made by the Inspector of the applicant's factory. The inspection related to the manufacture of mustard oil which the applicant carried on in his factory. Sample of oil was taken by the Inspector in three phials one of which was sent to the Chemical Examiner under S. 8 of the Act and the report of the Examiner showed that the sample was adulterated. That was the reason of the prosecution. During the trial, the applicant applied, under S. 9 (2) of the Act that the

BIHAR AND ORISSA PREVENTION OF ADULTERATION ACT (II of 1919), S. 9

sample in the hands of the local authority, which was kept by them under sub-s. (2), S. 7 may be sent to the Government analyst. The trying Magistrate held that by reason of the proviso to S. 9 he was prevented from acceding to the application :

Held, that the trying Magistrate was wrong in not allowing the petition of the applicant to have the sample, in the custody of the local authority, analysed under S. 8 *(Wort J.)* GOPINATH SAHU v. ARRAH MUNICIPALITY **A I R 1929 Pat 510=118 I C 328=1929 Cr C 270=30 Cr L J 895.**

—S. 10.

——*Proceeding without sanction under S. 10 — Irregularity, if cured by S. 537, Criminal Procedure Code (Act 5 of 1898).*

An irregularity created by an absence of a complaint by local authority under S. 10 of Bihar and Orissa Prevention of Adulteration Act, in proceedings under the Act, is cured by S. 537 of the Criminal P. C. *(Rowland J.)* SARUP LAL v. EMPEROR
A I R 1936 Pat 636=3 B R 137=9 R P 264=17 P L T 953=166 I C 206=1936 Cr Cas 1067=38 Cr L J 192.

—S. 14.

——*Inspector authorised to effect compulsory purchase—Whether takes away his right of purchase as ordinary member of public — Oil sold in tin — Purchase by Inspector in small quantity as sample.*

Section 14 exempts the vendor from the legal compulsion to sell a small sample, in case he wishes to sell a whole sealed parcel. It does not nullify the sale if he voluntarily sells a small sample. The fact that the statute gives an authorized person the power of compulsory purchase does not affect the right which such authorized person has in common with every member of the public of proposing to purchase goods and, if the vendor assents, of making that purchase. Consequently, there is no substance in the argument that as the Inspector had not the power to compel the sale to him of a small quantity as sample, it was contrary to law for him to take such a small quantity. *(Rowland J.)* KARNIDAN SARDA v. EMPEROR
A I R 1935 Pat 521=16 P L T 655=2 B R 8=8 R P 205=1935 Cr Cas 1279=158 I C 728=36 Cr L J 1439.

——*Interpretation.*

Neither the word "labelled" nor the word "sealed" necessarily means that it should contain the name of manufacturer. *(Jwala Prasad and Ross JJ.)* EMPEROR v. SHIB DAS
A I R 1928 Pat 213=9 P L T 434=106 I C 587=9 A I Cr R 352=29 Cr L J 75.

——*S. 14, Cl. (2) — Irregularity — Inspector not purchasing the entire tin — Accused can take advantage of the irregularity.*

Where the Inspector acted illegally in not purchasing the entire tin as is required by Cl. (2), S. 14 :

Held, yet the oil of the tin was found to be highly adulterated, the accused could take advantage of the illegality or irregularity as the procedure adopted by the inspector had prejudiced the accused seriously and deprived him of the best evidence to prove his *bona fides*. *(Jwala Prasad and Ross JJ.)* EMPEROR v. SHIB DAS
A I R 1928 Pat 213=9 P L T 434=106 I C 587=9 A I Cr R 352=29 Cr L J 75.

BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT (IV of 1914)

—S. 4.

——Execution of certificate by arrest when is bad —*See* ibid, S. 47. A I R 1953 Pat 313= 1953 Cr L J 1681.

—S. 7.

——*Execution of certificate by arrest of certificate-debtor — Notice under S. 7, necessity of — (Civil P. C. (1908), O. 21, R. 37) — (Penal Code 1860), S. 99).*

Notice under S. 7 of the Act gives jurisdiction to the Certificate Officer to execute the certificate. It is for the prosecution to show that the Court or the officer concerned, who issued the warrant of arrest of the certificate-debtor in execution had the jurisdiction to do so and it is not for the defence to prove the negative. A forwarding letter attached to the non-satisfaction decree in respect of the certificate mentioning that notice under S. 7 had already been served and that no objection was filed within the time limit, does not prove the service of notice under S. 7 as the forwarding letter cannot be substituted for the primary or secondary evidence of the service of notice under that section.

Arrest of certificate-debtor in execution, without proof that notice under S. 7 was served is illegal.

Section 99, Penal Code, does not help the officer carrying out the arrest. *(Sinha J.)* ANAND BALLABH PRASAD v. STATE OF BIHAR

A I R 1953 Pat 313=1953 B L J R 364= 1953 Cr L J 1681.

—S. 47.

——*Ss. 47, 4 and Sch. II, Rule 54 (1)*—Execution of certificate by arrest of certificate debtor cannot be bad unless certificate holder has deposited subsistence allowance in Court — Provision is mandatory —No allowance deposited—Arrest is illegal—S. 99, Penal Code, does not help the officer carrying out arrest — (Penal Code (1860), S. 99) — (Civil P. C. (1908), O. 21, R. 39. *(Sinha J.)* ANAND BALLABH PRASAD v. STATE OF BIHAR

A I R 1953 Pat 313=1953 B L J R 364= 1953 Cr L J 1681.

—Sch. II.

——*Sch. II, Rule 54 (1)*—Scope—Rule is mandatory—*See* ibid, S. 47. A I R 1953 Pat 313= 1953 Cr L J 1681.

BIHAR AND ORISSA SUGARCANE RULES (1934)

—R. 15.

——*Rr. 15 (e) and (f), object of.*

Rules 15 (e) and (f), Bihar and Orissa Sugarcane Rules (1934), have been made with the object of protecting the cultivators who are not always educated, from the wiles of persons dealing with them on behalf of the purchasing agent. Such cases are not likely to be detected easily and when once a case is detected, it should not be dealt with leniently. *(Varma J.)* BALA BUX v. EMPEROR

A I R 1938 Pat 366=19 P L T 395= 4 B R 734=11 R P 85=176 I C 558= 39 Cr L J 732.

—R. 18.

——The opening word of R. 18, Bihar and Orissa Sugarcane Rules, 'whoever' is not restricted in any way to the purchaser of cane. *(Agarwala and Varma JJ.)* RAM SARAN v. EMPEROR

A I R 1937 Pat 242=16 Pat 251= 3 B R 538=10 R P 1=18 P L T 182= 169 I C 312=38 Cr L J 750 (2).

BIHAR AND ORISSA SUGARCANE RULES (1934), R. 18

——Jamadar *weighing sugarcane on behalf of factory and taking illegal gratification — Factory purchasing sugarcane at minimum price fixed by Government—Growers prevented from getting full minimum price—Offence under R. 18.*

A *jamadar* used to weigh sugarcane at the weighbridge on behalf of the factory. He was therefore, in a position to delay the weighing of the cane when brought in the factory or to prevent its delivery altogether by not delivering in time or not delivering at all a *purji* which would authorise the weighman to weigh and receive the cane. Taking advantage of this position he was in the habit of demanding payments for himself before making out and delivering the *purjis* to the persons entitled to them. The amounts thus levied by the *jamadar* for his own benefit resulted in the growers of sugarcane receiving about 5 per cent. less than the minimum price fixed by the Government for the period and in the controlled area. The *jamadar* was prosecuted and convicted under R. 18 of the Bihar and Orissa Sugarcane Rules :

Held, that what had to be seen was whether by demanding gratification or other payment the accused prevented the cane-growers from receiving the full benefit of the minimum price fixed for their produce. The cane-growers dealing with the factory were unable to receive the full minimum rate for their produce because the accused insisted on a payment to him before their cane was weighed. Provided the factory was buying cane from them at the minimum rate, and not at any rate in excess of the minimum rate, it followed that the cane-growers were not receiving the benefit of the full minimum rate. It was clear, therefore, that the accused was guilty and the conviction was rightly recorded against him. *(Henderson and R. C. Mitter JJ.)* RAM SARAN JHA v. EMPEROR

A I R 1937 Pat 242=16 Pat 251= 3 B R 538=10 R P 1=18 P L T 182= 169 I C 312=38 Cr L J 750 (2).

—R. 20.

——*On report of Inspector, District Magistrate sanctioning prosecution, taking cognizance of offence under S. 190 (1) and directing examination of Inspector under S. 200 (aa), Criminal Procedure Code (Act V of 1898).*

Where upon a report of the Sugarcane Inspector the District Magistrate sanctions the prosecution as required by R. 20 of Bihar and Orissa Sugarcane Rules (1934), and at the same time takes cognizance of the offence under S. 190 (1) and directs an examination of the Inspector under S. 200 (aa), Criminal P. C., the provisions of R. 20 are properly complied with. *(Varma J.)* BALA BUX v. EMPEROR

A I R 1938 Pat 366=19 P L T 395= 4 B R 734=11 R P 85=176 I C 558= 39 Cr L J 732.

BIHAR AND ORISSA VILLAGE ADMINISTRATION ACT (III OF 1922)

—S. 27.

——*S. 27 (d)—Scope—Requirements.*

Section 27 (d) does not state that in fact stolen property must be found in the possession of a person before he can be arrested by a *chaukidar*. What it states is that any person found in possession of anything which may reasonably be suspected to be stolen property, or a person who may reasonably

BIHAR AND ORISSA VILLAGE ADMINISTRATION ACT (III of 1922), S. 27

be suspected of having committed an offence with reference to such thing is liable to be arrested by a *chaukidar*. *(Meredith and Imam JJ.)* HIRDAY SINGH v. EMPEROR A I R 1946 Pat 40=24 Pat 501=227 I C 404=48 Cr L J 99.

——*S. 27 (1) (ii) — Words, "hue and cry" — Meaning.*

The words "hue and cry" in S. 27 (1) (ii), Bihar and Orissa Village Administration Act, mean something more than a mere direction of the Sub-Inspector of Police to the village *chaukidars* to look out for certain man and to arrest him. *(Harries C. J. and Meredith J.)* JOGRAJ MAHTO v. EMPEROR A I R 1940 Pat 696=13 R P 358=7 B R 236=22 P L T 80=191 I C 590=42 Cr L J 199.

——The village *chowkidar* has the limited powers of arrest provided under S. 27 and has not the full powers of a Police Officer. *(Harries C. J. and Meredith J.)* JOGRAJ MAHTO v. EMPEROR A I R 1940 Pat 696=13 R P 358=7 B R 236=22 P L T 80=191 I C 590=42 Cr L J 199.

——The section specifies the powers and duties of a *chaukidar* and these appear in Part III which is under the heading "Village Police". *(Dhavle and Chatterjee JJ.)* EMPEROR v. JAGIA A I R 1938 Pat 308=4 B R 451=17 Pat 369=19 P L T 268=10 R P 531=174 I C 524=39 Cr L J 428.

—S. 34.

——*President present causing* chaukidar *to levy distress—Separate distress warrant, not necessary.*

The section empowers the President of the Union Board to cause the *chaukidar* to levy the amount by distraint without issuing to the *chaukidar* any special authority in writing, that is to say, the words "authorised in writing by the President" apply not to the *chaukidar* but to any other person. Hence a separate distress warrant in Form F of the Bihar and Orissa Village Administration Manual, 1926, is not necessary when the President being present causes the *chaukidar* under S. 34 to levy distress. *(Rowland J.)* SHEO SAHNI v. EMPEROR A I R 1943 Pat 432=10 B R 295=16 R P 204=210 I C 531=45 Cr L J 279.

—S. 53.

——*S. 53 (2) (b) — Sub-Divisional Magistrate, if can stay proceedings of* Panchayat.

The only provision in the Bihar and Orissa Village Administration Act enabling a Sub-Divisional Magistrate to interfere with the proceeding of a *Panchayat* in criminal case, while the case is pending, is S. 53 (2) (b), which enables either the Sub-Divisional Magistrate or the District Magistrate to transfer the case. There is no other provision in the Act which enables a Sub-Divisional Magistrate to interfere with the proceedings of a *Panchayat* either by stay or otherwise. *(Agarwala J.)* GONI MAHTON v. EMPEROR A I R 1941 Pat 169=7 B R 606=13 R P 614=193 I C 491=42 Cr L J 434.

—S. 68.

——*Ss. 68, 53 (2)—Complaint filed before Magistrate transferred by him to Union Board — Accused wishing to get it transferred to proper Court.*

BIHAR AND ORISSA VILLAGE ADMINISTRATION ACT (III of 1922), S. 68

Section 68, Bihar and Orissa Village Administration Act, does not empower the Union Board to re-transfer a case to the Court of a Magistrate but it only empowers it to direct the complainant to file a complaint before the proper Court. Where the complaint had already been filed before the Magistrate and transferred by him to the Union Board under S. 53 (2), the procedure to be followed by the accused if he wishes to get it transferred to the proper Court, is to move the District Magistrate or the Sub-Divisional Magistrate under S. 53 (2) (b) of the Act. *(Fazl Ali J.)* RAM CHANDRA SINGH v. BALDEO SINGH A I R 1940 Pat 184=6 B R 247=12 R P 446=185 I C 748=41 Cr L J 232.

—S. 76.

——*S. 345 (6), Criminal P. C. (Act V of 1898), applicability of, to* Panchayat—Panchayat, *neither bound to accept compromise entered into by parties.*

Section 345 (6), Criminal P. C., does not apply to a *Panchayat*. Section 76, Bihar and Orissa Village Administration Act is merely an enabling section and it does not mean that a *Panchayat* is bound to accept a compromise entered into by the parties. Where one of the parties resiles from the compromise it is clearly a proper case in which the *Panchayat* should not act on it. *(Agarwala J.)* GONI MAHTON v. EMPEROR A I R 1941 Pat 169=7 B R 606=13 R P 614=193 I C 491=42 Cr L J 434.

BIHAR BAKASHT DISPUTES SETTLEMENT ACT (XIII OF 1947)

—S. 3.

——District Magistrate acting under S. 3—District Magistrate is not inferior Criminal Court within meaning of Ss. 435 and 439, Criminal P. C. — *See* Criminal P. C. (1898), S. 435 A I R 1953 Pat 103=1953 Cr L J 799.

——*Ss. 3, 6 and 14 — Reference of dispute to Board—Notification in Gazette—Absence of.*

Where the powers of the Provincial Government are exercised by the District Magistrate by virtue of a notification delegating the Government's powers to him under S. 14, a Notification under S. 3 referring the dispute to the arbitrators must be issued by the District Magistrate. Until a notification is published, a reference to a Board of arbitrators, although purporting to be under the Act, is not in law under the Act so as to attract the provisions of S. 6. *(Agarwala C. J. and Narayan J.)* BIJOYANAND SINGH v. DOMA DUSADH A I R 1949 Pat 263=27 Pat 768=30 P L T 125=50 Cr L J 533.

—S. 5.

——*Ss. 5 and 6—S. 5 when applies.*

Section 5 applies only to an order of the Provincial Government and does not even purport to apply to an order made by a District Magistrate by virtue of the power delegated to him by the Provincial Government. Moreover, the section only provides that in the case of an order of the Provincial Government appointing a board or any Chairman or member of the board that order shall not be called in question in any manner. It does not affect the provisions of S. 6 which operate to stay of proceedings under S. 145, Criminal P. C., only when a dispute is referred to a board under the Act. Unless the dispute is referred under the Act, Section 5

BIHAR BAKASHT DISPUTES SETTLEMENT ACT (XIII of 1947), S. 5

does not and cannot confer jurisdiction on a board of arbitrators to settle the dispute. *(Agarwala C. J. and Narayan J.)* BIJOYANAND SINGH v. DOMA DUSADH
A I R 1949 Pat 363=30 P L T 125=27 Pat 768=50 Cr L J 533.

—S. 6.

——Applicability—Reference of dispute to board—Absence of notification in Gazette — Effect — *See* ibid, Ss. 3, 6 and 14.
A I R 1949 Pat 263=50 Cr L J 533.

—S. 8.

——*S. 8 (4) — Reference not under the Act — Board's decisions—Validity.*

Orders of a board of arbitrators are only valid if the board is acting within jurisdiction in the matter of a dispute referred to it under the Act. Where there is no reference under the Act by reason of the omission to publish a notification under S. 3, S. 8 (4) does not operate to validate the decision of the board. *(Agarwala C. J. and Narayan J.)* BIJOYANAND SINGH v. DOMA DUSADH
A I R 1949 Pat 263=30 P L T 125=27 Pat 768=50 Cr L J 533.

—S. 14.

——Reference of dispute to board—Notification in Gazette essential — Absence of notification—Effect —*See* ibid, Ss. 3, 6 and 14.
A I R 1949 Pat 263=50 Cr L J 533.

BIHAR BUILDINGS (LEASE, RENT AND EVICTION) CONTROL ACT (III OF 1947)

—S. 11.

——*S. 11 (1), (2) and (3) — Distinction between sub-sections — Fixation of specific period under sub-s. (2) for delivery of possession, if necessary.*

There is a clear distinction between the provisions of sub-s. (3) and sub-ss. (1) and (2) of S. 11 of the Act, in that whereas an order passed under sub-s. (3) authorises the controller to direct a specific period within which the tenant should put the landlord in possession, sub-s. (2) does not specifically direct the controller to fix any period during which the tenant has to put the landlord in possession. *(Imam and Jamuar JJ.)* HIRALAL v. RAMREKHA
A I R 1950 Pat 204=51 Cr L J 854.

——*Ss. 11 (2), 18 and 20* — Order under S. 11 (2) directing tenant to put landlord in possession within specified time—Appeal by tenant — Tenant need not put landlord in possession within time, when appeal is pending—Appeal dismissed—Landlord not put in possession — Application for proceedings to be taken against tenant for offence under S. 20—Summons on tenant issued—Tenant, however, instituting suit in civil Court, before issue of summons, for declaration that order of controller was without jurisdiction and obtaining *ad interim* injunction — Controller apprised of suit and order shown—Controller must recall summons and await decision of suit — He cannot proceed on technical ground that no stay has been ordered. *(Imam and Jamuar JJ.)* HIRALAL v. RAMREKHA
A I R 1950 Pat 204=51 Cr L J 854.

—S. 17.

——Eviction order against tenant—Tenant obtaining injunction against landlord restraining execution of order—Prosecution of tenant for contravening order—Maintainability. — *See* Penal Code (1860), S. 188
A I R 1952 Pat 356=1952 Cr L J 1410.

—S. 18.

——Order under S. 11 (2) directing landlord to put tenant in possession within specified time—Appeal by tenant under S. 18 pending — Tenant need not put landlord into possession within time —Appeal dismissed—Landlord not put in possession — Tenant proceeded against under S. 20—Before issue of summons tenant bringing suit for declaration that order of Rent Controller was without jurisdiction—Injunction for stay granted — Controller must recall summons and await decision of civil suit.—*See* ibid S. 11 (2)
A I R 1950 Pat 204=51 Cr L J 854.

—S. 20.

——Eviction order against tenant—Tenant obtaining injunction against landlord restraining execution of order — Prosecution of tenant for contravening order — Maintainability.—*See* Penal Code (1860), S. 188.
A I R 1952 Pat 356=1952 Cr L J 1410.

✠——*S. 20 (2)—Tenant directed to vacate—Non-compliance, if punishable.*

There is nothing in the Act to indicate that a non-compliance of the order which is executable under section 17 of the Act cannot be a subject-matter of prosecution under sub-section (2) of Section 20. The order passed under S. 11 (2) by a Controller or by a Commissioner on appeal against a tenant to vacate a house within a certain time is clearly a direction for the non-compliance of which the tenant is liable to be punished under sub-section (2) of Section 20. Under the provisions of the Act there is no bar for the landlord to apply to the Civil Court for execution of that order or direction under Section 17 of the Act, and yet he may apply for the prosecution of the tenant for the non-compliance of the direction under sub-section (2) of Section 20 of the Act. *(Shearer and Jamuar JJ.)* GOPALJI SHARMA v. THE STATE
A I R 1951 Pat 354.

——Order under S. 11 (2) directing landlord to put tenant in possession within specified time—Appeal by tenant under S. 18 pending—Tenant need not put landlord into possession within time — Appeal dismissed—Landlord not put in possession—Tenant proceeded against under S. 20 — Before issue of summons Tenant bringing suit for declaration that order of Rent Controller was without jurisdiction—Injunction for stay granted—Controller must recall summons and await decision of civil suit. — *See* ibid, S. 11 (2)
A I R 1950 Pat 204=51 Cr L J 854.

BIHAR CATTLE, FOWL, EGGS, SHEEP AND GOATS (MOVEMENT) CONTROL ORDER (1943).

—Cl. 3.

——*Order is not kept alive by Bihar Essential Articles Control (Temporary Powers) Ordinance, 1946 — Export of cattle from Bihar to Bengal in January 1947 held no offence.*

The Bihar Cattle, Fowl, Eggs, Sheep and Goats (Movement) Control Order (1943) has come to an end on 30th September 1946, and the Bihar Essential Articles Control (Temporary Powers) Ordinance, 1946 cannot keep the Control Order of 1943 alive

BIHAR CATTLE, FOWL, EGGS, SHEEP & GOATS (MOVEMENT) CONTROL ORDER (1943), Cl. 3

in so far as it relates to the export of cattle from Bihar to a place outside Bihar as the Provincial Legislature could not pass such a law because the power of the Provincial Legislature to legislate in respect of items 27 and 29 of the Provincial Legislative List is subject to the restriction contained in S. 297, Constitution Act. As the Provincial Legislature could not ban the export of cattle from Bihar to Bengal, the Governor could not do so by the Control Ordinance made under S. 88, Constitution Act.

Hence export of cattle from Bihar to Bengal in January 1947 without permit is no offence under Cl. 3 of the Control Order. *(Das J.)* PESU SHEIKH v. EMPEROR A I R 1948 Pat 297=29 P L T 233=49 Cr L J 414.

BIHAR COTTON CLOTH AND YARN CONTROL ORDER (1944)

——*Sanction for prosecution under—Cotton Cloth and Yarn (Control) Order, 1943, Cl. 23.*

A conviction under Cl. 3 for not granting a cash-memo is not bad for want of a previous sanction of the Provincial Government as contemplated by Cl. 23 of the Central Order, for such a conviction is not covered by the Central Order. *(Meridith and Sinha JJ.)* MANOHAR LALL v. EMPEROR A I R 1945 Pat 477=24 Pat 487=27 P L T 487.

—Cl. 3.

——*Cls. 3 and 9 — Prosecution for contravention of — Sanction of Provincial Government is not necessary.*

No sanction of Provincial Government is necessary for prosecution for contravention of Cl. 3 :

As regards prosecution for contravention of Cl. 9, the considerations which apply to a prosecution under Clause 8, do not apply to one under Cl. 9. Clause 9 refers to orders and directions of a different kind and authority from the orders mentioned in Cl. 19, Cotton Cloth and Yarn (Control) Order (1943) made by the Central Government and they do not cover the same ground. Hence no sanction of the Provincial Government is necessary for a prosecution for contravention of Cl. 9. *(Das J.)* GOGAN RAM v. EMPEROR A I R 1946 Pat 285=226 I C 316=47 Cr L J 892.

——*Cotton Cloth and Yarn (Control) Order (Central) 1943, Cls. 12 and 23 — Charge under Cl. 8 of Provincial Order and not Cl. 12 of Central Order — Sanction under Cl. 23 of Central Order.*

Charge under Cl. 8 of provincial Order of 1944—No charge under Central Order — Sanction under Cl. 23 of the Central Order is still necessary. The reason why Cl. 8 was inserted in the Provincial Order, 1944, was to make it clear that the mere issue of license is not intended to exempt the licensee from the operation of the Central Government's Cotton Cloth and Yarn (Control) Order, 1943, that is to say, to make it clear that he is bound to keep his prices within the limits fixed by the Textile Commissioner in exercise of the powers conferred on him. *(Agarwala and Meredith JJ.)* KAPILDEO PANDEY v. EMPEROR A I R 1945 Pat 375=26 P L T 85=24 Pat 257=12 B R 130=221 I C 426=47 Cr L J 190.

BIHAR COTTON CLOTH & YARN CONTROL ORDER (1944) —Cl. 8.

——*Prosecution under Cl. 8—Sanction — Cotton Cloth and Yarn (Control) Order, 1943, cl. 23. Cr. Misc. No. 322 of 1944 D/- 24-10-1944 (Pat), Cr. Revn. Nos. 96 and 98 of 1945 D/- 19-3-1945 (Pat) and Cr. Revn. No. 1222 of 1944 D/- 14-10-1944 (Pat) Overruled.*

A prosecution under Cl. 8 of the Provincial Order, without previous sanction of the Provincial Government as contemplated by Cl. 23 of the Central Order is illegal. Clause 8 of the Provincial Order does not create an offence. It has to be read along with and as supplemental to the Central Order. Cr. Misc. No. 322 of 1944, D/- 24-10-1944 (Pat); Cr. Rev. Nos. 96 and 98 of 1945, D/- 19-3-1945 (Pat) and Cr. Rev. No. 1222 of 1944, D/- 14-11-1944 (Pat) *Overruled*,

But a conviction under Cl. 3 of the Provincial Order is not bad for want of a sanction of the Provincial Government for such conviction is not covered by Central Order. *(Meredith and Sinha JJ.)* MANOHAR LALL v. EMPEROR A I R 1945 Pat 477=24 Pat 487=27 P L T 487

BIHAR COTTON CLOTH AND YARN CONTROL ORDER, (1945) —Cl. 18.

——*Cl. 18 (2)* — Person found in possession of 76 yards of Cloth and 36 yards of Saris — Person must be deemed to contravene Cl. 18 (2) unless he can prove otherwise. *(Imam and Das JJ.)* SHAYAM LAL v. EMPEROR A I R 1948 Pat 355=49 Cr L J 557.

BIHAR COTTON CLOTH AND YARN CONTROL ORDER (1948)

——Mere possession of cloth in excess of specified quantity is not an offence under Order, nor punishable under Essential Supplies (Temporary Powers) Act (1946)—*(Imam J.)* SURAJMAL SINGHANIA v. STATE A I R 1953 Pat 251=1953 B L J R 246=1953 Cr L J 1326.

—Cl. 2.

——*Register of Daily transactions—Transactions when to be entered — Prosecution under S. 7, Essential Supplies (Temporary Powers) Act (1946), for contravening conditions of licence—Held no contravention.*

Clause 2 means that the transaction of each day is to be entered in a register. From the point of view of convenience and correctness this register showing the transaction of the day can be filled up only at the close of the transaction for that day. Neither the terms of the clause require that the register should be filled up from minute to minute and hour to hour or as soon as a new stock is brought into the shop, nor does the general practice or rule of convenience prevalent in the business world support the idea that it should be filled up from minute to minute or hour to hour, or as soon as the stock is brought into the shop.

The accused held licence for dealing in cloth. The stock in his shop was checked and verified with reference to the Stock Register. On checking, twenty-five pairs of saris were found to be in excess in the shop of the accused and were not found entered in the Stock Register. The accused was prosecuted under S. 7 of the Essential Supplies

BIHAR COTTON CLOTH & YARN CONTROL ORDER (1948), Cl. 2

(Temporary Powers) Act, 1946, for having no proper account of the cloths in his stock and thereby contravening the conditions of the licence issued to him under the Bihar Cotton Cloth and Yarn (Control) Order, 1948. The defence of the petitioner was that the said twenty-five pairs of saris were purchased by his Munib that very day from a certain firm, but no sooner than the Munib had brought the saris from the said firm, he received news of the sudden illness of his son and so he left the petitioner's shop without entering the twenty-five pairs of saris in the Stock Register. The cash memo in respect of the said saris was also with the petitioner's Munib and as such it could not be produced at the time of the checking. He also contended that there could be no contravention of the conditions of the licence for mere non-entry in the Stock Register of the stock received soon after its receipt until the entries for the day had closed.

Held that there may be a presumption that these twenty-five pairs of saris found in the shop must be a part of the stock which was in the shop from before. The presumption was, however, rebuttable.

Held further that the explanation given by the accused was sufficient to discharge the onus laid on him under S. 106, Evidence Act, and to account for the excess of twenty-five pairs of saris found in the shop on the day of checking. The mere non-entry of this purchase in the Stock Register during the business hours before the close of the day did not amount to any contravention of the terms of the licence. *(Ahmad J.)* KEDAR NATH v. THE STATE OF BIHAR
A I R 1952 Pat 28=
1952 Cr L J 227.

—Cl. 9.

——Cl. 9 (1) — Contravention of — (Maxims — Respondeat Superior).

Under Cl. 9 (1) of the Order the liability is thrown upon the licensee, and no duty which is cast upon a licensee can be cast upon a servant or a salesman of a shop. In such cases the maxim *respondeat superior* must apply and the salesman of the licensee cannot be held guilty for the contravention of cl. 9 (1) or for a breach of condition No. 3 of the license granted under the order. *Case law referred. (Jamuar and Sahai JJ.)* SHANKAR LAL v. STATE
1953 B L J R 543.

—Cl. 10.

——Constable making enquiry not empowered in this behalf—False answers given — No offence for contravening S. 10 (b) held committed—(Essential Supplies (Temporary Powers) Act (1946), S. 7). *(Imam J.)* SURAJMAL SINGHANIA v. STATE
A I R 1953 Pat 251=1953 B L J R 246=
1953 Cr L J 1326.

BIHAR COTTON CLOTH AND YARN DEALERS (LICENSING AND CONTROL) ORDER (1944).

——Cloth Controller has power to issue direction to exhibit correct account of stock on notice board.

The Cloth Controller had issued a notification directing all wholesale dealers to exhibit on a notice board from day to day at each of their respective shops or places of business a correct account of the respective stocks of cloth, yarn and standard cloth:

Held that the terms of cl. (a) of sub-r. (2) of

BIHAR COTTON CLOTH & YARN DEALERS (LICENSING & CONTROL) ORDER (1944)

R. 81, Defence of India Rules, were wide enough to cover directions of such a nature. The Provincial Government could authorise the Cloth Controller to give such directions to licensees as might be necessary for the purpose of the Bihar Cotton Cloth and Yarn Dealers (Licensing and Control) Order. The direction issued by the Cloth Controller was not illegal. *(Das J.)* GOGAN RAM v. EMPEROR
A I R 1946 Pat 285=226 I C 316=
47 Cr L J 892.

—Cl. 3.

——Charge defective — Accused knowing case he had to meet with — No prejudice caused — Trial not vitiated.

A person was prosecuted for contravening the provisions of Cl. 3, Bihar Cotton Cloth and Yarn Dealers (Licensing and Control) Order. The charge framed, however, mentioned that the person contravened the provisions of Cl. 3 by not maintaining the registers of daily transactions. He had maintained the registers but not correctly in accordance with the conditions of his licence :

Held that the defect in the charge was of a very minor nature and had not in any way caused prejudice to the accused. The accused knew full well the case he had to meet, namely, that the registers were incorrectly prepared so that stock in hand was much in excess of the stock actually shown in the registers and the trial was not, therefore, vitiated. *(Das J.)* GOGAN RAM v. EMPEROR
A I R 1946 Pat 285=226 I C 316=
47 Cr L J 892.

BIHAR CRIMINAL LAW (INDUSTRIAL AREAS) AMENDMENT ACT (VII of 1943).

—S. 5.

——"Industrial articles" — Articles produced or manufactured in industrial areas or used for mine, factory or workshop in that area, are industrial articles—Burden of proof is on prosecution.

What the Act is intended to deal with is cases of theft in an industrial area of articles which are produced or manufactured in that area, or which are used for the purposes of any mine, factory or workshop situated in that area.

Where, in an industrial area, the petitioner was found in possession of glasses of motor head lights and some parts of wireless receiver.

Held that to bring the articles within the definition of 'industrial articles' within the meaning of S. 5, it was for the prosecution to prove that the things had been produced or manufactured in the industrial area or that they were being used for the purposes of mine, factory or workshop in that area. In the absence of such proof it was not beyond the bounds of possibility that the articles in question were in use in some private car or house. *(Agarwala Ag. C. J.)* AJIT RANKAN BHATTACHARYA v. THE KING
A I R 1949 Pat 40=49 Cr L J 596.

BIHAR CUTCHERRY RULES (1949)

—R. 58.

——Appeal by private complainant against acquittal — *See* Bihar Punchayat Raj Act (7 of 1947), S. 67
1953 B L J R 124.

BIHAR ESSENTIAL ARTICLES CONTROL (TEMPORARY POWERS), ORDINANCE, 1946.

—S. 5.

——Bihar Cattle, Fowl, Eggs, Sheep and Goats (Movement) Control Order (1943), Cl. 3 — Order under, is not kept alive by Bihar Essential Articles Control (Temporary Powers) Ordinance, 1946— Export of cattle from Bihar to Bengal in January 1947, held no offence :—*See* Bihar Cattle, Fowl, Eggs, Sheep and Goats (Movement) Control Order (1943), Cl. 3 **A I R 1948 Pat 297= 49 Cr L J 414.**

BIHAR ESSENTIAL FOODGRAINS (POSSESSION AND STORAGE) ORDER (1943) —S. 3.

——*Defence of India Rules, 1939, R. 81 (4)— Conviction for contravention of Cl. 3 — Premises must be proved to be in occupation of accused.*

No conviction can be had under Defence of India Rules, R. 81 (4) for contravention of Cl. 3, Bihar Essential Foodgrains (Possession and Storage) Order, 1943, if the accused who is found to have been engaged in getting and storing an essential foodgrain in a room, is not alleged and proved to be the occupier of the room. It must be shown either that the accused had kept or stored any essential foodgrain in any premises occupied by him or had permitted any other person to do so in any such premises. *(Varma and Shearer JJ.)* CHHOTAN LAL v. EMPEROR **A I R 1946 Pat 20= 24 Pat 331=224 I C 420=47 Cr L J 622.**

——*Person found taking carts loaded with more than 25 maunds of rice — Offence does not fall under Section 3.*

What the Bihar Essential Foodgrains (Possession and Storage) Order, 1943, aims at is what is popularly known as "hoarding" by persons who are neither producers nor licensed dealers. It is not an offence under S. 3, for a person to be in possession of more than 25 maunds of rice loaded in bullock carts while he is taking them to a neighbouring district. The words "in any premises occupied by him" in S. 3 qualify the word "keep" as well as the word "store." *(Shearer J.)* DINANATH BANIA v. EMPEROR **A I R 1946 Pat 130= 222 I C 359=47 Cr L J 436.**

BIHAR EXCISE (AMENDMENT) ACT (VIII OF 1940).

See also BIHAR AND ORISSA EXCISE ACT.

——*If* ultra vires.

The Bihar Excise (Amendment) Act of 1940 was *ultra vires* the Provincial Government in so far as it dealt with dangerous drugs. The result, therefore, is that the Act II of 1915 (Bihar and Orissa Excise Act) remained unaffected by it till the Bihar Excise Supplementary Act of 1941. *(Agarwala J.)* SHIVA PRASAD MARWARI v. EMPEROR **A I R 1943 Pat 358=24 P L T 91= 10 B R 297=16 R P 207=210 I C 563= 45 Cr L J 281.**

——*Object.*

There is no reason in theory or principle why an Excise Act should not have a double object, the benefit of the revenue and the improvement of public health or morals by a greater control of the liquor trade. It cannot be said that the Legislature in enacting Bihar Excise Act, 1915, did not intend to deal with the question of prohibition in the excise

BIHAR EXCISE (AMENDMENT) ACT (VIII of 1940)

legislation. On the other hand, the language of the Act leads to a different inference altogether. *(Gwyer C. J., Varadachariar and Zafrulla Khan JJ.)* BHOLA PRASAD v. KING-EMPEROR **A I R 1942 F C 17=44 P L R 261= 46 C W N F C 32=1942 O W N 411= (1942) 2 M L J 6=23 P L T 253= 21 Pat 587=ILR (1942) Kar (FC) 21= 8 B R 555=1942 M W N 378= 14 R F C 19=199 I C 322 = 43 Cr L J 481 (FC).**

——*Powers of Provincial Legislature.*

A power to legislate "with respect to intoxicating liquors" could not well be expressed in wider terms, than those in Entry No. 31, of Provincial Legislative List and would, unless the meaning of the words used is restricted or controlled by the context or by other provisions in the Act, undoubtedly include the power to prohibit intoxicating liquors throughout the Province or in any specified part of the Province. *(Gwyer C. J., Varadachariar and Zafrulla Khan JJ.)* BHOLA PRASAD v. KING-EMPEROR **A I R 1942 F C 17= 44 P L R 261=46 C W N F C 32= 1942 O W N 411=(1942) 2 M L J 6= 21 Pat 587=23 P L T 253= I L R (1942) Kar F C 21=8 B R 555= 1942 M W N 378 = 14 R F C 19= 199 I C 322=43 Cr L J 481 (FC).**

——*Validity.*

The Bihar Excise (Amendment) Act, 1940, which amended S. 19 (4) of the Bihar and Orissa Excise Act, 1915, was a valid Act and was within the powers conferred upon the Provincial Legislature by S. 100 (3) of the Constitution Act and Entry No. 31 of the Provincial Legislative List. *(Gwayer C. J., Varadachariar and Zafrulla Khan JJ.)* BHOLA PRASAD v. KING-EMPEROR **A I R 1942 F C 17=44 P L R 261= 46 C W N F C 32=1942 O W N 411= (1942) 2 M L J 6=21 Pat 587= 23 P L T 253=ILR (1942) Kar (FC) 21= 8 B R 555=1942 M W N 378=14 R F C 19= 199 I C 322=43 Cr L J 481 (FC).**

BIHAR FOODGRAINS CONTROL ORDER (1947)

—Cl. 3.

——*Cl. 3 (b)* — "Premises" does not include country-boat. *(Imam and Jamuar JJ.)* PROVINCE OF BIHAR v. THAKKAN MANJHI **A I R 1950 Pat 181=28 Pat 883= 51 Cr L J 681.**

BIHAR FOODGRAINS CONTROL ORDER (1948)

——Contravention of S. 3 (a) on 16-1-1950 in Chota Nagpur—Conviction for, is not illegal—*See* Essential Supplies (Temporary Powers) Act (1946), S. 7. **A I R 1953 Pat 55= 1953 Cr L J 510.**

—Cl. 3.

——Violation of — Accused having no guilty knowledge — No liability to conviction under S. 7, Essential Supplies (Temp. Powers) Act. — *See* Essential Supplies (Temporary Powers) Act (1946), S. 7 **A I R 1953 Pat 137= 1953 Cr L J 923.**

BIHAR FOODGRAINS CONTROL ORDER (1948), Cl. 3

——*S. 3 (a) — It must be shown that wholesale purchase by retail dealer was in one day — Production as cash memo is not enough when defence is that it was a consolidated memo for purchases made on various dates — (Essential Supplies (Temporary Powers) Act (1946), S. 7).*

For Conviction under S. 3 (a), Bihar Food Grains Control Order, 1948, it must be shown that the accused (a retailer) purchased 25 or more maunds of foodgrains without a licence in a day. Mere production of a cash memo, showing the purchase of 62 maunds of rice, does not show that the grains were purchased at one time, when the defence is that the cash memo was a consolidated memo for purchases made on various dates. The prosecution must show that the purchase beyond the prohibited quantity was made in one day, *(Jamuar and Khaleel Ahmad JJ.)* STATE OF BIHAR v. GANAURI SAO

A I R 1953 Pat 55=1953 Cr L J 510.

BIHAR FOODGRAINS CONTROL ORDER (1950)

—Cl. 3.

——*Viresness — (Essential Supplies (Temporary Powers) Act (1946), S. 3).*

In S. 3 of the Essential Supplies (Temporary Powers) Act, there is no limitation prescribed as to the maximum amount of foodgrains which one can keep, sell or store without a licence. The State Government under the provisions of the Act was, therefore, a free agent and entitled in law to fix the maximum quantity of foodgrains which a person might keep, sell or store without obtaining a licence, under the Bihar Foodgrains Control Order, 1950. Hence the Control Order is in furtherance of the intention deducible from the provisions of S. 3 of the Act and is not *ultra vires. (S. K. Das and Sinha JJ.)* RAM PRASAD SAH v. STATE

A I R 1953 Pat 378=1953 B L J R 345=
1953 Cr L J 1792.

——*Object and Scope—(Essential Supplies (Temporary Powers) Act (1946), Ss. 3, 4).*

The intention of Cl. 3 of the Order was certainly to maintain the supply of foodgrains for securing equitable distribution at fair price and it cannot be said that by enacting clause 3 the State Government has gone beyond the powers given to it under S. 3 read with S. 4 of the Essential Supplies (Temporary Powers) Act. *(S. K. Das and Sinha JJ.)* RAM PRASAD SAH v. STATE

A I R 1953 Pat 378=1953 B L J R 345=
1953 Cr L J 1792.

BIHAR KEROSENE OIL CONTROL ORDER, (1948)

—Cl. 11.

——Contravention of — Conviction and sentence under S. 7, Essential Supplies Act is valid — *See* Essential Supplies (Temporary Powers) Act (XXIV of 1946), S. 7.

A I R 1950 Pat 200=51 Cr L J 808.

BIHAR MAINTENANCE OF PUBLIC ORDER ACT (V of 1947)

——*No assent of Governor-General was required —No assent is required to amendment, though assent was taken to the original Act.*

Meredith and Shearer JJ.—Bihar Maintenance of Public Order Act, 1947, is substantially concerned with "preventive detention for reasons connected with the maintenance of public order," which falls directly within item 1 of List II of the 7th Schedule of the Government of India, Act, 1935. It is, therefore, purely a matter for the Provincial Government. Nor does any question of repugnancy arise : A I R 1949 Cal 1 (FB), *Rel. on.*

The Act therefore did not require the assent of Governor-General. No assent therefore is required to any amendments made to the Act, even if the original Act had received the assent. *(Meredith, Shearer and Imam JJ.)* ISHWARI SINGH v. PROVINCE OF BIHAR

A I R 1949 Pat 369=30 P L T 257=
28 Pat 476=50 Cr L J 730 (FB).

—Preamble.

——*Act is not* ultra vires *the Provincial Legislature.*

The true nature and character of the Bihar Maintenance of Public Order Act brings it within item I of the Provincial Legislative List.

The expression "public order" in item I of the Provincial Legislative List must, in its context, be taken in a comprehensive sense so as to include public safety in its relation to the maintenance of public order.

If the scope and purpose of the Act as a whole is considered then the conclusion at which one is bound to reach is that in its true nature and character it deals with the maintenance of public order involving, no doubt considerations of public safety as well. In the context in which the expression "public safety" occurs in the preamble and in section 2 (1) of the Act it is either synonymous with public order or is comprehended by the more general term "public order" and the use of the word 'and' in the preamble is not disjunctive. There is no encroachment on item 1 of the Federal Legislative List which deals with, *inter alia*, preventive detention in British India for reasons of State connected with defence, external affairs, etc. That item may also have an aspect of public safety, but of a different character altogether, being connected with defence, external affairs, or the discharge of the functions of the Crown in relation to the Indian States. *Case law referred. (Meredith, Sinha and Dass JJ.)* NEK MOHAMMAD v. THE PROVINCE OF BIHAR

A I R 1949 Pat 1=50 Cr L J 44 (FB).

—S. 1.

——*S. 1 (3) proviso — Power to extend Act with modification amounts to delegated legislation and is* ultra vires*—Amending Act V [5] of 1949 could not effectively amend Act V [5] of 1947. A I R 1949 Pat 369=50 Cr L J 730,* REVERSED.

(Per *Majority; Fazl Ali J. Contra*).—The proviso to S. 1 (3) is framed in the affirmative form, stating that it shall be extended for a period of one year by the Provincial Government on a resolution passed by the two Chambers. On a true construction of the proviso this power of legislation to extend the life of the Act beyond the first year is not left in the legislative body established by the Government of India Act for the Province, but in a different body. For the extension of the Act beyond the first year, the consent of the Governor of the Province is not required under the proviso. The proviso comes within the ambit of delegated legislation and is thus an improper

BIHAR MAINTENANCE OF PUBLIC ORDER ACT (V of 1947), S. 1

piece of legislation and void. The Bihar Maintenance of Public Order Act died natural death on 16th March 1948 and had not been validly re-enacted. Act V [5] of 1949, enacted an amendment in the original Act of 1947 which had died a natural death on 16th March 1948. Unless that Act was revived, no amendment made in it could be of any effect. The only apt manner of reviving the expired Act was by enacting a fresh statute or by enacting a statute expressly saying that that Act is herewith revived. When the Bihar Amending Act V [5] of 1949 was passed there was no Bihar Maintenance of Public Order Act, 1947, in operation in the Province which could be amended : 5 I A 178, (1882) 7 A C 829 and A I R 1945 P C 48, *Disting*; A I R 1949 Pat 369=50 Cr L J 730, REVERSED. *(Kania C. J., Patanjali Sastri, Mahajan, B. K. Mukherjea and Fazl Ali JJ.)* JATENDRA NATH GUPTA v. PROVINCE OF BIHAR

A I R 1949 F C 175=1949-2 M L J 356=53 C W N (FR) 91=1949 F L J 225=1949 F C R 595=30 P L T 453=28 Pat 703=50 Cr L J 897 (FC).

——*S. 1 (3) Proviso* — Application of proviso to S. 1 (3) to Chota Nagpur was unconstitutional. *See* Government of India Act (1935) (26 Geo V & 1 Edw. VIII c. 2.) S. 92 (1).

A I R 1949 F C 175=50 Cr L J 897 (FC).

——Extension of the Act to Chota Nagpur Division. *See* Govt. of India Act (1935), S. 59 (2).

A I R 1949 Pat 369=50 Cr L J 730 (FB).

——Extension of Provincial Act to partially excluded area. *See* Govt. of India Act (1935), S. 92.

A I R 1949 Pat 369=50 Cr L J 730 (FB).

——Act is within competence of Provincial Legislature and is not *ultra vires* (Agarwala C. J. in referring judgment) A I R 1949 Pat 1, *Rel. on. (Meredith, Shearer and Imam JJ.)* ISHWARI SINGH v. PROVINCE OF BIHAR

A I R 1949 Pat 369=30 P L T 257=28 Pat 476=50 Cr L J 730 (FB).

[Reversed in A I R 1949 F C 175 = 50 Cr L J 897 (FC)].

——*S. 1 (2) and (3)*—Act to be in force for period of one year — Upon resolution of Legislature Provincial Government having power to extend operation for a further period of one year— Whole Act applied to partially excluded area of Chotanagpur by Governor by notification under S. 92 (1), Government of India Act — Operation of Act extended for further period of one year by Provincial Government by notification under S. 1 (3), proviso — Extension of Act, including S. 1 (3), proviso to Chotanagpur, without modification, whether amounts to delegation of power of Legislature to further extend Act in area by resolution—Necessity of fresh notification under S. 92 (1). *(Meredith, Shearer and Imam JJ.)* ISHWARI SINGH v. PROVINCE OF BIHAR

AIR 1949 Pat 369=30 P L T 257=28 Pat 476=50 Cr L J 730 (FB).

——*S. 1 (3) — Act to be in force for one year — Power to Provincial Government to extend Act for further period of one year upon resolution of Legislature—Governor by notification dated 16th March 1947 under S. 92 (1), Government of India Act, extending Act to partially excluded area of Chotanagpur — Provincial Government extending, under powers given by Act, whole Act for further period of one year till 15th March 1949 — Held that by virtue of notification dated 16th March 1947 under S. 92 (1) the Act also extended for such further period of one year to Chotanagpur and that no further notification was necessary—Detention of persons in Chotanagpur under Act, in February 1949 held was legal.*

Under S. 2 (1), Government of India Act, the Governor of Bihar extended the operation of the Bihar Maintenance of Public Order Act, 1947, to Chotanagpur (partially excluded area) by notification dated 16th March 1947. The Act, by S. 1 (3), was to be in force in the Province of Bihar for a period of one year from the date of its commencement i. e., 15th March 1947. By a proviso to S. 1 (3), the Act, however, could be extended for a further period of one year, with modifications if necessary, by a notification by the Provincial Government, on a resolution by the Bihar Legislative Assembly and agreed to by Bihar Legislative Council. Such a notification, however, was issued on 11th of March 1949. No fresh notification, however, was issued by the Governor under S. 92 (1) keeping the Act in force in Chotanagpur after the 15th March 1948. Orders for the detention of the petitioners (in Chotanagpur) were made in February 1949. On the 7th March 1949, however, the Governor issued a notification under S. 92 (1) directing that "the Act shall apply and shall always be deemed to have applied to Chotanagpur Division with effect from the 16th March 1948." The validity of the detention was challenged on the ground that in the absence of any fresh notification the petitioners could not be detained and that the notification of the 7th March 1949 had no retrospective effect :

Held, (per Full Bench) that no fresh notification under S. 92 (1) was necessary after 16th March 1948 and that the issue of the notification dated 7th March 1949 was not necessary and the arrest and detention of persons after 16th March 1948 were not illegal. *(Meredith, Shearer and Imam JJ.)* ISHWARI SINGH v. PROVINCE OF BIHAR

AIR 1949 Pat 369=30 P L T 257=28 Pat 476=50 Cr L J 730 (FB).

[Reversed in A I R 1949 F C 175 = 50 Cr L J 897 (FC)].

——*S. 1 (3), proviso*— Act in force for one year— Power to Governor to extend it for further period of one year — Governor extending Act up to 15th March 1949 — Bihar Act V of 1949, by amending S. 1 of Act V of 1947, keeping the Act V of 1947 in force till the 31st of March 1950—Person arrested on 23rd February 1949 and detained — Detention is valid even after 15th of March 1949 — Order made would continue in force and be deemed to have been made under re-enacted provisions, by virtue of S. 27, Bihar and Orissa General Clauses Act (I [1] of 1947) — Detention being still under Act V [5] of 1947, there is no question of any fresh order under Bihar Act, V [5] of 1949— (Per *Full Bench) (Meredith, Shearer and Imam JJ.)* ISHWARI SINGH v. PROVINCE OF BIHAR

AIR 1949 Pat 369=30 P L T 257=28 Pat 476=50 Cr L J 730 (FB).

BIHAR MAINTENANCE OF PUBLIC ORDER ACT (V of 1947), S. 1

——*S. 1 (3) Proviso— Notification extending Act issued by Governor of Bihar instead of by Provincial Government—Extension not illegal.*

By virtue of S. 4A read with Ss. 3 (27a) and 3 (43a), General Clauses Act, 1897, the expression 'Provincial Government' used in the Bihar Act, V of 1947, means nothing more or less than the Governor of Bihar. Where therefore the notification continuing the latter Act was issued under S. 1 (3) Proviso in the name of the Governor, there is no illegality about it. *(Meredith, Sinha and Dass JJ.)* NEK MOHAMMAD v. THE PROVINCE OF BIHAR AIR 1949 Pat 1=50 Cr L J 44 (FB).

——*S. 1 (3) Proviso — Validity — Provision for extension of Act by notification by Provincial Government on a resolution of Provincial Legislature—Assent by Governor-General to Act — This is no delegation of power of assent but only instance of conditional assent—No question of delegated legislation—Provision not* ultra vires.

The Legislature has in its wisdom left it to the executive to decide whether a particular Act should come into force at a later date or should be continued for a further period. When the Legislature incorporates such a provision in the Act, the provision is as much law as any other provision of the Act. When the Governor-General gives his assent to the entire Act, he gives his assent to the particular provision in question as well. No question of delegation arises in such case. It must also be remembered that the Governor-General gives his assent to a Bill passed by the Provincial Legislature when it is reserved for his consideration by the Governor, acting in accordance with the provisions of S. 75, Government of India Act. In giving his assent the Governor-General does not act as a delegate, and there is no question of the application of the principle *delegatus non potest delegare.*

In this view, when the Governor-General gave his assent to the Bihar Act, 5 of 1947, he gave his assent to the proviso to sub-s. (3) of S. 1 of the Act, which says that the Provincial Government may, by notification, on a resolution passed by the Bihar Legislative Assembly and agreed to by the Bihar Legislative Council, direct that the Act shall remain in force for a further period of one year. It cannot be suggested that the Governor-General has delegated his power of assent; on the contrary, he has exercised his power of assent. The utmost that can be said is that the assent is a conditional assent, the condition being that the Provincial Government can act only on a resolution passed by the Bihar Legislative Assembly and agreed to by the Bihar Legislative Council. Conditional assent of this kind is not unknown to legislative practice. A I R 1945 P C 48, Rel. on. *(Meredith, Sinha and Das JJ.)* NEK MOHAMMAD v. THE PROVINCE OF BIHAR AIR 1949 Pat 1=50 Cr L J 44 (FB).

—S. 2

——*S. 2 (1)—If the Act has, in fact, empowered executive to detain person on ground that he is habitual criminal, so much of it is* ultra vires.

Shearer J. — If the Act has empowered the executive to detain a man without trial on the ground that he is a habitual criminal, so much of the Act is *ultra vires* and void. Under Entry I, List 2, Sch. VII, Government of India Act, the Provincial Legislature can enact a law on the subject of preventive detention "for reasons connected with the maintenance of public order" and for no other reasons whatever. An Act giving power to order preventive detention of habitual criminals would be amending or supplementing the criminal law (Chap. 8 of Criminal P. C.). If it was thought by the Provincial Legislature to give such a power to the executive, it should have first obtained from the Governor-General an order under S. 104, Government of India Act, assigning this subject which is not one of the subjects mentioned in the Lists in the Seventh Schedule, which lists are intended to be exhaustive, to the Provincial Legislature. No such order having been obtained, the Act in so far as it empowers detention of persons on grounds of their being habitual criminals, is *ultra vires* the Provincial Legislature. *(Shearer and Reuben JJ.)* LALU GOPE v. THE KING A I R 1949 Pat 299=50 Cr L J 575.

BIHAR MAINTENANCE OF PUBLIC ORDER ACT (V of 1947), S. 2

——*S. 2 (1)* — Scope — Act does not give power to detain person on ground that he is habitual criminal—Person convicted and suspected of committing thefts in running goods trains—He cannot be detained under Act on ground that his remaining at large would enable him to indulge in similar thefts — His act can neither be described as prejudicial to public safety and maintenance of public order. *(Shearer and Reuben JJ.)* LALU GOPE v. THE KING A I R 1949 Pat 299=50 Cr L J 575.

——*S. 2 (1)—Satisfaction of Provincial Government — Order stating that "whereas Governor is satisfied" — Order properly authenticated—Onus to show that Governor was not satisfied lies on him who asserts it.*

The term "Provincial Government" in Section 2 (1) means the Governor, and, it is the Governor himself who must be satisfied before action can be taken under the section. Where the order of detention states : "Whereas the Governor is satisfied", and the order is properly authenticated in the manner required by S. 59 of the Government of India Act, the onus of proving that the Governor was not satisfied lies on those, who assert it. Cr. Misc. No. 587 of 1948 decided on 6th January 1949, *Ref. (Meredith, Shearer and Imam JJ.)* ISHWARI SINGH v. PROVINCE OF BIHAR A I R 1949 Pat 369=30 P L T 257=28 Pat 476=50 Cr L J 730 (FB).

——*S. 2 (1) (a)* — Recital in duly authenticated order of detention—Recital will, in absence of any evidence as to its inaccuracy, be accepted by Court as establishing necessary condition for passing order of detention — Onus of showing bad faith is on detenu. *(Das and Narayan JJ.)* SIDDIQUE ALI v. PROVINCE OF BIHAR A I R 1949 Pat 241=28 Pat 23=50 Cr L J 510.

——*Ss. 2 (1) (a) and 4 — Fact that prejudicial act may have consequences or repercussions outside province of Bihar would not make detention order illegal.*

The consequences of a prejudicial act need not necessarily be confined to the Province of Bihar, and the fact that it may have repercussions or consequences outside the Province of Bihar does not necessarily oust the jurisdiction of the Provincial Government to pass an order under the Act, provided that the ground based on the prejudicial act has connection with or reference to the public

BIHAR MAINTENANCE OF PUBLIC ORDER ACT (V of 1947), S. 2

safety and maintenance of public order in the Province of Bihar. The Provincial Government cannot pass an order of detention under the Act on grounds which have only reference to or connection with the defence of India or the external affairs of India and which have no connection with the public safety and maintenance of public order in Bihar : A. I. R 1948 P. C. 118, *Rel. on. (Das and Narayan JJ.)* SIDDIQUE ALI v. PROVINCE OF BIHAR **A I R 1949 Pat 241=28 Pat 23=50 Cr L J 510.**

——*S. 2 (1)—Inference from past acts of person is not shut out by Act.*

Section 2 (1) is meant for preventive detention. An inference from past acts of a person cannot be said to be shut out by the provisions of the Act. Cri. Misc. No. 107 and others of 1948, Ref. *(Das and Narayan JJ.)* SIDDIQUE ALI v. PROVINCE OF BIHAR **A I R 1949 Pat 241=28 Pat 23=50 Cr L J 510.**

——*S. 2 (1) — Detention orders under — Act is emergency legislation — Rules of interpretation applicable to detention orders under emergency legislation must apply — Order stating that Governor was satisfied as to necessity of detention — Court cannot question order unless authority concerned has not acted* bona fide.

The Bihar Act V of 1947 is of a temporary nature and considered in the light of various provisions, there can be no doubt that it is a piece of emergency legislation. Hence the principles of interpretation laid down in 1942 A C 206 and 1942 A C 284 will apply to orders of detention under the Act : A I R 1948 Pat 135 (FB), *Rel. on.*

Applying those principles, where the orders of detention under S. 2 (1), state that the Governor was satisfied that it was necessary to make an order of detention, the Court must accept the position that he was so satisfied, unless there are grounds for holding that he was not acting in good faith or that the order was a sham order or in excess of powers given to him under the Act : 1942 A C 206 ; A I R 1944 Pat 354 ; (1942) 1 K B 87 ; A I R 1945 P C 156, *Rel. on. (Meredith, Sinha and Das JJ.)* NEK MOHAMMAD v. THE PROVINCE OF BIHAR **A I R 1949 Pat 1 = 50 Cr L J 44 (FB).**

—S. 4.

——*Supplying of grounds of detention to detenu as soon as may be — Whether there was delay depends on facts of case.*

Per *Agarwala C. J. (in referring judgment)* — Failure on the part of the authority making the order under S. 2 (1) (a) to furnish grounds of detention in order to enable the detenu to make a representation under S. 4 renders the continued detention of the detenu unlawful. Section 4 does not provide any fixed period within which the grounds of detention must be served on the detenu, but requires that they should be served as soon as may be after the order of detention is made. The length of time which elapses between the order of detention and service of the grounds of detention must necessarily vary according to the circumstances of each case. *(Meredith, Shearer and Imam JJ.)* ISHWARI SINGH v. PROVINCE OF BIHAR

A I R 1949 Pat 369 = 30 P L T 257 = 28 Pat 476 = 50 Cr L J 730 (FB).

BIHAR MAINTENANCE OF PUBLIC ORDER ACT (V of 1947), S. 4

——*Furnishing of grounds and particulars— They must be sufficient to enable detenu to make representation against detention — Lawyer's association with Communist party may be in professional capacity — Particulars should indicate nature of association and assistance rendered by lawyer detenu to communist party.*

The particulars furnished to the detenu must be such as to enable him to make an effective representation against his detention and vague grounds of detention are insufficient compliance with requirements of S. 4. Where the detenu is a practising lawyer and the allegations against him are that he is closely associated with the "Revolted Group" of the Revolutionary Communist party, which is committed to the sabotaging of communications and vital installations and to spreading disaffection among industrial workers, harassing the police and murdering military and police officers the allegations are not sufficient to enable him to make representation against his detention. A party or branch of a party which has such aims may nevertheless consult a lawyer, and the latter may be called upon to give legal advice when so consulted, even though he does not share the aims of his client. Merely alleging that the lawyer has been secretly assisting its subversive activities, without further particulars of what assistance was being rendered, does not carry the matter any further. (Other allegations against this detenu were held to be equally insufficient.) *(Meredith, Shearer and Imam JJ.)* ISHWARI SINGH v. PROVINCE OF BIHAR **A I R 1949 Pat 369 = 30 P L T 257= 28 Pat 476 = 50 Cr L J 730 (FB).**

——Grounds of detention order must have reference to public safety and maintenance of public order in Province of Bihar — Fact that such prejudicial act may have consequences outside Province of Bihar would not make detention order illegal—*See also* ibid, Ss. 2 (1) (a) and 4 : **A I R 1949 Pat 241 = 50 Cr L J 510.**

— Order containing grounds of detention signed by Additional Under-Secretary — "Additional Under Secretary" not included in R. 13 of Rules of Executive Business made under S. 59 (2), Government of India Act, 1935 — Order is still valid. Cr. Revn. No. 365 of 1948 and Government Appeal No. 7 of 1948, *Disting (Das and Narayan JJ.)* SIDDIQUE ALI v. PROVINCE OF BIHAR **A I R 1949 Pat 241 = 28 Pat 23 = 50 Cr L J 510.**

——*Vague ground.*

Merely stating in the grounds for detention that the detenu was responsible for strikes in some collieries without mentioning whether they were legal or illegal is not a ground of such precision or adequacy as to enable the detenu to make a representation against the order of detention.

Where the Deputy Commissioner had stated in his grounds that the detenu had attempted to participate in strikes at some collieries, whereas in the grounds supplied by the Provincial Government it was stated that he was responsible for the strikes, the conflict considerably detracts from the force and validity of the ground.

Merely stating that the detenu is a trusted lieutenant of a communist leader or that he is the link between certain communists or that his activities are suspicious is not a ground with such

BIHAR MAINTENANCE OF PUBLIC ORDER ACT (V of 1947), S. 4

particulars as would enable the detenu to make an effective representation against the order of detention.

The Courts must judge the case against a detenu on the grounds disclosed and not on those not disclosed. *(Das and Narayan JJ.)* ARUN KUMAR SINHA v. PROVINCE OF BIHAR,

AIR 1949 Pat 236=50 Cr L J 497.

——*Grounds required to be furnished to detenu— Particulars supplied must be such as would enable detenu to make representation — Vague and general assertions cannot take place of particulars — Statement in grounds furnished that detenu was member of recently declared unlawful organization without reference to nature of activity in which he was engaged — No sufficient compliance with S. 4.*

Section 4 is clearly meant as a safeguard against arbitrary detention by the executive, and it should be the duty of the Court to see that this safeguard is not whittled away.

Under S. 4 the authority passing the order of detention "shall" communicate the grounds but it need not disclose facts which it considers it would be against the public interest to disclose.

The facts may be so intertwined with the grounds that the Provincial Government may be in a position to say that the grounds cannot be disclosed without disclosing the facts.

But the section makes a distinction between 'grounds' and 'particulars', in spite of the use of the word 'other' before 'particulars'. The authority making the order is given a discretion to give such particulars as are in the opinion of that authority sufficient to enable the detenu to make a representation against the order of detention. The discretion, however, is not to be exercised capriciously, and if no particulars are given or particulars are given in such a way as to make it impossible for the detenu to make a representation against the order, then there is a failure to comply with the mandatory provisions of the section and the detenu is deprived of, to use the words of the section, "the earliest practical opportunity" of making a representation.

It may not be feasible in all cases to mention the particulars in the same way as they are mentioned in a charge. But that does not mean that vague and general assertions can take the place of particulars. The particulars must be such as would enable the detenu to make a representation; otherwise the very purpose of giving particulars is defeated.

A statement in the ground furnished under S. 4 that the detenu is a member of an organization or association which has been recently declared unlawful, without any reference to the nature of the activity in which he is or was engaged and without any particulars of that activity, is not sufficient compliance with the mandatory provisions of S. 4.

A statement to the effect that the activity was underground and secret is general and vague and means nothing, unless the nature of the activity is indicated and some particulars at least are given. Secret activity does not necessarily mean that it is an activity subversive of law and order.

Section 4 does not contemplate that the persons detained should gather the grounds from some documents of which they may have no knowledge or to which they may have no access in jail.

BIHAR MAINTENANCE OF PUBLIC ORDER ACT (V of 1947), S. 4

Even where the detenu knew the reasons which led the Provincial Government to declare the association unlawful, it does, by no means, follow that he indulged in activities which were subversive of public safety and the maintenance of public order, either before or after the organization was declared unlawful. The crucial point is the nature of the activity in which the person detained has been engaged, and in order to enable the detained person to make an effective representation the Provincial Government must indicate the nature of that activity and give particulars thereof; *Case law discussed. (Meredith, Sinha and Das JJ.)* NEK MOHAMMAD v. THE PROVINCE OF BIHAR

AIR 1949 Pat 1=50 Cr L J 44 (FB).

——*Supplying ground of detention "as soon as may be", means within reasonable time — Order under S. 2 (1) (a) served on 17th February 1948 — Grounds communicated on 13th March 1948— Period held not unreasonable.*

No specific period is laid down within which grounds for detention have to be communicated to a detenu under S. 4. The phrase "as soon as may be" used in S. 4 means as early as is reasonable in the circumstances of the particular case. What is reasonable in one set of circumstances may be quite unreasonable in another.

The date of the Provincial Government's order under S. 2 (1) (a) was 17th February 1948, and the grounds for the detention were served on the detenu on 13th March 1948, that is to say, within a month from the date of the order :

Held that the period could not be described as unreasonable : A I R 1948 Pat. 135 (FB), *Rel. on. (Imam and Narain JJ.)* BADRI PRASAD v. EMPEROR

A I R 1948 Pat 401= 49 Cr L J 683.

——*"As soon as may be", meaning of — Onus — Which is reasonable time.*

The phrase "as soon as may be" as used in S. 4 of the Act means as early as is reasonable in the circumstances of the particular case. It should ordinarily be possible to communicate the grounds to a detenu within a comparatively short period of time and after lapse of such a period the onus will shift to the authority in question to show that the grounds were served as soon as was reasonable. No particular period can be indicated as being sufficient to shift the onus of proof. The circumstances will obviously differ to a substantial extent. What is reasonable in one set of circumstances may be quite unreasonable in another.

Where the order under S. 2 (1) (a) of the Act was issued against a person on 16th April 1947, the person was arrested thereunder on 9th May 1947, but the grounds of his detention were not communicated to him until 24th July 1947 :

Held that the authority concerned did not comply with the provisions of S. 4 of the Act. *(Agarwala Ag. C. J., Reuben and Bennett JJ.)* MURAT PATWA v. PROVINCE OF BIHAR

A I R 1948 Pat 135=29 P L T 295= 1949 P W N 11=26 Pat 628= 49 Cr L J 132 (FB).

——*Section is mandatory — Non-compliance with —Effect.*

The provisions of S. 4 are mandatory and absolute.

BIHAR MAINTENANCE OF PUBLIC ORDER ACT (V of 1947), S. 4

The Act is not primarily concerned with orders but with the preventive detention of persons whose detention the Provincial Government is satisfied is necessary with a view to prevent them from acting in any manner prejudicial to the public safety and maintenance of public order. The order made under S. 2 (1) (a) is mere machinery through which the object of the Act, namely, the detention of the person concerned, is carried out and it is that detention which becomes illegal if the grounds for his detention are not communicated to the detenu within a reasonable time as provided in S. 4. It is unnecessary to infer any intention on the part of the Legislature that the order issued under S. 2 (1) (a) should be avoided *ab initio*. *(Agarwala Ag. C. J., Reuben und Bennett JJ.)* MURAT PATWA v. PROVINCE OF BIHAR,
A I R 1948 Pat 135 (FB)=29 P L T 295=
1949 P W N 11=26 Pat 628=
49 Cr L J 132.

BIHAR MAINTENANCE OF PUBLIC ORDER ACT (III of 1950)

——Validity of — Constitution of India, Arts. 13 and 22.

The entire Bihar Act 3 of 1950 has become void from the midnight of 25th Jan. 1950, as the detention provisions are inconsistent with Art. 22 of the Constitution. *(Meredith C. J. and Sarjoo Prosad J.)* BRAHMESHWAR PRASAD v. THE STATE OF BIHAR, A IR 1950 Pat 265=
29 Pat 335=51 Cr L J 1081.

—S. 2.

——Validity — *See* Constitution of India, Art. 19 (1). A I R 1952 Pat 376=1952 Cr L J 1361.

——*S. 2 (1) (b)—Constitution of India, Arts. 13 (1), 19 (1) (d) and (5) — Validity of S. 2 (1) (b) of Bihar Act (III of 1950).*

(Per *Majority* ; *Shearer J.* Contra) — Section 2 (1) (b), Bihar Maintenance of Public Order Act, 1949 (Bihar Act III [3] of 1950), in so far as it operates to restrict freedom of movement of a free citizen, has become void by reason of Art. 13 (1), read with Art. 19 of the Constitution of India, which came into force on 26th January 1950. *(Meredith C. J., Shearer and Das JJ.)* BRAJNANDAN SHARMA v. STATE OF BIHAR
A I R 1950 Pat 322=29 Pat 461=
52 Cr L J 610 (FB).

——*S. 2 (1) (b) — Constitution of India, Art. 19 (5) — Reasonable restrictions — Courts excluded from applying objective test of reasonableness — S. 2 (1) (b) is not reasonable.*

A law to satisfy the criterion imposed by Art. 19 (5) must be so framed as to leave it open to the Courts to apply the objective test of reasonableness to its operation.

The power of restriction contained in S. 2 (1) (b) of the Bihar Act III [3] of 1950 is based, not on any reasonable grounds, but upon the satisfaction of some individual and the provision is in such terms that it is not open to the Court to examine the reasonableness or otherwise of orders passed. There can be no presumption that an executive official will always act reasonably. There may be a presumption that he will act *bona fide*; but that is a different thing. The test is not what is actually done under the law, but what the law enables to be done. If the law enables orders to be passed which are unreasonable, and yet are consistent with its terms, then that cannot be called a law operating to impose only reasonable restrictions. *(Meredith C. J., Shearer and Das JJ.)* BRAJANANDAN SHARMA v. STATE OF BIHAR
A I R 1950 Pat 322=29 Pat 461=
52 Cr L J 610 (FB)

BIHAR MAINTENANCE OF PUBLIC ORDER ACT (III of 1950), S. 2

——*S. 2 (1) (a) — Detention under — Validity— Constitution of India, Arts. 21 and 226 — Criminal P. C. (1898), S. 491.*

The provisions of the Bihar Act having become void on the coming into force of the Constitution the detention of a person under S. 2 (1) (a) of that Act cannot legally continue after 26th January 1950 by virtue of Art. 21 of the Constitution and the detenu is entitled to be released. *(Meredith C. J. and Sarjoo Prosad J.)* BRAHMESHWAR PRASAD v. THE STATE OF BIHAR
A I R 1950 Pat 265=29 Pat 335=
51 Cr L J 1081.

—S. 5.

——*S. 5 (1) Proviso*—Proviso being repugnant to Art. 22 (5) of the Constitution has become void from 26th January 1950—Proviso being severable from rest of the section it can be eliminated from consideration in examining legality of detention—(Obiter). *(Meredith C. J. and Sarjoo Prosad J.)* BRAHMESHWAR PRASAD v. THE STATE OF BIHAR A I R 1950 Pat 265=29 Pat 335=
51 Cr L J 1081.

——*S. 5 (6)* — Sub-section (6) is designed to prevent Court from ascertaining if detention beyond three months is in accordance with report of Advisory Council — It is repugnant to Art. 22 (4) and as such void — It is however severable from rest of Act—(Obiter). *(Meredith C. J. and Sarjoo Prosad J.)* BRAHMESHWAR PRASAD v. THE STATE OF BIHAR A I R 1950 Pat 265=
29 Pat 335=51 Cr L J 1081.

——*Ss. 5, 26 — Reference to Advisory Council constituted under Bihar Maintenance of Public Order (No. 2) Ordinance of 1949.*

If a member of the Advisory Council constituted under the Ordinance of 1949 was not qualified to be a member under the Act, the Advisory Council on the operation of the Act, ipso facto stood dissolved: nevertheless the reference made to the then existing Council under the law as it was and the steps taken by the Advisory Council would be deemed to have been made under the Act. *(Das and Sarjoo Prosad JJ.)* SUNIRMAL DUTTA v. PROVINCE OF BIHAR A I R 1950 Pat 259=
29 Pat 293=51 Cr L J 1025.

—S. 9.

——"*Procession*", *ingredients of* — *(Words and Phrases—Procession).*

Some element of an organised march according to a system is necessary in order to constitute a procession. Where therefore a meeting was permitted to be held in the village, and it was being lawfully held, if a number of villagers came to the meeting, though shouting slogans and carrying musical instruments, that will not be a circumstance leading to the inference that they came in a procession. *(Jamuar and Ahmad JJ.)* JUNAS SURIN v. THE STATE A I R 1953 Pat 195=
31 Pat 845=1953 B L J R 165=
1953 Cr L J 1191.

BIHAR MAINTENANCE OF PUBLIC ORDER ACT (III of 1950), S. 9

——Restrictions as to public processions etc., imposed by order are not unreasonable — *See* Constitution of India, Art. 19 (1) (b), (3)

A I R 1951 Pat 242.

——Section is not ultra vires the State Legislature —*See* Bihar Maintenance of Public Order (No. 2) Ordinance (IV of 1949), S. 6

A I R 1951 Pat 242.

——*S. 26*—Reference to Advisory Council constituted under Bihar Maintenance of Public Order (No. 2) Ordinance of 1949—Member of Council not qualified to be member under the Act — Effect — *See* ibid, S. 5 A I R 1950 Pat 259= 51 Cr L J 1025.

BIHAR MAINTENANCE OF PUBLIC ORDER (NO. 2) ORDINANCE (IV of 1949)

——Amendment by Bihar Ordinance V of 1949 is valid—Governor can amend Ordinance by another Ordinance. *(Imam and Jamuar JJ.)* TABARAK KHAN v. PROVINCE OF BIHAR

A I R 1950 Pat 228=51 Cr L J 936.

——Validity of—Ordinance is entirely covered by items 1 & 2 of List II, Sch. 7, Government of India Act — Question of repugnancy under S. 107 does not arise — *See* Government of India Act, S. 107 A I R 1950 F C 59= 51 Cr L J 921 (FC).

——*Intra vires.*

The Ordinance deals in 'pith and substance' with item 1 in Sch. VII List II namely, public order and preventive detention for reasons connected with maintenance of public order, and is *intra vires* the Governor of Bihar.

Even assuming that Ss. 23 and 24 are invalid they are separable from the rest of the Ordinance which would still retain its original character and therefore would be valid. *(Ramaswami and Narayan JJ.)* BHUTNATH GHOSH v. PROVINCE OF BIHAR A I R 1950 Pat 35= 30 P L T 419=28 Pat 782=51 Cri L J 300.

——*Ordinance not ultra vires.*

The subject-matter of the impugned Ordinance (Bihar Ordinance IV [4] of 1949) falls clearly within items 1 and 2 of the Provincial Legislative List and therefore there was no necessity for the Governor to invoke any powers from the Concurrent Legislative List. It follows that the Ordinance cannot be held to be *ultra vires* for absence of instructions from the Governor-General. *(Ramaswami and Narayan JJ.)* BHUTNATH GHOSE v. PROVINCE OF BIHAR

A I R 1950 Pat 35=30 P L T 419= 28 Pat 782=51 Cri L J 300.

—S. 2.

——*S. 2 (1) — Detention under — Court is not entitled to examine adequacy of grounds on which Provincial Government ordered detention.*

Section 2 (1) uses the words "the Provincial Government if satisfied." There is a vital distinction between the word "satisfied" and the words "reasonable cause." In the former case unlimited discretion is given to the Provincial Government but in the latter the discretion is subject to an objective condition to the Government's power to detain, the existence of which would be cognizable in the Court of law. Thus where the Government is merely "to be satisfied" its certificate is enough; and where it has "reasonable cause to believe" then the test is subjective and not objective. Therefore, in the case of detention of a detenu under S. 2 (1), the Court is not entitled to apply the objective standard and to examine the adequacy of the grounds on which the Provincial Government have ordered detention of the detenu. LIVERSIDGE v. ANDERSON (1941) 3 All E R 338, *Rel. on*; A I R 1945 P C 156; A I R 1944 Pat 354; A I R 1945 Pat 44, *Ref. (Ramaswami and Narayan JJ.)* JAGDISH PRASAD PAL v. PROVINCE OF BIHAR A I R 1950 Pat 41= 28 Pat 800=51 Cr L J 327.

—S. 4.

——*S. 4 (1), Proviso*—Proviso is valid. *(Das and Sarjoo Prosad JJ.)* SUNIRMAL DUTTA v. PROVINCE OF BIHAR A I R 1950 Pat 259= 29 Pat 293=51 Cr L J 1025.

——*S. 4 (1)* — "As soon as may be" — Delay of 58 days held not such delay as to render detention illegal. *(Imam and Jamuar JJ.)* TABARAK KHAN v. PROVINCE OF BIHAR

A I R 1950 Pat 228=51 Cr L J 936.

——*S. 4 (1), Proviso* —Propriety of detention can be enquired into—It is within competence of legislature to curtail liberty of individual by valid legislation — Oidinance is intra vires— Proviso to S. 4 (1) before its amendment is valid and does not make sub-s. (1) ultra vires—Amendment of proviso by Bihar Ordinance VI [6] of 1949 does not render Ordinance IV [4] of 1949 ultra vires. *(Imam and Jamuar JJ.)* TABARAK KHAN v. PROVINCE OF BIHAR A I R 1950 Pat 228=51 Cr L J 936.

——*S. 4 (1)* — Government of India Act (1935), Sch. 7, List II, item (1)—Preventive and arbitrary detention — Distinction pointed out — Legislation coming within preventive detention — Policy or reasonableness cannot be criticised by Courts : 53 C W N 545, Ref., A I R (35) 1948 Pat 135, *Disting. (Kania C. J. Fazal Ali. Patanjali Sastri, Mahajan and B. K. Mukherjea JJ.)*, LAKHI NARAYAN DAS v. PROVINCE OF BIHAR

AIR 1950 F C 59=1950 M W N Cr 46 (2)= 1950 S C J 32 = 1950 W N 222 (2) = 1949 F C R 693 = 85 C L J 205 = 1950-1 M L J 760=51 Cr L J 921 (FC).

—S. 6.

——*S. 6 — Bihar Maintenance of Public Order Act (III [3] of 1950), S. 9—Ultra vires.*

The words 'public safety' and 'public order' are interchangeable terms in the context in which they have been used and S. 6 of the Ordinance or S. 9 of the Act was not ultra vires the Provincial Legislature. *(Das and Sinha JJ.)*, INDERDEO SINGH v. THE STATE AIR 1951 Pat 242.

——*Holding of procession—What amounts to.*

Where certain persons, who were members of communist party, led a procession arranged by the communist party, carried communist flags and were most vociferous in the slogans which the processionists shouted it must be held that such persons held the procession. *(Das and Sinha JJ.)* INDERDEO SINGH v. THE STATE

A I R 1951 Pat 242.

——*S. 6 (2)—Public procession—What constitutes.*

Where a procession is taken out at a public place, it is going along a public thoroughfare to a meeting which is admittedly public, the purpose of procession is public i.e., a purpose of a party as opposed to a private purpose, and it is open to the

BIHAR MAINTENANCE OF PUBLIC ORDER (NO. 2) ORDINANCE (IV of 1949), S. 6

public or a class of the public to join in the procession, the reasonable inference from the proved facts is that the procession is public. *(Das and Sinha JJ.)* INDERDEO SINGH v. THE STATE
A I R 1951 Pat 242.

—S. 21.

——Validity—There is no repugnancy with S. 54, Criminal P. C. and as such S. 107, Government of India Act, does not apply: *See* Government of India Act (1935), S. 107.
A I R 1950 F C 59=51 Cr L J 921 (FC).

—S. 23.

——*Ss. 23 and 24* — Sections are not ultra vires. *(Imam and Jamuar JJ.)* TABARK KHAN v. PROVINCE OF BIHAR.
A I R 1950 Pat 228=51 Cr L J 936.

—S. 24.

——Section is not ultra vires. *(Imam and Jamuar JJ.)* TABARAK KHAN v. PROVINCE OF BIHAR.
A I R 1950 Pat 228=51 Cr L J 936.

BIHAR MAINTENANCE OF PUBLIC ORDER (NO. 2) (AMENDMENT) ORDINANCE (V of 1949)

——It has retrospective operation—Interpretation of statutes—Retrospective operation— Declaratory and amending statute. *(Imam and Jamuar JJ.)* TABARAK KHAN v. PROVINCE OF BIHAR,
A I R 1950 Pat 228=51 Cr L J 936.

BIHAR MAINTENANCE OF PUBLIC ORDER ORDINANCE (IV of 1946)

—S. 4.

——*Failure to submit report by Advisory Council —Bihar Maintenance of Public Order Act (III of 1950), S. 26.*

Where on a proper reference to the Advisory Council on 24-9-1949 no further information was called for by the Council and no report was submitted by it to the Provincial Government there are no proceedings pending which could be saved and continued under S. 26, Bihar Maintenance of Public Order Act (III [3] of 1950). There being a failure to comply with the mandatory provisions of sub-sections (4) and (5) of S. 4 of the Ordinance the detention is illegal. *(Das and Sarjoo Prosad JJ.)* SUNIRMAL DUTTA v. PROVINCE OF BIHAR.
A I R 1950 Pat 259=29 Pat 335=51 Cr L J 1025.

——Detention mala fide—Detention can be declared illegal. But it does not make Ordinance *ultra vires. (Imam and Jamuar JJ.)* TABARAK KHAN v. PROVINCE OF BIHAR. A I R 1950 Pat 228=51 Cr L J 936.

—S. 6.

——*S. 6 (1)—Notification prohibiting any meeting or procession without sanction is* ultra vires.

Section 6 enables the Provincial Government to prohibit public meetings and in sub-s. (2) enacts that a public meeting would be deemed to include a meeting which is open to any class or portion of the public whether held in a public or private place and whether admission thereto is restricted by the issue of tickets or otherwise. But the statute does not confer upon the Provincial Government the power to prohibit other meetings, for instance meetings to which the public or any class of them are not admitted.

BIHAR MAINTENANCE OF PUBLIC ORDER ORDINANCE (IV of 1946), S. 6

Where, therefore, a notification by the Provincial Government prohibits any meeting or procession without the sanction of the District Magistrate or Additional District Magistrate the Provincial Government acts in excess of the authority conferred upon them under S. 6 (1) of the Ordinance and the notification is *ultra vires* and no offence is committed by violating it. *(Manohar Lall and Ramaswami JJ.)* RAMKHELAWAN PODDAR v. KING A I R 1951 Pat 418=30 P L T 411=28 Pat 854=52 Cr L J 182.

BIHAR MAINTENANCE OF PUBLIC ORDER ORDINANCE, 1949 (II of 1949)

——*This Ordinance is* ultra vires *and invalid.*

Bihar Maintenance of Public Order Ordinance, 1949 (No. II of 1949) was promulgated on 3rd June 1949 when the Bihar Provincial Legislatures were in session. As the Governor in thus promulgating the Ordinance acted beyond the authority conferred upon him by S. 88 of the Government of India Act, 1935, the said Ordinance is *ultra vires* and invalid. *(Ramaswami and Narayan JJ.)* BIDYA CHAUDHARY v. PROVINCE OF BIHAR A I R 1950 Pat 19=28 Pat 775=51 Cr L J 256.

—S. 6.

——*S. 6 — Bihar Maintenance of Public Order Act (III of 1950), S. 9*—Ultra vires.

The words 'public safety' and 'public order' are interchangeable terms in the context in which they have been used and S. 6 of the Ordinance or S. 9 of the Act was not *ultra vires* the Provincial Legislature. *(Das and Sinha JJ.)* INDERDEO SINGH v. THE STATE A I R 1951 Pat 242.

——*Holding of procession — What amounts to.*

Where certain persons, who were members of communist party, led a procession arranged by the communist party, carried communist flags and were most vociferous in the slogans which the processionists shouted it must be held that such persons held the procession. *(Das and Sinha JJ.)* INDERDEO SINGH v. THE STATE
A I R 1951 Pat 242.

——*S. 6 (2)—Public procession—What constitutes.*

Where a procession is taken out at a public place, it is going along a public thoroughfare to a meeting which is admittedly public, the purpose of procession is public i. e., a purpose of a party as opposed to a private purpose, and it is open to the public or a class of the public to join in the procession, the reasonable inference from the proved facts is that the procession is public. *(Das and Sinha JJ.)* INDERDEO SINGH v. THE STATE
A I R 1951 Pat 242.

BIHAR MOTOR VEHICLES RULES (1940) —R. 4.

——*R. 4 (b) — Goods truck — Contravention of R. 4 (b) — (Motor Vehicles Act (1939), S. 2 (8) and (25)).*

A goods truck is not a public service vehicle but a "goods vehicle" as defined in S. 2 (8) of the Act, and as such there is no contravention of R. 4 (b) in driving a goods truck without having the licence counter-signed by the Regional Transport Authority within the province. *(Sarjoo Prosad J.)* CHOUDHARY v. STATE A I R 1953 Pat 130=1953 Cr L J 914.

BIHAR MUNICIPAL ELECTION RULES (1937)

—R. 13.

——*R. 13 (1) — Chairman, if must make formal appointment in writing.*

Rule 13 (1) of the Bihar Municipal Election Rules, 1937, does not require the Chairman to make the appointment in writing. The rule is not intended to deal with the manner of appointment at all, and only lays down which authority is to appoint a person to prepare the rolls. *(Dhavle J.)* BRIJBEHARI v. EMPEROR

A I R 1941 Pat 539=22 P L T 443=7 B R 690=13 R P 657=194 I C 108=42 Cr L J 508.

BIHAR PANCHAYAT RAJ ACT, 1947 (VII of 1948)

—S. 56.

——*Trial without jurisdiction.*

It is desirable that a person who has witnessed the occurrence of an offence should not himself try the persons accused of having taken part in that occurrence. However, when such a person does try a case in accordance with the provisions of law empowering him to try it, it cannot be said that he tries it without jurisdiction.

(Note : As to the effective working of the Act, *see* observations in Para 4*). (Imam and Misra JJ.)* LALJI SINGH v. STATE OF BIHAR

A I R 1953 Pat 77=1953 B L J R 43=1953 Cr L J 559.

——*Personal interest of Panch.*

Mere residence of a Panch in the village where a 'karha' lies which is alleged to have been broken by the accused is not sufficient to bar the Panch on the ground that he is personally interested in the proceeding before the Gram Panchayat in the absence of proof to show that the Panch's fields were irrigated by means of the said 'karha' *(Imam and Misra JJ.)* LALJI SINGH v. STATE OF BIHAR **A I R 1953 Pat 77=1953 B L J R 43=1953 Cr L J 559.**

—S. 57.

——*S. 57 and Proviso (i)* — Accused failing to persuade two persons to accept his nomination— Failure of accused to nominate another person within time allowed — Sarpanch is authorised to nominate panch. *(Imam and Misra JJ.)* NIVAS SINGH v. AMAR SAO **A I R 1953 Pat 188=32 Pat 436=1953 B L J R 258=1953 Cr L J 1132.**

—S. 58.

——*Ss. 58 and 59 and R. 13 (1) (framed under S. 80)—Non-compliance with S. 58.*

Where a Bench of the Gram Cutcherry does not comply with the provisions of S. 58 and proceeds to try the case straightway, it proceeds without jurisdiction. *(Imam and Misra JJ.)* NIVAS SINGH v. AMAR SAO **A I R 1953 Pat 188=32 Pat 436=1953 BL J R 258=1953 Cr L J 1132.**

—S. 59.

——*Ss. 59 and 60 — Preliminary enquiry.*

There is nothing in the Act which prevents the bench from directing a preliminary enquiry by another officer, provided the bench does not delegate its own power of making the final enquiry and receiving such evidence as it considers necessary. *(Das and Sinha JJ.)* GANGA RAM v. BHABICHHAN RAI **A I R 1953 Pat 295=32 Pat 407=1953 Cr L J 1643.**

BIHAR PANCHAYAT RAJ ACT, 1947 (VII of 1948), S. 59

——Non-compliance with S. 58—Effect—*See* ibid, S. 58 **AIR 1953 Pat 188=1953 Cr L J 1132.**

—S. 60.

——Preliminary enquiry by another officer — *See* ibid, S. 59 **AIR 1953 Pat 295=1953 Cr L J 1643.**

—S. 62.

——*"Subject to the provisions of this Act."*

The words "subject to the provisions of this Act" mean that a Bench of the Gram Cutcherry shall have jurisdiction to try an offence under S. 506, Penal Code, subject to this that the Bench will be exercising the powers which are exercised by a Magistrate of the third class that is to say, on conviction the sentence can be no more than what a third class Magistrate could pass. *(Imam and Misra JJ.)* NIVAS SINGH v. AMAR SAO **AIR 1953 Pat 188=32 Pat 436=1953 B L J R 258=1953 Cr L J 1132.**

—S. 67.

——*Ss. 67 and 80 (2) and Rr. 58 and 59 (framed under S. 80 (2))—Validity of Rules.*

The expression "in the prescribed manner" in S. 67 entitles the State Government to make rules and Rr. 58 and 59 are not invalid as being inconsistent with S. 67: *(Das and Sinha JJ.)* GANGA RAM v. BHABICHHAN RAI **AIR 1953 Pat 295=32 Pat 407=1953 Cr L J 1643.**

——Judgment signed by ten Panchas — This does necessarily show that all fifteen panchas had not heard appeal. *(Imam and Misra JJ.)* NIVAS SINGH v. AMAR SAO **AIR 1953 Pat 188=32 Pat 436=1953 Cr L J 1132.**

——*Appeal by private complainant against acquittal — (Bihar Cutcherry Rules (1949), R. 58).*

Trial before Gram Cutcherry — Acquittal — Appeal against, by complainant before Full Bench of Gram Cutcherry — Appeal held fell within meaning of S. 67 — Provisions of Criminal P. C., did not apply—Provisions of S. 67 held not against natural justice nor contrary to R. 58. *(Jamuar and Banerji JJ.)* RAM NARAYAN SUKUL v. LAKHAN SAH **1953 B L J R 124.**

—S. 73.

——*Powers of Sub-Divisional Magistrate.*

The Sub-Divisional Magistrate having found that there had been a miscarriage of justice cannot modify the order of conviction passed by the bench of the Gram Panchayat. He can cancel the order leaving it open to the complainant to institute his case afresh in the court of the Sub-Divisional Magistrate. The order of modification is without jurisdiction. *(Jamuar and Sahai JJ.)* KISHAN MAHTON v. STATE **AIR 1954 Pat 217=1953 B L J R 584=1954 Cr L J 573.**

——*Order of remand by Magistrate — (Constitution of India, Art. 227).*

Where the Sub-divisional Magistrate purporting to act under S. 73 sets aside the conviction his order remanding the case to the Gram Cutcherry for retrial is without jurisdiction. The High Court in such a case can intervene under Art. 227. *Imam and Misra JJ.)* SHEONARAIN PATHAK v. LACHMI NARAIN PATHAK **AIR 1953 Pat 339=1953 B L J R 64=32 Pat 433=1953 Cr L J 1771.**

BIHAR PANCHAYAT RAJ ACT, 1947 (VII of 1948), S. 73

——*Scope—Miscarriage of justice.*

Application under S. 73, Bihar Panchayat Raj Act, 1948 against order of conviction and sentence passed by Gram Panchayat — Allegations that there had been miscarriage of justice on number of grounds one of which was that accused were neither allowed to cross-examine, P. Ws. nor to produce any D. Ws. — Sub-Divisional Magistrate while setting aside conviction and sentence, directing the Gram Panchayat to rehear the case giving the accused an opportunity to cross-examine P. Ws. and produce D. Ws. In revision with respect to order made by Sub-Divisional Magistrate: —*Held* that Sub-Divisional Magistrate clearly meant that there had been a miscarriage of justice in the case — Order passed by him was an order under provisions of S. 73. But while a part of that order, namely setting aside the conviction and the sentence imposed upon the petitioners, was within his jurisdiction to pass, the remaining part of the order by which he gave a direction for the rehearing of the case by Gram Panchayat was not within his jurisdiction to pass. *(Jamuar and Sahai JJ.)* DEDAR SHEIKH v. STATE 1953 B L J R 557.

—S. 80.

——*Rules under, R. 13 (1).*

Duty of Bench to bring amicable settlement — *See* ibid, S. 58 AIR 1953 Pat 188= 1953 Cr L J 1132.

——*Rules under, Rr. 57 and 58—Validity.*

Rules 57 and 58 are in conformity with S. 80 (2) (5)—They are not contrary to S. 80. *(Jamuar and Banerji JJ.)* RAM NARAYAN SUKUL v. LAKHAN SAH 1953 B L J R 124.

——*S. 80 (2)—Rules under, R. 58.*

——Validity of—*See* ibid, S. 67
AIR 1953 Pat 295=1953 Cr L J 1643.

——*S. 80 (2)—Rules under, R. 59.*

——Validity of—*See* ibid, S. 67
AIR 1953 Pat 295=1953 Cr L J 1643.

BIHAR PREVENTION OF FOOD ADULTERATION ACT (V of 1948)

—S. 3.

——*Ss. 3 (e) (i), 21 (b)—Local authority—Special Officer appointed under S. 386 of Bihar and Orissa Municipal Act—Power to file complaint—(Municipality—Bihar and Orissa Municipal Act (7 of 1922), S. 386) — (Words and Phrases — Local authority.)*

If the Legislature had meant that the expression 'local authority' as defined in S. 3 (e) (i) of the Bihar Act 5 of 1948 should mean the person appointed as the Special Officer under S. 386 of the Municipal Act, in a case where the Commissioners of a Municipality are superseded, they could have framed the definition accordingly. When the Legislature has thus clearly left a gap it is not at all in consonance with the canons of interpretation for the Courts to fill in the gap and to say that, though the words 'Municipal Commissioners' have been used, they must include the Special Officer appointed to exercise and perform their powers and duties under the Municipal Act: (1951) 2 All E R 839, Ref.

BIHAR PREVENTION OF FOOD ADULTERATION ACT (V of 1948), S. 3

A Special Officer is not, therefore, the local authority within the meaning of S. 21 (b) of the Bihar Prevention of Food Adulteration Act; consequently a Sanitary Inspector cannot be held to have had the power under S. 21 (b) to file the complaint, simply because he was authorised by the Special Officer to file it. *(Ahmed and Sahai JJ.)* PURSOTTAM DASS v. STATE
1953 B L J R 695.

——*Ss. 3 (e), 21 (b) — Local authority—Power to file complaint.*

The authority to file complaint should be granted by the municipal commissioners, and not by the Chairman of the municipality. The powers conferred on the Chairman by S. 24 of the Bihar Municipal Act cannot entitle him to act in place of the commissioners for the purposes of S. 21. The notification issued by the Chairman being thus defective on the face of it, it cannot be deemed to have conferred any authority on the sanitary inspector to file a valid complaint under S. 21 (b). S. 21 is a bar to taking of cognizance by the Magistrate. *(Das and Rai JJ.)* STATE OF BIHAR v. NANHAK SAO 1953 B L J R 680.

——*Ss. 3 (f) and 14, 21 (a)—Sanitary Inspector, whether purchaser—Power to file complaint.*

No notification in official Gazette authorising Sanitary Inspector to make a purchase in accordance with S. 14 — Sanitary Inspector is not purchaser within S. 14 — He cannot file complaint under S. 21 (a). *(Jamuar and Sahai JJ.)* RAMJEE PRASAD v. STATE 1953 B L J R 589.

——*Ss. 3 (e), 21 (b)—Complaint signed by Chairman and Sanitary Inspector.*

The Chairman cannot be held to be the local authority as referred to in S. 21 (b). Where the prosecution report which is the complaint bears the signature of only the Chairman and the Sanitary Inspector and there is no evidence that either of them was authorised by the Municipal Commissioner to file a complaint in connection with an offence under the Food Adulteration Act, the complaint cannot be treated to be a complaint filed as contemplated by S. 21 (b). Cr. Revn. No. 1090 of 1952 (Pat), Rel. on. *(Jamuar and Sahai JJ.)* RAMJEE PRASAD v. STATE
1953 B L J R 539.

——*S. 3 (b) and (h)*—The analyst of the Harcourt Butler Technological Institute, Kanpur, is neither a public analyst within the meaning of S. 3 (h) nor a Chemical Examiner within the meaning of S. 3 (b). *(Das J.)* DEVABRATE GANGULI v. THE STATE OF BIHAR A I R 1950 Pat 301= 51 Cr L J 1136.

—S. 8.

——*Ss. 8 and 9 — Sale of adulterated mustard oil—Applicability.*

Section 8 has no application to a case where a person keeps or stores for sale mustard oil which is not exclusively derived from mustard seeds. The provision applicable is S. 9. *(Das J.)* DEVABRATE GANGULI v. THE STATE OF BIHAR
A I R 1950 Pat 301=51 Cr L J 1136.

—S. 9.

——Sale of adulterated mustard oil—Applicability —*See* ibid, S. 8. A I R 1950 Pat 301= 51 Cr L J 1136.

——*Ss. 9 (2) (e) and 27—Contravention of S. 9 (2) (e)—Sentence in default of fine—Penal Code (1860), S. 67.*

BIHAR PREVENTION OF FOOD ADULTERATION ACT (V of 1948), S. 9

The sentence for contravention of S. 9 (2) (e) in default of fine imposed under S. 27, can only be simple imprisonment, where the offence committed is accused's first offence. Section 67, Penal Code, applies in such a case. *(Das J.)* DEVABRATE GANGULI v. THE STATE OF BIHAR
A I R 1950 Pat 301=51 Cr L J 1136.

——*S. 9 (2)* — A manager of a Mill which manufactures or stores for sale adulterated mustard oil comes within S. 9 (2). *(Das J.)* DEVABRATE GANGULI v. THE STATE OF BIHAR
A I R 1950 Pat 301=51 Cr L J 1136.

—S. 13.

——Purchaser—Sanitary Inspector taking sample —*See* Bihar Prevention of Adulteration Act (5 of 1948), S. 21 (a). 1953 B L J R 695.

——*Ss. 13, 14, 21 (a)—Reference to purchaser.*

Section 21 (a) refers to a person making a purchase under S. 13 and does not refer to a person making a purchase under S. 14. *(Das and Rai JJ.)* THE STATE OF BIHAR v. NANHAK SAO
1953 B L J R 680.

——*Ss. 13, 21 (a)* — *Sanitary Inspector, whether purchaser.*

Section 13 provides for a case of purchase by an ordinary purchaser. A transaction which can be described as purchase can only be based upon passing of consideration. When the Sanitary Inspector did not actually pay any price and the accused did not accept it, and there is no evidence that he promised to pay the price in future, the transaction cannot be held to be a purchase. *(Jamuar and Sahai JJ.)* RAMJEE PRASAD v. STATE
1953 B L J R 589.

—S. 14.

—— Purchaser—Sanitary Inspector taking sample —*See* Bihar Prevention of Adulteration Act (5 of 1948), S. 21 (a). 1953 B L J R 695.

——Reference to purchaser in S. 21 — *See* Bihar Prevention of Food Adulteration Act (5 of 1948), S. 13. 1953 B L J R 680.

—— Sanitary Inspector, whether purchaser — Power to file complaint—*See* Bihar Prevention of Food Adulteration Act (5 of 1948), S. 3 (f).
1953 B L J R 589.

—S. 21.

—— *Ss. 21 (a), 13, 14 — Purchaser — Sanitary Inspector taking sample.*

The Legislature has kept up a clear distinction between a purchaser referred to in S. 13 and a purchaser referred to in S. 14 by describing one thing purchased by the latter as a sample of food while the words used in S. 21 (a) are "an article of food." Hence cl. (a) of S. 21 refers to an ordinary purchaser for whom provision has been made in S. 13 and not to a person who acts under S. 14.

Further, an ordinary transaction of sale and purchase imports free agreement between the parties. When a Sanitary Inspector obtains a sample of an article of food which is supplied to him under a feeling of compulsion, he cannot be said to be a purchaser under S. 13 and as such cannot file a complaint as a purchaser under S. 21 (a). *(Ahmed and Sahai JJ.)* PURSOTTAM DASS v. STATE 1953 B L J R 695.

——*S. 21 (b)*—Local authority — Special Officer appointed under S. 386 of L & O. Municipal Act

BIHAR PREVENTION OF FOOD ADULTERATION ACT (V of 1948), S. 21

—Power to file complaint—*See* Bihar Prevention of Food Adulteration Act (5 of 1948), S. 3 (e) (i).
1953 B L J R 695.

——*S. 21 (b)*—Local authority — Power to file complaint—*See* Bihar Prevention of Food Adulteration Act (5 of 1948), S. 3 (e).
1953 B L J R 680

——*S. 21 (a) (b)—Purchaser.*

Per *Das J.* — The complaint by the Sanitary Inspector itself was sent to the Chairman of the Municipality in the first instance, and the Chairman forwarded the complaint to the Sub-Divisional Magistrate with an endorsement requesting the Sub-Divisional Officer to take cognisance of the alleged offence—*Held* that the complaint was made by the Sanitary Inspector not in his capacity as an ordinary purchaser but in his capacity as an officer of the Municipality. *(Das and Rai JJ.)* STATE OF BIHAR v. NANHAK SAO
1953 B L J R 680.

——*S. 21 (b)—General authority.*

The words "in this behalf" do not mean that the authority must be given for each and every complaint. A general authority for taking action under S. 21 (b) will meet the requirement of the section. *(Das and Rai JJ.)* STATE OF BIHAR v. NANHAK SAO 1953 B L J R 680.

——*S. 21 (a)*—Reference to purchaser in S. 21—*See* Bihar Prevention of Food Adulteration Act (5 of 1948), S. 13. 1953 B L J R 680.

——*S. 21 (a)*—Sanitary Inspector, whether purchaser — Power to file complaint—*See* Bihar Prevention of Food Adulteration Act (5 of 1948), S. 3 (f). 1953 B L J R 589.

——*S. 21 (b)*—Complaint signed by Chairman and Sanitary Inspector—*See* Bihar Prevention of Food Adulteration Act (5 of 1948), S. 3 (e).
1953 B L J R 589.

—S. 27.

——Contravention of S. 9 (2) (e) — Sentence in default of fine can only be simple — *See* ibid, S. 9 (2) (e)
A I R 1950 Pat 301 = 51 Cr L J 1136.

BIHAR PREVENTIVE DETENTION ORDINANCE (II of 1950)

——*Validity — Constitution of India, Art. 213 (1) — Criminal P. C. (1898), S. 5.*

Per *Sinha and Sarjoo Prosad JJ.* — (Meredith C. J., contra.)—In promulgating the Bihar Preventive Detention Ordinance (Bihar Ordinance II of 1950) the Governor has complied with the terms of clause (1) of Art. 213 of the Constitution of India and, therefore, the Ordinance is not void on that ground.

Per *Meredith C. J. and Sarjoo Prosad J.*— There is no other illegality in the Ordinance.

The Government is right in framing the Ordinance in accordance with Art. 22 (4) and not in accordance with the Preventive Detention (Extension of Duration) Order, 1950, made by the President under Art. 22 (7).

The Ordinance is not void on the ground of unreasonableness, so far as it puts restrictions on the personal liberty of the subject.

The provisions of the Ordinance are not repugnant with the provisions of the Criminal P. C.

BIHAR PREVENTIVE DETENTION ORDINANCE (II of 1950)

The State Legislature and, consequently, the Governor by Ordinance has power to create offences, and, in any event, the portions of the Ordinance creating offences are severable from the portions providing for detention. The ordinance, therefore, cannot be attacked on this ground.

Even if there was in fact no justification for making provisions for the continuation of detention for 3 months and in certain cases for a longer period, that would not make the Ordinance invalid or void so long as the Governor was satisfied, however mistakenly, that the circumstances required such provisions, and said so.

Nor is the Ordinance void on the ground of mala fides or as a colourable device to evade constitutional provisions.

In considering the question of bona fides or mala fides the Court is only concerned with the motive and not the result. (*Sinha J.* on a difference of opinion between *Meredith C. J. and Sarjoo Prosad J.)* RATAN RAY v. STATE OF BIHAR

A I R 1950 Pat 332 = 29 Pat 410= 51 Cr L J 1251.

BIHAR PRIVATE FORESTS ACT (1947) (IX of 1948)

—S. 3.

——*Ss. 3 (10) and 49.*

——Private protected forest is a creature of document which according to S. 30 has to be in the form of notification published in Gazette — Prosecution which, in order to invoke the Act, has to prove that private forest in question has been constituted into a protected one, should do so by production of Gazette in which notification has been published or its certified copy the notification being a public document or by proving any admission according to S. 22, Evidence Act : Cri. Ref. No. 52 of 1952 (Pat.), *Dissent.* — (Evidence Act (1872), Ss. 61, 65 (e), 74 and 22), *(Ahmad J.)* JAI GOPAL SINGH v. DIVISIONAL FOREST OFFICER

A I R 1953 Pat 310 = 1953 B L J R 199= 1953 Cr L J 1660.

—S. 21.

——*Contravention of order under.*

Where an order under S. 21 (1) was promulgated at a time when no rule prescribing the manner of publication of the order had been framed and the order was not republished in the prescribed manner after the rules had been framed and published a person cannot be convicted for a contravention of the order. *(Sinha and Mahabir Prasad JJ.)* SITARAM JAGATRAMKA v. THE KING

A I R 1949 Pat 129=30 P L T 14= 27 Pat 761 = 50 Cr L J 287.

—S. 30.

——*Importance of notification.*

Final Act which converts private forests into protected forests is publication of notification, in terms of section, in official Gazette. Private forest in respect of which this has not been done cannot be regarded a protected forest. *(Ahmad J.)* JAI GOPAL SINGH v. DIVISIONAL FOREST OFFICER

AIR 1953 Pat 310 = 1953 B L J R 199= 1953 Cr L J 1660.

——Production of Gazette in appellate stage not sufficient—*See also* ibid, S. 49 (c).

A I R 1953 Pat 143=1953 Cr L J 928.

BIHAR PRIVATE FORESTS ACT (1947) (IX of 1948), S. 30

——Absence of notification under — Effect — *See* ibid, S. 49.

A I R 1952 Pat 261=1952 Cr L J 881.

—S. 49.

——Private protected forest is a creature of document which has to be in the form of notification published in Gazette—*See* ibid, S. 3 (10).

AIR 1953 Pat 310=1953 Cr L J 1660.

——*Ss. 49 (c) and 30 — Production of gazette in appellate stage not sufficient.*

Unless it is conclusively established that the parcel of land wherein the offence is alleged to have been committed, did in fact form part of a private protected forest, it cannot be said that any act done by anybody on that land amounts to any contravention of the provisions laid down in the Act.

The oral evidence to the effect that the land was a part of private forest will not suffice to prove the factors essential for prosecution in the absence of the production of the Gazette containing the necessary notifications.

Mere production of the Gazette at the stage of appeal will not be sufficient unless the boundary given therein is held to be covering tne parcel of land wherein the offence was committed. *(Ahmad J.)* SITARAM JAGATRAMKA AGARWALA v. STATE.

A I R 1953 Pat 143=1953 Cr L J 928.

——*Ss. 49 and 30—Offence under S. 49—Private protected forest—Proof of — Absence of notification under S. 30 — Effect.*

Under the Bihar Private Forests Act it is ultimately the publication of a notification in the official gazette as contemplated by S. 30 specifying definitely, according to the boundary marks erected or otherwise, the limits of the forest which converts a private forest into a private protected forest.

In a prosecution under S. 49 of the Act unless the prosecution established that the forest in question is a private protected forest none of the provisions imposing penalty on persons for contravening the provisions of the Act can come into play. Hence where the prosecution fails to produce the notification under S. 30 of the Act in respect of the forest in question and there are no materials on the record to show that the forest has been constituted as private protected forest, the conviction of the accused cannot be sustained under S. 49 of the Act. *(Ahmad J.)* PARHAN MAHTO v. DIVISIONAL FOREST OFFICER, HAZARIBAGH,

A I R 1952 Pat 261=1952 Cr L J 881.

BIHAR PRIVATE IRRIGATION WORKS ACT (V of 1922)

—S. 5.

——*Ss. 5, 42 (d) — Owner of culturable field refusing permission for earth to be dug from his field and preventing it from being taken.*

Section 5, Bihar Private Irrigation Act does not in terms authorize the invasion of any private rights and presumably it is intended that the person executing the work should obtain the consent of those from whom he requires permission to take earth from their lands and other similar facilities. Where the Sub-Divisional Officer exercising the powers of a Collector under the Act has ordered the repair of an irrigation system, the order does not carry with it any right to take away property

BIHAR PRIVATE IRRIGATION WORKS ACT (V of 1922), S. 5

belonging to private persons and no offence is committed by those persons in refusing permission for earth to be dug from their culturable field and in preventing the earth from being taken. *(Rowland J.)* BHAROSA SINGH v. KAMLA PATI
A I R 1941 Pat 300=7 B R 888=22 P L T 753=14 R P 99=195 I C 260=42 Cr L J 712.

BIHAR SUGAR FACTORIES CONTROL ACT, (VII of 1937)

—Rules under.

——*Statement required to be made under Rules—Person, if should be forced to sign it.*

The law does not contemplate forcing a person to sign a statement which he is required to make under the rules of the Bihar Sugar Factories Control Act. *(Manohar Lall J.)* MUKTI NARAYAN GIR v. EMPEROR
AIR 1940 Pat 97=20 P L T 947=6 B R 377=12 R P 534=186 I C 627=41 Cr L J 349.

BIHAR (WAR ACQUISITION OF PROPERTY) COMPENSATION RULES, 1943, R. 20.

——Appeal against award filed beyond time — Delay cannot be condoned under Limitation Act (1908), S. 5, by reason of S. 29 of that Act. *(B. P. Sinha and C. P. Sinha JJ.)* SURYA MOHAN v. STATE OF BIHAR
AIR 1951 Pat 462=30 Pat 126.

——*Applicability to pending proceedings.*

Even where the case in which an award is made is instituted before the Bihar (War Acquisition of Property) Compensation Rules, 1943, were promulgated, yet if the award comes into existence after those rules have been framed it will come within the mischief of those rules and an appeal against an award will be governed by Rule 20. *(B. P. Sinha and C. P. Sinha JJ.)* SURYA MOHAN v. STATE OF BIHAR
AIR 1951 Pat 462=30 Pat 126.

——*Bikaner Notification No. 19 dated 19-3-1947—Magistrate acting under notification is a Court—His order is open to revision under S. 435, Criminal P. C.—(Criminal P. C. (1898), S. 435).*

An order of eviction passed by a Magistrate under the Bikaner Notification No. 19, dated 19-3-1947 is passed in the capacity of a Court of Magistrate of the second class and as such revision would lie to the Sessions Judge under S. 435, Criminal P. C. and thereafter to the High Court. In that view of the matter it is immaterial what provisions have been made under the Rajasthan (Control of Rent and Eviction) Act (17 [XVII] of 1950), Cr. R. No. 57 of 1949 D/- 12-4-1950, *Rel. on. (Wanchoo C. J.)* HIMMAT SINGH v. VAZIRUDDIN
1951 Raj L W 497.

BIKANER PREVENTION OF EVICTION ORDER (1942)

—S. 4.

——*Ss. 4, 8 (as amended by Notification No. 19 D/- 17.3.1947).*

Word "house" occurring in Notification does not include shop. *(Bapna and Datta JJ.)* MANAKCHAND v. BANSIDHAR
AIR 1950 Raj 29=51 Cr L J 1321.

BIKANER PREVENTION OF EVICTION ORDER (1942)

—S. 8.

——Word 'house' occurring in Notification can refer to residential house and does not include shop. *Sei* ibid, S. 4.
A I R 1950 Raj 29=51 Cr L J 1321.

—S. 13.

——*Scope.*

According to the language of the section it is not necessary that all the circumstances should coexist, but that the existence of each one of the circumstances justified the passing of the order of eviction. *(Bapna J.)* TARA SINGH v. MOHANLAL
1951 Raj L W 256.

—S. 26.

——*Objection in revision.*

Objection under S. 26 can only be taken at the time of execution. When the order directing eviction is being challenged in revision S. 26 is inapplicable. *(Bapna J.)* TARA SINGH v. MOHANLAL
1951 Raj L W 256.

—S. 27.

——*S. 27 (1) — Applicability to proceedings on application to Magistrate.*

Section 27 (1) refers to suits for eviction of tenants. Where the proceedings for eviction start on an application to the Magistrate, S. 27 (1) has no application. *(Bapna J.)* TARA SINGH v. MOHANLAL
1951 Raj L W 256.

BIKANER STATE MUNICIPAL ACT (VI of 1923)

—S. 118.

——*Ss. 118, 135 — Fresh prosecution for same offence—(Criminal P. C. (1898), S. 403).*

Court imposing fine and directing accused to remove stall by certain date and in default to pay certain fine per day as further fine — Action is in accordance with S. 135— Further prosecution and penalty for not removing stall imporper— Remedy is under S. 118 (2). *(Bapna Actg. C. J.)* RAMKUMAR v. STATE
1953 Raj L W 471.

—S. 135.

Fresh prosecution for same offence—*See* Bikaner State Municipal Act (6 of 1923), S. 118.
1953 Raj L W 471.

——*By-law No. 4.*

Bye-law No. 4 is merely procedural and a breach of this bye-law will not be punishable as a criminal offence, though non-payment of rent will give rise to a civil remedy to the Board. *(K. N. Wanchoo C. J.)* STATE v. JAGAT SINGH
1953 Raj L W 269.

——*Bye-law No. 1.*

Bye-law No. 1 prohibits the setting up of stalls but the punishment appears after bye-law 16— Where the only reference to any provision of the law in the judgment is in these words: "Jurm Dafa 1 Teh Bazari Bye-laws," the conviction must be set aside. *(K. N. Wanchoo C. J.)* STATE v. JAGAT SINGH
1953 Raj L W 269.

——*Breach of auction terms.*

Where according to term No. 12 of the auction terms it was provided that on breach of any of the auction terms, the person taking the land would have to leave it within one week: *Held* that even if the person has been given notice by the Board, and has not given up possession, this breach of the auction terms would not amount to a criminal offence. *(K. N. Wanchoo C. J.)* STATE v. JAGAT SINGH
1953 Raj L W 269.

BILASPUR SUGAR (DISTRIBUTION AND PRICE) CONTROL ORDER (1949)

—Cl. 6.

——Necessity of notification — *See* Essential Supplies (Temporary Powers) Act, 1946, S. 3 (1-A) (b).

A I R 1952 Bilaspur 1=1952 Cr L J 1243.

——*Order by Civil Supplies Officer under Cl. 6— Order ambiguous — Contravention of Order — (Essential Supplies (Temporary Powers) Act (1946), S. 7.)*

Where the accused was convicted for attempting to sell sugar outside the precincts of his shop in contravention of an order of the Civil Supplies Officer passed under Clause 6 of the Sugar Control Order but the order was not clear as to whether the accused was to sell sugar at his shop and nowhere else :

Held that even if it be supposed that the Civil Supplies Officer intended by his order to penalise sale of sugar beyond the precincts of the accused's shop, he having expressed himself in an ambiguous language the benefit of doubt should be given to the accused. *(Chowdhry J. C.)* SADHU RAM v. STATE

A I R 1952 Bilaspur 1=1952 Cr L J 1243.

BIRTH

——Concealment of : *See* PENAL CODE (45 OF 1860), S. 318.

——During marriage, conclusive proof of legitimacy : *See* EVIDENCE ACT (1 OF 1872), S. 112.

BODY

——Offences relating to : *See* PENAL CODE (45 OF 1860), Ss. 299-377.

BOILERS ACT (V of 1923)

—S. 2.

——*S. 2 (b)—Boilers, meaning of.*

The clear meaning of the definition of 'boiler' in S. 2 (b), Boilers Act, is that the definite and clear object of a contrivance should be to generate steam under pressure. A contrivance used at a dairy to clean and sterilize utensils used for keeping milk and other products, consisting of a closed tin canister with a capacity of more than 7 gallons with two stopcocks, one on the top and the other at the bottom placed upon a brick furnace and generating steam under pressure falls within the purview of the definition of boiler. *(Mulla J.)*, A. S. AGARWAL v. EMPEROR,

A I R 1939 All 697=1939 A L J 806= 12 R A 240=I L R (1939) All 883= 184 I C 483 (2)=41 Cr L J 26.

—S. 23.

——*Use to which steam is ultimately put is irrelevant — Person using such contrivance without certificate.*

The use to which the steam is ultimately put is quite irrelevant to the issue. A person using such a contrivance without the necessary certificate can be convicted under S. 23, Boilers Act. *(Mulla J.)* A. S. AGARWAL v. EMPEROR.

A I R 1939 All 697 = 1939 A L J 806 = 12 R A 240=I L R (1939) All 883= 184 I C 488 (2)=41 Cr L J 26.

——*"Owner" scope of—Whether includes agent or persons mentioned in S. 2 — Absentee owner of boiler, which was being used for his work.*

BOILERS ACT (V of 1923), S. 23

In S. 23, Boilers Act, the word "owner" has been used in its dictionary meaning and also includes an agent or other persons mentioned in S. 2. The question whether an owner who is absent should or should not be prosecuted, and if prosecuted, how he should be dealt with is one which depends upon the facts and circumstances of each particular case. As a mere proposition of law an absentee owner of a boiler, which is being used for his work comes within the purview of S. 23, Boilers Act. *(Mohammad Noor and Madan JJ.)* EMPEROR v. JUGAL KISHORE TEBERAWALA

A I R 1937 Pat 500=18 P L T 734= 10 R P 189=4 B R 10=16 Pat 495= 171 I C 143=38 Cr L J 1054.

BOMB

—*See* EXPLOSIVES ACT (6 of 1908), S. 5.

BOMBAY ABKARI ACT (V of 1878).

——*Object of Act.*

The object of the Act in insisting upon the application for a licence was to ensure the payment of duties, and was not for any other purpose. Such licences are to be granted in accordance with the rules to enable the duties imposed to be levied. *(Blackwell J.)* RATANSHAW v. GEOFFERY

A I R 1942 Bom 1=43 Bom L R 896= 14 R B 339 = I L R (1942) Bom 259 = 198 I C 849.

——Abkari Officer investigating offence against the Act is a Police Officer within S. 25 of the Evidence Act : (1) A I R 1925 Sind 70=25 Cr L J 1223 and (2) A I R 1927 Sind 112=28 Cr L J 162, Overruled. *(Rupchand Ag. C. J., Mehta and Lobo JJ.)* BACHOO KANDERO v. EMPEROR

A I R 1938 Sind 1=10 R S 188= 32 S L R 185=172 I C 968= 39 Cr L J 239 (FB).

——There is no provision in the Act empowering Police Officers to effect searches or arrests or to send up cases for trial for offences falling under this Act and no such powers can be presumed. *(Ferrers J. C., Rupchand and Mehta A. J. Cs.)* EMPEROR v. MOHAMMAD USMAN

A I R 1933 Sind 325=1933 Cr Cas 1077= 6 R S 65=146 I C 419= 35 Cr L J 129 (FB).

——The more appropriate form of punishment for an offence under the section is imprisonment and not fine. *(Kennedy J. C. and Tyabji A. J. C.)* EMPEROR v. GULAB A I R 1926 Sind 176= 20 S L R 1=92 I C 588=27 Cr L J 300.

——*"Chandul" —Preparation of opium.*

"Chandul" is a preparation of opium, and the provision of the Bombay Abkari Act V of 1878, cannot be applied to a person found in possession of it. He can, however, be dealt with under the Opium Act. *(R. Knight Esq. and H. N. Crouch Esq.)*. IMPERATOR v. JANMAHOMED

1 S L R 8 Cr=9 Cr L J 254.

—Preamble.

——Courts cannot read into the Bombay Abkari Act the purpose of the Legislature to permit the Executive Government for the time being to abolish altogether the possession of intoxicants.

BOMBAY ABKARI ACT (V of 1878), Preamble

(Davis C. J. and Weston J.) EMPEROR v. DHOLARAM HOLARAM, A I R 1941 Sind 221=ILR (1941) Kar 431=14 R S 167=199 I C 101=43 Cr L J 468.

—S. 3.

——*S. 3 (10)*—"Import" meaning of — *See* Bombay Abkari Act (5 of 1878), S. 9
9 Cr L J 291 (Bom).

——S. 3-A.

——*S. 3-A (amendment by Sind Act XXVI of 1940)—Vendor—Person given money by customer in advance for article to be ordered for customer—Such person supplying article and returning change due.*

Where a person is given money in advance for an article which he is to order for the customer and he hands back to the customer with the article which he sells or has obtained, any change that may be due, he is to all intents and purposes a vendor within S. 3-A, Bombay Abkari Act. He cannot escape under the plausible plea that he is not a vendor but an agent only. *(Davis C. J.)* KASSIM ALLAHADAD v. EMPEROR,
A I R 1944 Sind 32 = 16 R S 210=211 I C 410=45 Cr L J 390.

—S. 4.

——*Power to grant licence.*

Section 4 relates only to control in reference to establishment, and not to power to grant licences, for tapping and drawing *toddy* and such power is controlled only by the rules made under the Act. *(Blackwell J.)* RATANSHAW v. GEOFFREY,
A I R 1942 Bom 1=43 Bom L R 896=14 R B 339=ILR (1942) Bom 259=198 I C 849.

—S. 6.

——*Ss. 6 and 7—Public servant (non-covenanted) of Government in Excise Department—Power of Commissioner of Customs to dismiss at pleasure—Statutory restrictions.*

The plaintiff was employed as Acting Inspector in the Excise Department on a salary of Rs. 125 per mensem. He was dismissed from the service by the Commissioner of Customs, after making a formal inquiry into certain charges of misconduct brought against him. Plaintiff filed a suit against the Secretary of State for India for wrongful dismissal, as the inquiry in respect of charges of misconduct against him was not conducted according to the regulations framed by Government for dismissal of the non-covenanted servants and therefore, claimed Rs. 50,000 as damages for wrongful loss of service and injury to his reputation.

Held, that the plaintiff did not hold the appointment at the will and pleasure of the Government, that the plaintiff was appointed in the Excise Department by the Commissioner of Customs under S. 6 of the Bombay Abkari Act, 1878, and not by the Government direct. (1896) A. C. 575, Followed.

The Legislature by statute has restricted the power of dismissal under S. 7 of 1878 and that provision under S. 7 of the Act is made for the protection of officers employed in the Excise Department. *(Kajiji J.)* DINSHAW J. JAVERY v. SECY. OF STATE, A I R 1922 Bom 17=24 Bom L R 210=67 I C 280.

BOMBAY ABKARI ACT (V of 1878)—S. 9.

——*Ss. 9, 3 (10) and 43—'Import' meaning of — Importation of cocaine liable to duty — Sea Customs Act (VIII of 1878), S. 19.*

Import of cocaine generally is not prohibited by S. 9. It merely prohibits importation of articles unless duty has been paid, where they are liable to payment of duty. The intention and requirement of S. 9 in the case of articles liable to duty are that the duty shall be paid. That intention and requirement can only be contravened, when reasonable opportunity to pay the duty has been afforded and evaded. The mere entry into the Bombay harbour of a ship conveying the dutiable goods, or mere tying up of such ship against the dockwall, is not importing goods, under S. 43 in contravention of the Act, that is, in contravention of the obligation to pay duty. The word 'import' in the Act includes the conveying into any part of the Presidency of Bombay by sea. *(Chandavarkar and Heaton JJ.)* EMPEROR v. DE SYLVA,
11 Bom L R 221=1 I C 343=33 B 380=9 Cr L J 291.

——*Ss. 9, 13 and 43 — Cocaine consigned from Lucknow to Bombay City and conveyed without transhipment at frontier of Bombay Presidency.*

Where the accused who had no permit either under S. 9 or S. 13 consigned large quantity of cocaine at Lucknow for carriage by rail to Bombay and the consignment reached Bombay direct without transhipment and having traversed British territory the whole way :

Held that neither the mere fact that cocaine was consigned from Lucknow to Bombay city and conveyed thereto without transhipment at the frontier of the Bombay Presidency, nor the mere fact that the journey from Lucknow to Bombay was, throughout, through British territory, prevented cocaine from coming under the provisions of the Act, as soon as it crossed the frontier. *(Aston and Heaton JJ.)* EMPEROR v. TYABALLY CARIMBHOY, 8 Bom L R 601=4 Cr L J 193.

—S. 13.

——Cocaine consigned from Lucknow to Bombay City and conveyed without transhipment at frontier of Bombay Presidency—*See* ibid, S. 9
4 Cr L J 193 (Bom).

—S. 14.

——When the Collector and the Commissioner have both acted under the mistaken belief that the prohibition policy of the Government amounted to an order justifying them in refusing a licence for tapping and drawing *toddy* from trees, the Court will interfere under S. 45, Specific Relief Act. *(Blackwell J.)* RATANSHAW v. GEOFFREY,
A I R 1942 Bom 1=43 Bom L R 896=14 R B 339=ILR (1942) Bom 259=198 I C 849.

——*Rules under Act, R. 4—Duty of Collector.*

The implied power conferred upon the Collector by S. 14 (1) to grant or refuse a licence is limited by the rules. He would, e.g., have power to refuse a licence if the application were not in the form required by R. 4. But if the requirements of the rules are complied with, there is a statutory duty imposed upon the Collector to grant a licence, and this statutory duty is not affected by anything contained in S. 4. Section 4 has no application to the grant of licences for tapping *toddy*—producing

trees and the drawing of *toddy* therefrom, and as there is a right of appeal from the decision of the Collector to the Commissioner the Collector should not ask the Commissioner for order, but should deal with the application himself without consulting the Commissioner. *(Blackwell J.)* RATANSHAW v. GEOFFREY, AIR 1942 Bom 1=43 Bom L R 896=14 R B 339=ILR (1942) Bom 259=198 I C 849.

——*S. 14 (1)—Rules under Act — Collector, whether has discretion in granting licences.*

Having regard to the use of the word "shall" in the rules made under the Act, which are to have the same force as if enacted in the Act, no question of the exercise of any discretion by the Collector in the granting of a licence arises, provided that the requirements of the rules are complied with but a statutory duty to issue a licence is imposed by S. 14 (1) of the Act, read in conjunction with the rules. *(Blackwell J.)* RATANSHAW v. GEOFFREY, AIR 1942 Bom 1=43 Bom L R 896=14 R B 339=ILR (1942) Bom 259=198 I C 849.

——Licence to tap *toddy* is granted under S. 14 and not under S. 30 of the Act. *(Blackwell J.)* RATANSHAW v. GEOFFEREY, AIR 1942 Bom 1=43 Bom L R 896=14 R B 339=ILR (1942) Bom 259=198 I C 849.

——"*Any person,*" *means specified person.*

The words "by any person or class of persons" in S. 14-B, Bombay Abkari Act mean by any specified person or specified class of persons. *(Davis C. J. and Weston J.)* EMPEROR v. DHOLARAM HOLARAM, AIR 1941 Sind 221=ILR (1941) Kar 431=14 R S 167=199 I C 101=43 Cr L J 468.

—S. 14B.

——*S. 14-B (1), Proviso — Repeal of proviso by Bombay Act (VI [6] of 1940) — If* ultra vires *— Government of India Act (1935), Sch. VII, List I, Item 19 and List II, Item 31.*

The repeal of the proviso to S. 14-B (1), Bombay Abkari Act by Bombay Act VI [6] of 1940 in so far as it affected a private consumer of foreign liquor was *intra vires* the Bombay Provincial Legislature. *(Chagla C. J. and Gajendragadkar J.)* EMPEROR v. KISHORI SHETTY, AIR 1950 Bom 221=52 Bom L R 29=1950 A W R (Sup) 36=1949 Bom Cr C 128=ILR (1950) Bom 290=51 Cr L J 1207.

——*(as amended by Bombay Act XXIX [29] of 1947) — Validity — Government of India Act (1935), S. 100 and Schedule VII, List I, Item 19 and List II Item 31.*

Section 14-B in its amended form is covered by item 31 of List II of Government of India Act. Section 14-B does not purport to restrict or prohibit dealings in liquor in respect of its importation or exportation from India. Section 14-B is therefore valid. *(Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan and B. K. Mukherjea JJ.)* MISS KISHORI SHETTY v. THE KING, AIR 1950 F C 69=1950 M W N 299=1950 S C J 44=1949 F C R 650=1950 M W N Cr 79=52 Bom L R 591=51 Cr L J 1018.

——Possession of foreign liquor in quantity prohibited by Hoarding and Profiteering Prevention

Ordinance—Possession, however, legal under Bombay Abkari Act — Ordinance does not apply—*See* Hoarding and Profiteering Prevention Ordinance (XXXV [35] of 1943), Ss. 7 and 17. AIR 1948 Bom 237=49 Cr L J 337.

——*Notification of 1939, whether* ultra vires *as a whole — Effect of declaration of notification as* ultra vires.

Quaere. — Where the first part of the notification by the Government purporting to prohibit *charash* was held *ultra vires*, whether all the subsequent parts of the notification were also *ultra vires.*

Quaere.—Whether the effect of the notification of 1939, which was declared by the High Court to be *ultra vires*, so far as the possession of *charash* is concerned, was to revive, as it were the provisions of a previous Notification of 1932 (No. 8362-28 *(a)*), dated April 14, 1932, issued by the Government of Bombay, in the Revenue Department. *(Davis C. J. and Weston J.)* EMPEROR v. SUGNOMAL BHOJRAJ, AIR 1942 Sind 52=ILR (1941) Kar 545=14 R S 165=199 I C 119=43 Cr L J 473.

——*Notification under, declared* ultra vires *and invalid by High Court—Effect—Remedy.*

Notification under S. 14-B (2), declared by the High Court to be *ultra vires* is invalid according to the law in force in Bombay Presidency and everybody can act upon that view of the law. Where there is no appeal from the decision of the Court the only manner in which the law as declared by the High Court could be altered would be by an Act of the Legislature. *(Beaumont C. J., M. J. Wadia, Wassoodew and Sen JJ.)* EMPEROR v. SAVER MANUEL DANTES, AIR 1940 Bom 307=42 Bom L R 791=13 R B 149=ILR (1940) Bom 777=191 I C 85=42 Cr L J 74 (SB).

——*Power of prohibition, if can be extended to public generally—Sub-s. (2), if affects rights conferred by Proviso to sub-s. (1).*

There is nothing in the Bombay Abkari Act to suggest that the Legislature contemplated the introduction of total prohibition of intoxicants as a measure of social reform. The natural meaning of the expression "any person or class of persons" is a person designated by name or description or a class of person designated. The Legislature did not intend that the power of prohibition might be extended to the public generally. *(Beaumont C. J., N. J. Wadia, Macklin, Wassoodew and Sen JJ.)* CHINUBHAI LALBHAI v. EMPEROR, AIR 1940 Bom 273=42 Bom L R 669=13 R B 99=ILR (1940) Bom 587=190 I C 170=41 Cr L J 834 (SB).

[Impliedly Overruled in AIR 1942 F C 17=43 Cr L J 481 (FC).]

——The proviso to S. 14-B (1) is clearly a part of sub-s. (1), and it is competent to Government under sub-s. (2) to prohibit the possession by any person or class of persons of foreign liquor as fully as they can prohibit the possession of country liquor. *(Beaumont C. J., N. J. Wadia, Macklin, Wassoodew and Sen JJ.)* CHINUBHAI LALBHAI v. EMPEROR, AIR 1940 Bom 273=42 Bom L R 669=13 R B 99=ILR (1940) Bom 587=190 I C 170=41 Cr L J 834 (SB).

BOMBAY ABKARI ACT (V of 1878) —S. 17.

——Possession of foreign liquor in quantity prohibited by Hoarding and Profiteering Prevention Ordinance—Possession, however, legal under Bombay Abkari Act — Ordinance does not apply—*See* Hoarding and Profiteering Prevention Ordinance (XXXV [35] of 1943), Ss. 7 and 17

A I R 1948 Bom 237=
49 Cr L J 337.

—S. 30.

——*Ss. 30, 14—Licence to tap* toddy *is granted under S. 14 and not under S. 30.*

Section 30 is not the section under which licences to tap and draw *toddy* are granted. They are granted under S. 14. The meaning of S. 30 is that such licences if granted shall be granted on payment of such fees, and subject to such restrictions and conditions and shall be in such form as the Provincial Government may direct in rules and orders which are not to be inconsistent with the Act. *(Blackwell J.)* RATANSHAW v. GEOFFREY

A I R 1942 Bom 1=
43 Bom L R 896=14 R B 339=
I L R (1942) Bom 259=198 I C 849.

—S. 32.

——*Ss. 32 and 67—Protection of Abkari officers.*

If any public or private body which is entrusted with the execution of a statute, honestly intends to put the law in motion and really believes in the existence of the facts that would justify its act it will be protected. *(Batchelor and Rao JJ.)* DHONDU DAGDU PATIL v. SECRETARY OF STATE

37 Bom 101=17 I C 673=
14 Bom L R 949.

—S. 34.

——*Arrears of* abkari *revenue—Sale by Government for recovery of — Whether subject to any prior mortgages.*

Though under S. 34, Bombay Abkari Act, arrears of *abkari* licence-fees are recoverable as land revenue, arrears of *abkari* revenue are not due upon any specific land owned by the *abkari* renter. Consequently, a sale by Government of the land of the renter for recovery of arrears of *abkari* revenue would be a sale subject to any prior mortgages on the land. *(Aston, A. J. C.)* AHMED HAJI ESMAIL v. PARMANAND MENGHRAJ

A I R 1932 Sind 121=
Ind. Rul. (1932) Sind 110=26 S L R 390=
139 I C 47.

—S. 43.

See also Ss. 3 and 9.

SYNOPSIS

1. Evidence and Proof.
2. Import.
3. Master and Servant.
4. Possession.
5. Punishment.
6. Scope.
7. Search.
8. Transport.

1. Evidence and Proof.

——*S. 43 (1) (a) and (b) — Prosecution under—Acceptance of police evidence.*

Where although the law does not make it obligatory for a search to take place in presence of panchas still in view of the information already received there is sufficient time for panchas to be called and a seizure to be made in presence of panchas, it would be advisable on the part of the police in such cases to raid a place or seize incriminating articles accompanied by panchas. If however the police do not avail themselves of panchas in such a case the Court must very carefully scrutinize the Police evidence. If after careful scrutiny, the Court is satisfied that the evidence is such as can be safely acted upon, it would certainly be open to the Court to act on that evidence. *(Chagla C. J. and Gajendragadkar J.)* EMPEROR v. SHANWAR MANU KOLI

A I R 1950 Bom 267=
52 Bom L R 38=1949 Bom Cr C 136=
I L R (1950) Bom 303=
51 Cr L J 1297.

BOMBAY ABKARI ACT (V of 1878), S. 43 —

1. Evidence and Proof

——*S. 43 (1) (a)—Burden of proof.*

The burden of proof on the prosecution in proceedings under Bombay Abkari Act, does not shift until the factum of possession is proved. *(Davis J. C. and Lobo J.)* EMPEROR v. GULAB SHAH KADIR SHAH

A I R 1938 Sind 80=
10 R S 269=32 S L R 689=
174 I C 835=39 Cr L J 504.

2. Import.

——*Importation of Bhang.*

Importation of 20 tolas of Bhang into Viramgaon from Wadhwan Civil Station amounts to importation from foreign territory into Bombay Presidency and is punishable under S. 43. *(Bhatchelor and Heaton JJ.)* EMPEROR v. CHIMAN LAL

37 Bom 152=14 Bom L R 876=
17 I C 534=13 Cr L J 790.

——Import of articles, liable to duty—Contravention of Act — *See* Bombay Abkari Act (5 of 1878), S. 9

9 Cr L J 291 (Bom).

3. Master and Servant.

——*S. 43, Cl. (g)—Applicability.*

Section 43, Cl. (g) of the Bombay Abkari Act, 1878, applies to the case of a servant of a licensee, who sells liquor without a permit from the Collector. *(Chandavarkar and Heaton JJ.)* EMPEROR v. BALLA SAKHARAM KOREGAONKAR

11 Bom L R 746=3 Ind Cas 778=
10 Cr L J 382.

4. Possession.

——*Bottle containing illicit liquor produced by son—Father not present at time of search—Presumption as to joint possession.*

Where on a search, the son produced the key of the box in which a bottle containing illicit liquor was found, but at the time of the search the father was not present :

Held, that before a presumption could be raised that this bottle was in the joint possession of both the son and the father it was incumbent upon the Crown to prove that both of them had either physical or constructive possession of the contraband liquor, or if the son had such possession, that he had it on behalf of himself and the father to the knowledge of the father. *(Rupchand and Mehta A. J. Cs.)* DODO RACHO v. EMPEROR

A I R 1937 Sind 154=10 R S 316=
169 I C 561=38 Cr L J 796 (1).

——*Ss. 43, (1) (a), 53 — Conviction for illegal possession of liquor — Essentials to be proved—Three brothers belonging to joint Hindu family charged under S. 43-A—Bottles containing liquor found in godown owned by them—Charge of joint illegal possession—Nature of proof required.*

In order to convict a person of illegal possession of contraband liquor it is necessary for the Crown to prove that he had knowledge of his possession,

BOMBAY ABKARI ACT (V of 1878), S. 43—

4. Possession

and a person who was unaware that it had been placed in his custody cannot be so convicted. The mere fact that three brothers belong to a joint Hindu family, and as such own the godown in which the bottles containing the liquor are found concealed does not, in a charge under S. 43-A, Bombay Abkari Act, prove that any one of them was in conscious possession of the bottles lying there, so as to bring them within the purview of S. 53.

In such a case it is incumbent upon the Crown to prove (a) that each of the accused had either physical or constructive possession of the property in question, or (b) that one or more of them had possession thereof either physical or constructive on behalf of themselves and the other accused and to their knowledge. *(Rupchand and Mehta A. J. Cs.)* NARUMAL DAYALDAS v. EMPEROR

A I R 1936 Sind 44=8 R S 165=
1936 Cr Cas 316=162 I C 263=
37 Cr L J 546.

——*S. 43 (1) (a)—Nature of possession necessary for conviction.*

For the purposes of S. 43 (1) (a), Bombay Abkari Act, possession of any excisable article is sufficient without anything more. *(Broomfield and Divatia JJ.)* EMPEROR v. APPA RAMA MALI

A I R 1934 Bom 16=35 Bom L R 1065=
6 R B 929=1934 Cr Cas 108=
147 I C 1003=35 Cr L J 523.

——*S. 43 (1) (a)*—Possession of an illicit article, in order to justify a conviction under the Abkari Act, need not necessarily be exclusive possession. *(Broomfield and Divatia JJ.)* EMPEROR v. APPA RAMA MALI A I R 1934 Bom 16=
6 R B 929=35 Bom L R 1065=
1934 Cr Cas 108=147 I C 1003=
35 Cr L J 523.

——*S. 43 (1) (a), (h)—Possession of illicit liquor and articles for manufacturing it—Joint possession of accused and his brothers—Exclusive possession, if necessary to justify conviction—Search.*

The accused lived jointly with his two brothers in a clump of huts. Of the three huts that were there the middle one was occupied by the accused with his family, the two adjoining huts by his two brothers and their families. At the back of the huts there were some fields jointly cultivated by the brothers. In each of the three huts were found articles which suggested that the inhabitants were or had been in possession of illicit liquor and in the fields were found some bottles containing liquor and tins of jaggery wash intended for preparation of illicit liquor :

Held, that the only reasonable inference which could be drawn from the possession of these articles would be that the accused or the accused and his brothers were manufacturing illicit liquor, and that the possession of these articles, which could not be explained on any other hypothesis, was for the purpose required by Cl. (h), S. 43, Bombay Abkari Act :

Held also, the fact that the evidence of possession would tell with almost equal force against the brothers of the accused was no ground for holding that possession has not been proved against the accused himself. If the evidence as to possession is adequate in the case of the accused, it does not assist him at all to say that on the same evidence

BOMBAY ABKARI ACT (V of 1878), S. 43—

4. Possession

other persons might have been tried and convicted along with him. *(Broomfield and Divatia JJ.)* EMPEROR v. APPA RAMA MALI

A I R 1934 Bom 16=35 Bom L R 1065=
6 R B 929=1934 Cr Cas 108=
147 I C 1003=35 Cr L J 523.

——*S. 43, cl. (1) (a) and (i) — Possession, if necessary — Conviction for selling and possession.*

Possession is not a necessary part or element of the sale of an excisable article and on the same facts an accused person may be convicted of possession of an excisable article and at the same time of selling such article or part of it. But the question whether a conviction should, in any particular case, be under both charges or not must depend upon the particular facts of that case.

Where the possession was only for the purposes of the sale and the whole of the article in possession was sold and there was no evidence to prove that the accused or any of them had any prior possession of the excisable article :

Held, that the facts were not sufficient to base a conviction for such prior possession against either of them in addition to a conviction for selling. *(Rupchand and Mehta A. J. Cs.)* EMPEROR v. JABAR SHERBAZ

A I R 1933 Sind 134 (2)=6 R S 55=
1933 Cr Cas 332 (2)=146 I C 39=
34 Cr L J 1151.

5. Punishment.

——*Effect of amendment — It is not obligatory upon Court to impose upon accused sentences of both imprisonment and fine.*

The effect of the amendment made in S. 43, Bombay Abkari Act, by Bombay Act XXIX of 1947, is that on a conviction, the accused is not necessarily to be punished with the imprisonment of six months and with fine; but he is 'punishable' or liable to be punished with imprisonment and with fine. The word 'punishable' imports discretion, and it is left to the discretion of the Court to impose a sentence of imprisonment or a sentence of fine or both. And as the words 'such imprisonment and fine' occurring in the proviso refer to the preceding clause, they also indicate that the sentence is left to the discretion of the Court. It is not, therefore, obligatory upon the Court to impose upon the accused both the sentence of imprisonment and the sentence of fine. *(Chagla C. J., Bavdekar and Gajendragadkar JJ.)* PETER D'SOUZA v. EMPEROR

A I R 1949 Bom 41=50 Bom L R 574=
20 Bom Cr C 1=50 Cr L J 137 (FB).

——*Offence under—Sentence of imprisonment — Enhancement of sentence on reference—Exercise of discretion by Court of competent jurisdiction—Criminal Procedure Code (Act V of 1898), S. 439.*

The crime of surreptitiously importing dangerous drugs is one which must be put down with a strong hand and the proper sentence is one of imprisonment. But enhancement of sentence is a serious proceeding. *(Ferrers J. C. and O'Sullivan A. J. C.)* EMPEROR v. MUBARAK MIAN RAKHIO

A I R 1934 Sind 157=1934 Cr Cas 1149=
7 R S 103 (1)=152 I C 872=
36 Cr L J 218.

——*Cultivation of bhang—Deterrent punishment is called for as such offences are difficult for detection.*

BOMBAY ABKARI ACT (V of 1878), S. 43 —

5. Punishment

The offences like cultivating bhang are difficult to detect and when discovered should be dealt with in such a manner as to deter other persons from committing similar breaches of law. A fine of Rs. 25 was held to be entirely inadequate. *(Kincaid J. C. and Barlee A. J. C.)* EMPEROR v. BUDHO A I R 1927 Sind 112= 7 A I Cr R 290=99 I C 594= 28 Cr L J 162.

——*S. 43 (9)—Penalty—Imprisonment.*

Where cocaine is possessed and sold secretly without license, imprisonment should be awarded as a deterrent sentence. *(Chandavarkar and Hayward JJ.)* EMPEROR v. ROGER DE SILVA 13 Bom L R 1185=12 I C 980= 12 Cr L J 604.

6. Scope.

——*Ss. 43 and 45A—Applicability.*

If a case falls within S. 43, S. 45A which is a residuary section, cannot be resorted to. *(Chagla C. J. and Gajendragadkar J.)* EMPEROR v. KISHORE SHETTY A I R 1950 Bom 221= 52 Bom L R 29=1950 A W R (Sup) 36= 1949 Bom Cr C 128=I L R (1950) Bom 290= 51 Cr L J 1207

——*S. 43 (1), (a) — Sub-ss. (a) and (h), if create distinct offences—Sentence.*

Section 43 (1) (a), Bombay Abkari Act makes it an offence to import, export, transport or possess any excisable article or hemp; and sub-s. (h) makes it an offence to use, keep or possess any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any excisable article other than *toddy*, so that the one sub-section deals with the possession and dealing with an excisable article, and the other sub-section deals with the possession of materials for manufacturing that article. The offences dealt with by the two sub-sections are quite distinct. It does not necessarily follow that excisable articles in an accused's possession have been manufactured with his own material, but where that connection exists between the two offences, it may properly be taken into account in considering the sentence. *(Beaumont C. J. and Wadia J.)* EMPEROR v. DEORAO BHIVAJI A I R 1935 Bom 202= 37 Bom L R 191=7 R B 510= 1935 Cr Cas 589=156 I C 399= 36 Cr L J 924 (1).

——*Ss. 43 (1) (a) and (b) — Apparatus — Cr. P. Code, S. 35 — Offences of possessing illicit liquor and of possessing apparatus for manufacturing such liquor are distinct.*

The offence of possessing illicit liquor is not necessarily covered by the offence of possessing the apparatus for manufacturing such liquor. The two offences are quite distinct. (1890) Rat Unrep Cr C 523, Foll. *(Fawcett and Mirza JJ.)* EMPEROR v. PANDU AVACHIT BHIL A I R 1928 Bom 141=52 Bom 277= 30 B L R 378=108 I C 512= 10 A I Cr R 114=29 Cr L J 412.

——*Ss. 43 (b), 47—Scope.*

Section 43 (b) does not apply if the accused's possession of cocaine is altogether illegal. The section seems to contemplate the case of a person who is in lawful possession of cocaine at one place but is by law forbidden to remove it either partly or wholly to another place. If the offence consists in the possession of cocaine at any place in contravention of the Act, the conviction under S. 47 is right. *(Batchelor and Knight JJ.)* EMPEROR v. BALVANTRAO ANANTRAO 5 I C 860= 12 Bom L R 124=11 Cr L J 269 (2).

BOMBAY ABKARI ACT (V of 1878), S. 43 —

6. Scope

7. Search.

——*S. 43 (1)—Search—Irregularities—Effect—Conviction based on uncorroborated testimony of Police Officers — Legality — See* Criminal P. C., S. 103 A I R 1951 Bom 186=52 Cr L J 41.

——*S. 43 (1)—Cr. P. Code, S. 103—Punchas not witnessing every detail of search does not vitiate search if search carried on in presence of accused, provided possession of offending object can be proved beyond doubt from evidence.*

The mere fact that the Panchas are not present throughout a search under S. 43 (1) *(a)*, and do not witness every detail of it is not sufficient in itself to vitiate the conviction, especially where the accused is himself present at the search, and it is open to the Court to find the fact of possession of an offending article proved, provided that on a consideration of all the evidence in the case it is satisfied that the fact has been proved beyond reasonable doubt. 4 Cr. L. J. 390; 20 Cr. L. J. 742, Dist.; 41 Cal. 350; A. I. R. 1925 All. 434 and A. I. R. 1926 All. 188, Foll. *(Mirza and Broomfield JJ.)* DINKAR NHANU MANGAONKAR v. EMPEROR A I R 1930 Bom 169= 54 Bom 471=125 I C 713= 32 B L R 344=31 Cr L J 927.

8. Transport.

——*S. 43 (1) (a)—Mere passing through place in course of journey, whether amounts to transporting to that place.*

When the Act talks about transport from one place to another it means transport from the starting point to the ultimate destination. It is a question of fact for the Court to determine what the destination may be. If a man comes to a place and stays there for an appreciable time—and what amounts to an appreciable time would have to be considered in relation to the purposes of the Act —the Court might hold that that place was the destination although it appeared that the journey was to be resumed subsequently. But merely passing through a place in the course of a journey does not amount to transporting to that place. *(Beaumont C. J. and Norman J.)* EMPEROR v. DAGADU SHETIBA A I R 1938 Bom 43= 39 Bom L R 1062=10 R B 295= I L R (1938) Bom 49=172 I C 764= 39 Cr. L J 197.

——*Possession of mhowra flowers—Consignment through Railway.*

The accused consigned certain *mhowra* flowers for conveyance to another place and the Railway Company took these goods in the course of the conveyance to a place in the prescribed area within which even the possession of *mhowra* flowers without a permit was unlawful. *Held*, that the applicant was not guilty of the possession of the flowers, and in the absence of any evidence that he conspired with the Railway Company to carry those goods without a permit, he was not guilty of even of abetment. *(Heaton and Shah JJ.)* CHUNI LAL MANI LAL v. EMPEROR A I R 1915 Bom 296=27 I C 836= 17 Bom L R 72=16 Cr L J 212.

BOMBAY ABKARI ACT (V of 1878), S. 43 —

8. Transport

——Cocoine consigned from Lucknow to Bombay City and conveyed without transhipment at frontier of Bombay Presidency—*See* ibid, S. 9

4 Cr L J 193 (Bom).

—S. 45.

——*S. 45 (c) — Breach of licence by servant of licence holder.*

A licensee was under a licence authorised to sell liquor to be drunk on the premises of the shop and not for removal. The licensee told his servant to hand over three bottles of whisky to a purchaser. The servant put these bottles unopened on the counter in front of the purchaser. *Held* that the servant must have known from the fact of puting these bottles, unopened upon the counter, that these were to be taken away. He was therefore guilty of abetting a breach of the licence. *(Constantine J.)* REWACHAND BAGOMAL v. EMPEROR

229 I C 239=48 Cr L J 364 (Sind).

——*S. 45 (c) — Licence prohibiting accused from selling liquor outside his shop — Accused taking out liquor from cask in shop, bottling it and delivering to servants in shop for transmission to customers at their houses.*

The accused who was a licensed vendor of country liquor was prohibited by a clause in his licence from selling liquor outside the shop mentioned in the licence. He took out quantity of liquor out of a big cask, bottled it and delivered it to his servants in the shop premises and the servants delivered the bottles to the customers in their houses and recovered the price there :

Held, that the servant of the accused in the circumstances could very well be treated as a bailee for the purpose of transmission to the buyer, within the meaning of S. 23 (2), Sale of Goods Act, and delivery to such servant, which admittedly took place in the licensed place, would be effective delivery to the buyer himself. As the sale, therefore, was completed within the licensed area the fact that the price was paid at the houses of the customers was immaterial for the completion of sale does not depend upon payment of the price of the goods sold. The accused could not, therefore, be convicted under S. 45 *(c)*, Bombay Abkari Act. *(Broomfield and Wassoodew JJ.)* EMPEROR v. KUNVERJI KAVASJI KAVARANA

A I R 1941 Bom 106 = 43 Bom L R 95=13 R B 368=194 I C 302 =42 Cr L J 552.

——*S. 45 (c) — Sale — Keeping for sale in forbidden battles does not amount to selling.*

Where the accused is found in his shop to have kept for sale ordinary denatured spirit in bottles, which were not full corked quart or pint bottles.

Held, that the accused cannot be said to have violated the condition, because it is not proved that he sold ordinary denatured spirit in the forbidden bottles.

Per *Fawcett J.* — The word "sell" in condition 5 of the license cannot be properly construed as covering words such as "or keep for sale". *(Fawcett and Patkar JJ.)* EMPEROR v. S. V. MARATHE

A I R 1927 Bom 518=29 Bom L R 1012=103 I C 834 =8 A I Cr R 442=28 Cr L J 754.

——*S. 45 (c) — Breach of conditions of license— License Rule 20.*

BOMBAY ABKARI ACT (V of 1878), S. 45

The accused agreed with the complainant to allow his name to be used as a contractor from Government, for two shops for the sale of country liquor. The funds for the contract proceeded from the complainant, and the accused was to be paid a certain sum by the complainant, for allowing his name to be used. The contract was knocked down to the accused; and the licenses were issued in his name. One of the conditions of the licenses was as follows : "The licensee shall not sell, transfer or sublet his right of sale of country spirits under this license, nor enter into any agreement in connection with the exercise of the said right, which, in the opinion of the Collector, is in the nature of sub-lease." The shops remained in the complainant's possession and were managed by him. The accused was proceeded against under S. 45 (c) of the Act, for the breach of a condition in the license :

Held that, though, by supplying the necessary funds, a person, other than the licensee named in the license, might acquire a beneficial interest in the proceeds or profits of sales, he could not, by so supplying funds, acquire the right of sale through the licensee named, such right being conferred by virtue of the Act only upon the person named, and that the person named in the license could not set up as a defence that another person had acquired the right of sale through him as an agent or benamidar instead of from him as the person who had that right in himself. *(Batty and Heaton JJ.)* EMPEROR v. MAHADEVAPPA

8 Bom L R 990=5 Cr L J 10.

——*S. 45 (c)—Omission to keep accounts.*

The omission to keep true accounts in accordance with the conditions of a license granted under the Bombay Abkari Act is an offence under S. 45 (c) of the Act. *(Chandavarkar and Aston JJ.)* EMPEROR v. J. B. MASCERENAS

6 Bom L R 253=1 Cr L J 261.

—S. 45A.

——Applicability—*See* ibid, S. 43.

AIR 1950 Bom 221=51 Cr L J 1207.

—S. 47.

——*"All due and reasonable precautions", meaning of.*

The phrase "all due and reasonable precautions" in S. 47, Bombay Abkari Act, does not imply "all precautions." That would be an impossible construction. The phrase implies precautions that are reasonable or practical and due or necessary and which a prudent and sensible person would take in endeavouring to prevent transgressions of the kind in question in carrying out the object of the licence. That is the test laid down by S. 47. In that view of the law, the licensee's liability must be decided according to the circumstances of each case.

A licensee had employed two servants to conduct his *toddy* booth, in order to act as effective checks on one another. He used to visit the booth every day until he fell ill and was unable to visit the booth. During his illness his booth was raided by excise officer and adulterated *toddy* was found. But before he fell ill a surprise raid had been carried out in his booth and the *toddy* was found to be pure :

Held, that the licensee was not liable under S. 47, Abkari Act as he had taken all due and

BOMBAY ABKARI ACT (V of 1878), S. 47

reasonable precaution. *(Wassoodew and Somjee JJ.)* EMPEROR v. GANPAT LAXMAN KALGUTKAR
AIR 1938 Bom 427=40 Bom L R 820=
11 R B 112=177 I C 665=
39 Cr L J 933.

——*Ss. 47, 43 (1) (i), 45 — Charge under S. 45 joined with charge under S. 43 (1) (i) read with S. 47—Legality of.*

Section 47, Bombay Abkari Act, provides for liability for the holder of a license as if he himself had committed an offence and his trial under S. 43 (1) (i) read with S. 47 is a trial as to his criminal liability. Consequently, there is no valid objection to a charge under S. 45 being joined with a charge under S. 43 (1) (i) read with S. 47. *(Ferrers J. C. and Aston A. J. C.)* JETHANAND MURIJMAL v. EMPEROR
AIR 1933 Sind 255=1933 Cr Cas 811=
6 R S 116=147 I C 55=
35 Cr L J 256.

——Scope — Possession of Cocaine unlawful from inception — Conviction under S. 47 is right — *See* Bombay Abkari Act (V of 1878), S. 43 (b).
11 Cr L J 269 (2) (Bom)

——*Possession of liquor.*

Mere possession of Kaju liquor, on which no duty has been paid, but which is under the quantity fixed by S. 17 is not punishable under S. 47. *(Chandavarkar and Knight JJ.)* EMPEROR v. DATTA KHETAR DESAI 10 Bom L R 284=
7 Cr L J 307.

—S. 53.

——*Principle*—Mens rea—*Master's liability.*

The Abkari Act is a Licensing Statute, with reference to which the principle is that licenses to keep ale houses are only granted to persons of good personal character, and it is obvious that the object of so restricting the grant of licenses would be defeated, if the licensed person could, by delegating the control and management of the house to another person who was altogether unfit to keep it, free himself from responsibility for the manner in which the house was conducted. *Mens rea* is not required where the acts prohibited by a statute are not criminal in any sense, but are prohibited in the public interest, under a penalty. This principle is substantially adopted in S. 53 of the Abkari Act, with the exception, that it is open to the license-holder, according to the section, to prove facts to show that he is not liable for his servant's defaults or acts. *(Chandavarkar and Knight JJ.)* EMPEROR v. WAMAN DHANRAJ
10 Bom L R 171=7 Cr L J 191.

—S. 54.

——*S. 54, cls. (a) and (b)—Order of confiscation.*

Before cl. (b) of S. 54 comes into operation, there must be an offence committed under the Act. An article must be liable to confiscation under cl. (a), and that article must be dealt with in the manner specified along with, or in addition to, the other articles sought to be confiscated.

The accused were convicted under S. 43 (1) (i), the offence charged being that they sold without a licence a bottle of beer and a bottle of rum. The Magistrate in convicting the accused, passed an order for the confiscation of liquor which was found, on the Police raiding the premises in the kitchen adjacent to the place where the sale took place and a very considerable amount of liquor was found in a godown at the back of the accused's premises :

BOMBAY ABKARI ACT (V of 1878), S. 54

Held, that the articles in the kitchen and in the godown were never had in possession along with the bottles sold after they became liable to confiscation. Hence those articles were not liable to confiscation. *(Beaumont C. J. and N. J. Wadia J.)* SALAMAT MURZBAN IRANI v. EMPEROR
A I R 1942 Bom 154 (2)=
44 Bom L R 239=I L R (1942) Bom 254=
15 R B 60=200 I C 879=43 Cr L J 730.

——*S. 54, cl. (b) — Cl. (b) must be strictly construed.*

Clause (b) of S. 54 being a penal clause must be construed strictly.

The only sound way to construe cl. (b) of S. 54 is to take the words literally, and to say that the only articles which are liable to confiscation under cl. (b) are articles lawfully imported, transported, manufactured, had in possession or sold along with something which had actually at the time become liable to confiscation. *(Beaumont C. J. and N. J. Wadia J.)* SALAMAT MARZBAN IRANI v. EMPEROR
A I R 1942 Bom 154 (2)=
44 Bom L R 239=I L R (1942) Bom 254=
15 R B 60=200 I C 879=43 Cr L J 730.

BOMBAY ABKARI AMENDMENT ACT (VI of 1940)

—S. 6.

——*Ss. 6, 7—S. 6 deleting Proviso to S. 14-B (1) of Abkari Act (V of 1878)—Object of deletion.*

By S. 6 of the Amending Act, the proviso to sub-s. (1) of S. 14-B, Bombay Abkari Act was deleted. One object of the proviso was to facilitate import and export into and from the port of Bombay by enabling warehouse-keepers and railway companies on the docks to possess any quantity of foreign liquor, and the object of the Legislature in deleting the proviso was to destroy, or at any rate render very difficult, import and export into and from the port of Bombay. *(Beaumont C. J., N. J. Wadia, Wassoodew and Sen JJ.)* EMPEROR v. SAVER MANUEL DANTES
AIR 1940 Bom 307=42 Bom L R 791=
13 R B 149=ILR (1940) Bom 777=
191 I C 85=42 Cr L J 74 (SB).

—S. 7.

——*Retrospective.*

The Court leans strongly against a construction which gives to an Act retrospective action because it manifestly shocks one's sense of justice that an act legal at the time of doing it, shall be made unlawful by some new enactment. The only notifications which fall within S. 7, Bombay Abkari Amendment Act are notifications effective at the date of the passing of the Amending Act. The section was not intended to affect the construction of notifications already rescinded, still less of a Notification which had been declared invalid, and therefore had never had any effect, and was a mere nullity. Even if S. 7 applied to a notification already declared *ultra vires* by the High Court S. 7 cannot have the effect of reviving the invalid notification. *(Beaumont C. J., N. J. Wadia, Wassoodew and Sen JJ.)* EMPEROR v. SAVER MANUEL DANTES
AIR 1940 Bom 307=
42 Bom L R 791=13 R B 149=
ILR (1940) Bom 777=191 I C 85=
42 Cr L J 74 (SB).

BOMBAY ACT FOR AVOIDING WAGERS (AMENDMENT) ACT (III of 1865)

—S. 1.

——*Wrestling match.*

Agreement that party failing to appear should pay certain sum and winner should get gate-money is not a wagering contract and does not come under the Bom. Act, 3 of 1865. *(Madgavkar and Barlee JJ.)* BABA SAHEB RAHIMSAHEB v. RAJARAM RAGHUNATH ALPE AIR 1931 Bom 264= Ind Rul (1931) Bom 366= 33 Bom L R 260=133 I C 254.

BOMBAY BEGGARS ACT (XXIII of 1945)

—S. 5.

——*Act not void — Constitution of India, Art. 15 —(Words & Phrases—'Domicile', meaning of).*

The term "domicile" as used in the Act means residence in the Province of Bombay without present intention of removing it from the Province of Bombay. The element of birth at a particular place is not a necessary constituent of the term 'domicile' as used in the Act. Therefore, it is clear that S. 5, sub-s. (4), does not deal with beggars whose place of birth only is in the Province of Bombay. The Act does not make a discrimination as between beggars on ground only of place of birth and is not *ultra vires* of Art. 15 of the Constitution, on that ground. *(Rajadhyaksha and Vyas JJ.)* VITHAL MARUTI v. STATE AIR 1952 Bom 451= 54 Bom L R 626=1952 Bom Cr C 365= ILR (1953) Bom 51= 1952 Cr L J 1600

——*Ss. 5 (5), 6 & 23 — Applicable to beggars not born and domiciled in Bombay Province.*

It is not correct to say that beggars neither born nor domiciled in the Province of Bombay cannot be dealt with under S. 5, sub-s. (5), read with S. 6. In such a case there are two alternative sections either of which may be applied, namely, S. 5 or S. 23. *(Rajadhyaksha and Vyas JJ.)* VITHAL MARUTI v. STATE AIR 1952 Bom 451= 54 Bom L R 626=1952 Bom Cr C 365= ILR (1953) Bom 51= 1952 Cr L J 1600.

—S. 6.

——Applicable to beggars not born and domiciled in Bombay Province—*See* ibid, S. 5 (5).

AIR 1952 Bom 451=1952 Cr L J 1600.

—S. 20.

——License under — No license granted under the Act can permit begging. *(Rajadhyaksha and Vyas JJ.)* VITHAL MARUTI v. STATE AIR 1952 Bom 451=54 Bom L R 626= 1952 Bom Cr C 365=ILR (1953) Bom 51= 1952 Cr L J 1600.

—S. 23.

——Applicability to beggars not born and domiciled in Bombay Province—*See* ibid, S. 5 (5).

AIR 1952 Bom 451=1952 Cr L J 1600.

BOMBAY BOILER INSPECTION ACT (II of 1891)

—S. 29.

——*S. 29 (1) (b) — "In direct and immediate management and charge."*

The words "in direct and immediate management and charge" in sub-s. (1) (b) of S. 29 did not mean that the Engineer should always be in the immediate presence of the boiler and have his eyes fixed on it for the whole day. It is a question of fact, to be decided from the circumstances, whether the Engineer was in direct and immediate charge of the boiler. *(Batten, Addl. J. C.)* EMPEROR v. RAMU BEHARI LAL 4 N L R 95= 8 Cr L J 31.

BOMBAY BOILER INSPECTION ACT (II of 1891), S. 29

BOMBAY BOILER INSPECTION ACT (II of 1891)

BOMBAY BORSTAL SCHOOLS ACT (XVIII of 1929)

—S. 6.

——*Ss. 6, 8 —Previous convictions as evidence of criminal habits.*

Where the evidence of criminal habits or tendencies from which it is to appear to the Court that it should take action under S. 6, Bombay Borstal Schools Act is that of previous convictions, the Court should require these previous convictions to be properly proved before it can say that there is evidence from which it can appear to the Court that the accused is of criminal habits or tendencies within the meaning of cl. *(b)* of S. 6. There is no difference in the standard of proof required for previous convictions, for the purpose of S. 75, Penal Code, or for the purpose of S. 6, Bombay Borstal Schools Act.

Where the only evidence of previous convictions is merely the extracts from the records of Central Bureau of Finger Prints and no certificate from Jail officer or warrant of commitment is produced to prove it, on such evidence, the Court cannot take account of the previous convictions and cannot, consequently, take action under S. 6. *(Davis J. C. and Tyabji J.)* EMPEROR v. ABDULLAH KARIM AIR 1939 Sind 335= ILR (1940) Kar 83=12 R S 161= 185 I C 268=41 Cr L J 143.

——*Ss. 6, 11—Action when can be taken—Procedure to be followed before referring case to High Court.*

Before a case is referred to the High Court under S. 6, a reference should be first made to the Inspector-General and only when he is of the opinion that he cannot, by reason of the particular circumstances of the case or the provisions of S. 11, Borstal Schools Act, transfer a young offender to the Borstal School by his own order or with the previous sanction of Government, should any reference in such matters be made to the High Court. *(Davis J. C. and Tyabji J.)* EMPEROR v. ABDULLAH KARIM AIR 1939 Sind 335= ILR (1940) Kar 83=12 R S 161= 185 I C 268=41 Cr L J 143.

——*Sentence of two years and one year for two offences with direction of detention in Borstal School for three years in lieu of it.*

Where the accused who is found to be under 18 years of age, is sentenced to two years' rigorous imprisonment for one offence and for one year's rigorous imprisonment for another, the sentences to run consecutively and it is directed that in lieu of the sentences the accused should be detained in a Borstal School for three years, the sentence is contrary to the provision of S. 6. *(Davis J. C. and Mehta A. J. C.)* EMPEROR v. KUNDAN AIR 1937 Sind 2=9 R S 155= 166 I C 831=38 Cr L J 320.

——Section 6, Borstal Schools Act, contemplates not a sentence of imprisonment passed under any one particular section or sections of the Penal Code, either concurrent or consecutive but an order

BOMBAY BORSTAL SCHOOLS ACT (XVIII of 1929), S. 6

of detention for the period prescribed. *(Davis J. C. and Mehta A. J. C.)* EMPEROR v. KUNDAN
AIR 1937 Sind 2=9 R S 155=166 I C 831=38 Cr L J 320.

——*(As amended by Act XVII of 1935)—Magistrate's duty regarding youthful offenders.*

The wording of the Bombay Borstal Schools Act is designed not only to reform the offender but to save him from the stigma of conviction and therefore, Magistrates should follow the wording of S. 6 of the Act and should find the youthful offender guilty of an offence but should not convict him of an offence and should pass in lieu of a sentence of imprisonment an order for detention within the provisions of S 6. *(Davis J. C. and Lobo A. J. C.)* EMPEROR v. KISHNO CHOPO
AIR 1936 Sind 78=9 R S 1 (1)=30 S L R 98=1936 Cr Cas 661=163 I C 373=37 Cr L J 855 (2).

——*Offence not first—Accused above 16 but below 21 years of age—Sentence.*

The mere fact that the offence committed by an adolescent is not his first offence is no ground for not sending him to a Borstal School. The very object of the Bombay Borstal Schools Act is to detain adolescents in the School who have formed criminal habits when the Court considers that their detention in the School will be conducive to their reformation Under the Act the Magistrate should consider whether an adolescent offender who is not below the age of 16 years and not above the age of 21 years should not be sent to a Borstal School for the purpose of being reformed, and the Magistrate should apply his mind to the provisions of the Act.

Where a person above 16 and below 21 is sentenced to undergo imprisonment in jail, it will not be competent for the Magistrate to pass an order of detention in Borstal School even if he thinks fit to do so, unless the sentence passed against him is set aside. *(Kupchand J. C. and Mehta A. J. C.)* EMPEROR v. NURO CHAPPAR
AIR 1933 Sind 391=6 R S 114=1933 Cr Cas 1431=27 S L R 476=146 I C 1076=35 Cr L J 253.

——*Proper form of order—Detention.*

Under S. 6, Bombay Borstal Schools Act, when an offender is found guilty of an offence for which he is liable to be sentenced to transportation or imprisonment and certain conditions are satisfied, it shall be lawful for the Court to pass in lieu of a sentence of transportation or imprisonment an order that the offender be detained in the Borstal School for a certain term. The proper order under S. 6 is to convict the accused, and then, in lieu of sentence of imprisonment, sentence him to be detained for a period of not less than two years and not more than five years. *(Beaumont C. J. Shingne and Wadia JJ.)* EMPEROR v. LAKSHMAN SHIVRAM
A I R 1933 Bom 461=35 Bom L R 1018=6 R B 134=1933 Cr Cas 1420=58 Bom 37=146 I C 1 (FB).

—— *Ss. 6, 21—Accused guilty of offence rendering him liable to transportation or imprisonment—Order for detention in Borstal School — Scope of S. 21—Revision.*

Where the accused is found to be guilty of an offence which renders him liable to be transported or imprisoned, the Court can, under S.6, Bombay Borstal Schools Act, pass in lieu of any such sentence of transportation or imprisonment an order for his detention in a Borstal School. *(Mehta A. J. C.)* ISSA v. EMPEROR
A I R 1932 Sind 175=26 S L R 295=1932 Cr Cas 732=Ind Rul (1932) Sind 188=140 I C 417=34 Cr L J 11.

——*Juvenile offender — Procedure — Nature of sentence to be passed.*

The proper procedure to be followed under S. 6, Bombay Borstal Schools Act, is that in case the Magistrate convicts the accused under S. 380, Indian Penal Code, in lieu of a sentence of imprisonment he should sentence the accused to be detained for a period of not less than two years and not more than five years in a Borstal School. It is wrong to sentence the accused to rigorous imprisonment and then direct him to undergo it in the Borstal School. *(Beaumont C. J. and Broomfield J.)* EMPEROR v. MATHURADAS PURSHOTTAM
A I R 1932 Bom 489=34 Bom L R 299=Ind Rul (1932) Bom 223=1932 Cr Cas 617=137 I C 132=33 Cr L J 395

—S. 12.

——*Ss. 12 and 21, Proviso—Order of detention by Magistrate—Government and not High Court can interfere with such order.*

Where the trial Court has substituted an order for detention for a sentence of transportation or imprisonment, the High Court cannot interfere in appeal or revision. Only Government has power under S. 12, Bombay Borstal Schools Act, to alter the order made by the Magistrate. *(Broomfield and Wassoodew JJ.)* EMPEROR v. BALWANT JIVAN PAWAR
A I R 1942 Bom 78=44 Bom L R 48=14 R B 351=199 I C 85=43 Cr L J 475.

—S. 21.

——Under S. 21 of the Borstal Schools Act nothing contained in the Criminal P. C. shall be construed to authorise any Court or Magistrate to alter or reverse in appeal or revision any order passed with respect to the age of an offender or the substitution of an order for detention in a Borstal School for transportation or imprisonment. *(Mehta A J. C.)* ISSA v. EMPEROR
A I R 1932 Sind 175=26 S L R 295=1932 Cr Cas 732=Ind Rul (1932) Sind 188=140 I C 417=34 Cr L J 11.

BOMBAY BUILDING (CONTROL ON EREC-TION) ACT (XXXI of 1948)

—S. 15.

—— *S. 15 (1)* — Effect of Notification dated 15-1-1948 issued under Ordinance 1 of 1948 — Notification extended not only provisions of Ordinance but also provisions of Act 31 of 1948—*See* Bombay Building (Control on Erection) Ordinance (1 of 1948), S. 1 (4). AIR 1953 S C 244=1953 Cr L J 1094 (SC).

—— *Notification issued under Bombay Building (Control on Erection) Ordinance (1 of 1948)—Words in notification referring to Ordinance, if can be substituted by words referring to Act—Bombay General Clauses Act (1 of 1904), Ss. 7, 9 and 25.*

Under S. 1 (4), Bombay Building (Control on Erection) Ordinance, the Government by a notification extended the operation of the Ordinance to

BOMBAY BUILDING (CONTROL ON EREC-TION) ACT (XXXI of 1948), S. 15

all the areas in the Province other than those specified in the schedule to the Ordinance. The Bombay Building (Control on Erection) Act repealed the Ordinance, but by S. 15 of the Act it was provided that the provisions of Ss. 7 and 25, Bombay General Clauses Act, would apply to the repeal as if that Ordinance were an enactment :

Held, that even if the notification continued in force because of the application of S. 25, Bombay General Clauses Act, it extended the Ordinance and not the Act. Therefore, in the absence of any provision in the Act embodying the principle underlying S. 9, Bombay General Clauses Act, it was not permissible to substitute for the words of the notification under the Ordinance referring to the Ordinance words referring to the Act. *(Bavdekar and Vyas JJ.)* STATE OF BOMBAY v. PANDURANG VINAYAK CHAPHALKAR,

AIR 1951 Bom 263=52 Bom L R 852=
1951-21 Bom Cr C 38=ILR (1951) Bom 271=
1952 Cr L J 277.

[Reversed in AIR 1953 S C 244=1953 Cr L J 1094 (SC).]

BOMBAY BUILDING (CONTROL ON EREC-TION) ORDINANCE (1 of 1948)

—S. 1.

——*S. 1 (4) — Notification under, dated 15-1-1948—(Bombay Building (Control on Erection) Act (31 of 1948), S. 15 (1))—(Bombay General Clauses Act (1 of 1904), S. 25)—(General Clauses Act (1897), S. 24)* : *A I R 1951 Bom 263=1952 Cri L J 277, REVERSED.*

The Notification issued on 15-1-1948 under S. 1 (4) of the Ordinance extended not only the provisions of the Ordinance to the other areas in the Bombay State to the extent indicated in the Notification but also the provisions of Act 31 of 1948 : AIR 1951 Bom. 263 = 1952 Cr L J 277, *REVERSED. (Mahajan and Bhagwati JJ.)* STATE OF BOMBAY v PANDURANG VINAYAK,

AIR 1953 S C 244=1953 S C J 330=
55 Bom L R 526=1953 S C R 773=
1954 S C A 293=1953 Cr L J 1094.

BOMBAY CHILDREN ACT (XIII of 1924)

—S. 3.

——*Ss. 3 (a), (c), 22—Accused, child and youthful offender.*

Where the accused is a child within the provisions of cl. *(a)* of S. 3, Bombay Children Act, and is a youthful offender within the meaning of cl. *(c)*, the Court can only lawfully commit the accused to prison under the provisions of S. 22 of the Act after it certifies that the boy is so unruly or of so depraved a character that he is not a fit person to be sent to a certified school and that none of the other methods by which a case may be legally dealt with is suitable. *(Davis J. C. and Lobo J.)* EMPEROR v. KAURO MIZARI, AIR 1938 Sind 224=
11 R S 79=ILR (1939) Kar 189=
178 I C 126 (1)=39 Cr L J 996.

—S. 5.

——*Object of.*

The object of S. 5 is to exclude from the exercise of powers under the Act all Courts other than those specified, and not to confer jurisdiction. *(Beaumont C. J. and Wassoodew J.)* DAMODAR GOPAL v. EMPEROR, AIR 1942 Bom 341=
44 Bom L R 804=ILR (1943) Bom 88=
15 R B 280=203 I C 643=44 Cr L J 126.

BOMBAY CHILDREN ACT (XIII of 1924), S. 5

——*Ss. 5, 51, 46—Juvenile Court and Presidency Magistrate—Jurisdiction, if concurrent.*

The jurisdiction of the Children's Court is not exclusive ; the other Presidency Magistrates can try cases in which children are concerned. *(Beaumont C. J. and Wassoodev J.)* DAMODAR GOPAL v. EMPEROR A I R 1942 Bom 341=
44 Bom L R 804=I L R (1943) Bom 88=
15 R B 280=203 I C 643=
44 Cr L J 126.

—S. 7.

——*Proceedings initiated by putative father.*

Under S. 7 of the Bombay Children Act, the only persons who can move the Court are a Police Officer or other person authorized in this behalf in accordance with rules made by the Governor in Council. Those persons include Probation Officers and certain other persons, but not an alleged putative father who has no *locus standi* to start proceedings. *(Beaumont C. J. and N. J. Wadia J.)* IN RE ANANDI MAHAR

A I R 1937 Bom 388=39 Bom L R 468=
10 R B 187=171 I C 274=
38 Cr L J 1053.

—S. 22.

——*Murder case—Age of accused hardly 15 years—Sentence of transportation held illegal.*

In a murder case, where the age of the accused when he committed the offence was hardly fifteen years, it was held that the sentence of transportation for life passed upon him was illegal as he clearly came within the definition of "child" as given in the Act. *(O'Sullivan and Thadani JJ.)* HIROMAL v. EMPEROR

A I R 1948 Sind 63=49 Cr L J 191.

——*Child convicted for murder — Reformatory School, benefit of—Inquiry.*

The conviction of a child for the offence of murder does not *per se* show that the child is of so unruly or depraved a character as to be unfit to be sent to a certified or reformatory school. In majority of cases, such a finding must be based on enquiry into the antecedents of the child in question. *(Lobo and Tyabji JJ.)* DINO RAMZAN v. EMPEROR I L R (1944) Kar 272.

—S. 23.

——Child committing theft can be dealt with under S. 23 (1)—*See* Bombay Children Act (13 of 1924), S. 27 A I R 1947 Sind 35=
48 Cr L J 513.

——*Ss. 23, 32, 51 (3) — Power of High Court, at any time before expiration of term of detention, to extend period of detention.*

There is no limit of time within which an application for revision must be made, and it can be made under S. 51, Bombay Children Act, at any time before the expiration of the term of detention limited in the order. High Court has, therefore, jurisdiction at any time before the expiration of the term of detention limited in the order under S. 23 to extend the period of detention, provided the extended period does not exceed the limit specified in S. 32. *(Beaumont C. J. and Lokur J.)* EMPEROR v. MAHOMED ISLAM ABDUL SAKUR

A I R 1939 Bom 371=41 Bom L R 554=
12 R B 153=184 I C 205=
40 Cr L J 900.

BOMBAY CHILDREN ACT (XIII of 1924) —S. 27.

——*Ss. 27 (3) and 23 (1)—Child committing theft —S. 27 (3) does not apply — Such child can be dealt with under S. 23 (1).*

Section 27 (3) clearly relates to S. 27 (2) which relates to the case of a child charged with an offence punishable with fine only, and theft clearly is not such an offence. Therefore, where theft is committed by a child S. 27 (3) cannot apply. The child can be sent to a certified school under S. 23 (1). *(Davis C. J. and Thadani J.)* EMPEROR v. DEVLO A I R 1947 Sind 35= I L R (1946) Kar 93=230 I C 115= 48 Cr L J 513.

——*Accused between 14 and 15 convicted for murder—Proper course is to proceed under S. 26.*

Under the I. P. C., the Sessions Judge has no power to impose on the accused (who is over 14 and below 15 years) a sentence of 7 years' imprisonment.

Hence, in convicting her of the offence of murder, he cannot do so under S. 27, Bombay Children Act by reason of the proviso which follows Cl. (1) of S. 27. The proper course for the Judge is to deal with the accused in the manner provided in S. 26 of the Act. *(Lobo and O'Sullivan JJ.)* RAJAN v. EMPEROR A I R 1944 Sind 198= I L R (1944) Kar 260=17 R S 69= 216 I C 205=46 Cr L J 141.

——*Murder—Sentence of imprisonment.*

A sentence of imprisonment cannot be imposed on a child found guilty of murder. *(Lobo and Tyabji JJ.)* DINO RAMZAN v. EMPEROR I L R (1944) Kar 272.

——*Offence by child under Railways Act (IX of 1890)—Court can order caning only in default of fine under S. 27 (2) and not in first instance.*

Section 27, Bombay Children Act, does not confer upon the Court powers which it does not otherwise possess. Although S. 27 does set out a list of pains and penalties which may be inflicted upon conviction of offences against the law, and gives the Magistrate the right to choose any one of them, it does not confer fresh powers upon Magistrates. The Magistrate cannot do any of the things mentioned in S. 27 unless he is authorized by some other law. Hence under S. 27, the Court cannot impose the punishment of whipping in the first instance upon a child who is found guilty of the offences under Ss. 109 and 121 of the Railways Act as those sections provide for punishment of fine only. In such a case the Court can order caning only in default of fine under S. 27 (2) of the Bombay Children Act. *(Davis C. J.)* KUNDAN TILLUMAL v. EMPEROR A I R 1942 Sind 162= I L R (1942) Kar 288=15 R S 87= 203 I C 646=44 Cr L J 127.

——*S. 27 (1), sub-cl. (1) — Proviso to S. 27 (1) applies only to sub-cl. (1)—Fresh power on Magistrate if conferred.*

The proviso to S. 27 (1), Bombay Children Act, is applicable only to sub-cl. (1) which enables the Magistrate to deal with the case "in any other manner in which it may legally be dealt with." The sub-clause does not confer any fresh power on the Magistrate.

It would be useless to confer by a section powers which already exist under some other law, and it would be senseless to give new powers under a section and then provide at the end that the new powers are not to operate. *(Beaumont C. J. and Macklin J.)* LINGANNA ELANNA v. EMPEROR, AIR 1934 Bom 461=36 Bom L R 962= 7 R B 212 (1)=1934 Cr Cas 1331= 153 I C 33 (1)=36 Cr L J 283 (1).

BOMBAY CHILDREN ACT (XIII of 1924), S. 27

— S. 27-B.

——*(As amended in 1935)—Report likely to lead to child's identification at least by relations and friends of child — Report comes under S. 27B— Previous publication of report is mitigating factor in awarding sentence.*

The intention of the Legislature in inserting the words 'calculated to lead to the identification' in S. 27B in the year 1935 is that the future of a child should not be marred by any report which is likely to lead to the child's identification. Thus a newspaper report does come within the wording of this section if it is likely to lead to the child's identification only by the friends and relations of the child's family, though not by a large section of public. The motive behind publishing the report, however laudable, is immaterial for the applicability of the section. The fact that the report had already been published in some other newspapers and the identity of the child concerned was thereby known by a wide section of public, though affords no justification for the offence itself, yet is a mitigating factor in the matter of sentence. *(Divatia and Bavdekar JJ.)* EMPEROR v. RUSTAM KARANJIA, A I R 1946 Bom 115= 47 Bom L R 986=18 Bom Cri C 185.

—S. 46.

——Juvenile offender — Right of counsel to cross-examine—*See* Criminal P. C. (1898), S. 340 A I R 1950 Sind 16=51 Cr L J 929.

—S. 51.

——*Ss. 51 (3), 7—Order under S. 7 — Appeal to District Magistrate — Revision to High Court, if lies against such order.*

Sub-section (3) of S. 51, Bombay Children Act, is in terms an enabling section and not a disabling section, and if it purports to restrict in any way the High Court's power of revision, it does so only by implication. As powers of revision are conferred by statute, it would be wrong to hold that they have been limited by implication when they have not been limited by any express words. Sub-section (3) does not, strictly speaking, apply to an order passed by a District Magistrate on appeal against the order made under S. 7 of the Act. The High Court can revise such order in revision. *(Beaumont C. J. and N. J. Wadia J.)* IN RE ANANDI MAHAR, AIR 1937 Bom 388= 39 Bom L R 468=10 R B 187= 171 I C 274=38 Cr L J 1053.

BOMBAY CHILDREN (AMENDMENT) ACT (VII of 1936)

— Man of 22 externed because of petty theft by him at the age of 14 — The order is in defiance of the spirit of the Bombay Children Act. *(Beaumont C. J. and Macklin J.)* EMPEROR v. CHHOTALAL BAPALAL A I R 1941 Bom 367= 43 Bom L R 834=ILR (1941) Bom 690= 14 R B 232=197 I C 577=43 Cr L J 210.

BOMBAY CITY LAND REVENUE ACT (II of 1876) —S. 13.

——*Ss. 13 and 41—Rules referred to in S. 13 are rules framed under S. 41 for confinement of civil prisoners — Fact that no rules are framed under S. 41 does not make all provisions in Civil P. C., with regard to arrest and detention of debtors applicable to persons arrested under S. 13.*

The rules referred to in S. 13 are the rules framed for the confinement of civil prisoners and not the provisions of the Civil Procedure Code with regard to the arrest and detention of debtors. Under S. 41 the Provincial Government can make rules regulating the manner in which the persons ordered to be arrested under S. 13 are to be apprehended. The mere fact that no such rules have been framed so far would not justify the conclusion that all the provisions contained in the Civil Procedure Code with regard to the arrest and detention of debtors apply to persons arrested under S. 13, Bombay City Land Revenue Act. *(Rajadhyaksha and Chainani JJ.)* ALI AHMED v. COLLECTOR OF BOMBAY,

A I R 1950 Bom 33=51 Bom L R 589=1949-17 I T R 371=1949 Bom Cr Cas 68=ILR (1950) Bom 150=51 Cr L J 306.

——*Detention under—Maximum period of detention is that prescribed by section and not period of six months prescribed by Civil P. C.*

In the absence of any limiting words, the maximum period for which a person can be detained under S. 13 is that mentioned in the section itself namely, one day for each rupee of the amount recoverable from him as an arrear of land revenue. The maximum limit of detention, viz., six months laid down in the Civil Procedure Code does not apply in cases of persons arrested under S. 13 of the Bombay City Land Revenue Act. The object of the Legislature in prescribing only the maximum period evidently was to give discretion to the Collector to determine, subject to the limit prescribed by it, the actual period of detention in each case, having regard to the circumstances of that case. Merely because of the possibility that in some cases the powers might be abused, it will not be proper to hold that the powers do not exist or to impose arbitrary restrictions on the exercise of those powers : A I R 1938 P C 130 and A I R 1939 P C 47, Ref. *(Rajadhyaksha and Chainani JJ.)* ALI AHMED v. COLLECTOR OF BOMBAY

A I R 1950 Bom 33=51 Bom L R 589=1949-17 I T R 371=1949 Bom Cri Cas 68=I L R (1950) Bom 150=51 Cr L J 306.

——*Scheme of, stated — Defaulter of income tax detained under S. 13 without first selling his property — Detention is illegal — Fact that defaulter is insolvent and all his property is vested in Official Assignee is no ground for not proceeding against his property.*

The scheme of S. 13 of the Act clearly is that the Collector should first proceed against so much of the property of the defaulter as is necessary to satisfy the Government demand, and if the sale of the defaulter's property does not produce an amount sufficient to satisfy the demand, then only can the Collector cause the defaulter to be apprehended and confined in a civil jail. The arrest and confinement are intended to secure, if possible, the realisation of the balance of the demand either from him or from some one interested in him. Until the amount of this balance is known, it would not be possible to determine the period for which the defaulter is to be confined. It is true that if the defaulter has no property at all, then it would be open to the Collector to proceed against the defaulter personally and to keep him in jail until the sum due from him is paid or the period of detention calculated on the basis of one day per each rupee of the demand expires. In such a case the question of satisfying the condition precedent does not arise.

Where a defaulter of income-tax is arrested and detained under S. 13 without following the procedure prescribed by that section, the detention would be illegal. The mere fact that the defaulter is an adjudged insolvent and all his property has vested in the Official Assignee is no ground for not proceeding against the property of the defaulter which is still capable of being sold for the realisation of Government dues by virtue of provisions of Ss. 17 and 49, Presidency Towns Insolvency Act.

So also the fact that the sale of the defaulter's property would not have realised any appreciable amount is no ground for not following the procedure prescribed by S. 13. The reason is that when a special procedure is prescribed by law for taking a particular action, that procedure must be followed, and it is no answer to say that even if such procedure had been followed, the result would not have been different : A I R 1936 P C 253, Rel. on. *(Rajadhyaksha and Chainani JJ.)* ALI AHMED v. COLLECTOR OF BOMBAY

A I R 1950 Bom 33=1949 Bom Cr Cas 68=I L R (1950) Bom 150=1949-17 I T R 371=51 Bom L R 589=51 Cr L J 306.

——Order of detention under S. 13 read with S. 46 (2), Income-tax Act, 1922, against defaulter of income-tax — Order passed bona fide — Even if order is illegal application under S. 491, Criminal P.C. is not barred by S. 226, Government of India Act. *See* Government of India Act (1935), S. 226

A I R 1950 Bom 33=51 Cr L J 306.

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888).

——*Interpretation — Premises do not mean contiguous buildings of one owner.*

Definition of the words "premises" meaning buildings which are contiguous to each other and owned by one private person, is not supported by any of the provisions of the Municipal Act. *(Patkar and Baker JJ.)* AMRATLAL v. EMPEROR,

AIR 1928 Bom 532=11 A I Cr R 500=30 Bom L R 1422=112 I C 773=30 Cr L J 5.

——*Applicability—Criminal P. C., S. 562 (1-A)—S. 562 (1-A) does not apply to offences under the Act.*

Sub-section (1-A), S. 562, Cr. P. C., is confined to cases of an offence under the Penal Code and does not apply to an offence punishable under the City of Bombay Municipal Act : AIR 1926 Bom 230, *Foll. (Fawcett and Mirza JJ.)* MERWANJI M. MISTRY v. EMPEROR,

AIR 1928 Bom 152=30 Bom L R 375=109 I C 502=52 Bom 250=10 A I Cr R 286=29 Cr L J 566.

—S. 3.

——*S. 3 (w) and (y) — Definition of "street"—Passage which has on both sides more or less continuous and regular row of houses.*

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888), S. 3

Words defined as "including" certain things are not meant to prevent the word from receiving its ordinary popular sense, but to enable the word to be applied to some things to which it would not, according to the ordinary use of language apply, especially where for the definition of other words the expression "means" or "means and includes" is used. Thus the inclusive definition of the word "street" in S. 3 *(w)*, Bombay (City) Municipal Act is not intended to exclude the ordinary meaning of the word "street", *viz.*, a roadway, not necessarily a highway, which has on one side or both sides a more or less continuous and regular row of houses. Questions may arise as to the nature of the roadway, and of the locality in which it is situated, how far a roadway must be made up in order to constitute a street, how many houses are necessary, and the degree of regularity in the line of houses, and so forth. But all such questions must be dealt with as questions of fact on the evidence adduced in the particular case. A well-laid out passage (more than 200 feet in length and 30 feet in width) running between two rows of buildings and used by the tenants and occupants of those buildings and by the public generally for access to the buildings from the main public road is a street even though the public has not acquired any unobstructed right of passage or access for 20 years. This is also made clear from S. 302 (1) *(d)*.

But it cannot be said that every open space or road which has buildings on one or both of its sides must be regarded as a street within the meaning of the Act. In that case the municipality will have power to interfere with rights of private ownership, and thereby the owners will be discouraged in leaving open spaces between their buildings for the use and benefit of their tenants. *(Beaumont C. J., Lokur and Rajadhyaksha JJ.)* PROVIDENT INVESTMENT CO. LTD., BOMBAY v. EMPEROR,
AIR 1943 Bom 435=45 Bom L R 965=
16 R B 276=210 I C 629=
45 Cr L J 274 (FB).

——*S. 3 (y)*—According to the definition in S. 3 *(y)* every street which is not a public street, is a private street, whether notice of its construction is given to the Commissioner or not. *(Beaumont C. J., Lokur and Rajadhyaksha JJ.)* PROVIDENT INVESTMENT CO., LTD., BOMBAY v. EMPEROR,
AIR 1943 Bom 435=45 Bom L R 965=
16 R B 276=210 I C 629=
45 Cr L J 274 (FB).

——*Ss. 3 (x) and (y)—Whether street is private.*

In order to prove that a street is a private street it must be shown that it is not a public street, that is to say, has not been levelled, paved, metalled, channelled, sewered or repaired by the corporation prior to the date when Act III of 1888 came into operation, *i. e.*, September 14, 1888.

Before Act III of 1888 came into force the work of public drainage and other matters of that kind were carried out at the expense of the corporation under Act III of 1872 and Act II of 1865. Therefore, it would be reasonable to say that drainage works, carried out by the responsible authorities under Act II of 1865 as well as those carried out when Act III of 1872 was in force, were works carried out by the corporation within the meaning of S. 3 *(x)* of Act III of 1888. Out of the works carried out by the corporation before Act III of 1888 came into force, drainage works alone came within the purview of S. 3 *(x)* of Act III of 1888. Hence in order to show that a street is a private street, it must be proved that no drainage work was carried out by the corporation with regard to it under Act II of 1865 and Act III of 1872 before coming into force of Act III of 1888. *(Broomfield and Wassoodew JJ.)* EMPEROR v. BYRAM KHODADAD,
AIR 1943 Bom 68=
45 Bom L R 60=15 R B 380=205 I C 358=
44 Cr L J 384.

——*S. 3 (m)*—The expression "receives the rent" in S. 3 *(m)* is not used in any technical sense. The Court has to see whether the person charged with an offence under the Act is one who receives rent of the premises. *(Beaumont C. J. and Macklin J.)* NOOR MOHOMED v. EMPEROR,
AIR 1941 Bom 304=43 Bom L R 508=
14 R B 99=196 I C 95=42 Cr L J 811.

——*Ss. 3 (m) and 380—Interpretation—Definition of "owner," in S. 3 (m) applies to S. 380.*

There is nothing in S. 380 which renders the definition of "owner" in S. 3 (m) inapplicable either to the case of the owner of a hut or shed or to the case of the owner of the land on which such hut or shed stands. In each case the definition is one that can properly be applied without there being inconsistency with the rest of the section. *(Fawcett and Mirza JJ.)* LAXMAN PANDU v. EMPEROR
A I R 1928 Bom 136=
30 Bom L R 339=109 I C 344=
10 A I Cr R 176=29 Cr L J 520.

——*Ss. 3 (x) (y) and 305 — Street — Public and private—Houses abutting on the street.*

A "street" does not merely mean the actual roadway but includes the houses on either side of it. Therefore the laying down in a street of a sewage pipe which carries the sullage water of the houses abutting on it constitutes sewering of the street by the Municipality though the surface water of the street is not taken away. *(Shah and Marten JJ.)* EMPEROR v. RAM RAO
A I R 1918 Bom 91=43 Bom 122=
20 Bom L R 620=46 I C 519=
19 Cr L J 743.

——*Ss. 3 and 305—Public street—Private street—'Sewer' meaning of.*

"Sewer" in S. 3 signifies a drain or passage to convey water and filth underground and refers to the carrying of other water besides liquid filth. A street whereunder runs a corporation pipe for carrying off sullage water from certain houses but which have connection with the surface of the street, cannot be said to be "sewered" by the corporation and is not a public street and a notice can validly be issued under S. 305. *(Batchelor and Rao JJ.)* EMPEROR v. EDALJI
14 Bom L R 1169=18 I C 267=
14 Cr L J 43.

——*S. 3, Cl. (w)—Street—Vacant space laid out as means of passage with houses on both sides.*

The word "include" in cl. (w) of S. 2 must have been used in order to enlarge the meaning of the word "street". The word street must receive the ordinary common-sense interpretation which would be put upon it by "the man in the street".

Held that the vacant space in front of *M's* house when, and if, laid out as a means of passage with houses on both sides and when, and if, used as

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888), S. 3

such by the occupiers of such houses, and not by the public generally, would constitute a street within the meaning of the Bombay Municipal Act. *(Russell and Batty JJ.)* MUNICIPAL COMMISSIONER OF BOMBAY v. MATHURABAI,
8 Bom L R 457=4 Cr L J 23.

—S. 24.

——*"City," meaning of.*

The word "City" in S. 24 is not equivalent to the City of Bombay or the whole area to which the Municipal Act applies. *(Russell and Aston JJ.)* EMPEROR v. BUDHOOBAI, 30 Bom 126=
7 Bom L R 726=2 Cr L J 604.

—S. 231.

——*Notice not giving particulars as to character of drain is not sufficient compliance with S. 231.*

A notice which only requires the owner or occupier to connect his drain with the Municipal drain without giving him any particulars at all as to the character of the drain which the Commissioner thinks necessary, is not a sufficient notice to comply with S. 231, Bombay City Municipal Act. *(Beaumont C. J. and Wassoodew J.)* EUGENE MERANDA v. EMPEROR,
A I R 1938 Bom 315=40 Bom L R 320=
11 R B 1 (1)=175 I C 1001=
39 Cr L J 684 (2).

——*Ss. 231, 471 — Failure to comply with notice to construct drain — Protest against notice and reply thereto—Effect of.*

A notice under S. 231 of the City Municipal Act directed the accused to construct the drain in a particular part of his house and close to a particular wall thereof. The accused protested against the notice and the Municipal Commissioner replied that he would make enquiries. Finally, the Commissioner issued another notice asking the accused to carry out the work mentioned in the first notice; the accused's failure to comply with this notice resulted in the conviction in question.

Held (1) the effect of entering upon a course of negotiations after the first notice was to keep that notice in abeyance and both the parties must be regarded as having waived the notice and treated it as non-existent and unenforceable.

(2) That it was competent to the Commissioner, when the result of the enquiries was adverse to the accused, to start proceedings against him and issue a fresh notice; time, therefore, began to run only from the second notice.

(3) That it was not competent to the Commissioner, under S. 231 (a), to direct the accused to construct a drain so as to adjoin any particular part or wall of his premises. The requisition was so far *ultra vires* of the Commissioner, and the notice was illegal. *(Chandavarkar and Aston JJ.)* EMPEROR v. NADIRSHA H. E. SUKHIA,
29 Bom 35=6 Bom L R 667=
1 Cr L J 768.

—S. 248.

——*S. 248 (1) (c) — Rent farmer—Municipality can proceed either against landlord or rent farmer.*

The proper construction of S. 248 (1) (c) is that the Municipality may at their option proceed either against the landlord or his lessee who under the terms of his lease is entitled to sub-let the premises and receive rent from his sub-tenants. The term "owner," as defined in the Act, covers both cases. A. I. R. 1928 Bom. 527, Expl.; A. I. R. 1928 Bom. 136, Ref. *(Mirza and Patkar JJ.)* JAFFAR CASSAM MOOSA v. EMPEROR,
A I R 1928 Bom 528=30 Bom L R 1442=
112 I C 861=11 A I Cr R 546=53 Bom 131=
30 Cr L J 29.

——*Rent contractor is liable to comply with requisition under S. 248.*

A rent contractor falls within the definition of "owner" in S 3, cl. (m) of the Act and as such he is the person who under S. 248 of the Act is liable to comply with the requisition of the Municipal Commissioner under S. 248. *(Patkar and Baker JJ.)* AZIZ GAFFOOR v. EMPEROR,
A I R 1928 Bom 527=30 Bom L R 1439=
112 I C 849=30 Cr L J 17.

——*"Employed in any premises" means employed in private residence.*

The words "persons employed in any premises" in S. 248 should be construed as referring to the servants who are employed in the private residence. *(Patkar and Baker JJ.)* AMRAT LAL v. EMPEROR,
A I R 1928 Bom 532=
11 A I Cr R 500=30 Bom L R 1422=
112 I C 773=30 Cr L J 5.

—S. 249.

——A godown in which more than 20 persons are employed as workmen or labourers, though contiguous to a residential building of the same owner, is premises within S. 249. *(Patkar and Baker JJ.)* AMRATLAL v. EMPEROR
A I R 1928 Bom 532=
11 A I Cr R 500=30 Bom L R 1422=
112 I C 773=30 Cr L J 5

——*Place of public resort—Theatre.*

A theatre is a place of public resort within the meaning of S. 249 of the Act. *(Russell and Aston JJ.)* EMPEROR v. DWARKADAS
8 Bom L R 115=30 Bom 392=
3 Cr L J 236

—S. 257.

——*Ss. 257, 375, 3 (m) — Accused parting with right to receive rent — He is not owner within meaning of Act*

The expression "receives the rent" in S. 3 (*m*), City of Bombay Municipal Act, is not used in any technical sense. The Court has to see whether the person charged with an offence under the Act is one who receives rent of the premises. If he is not entitled to receive the rent at all, and does in fact not receive it, he cannot be said to be an owner. Where the accused and his co-owners of the property have parted with the right to receive the rent they cannot recover it and, they are not owners within the meaning of the Act. *(Beaumont C. J. and Macklin J.)* NOORMAHOMED v. EMPEROR
A I R 1941 Bom 304=
43 Bom L R 398=14 R B 99=
196 I C 95=42 Cr L J 811

——*S. 257 (1)—Notice — Notice requiring owner to raise water to storage tank by means of hand pump cannot be given under S. 257.*

The Commissioner can under S. 257 requisition work to bring the condition of the privy or water-closet within the previous provisions of the chapter with regard to their construction and maintenance, and nothing whatever is said throughout the chapter with regard to the water supply. The Commissioner is not entitled to give a notice under S. 257 (1) directing the landlord to maintain the

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888), S. 257

water closet in good order by pumping a sufficient quantity of water into the cistern. *(Macleod, C. J. and Shah J.)* S. MAHOMED HAJI v. EMPEROR
A I R 1924 Bom 337=
26 Bom L R 178=81 I C 616=
25 Cr L J 968

—S. 271.

——*S. 271 (2)—Object and applicability.*

Section 271 (2) was designed for the purpose of providing for recalcitrant landlords, and not for investing the Municipal Commissioner with general powers whenever he thought that any premises connected with the water supply or unconnected therewith had not got provision for the supply of adequate water for the purposes therein mentioned. It applies only in the cases where the landlord has failed and neglected to apply for water connection in spite of the notice under S. 141 (b) of the Act. *(Bhagwati and Vyas JJ.)* BOMBAY MUNICI. PALITY v. MOHAMEDBHAI I. RAUJI
A I R 1952 Bom 194=
54 Bom L R 143=
1951-21 Bom Cr C 300=
I L R (1952) Bom 639=
1952 Cr L J 876

—S. 274.

—— *Ss. 274 (1) and 471—Notice under S. 274 (1) vague and indefinite—Action under S. 471.*

Where in the notice given by the Municipal Commissioner to a landlord the size, material, quality and description of the cisterns and fittings are not particularised as required by S. 274 (1), the notice is vague and indefinite and cannot afford any basis of any action to be taken against the landlord under S. 471.

Thus, where in a notice given under S. 274 (1) the landlord was asked to provide under head 2 for domestic purposes overhead storage of a total capacity of 1500 gallons and head 4 required him to provide suction tank at the ground level of 1500 gallon capacity :

Held that the words "overhead storage" and "at the ground level" were not enough by themselves to particularise the position in which the tanks had got to be placed by the landlord and as such heads 2 and 4 being vague and indefinite non-compliance with the notice could not be made the basis of the prosecution under S. 471;

Held further that the non-compliance with the requirements of other heads in the notice which was a composite one could not be treated as distinct from the non-compliance with the requirements of heads 2 and 4 and therefore there was no justification for a prosecution of the landlord only for non-compliance with the requirements of other heads. *(Bhagwati and Vyas JJ.)* BOMBAY MUNICIPALITY v. MOHAMEDBHAI I. RAUJI
A I R 1952 Bom 194=54 Bom L R 143=
1951-21 Bom Cr C 300=
1 L R (1952) Bom 639=
1952 Cr L J 876

—S. 278.

——*S. 278 (2)*—It is not necessary that before a person can be convicted for not complying with the provisions of S. 275 he should be served with a notice under S. 278 (2). *(Beaumont C. J. and Rajadhyaksha J.)* MUHAMMAD ELIAS PATEL v. EMPEROR JAFERALI
A I R 1944 Bom 18=
45 Bom L R 899=16 R B 252=
210 I C 412=45 Cr L J 261

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888)

—S. 302.

See also, S. 305.

——*Merely by omitting to give notice under S. 302, person cannot claim exemption from operation of Act.*

Normally, whoever intends to make or lay out a new private street ought to give written notice of his intention to the Commissioner. But he cannot be allowed to take advantage of his omission to fulfil the operation of the Act in respect of his road, if it is really a "street" in the true sense of that term. According to the definition in S. 3 *(y)*, every street, which is not a public street is a private street, whether notice of its construction is given to the Commissioner or not. *(Beaumont C. J., Lokur and Rajadhyaksha JJ.)* PROVIDENT INVESTMENT CO., LTD., BOMBAY v. EMPEROR
A I R 1943 Bom 435=
45 Bom L R 965=16 R B 276=
210 I C 629=45 Cr L J 274 (F B)

—S. 303

See ibid, S. 305.

—S. 304.

See ibid, S. 305.

—S. 305.

——*"Premises," meaning of.*

The word "premises" occurring in S. 305 of the City of Bombay Municipal Act must be presumed to have been used by the legislature in its legal sense, as referring to the particular kind of property which forms the subject-matter of the group of the immediately preceding sections of the Act namely Ss 302 to 307. That whole group has reference to streets made for the use of buildings or building sites. The dominant idea running through Sections 302 to 304 is that of buildings either erected or projected. That is the kind of property dealt with in what has gone before S. 305, and, therefore, that is its "*præmissa.*" *(Chandavarkar and Heaton JJ.)* EMPEROR v. RAMACHANDRA BHASKAR MANTRI
12 Bom L R 669=34 Bom 593=
7 Ind Cas 935=11 Cr L J 544

——*Owner of land let out under building scheme if owner of property.*

The owner of land who has let out the land under a building scheme and takes the ground rent is not the owner of the property contemplated in the section. The lessee of the land who erects the building is the owner of property within the meaning of the section because under the Act the property contemplated embraces buildings whether erected or to be erected and that person is regarded as the owner who has the right to receive rent in respect of that property. *(Chandavarkar and Heaton JJ.)* EMPEROR v. RAMACHANDRA BHASKAR MANTRI
12 Bom L R 669=
34 Bom 593=7 Ind Cas 935=
11 Cr L J 544

—S. 306.

See ibid, S. 305.

—S. 307.

See ibid, S. 305.

—S. 308.

——*Encroachment on street over which public have no right of way.*

No doubt S. 308 refers to an obstruction "caused to the safe or convenient passage of the public along it," indicating thereby that the street referred to must be one over which the public have a

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888), S. 308

right of way. But although the obstruction required must be in respect of such a street the other acts referred to in that clause, viz., overhanging jutting or projecting into or in any way encroaching upon, any street, are applicable even to streets over which the public have no right of way. *(Beaumont C. J., Lokur and Rajadhyaksha JJ.)* PROVIDENT INVESTMENT CO. LTD., BOMBAY v. EMPEROR A I R 1943 Bom 435=45 Bom L R 965=16 R B 276=210 I C 629=45 Cr L J 274 (FB).

—S. 313-A.

——*Complaint in respect of offence under S. 313-A—Whether can be filed by the Police.*

The Police can lodge a complaint in respect of an offence under S. 313-A, City of Bombay Municipal Act. *(Beaumont C. J. and Macklin J.)* EMPEROR v. KASSAM ALIBHAI A I R 1934 Bom 459=36 Bom L R 965=7 R B 210 = 1934 Cr Cas 1330=59 Bom 53=153 I C 38=36 Cr L J 279.

—S. 337.

——*Ss. 337 (2), 342, 349-C—"To re-erect," meaning of — Additional superstructure to existing buildings.*

The additional storey or storeys which an owner wants to add to building with a ground floor which has been in existence for some years, would fall within "re-erection," provided it is not of the description mentioned in the definition of erection. *(Chandavarkar and Heaton JJ.)* EMPEROR v. NANABHOY BEZANJI CHOKSEY 9 Bom L R 932=6 Cr L J 236.

—S. 342.

——"To re-erect," meaning of—Additional construction to existing house when becomes re-erection. *See* ibid, S. 337 6 Cr L J 236.

—S. 349B.

——*Building—Meaning of.*

A small portion of a residential room such as an outlying bath room cannot be construed to be a building within S. 349-B of the Act. Adding of such rooms is not building. *(Batchelor and Shah JJ.)* KALIANJEE v. EMPEROR A I R 1917 Bom 249=41 Bom 741=19 Bom L R 681=42 I C 134=18 Cr L J 902.

——*House destroyed by fire — Limitation on height of house in reconstruction — Abutment on street.*

The height, to which an owner of a house abutting on street and destroyed by fire can raise his new building, is governed by S. 349-B City of Bombay Municipal Act, 1888. Even though reconstructing the owner sets back the house from the street on which it originally abutted, the house should still be taken as abutting on the street *(Davar and Heaton JJ.) In re* ALI MAHOMED 9 Bom L R 737=6 Cr L J 80.

The accused erected a building which touched, on ei her side of it, public streets running parallel to each other. The height of the house having exceeded the permissible limits, the Municipality required the accused to reduce the height, conformably to the provisions of S. 349-B. The accused disobeyed the requisition: and he was convicted and sentenced for the disobedience. *Held*, (1) that the building of the kind in question must, at all events

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888), S. 349-B

fulfil the conditions prescribed in cls. 1, 2 and 3 of S. 349-B with reference to both the streets on which it abuts, even if it did not fall within cl. 4 of the section (2) that the provisions in question of the Act were intended in the interests of public health, and the Court ought to so construe them as to advance that object. *(Chandavarkar and Pratt JJ.)* EMPEROR v. RUSTOMJI J. GHORKHODU 9 Bom L R 683=5 Cr L J 338.

—S. 349-C.

——"To re-erect," meaning of—Additional construction to existing house when becomes "re-erection'—*See* ibid, S. 337 6 Cr L J 236 (Bom).

—S. 377.

——*Notice to remove nuisance — Non-compliance —Acquittal by Magistrate on ground that premises did not appear to him to be in condition which would justify notice—Validity.*

Under S. 377 it is the commissioner to whom it should appear that the premises are in a condition which require a requisition for the removal of nuisance on the premises. An offence is complete as soon as there is non-compliance with his requisition and what the Magistrate thinks about the necessity for the removal is immaterial. Therefore he cannot order the acquittal of the accused on the ground that the premises were not in a condition as to justify the issue of a notice under the section. *(Batchelor and Knight JJ.)* EMPEROR v. RAJA BAHADUR SHIVLAL MOTILAL 12 Bom L R 125=34 Bom 346=5 I C 860 (2)=11 Cr L J 270.

—S. 379A.

——*S. 379 A (1)—Notice to abate to whom given —Overcrowding.*

A notice under S. 379 A (1) to abate the overcrowding must be given to the owner and not to the tenants to whom the building is let separately by the owner. *(Chandavarkar and Hayward JJ.)* MUNICIPAL COMMISSIONER v. MATHURADAS 36 Bom 81 =11 I C 995=13 Bom L R 640=12 Cr L J 459.

—S. 380.

——*Ss. 380 and 3 (m) — Applicability —Definition of "owner", in S. 3 (m) applies to S. 380.*

There is nothing in S. 380, which renders the definition of "owner" in S. 3 *(m)* inapplicable either to the case of the owner of a hut or shed or to the case of the owner of the land on which such hut or shed stands. In each case the definition is one that can properly be applied without there being inconsistency with the rest of the section. *(Fawcett and Mirza JJ.)* LAKSHMAN PANDU v. EMPEROR A I R 1928 Bom 136=30 Bom L R 339=10 A I Cr R 176=109 I C 344=29 Cr L J 520.

—S. 384-A.

——*Construction—Owner of building, when liable.*

The provision contained in S. 384-A of City of Bombay Municipal Act, is a penal provision and the section must be strictly construed.

The owner of a building is only liable under the language of S. 384-A, City of Bombay Municipal Act, if he himself is using the premises but not otherwise. The language used in S. 384-A, is not appropriate to the case of the owner unless he is also the occupier and uses the premises for any

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888), S. 384-A

prohibited purpose. *(Broomfield and Macklin JJ.)* DATTATRAYA RAMCHANDRA NAIK v. EMPEROR
A I R 1939 Bom 95 = 41 Bon L R 82= 11 R B 290 = 180 I C 97= 40 Cr L J 343.

—S. 390.

——*S. 390 (1) — Establishing of factory without permission is offence committed once for all when factory is established — But working of factory without leave is offence arising every day on which factory is worked.*

Since under S. 390, the offence consists of working a factory without permission, every day on which the factory is worked, an offence is committed. A continuing offence is not a very happy expression, because a person must be charged with committing an offence on a particular date, and he cannot be charged with committing an offence *de die in diem*. But the expression has a well-recognized meaning. It means that if an act of the accused constitutes an offence and if that act continues from day to day, then a fresh offence is committed on every day on which the act continues. If the act prohibited is that of working a factory an offence is committed on every day on which the factory is worked. It may not strictly be a continuing offence, because the owner of the factory may cease to work it for a longer or a shorter period and then re-open it; but on any day on which he is shown to have worked the factory without the requisite permission, he has committed an offence, and it is immaterial to consider whether he committed an offence by working the factory on some previous occasion. Under S. 390, the establishing of a factory without permission is an offence committed once and for all when the factory is established, but the working of a factory without permission is an offence which arises on every day on which the factory is so worked. *(Beaumont C. J. and Wassoodew J.)* EMPEROR v. KARSANDAS GOVINDJI VED
A I R 1942 Bom 326=44 Bom L R 756= 15 R B 278=203 I C 592= 44 Cr L J 120.

——*S. 390 (1) — Section constitutes two independent offences.*

The reference in the last part of S. 390 (1) to working "any such factory" must relate back to the description of the factory contained in the earlier part of the section, and the only description of a factory is of one in which it is intended that steam, water or other mechanical power shall be employed. The first part of the section constitutes as an offence the newly establishing of a factory, but the reference to such newly establishing does not form part of the description of the factory. The second part of the section applies generally to any person, and not merely to the person who has newly established a factory. The section constitutes two quite independent offences; one, establishing a new factory in which mechanical power is intended to be employed without permission, and the other, working such a factory, that is to say, a factory in which mechanical power is intended to be employed, without permission. The expression "such factory" is also found in sub-ss. (2) and (3) of S. 390 and in those subsections the reference is to the description of the factory contained in sub-s. (1) as a factory in which

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888), S. 390

steam, water or other mechanical power is to be employed. *(Beaumont C. J. and Wassoodew J.)* EMPEROR v. KARSANDAS GOVINDJI VED
A I R 1942 Bom 326 = 44 Bom L R 756= 15 R B 278=203 I C 592= 44 Cr L J 120.

——*S. 390 (1) — Offence under — Summons to accused—Ingredients of.*

In a summons to the accused in respect of an offence under S. 390 (1), Bombay City Municipal Act, it would be better to charge the accused in the words of the section constituting the offence, with having worked a factory in which mechanical power was used. Where, however, the accused was charged in the summons under the section with working 55 electric motors for the purpose of conducting a textile mill without permission, no serious objection can be taken to the form of the summons as it sufficiently informed the accused of the offence complained of. *(Beaumont C. J. and Wassoodew J.)* EMPEROR v. KARSANDAS GOVINDJI VED
A I R 1942 Bom 326 = 44 Bom L R 756= 15 R B 278=203 I C 592= 44 Cr L J 120.

——*Permission to establish one kind of factory—Commencement of another kind in addition without permission.*

Where the accused obtaining permission only to set up a handloom factory worked by an oil engine also set up a flour mill, the latter, though worked by the same power which was employed for the handloom, was a separate factory, and in opening the same without permission the accused committed a technical offence under S. 390. *(Batchelor and Knight JJ.)* EMPEROR v. MULJI DAMODARDAS
12 Bom L R 122 = 34 Bom 344= 5 I C 859 = 11 Cr L J 269.

—S. 394

——*Ss. 394 and 471 — Storing oil without license —Wrongful refusal of Commissioner to grant license is no defence.*

A wrongful refusal by Commissioner to grant license is no defence to a charge of storing oil without license. *(Shah and Crump. JJ.)* NARANDAS KARSANDAS v. EMPEROR
AIR 1921 Bom 445=45 Bom 1076= 61 I C 49 = 23 Bom L R 353= 22 Cr L J 321.

——*Lessor and lessee — Liability of.*

The lessees and sub-lessees of certain premises used them for keeping bullocks which were meant for hire contrary to the provisions of S. 394. The use was known to the owner and the lease expressly provided against it. *Held*, the lessor *i. e.* the owner of the premises was guilty under S. 394. *(Batchelor and Rao JJ.)* EMPEROR v. DADABHAI
14 Bom L R 882 = 17 I C 532= 13 Cr L J 788.

——*Bullocks kept by tenants—Liability of owner.*

Where A was joint owner of a place, part of which was let out to several tenants and the tenants kept bullocks on the place, some in huts and some in the open and they were plied for hire; but the place was not licensed by the Municipal Commissioner under S. 394A and knowing that the bullocks were kept on the land allowed their keeping. *Held* that A was guilty of an offence under S. 394 whether the bullocks were kept upon leased land or

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888), S. 394

not. (*Scott, C. J. and Russell, J.*) IMPERATOR v. TAYEBALI 14 Bom L R 885 =17 I C 529= 13 Cr L J 785.

——Railway using municipal land for storing timber—Licence—Necessity of — *See* Railways Act (1890), S. 7. 11 Bom L R 1181= 34 Bom 252=10 Cr L J 543.

——*Scope—Storing—Intention to store—"For the purpose."*

Section 394 requires that the premises, in order to attract the operation of the section, should be used for the purpose of storing. The expression "for the purpose" indicates that it must be the intention of those using the premises to store, that storing must be the object aimed at, the final cause for which the premises are used. The actual use is by itself insufficient, in the absence of proof as to the object aimed at. The purpose to store must be the dominant motive.

Where articles are kept on the premises, not because of the purpose of storing them, but merely because they have not been consumed as rapidly as anticipated or for other similar reasons, it cannot be reasonably said that the premises are used on purpose for storing. (*Batty and Aston JJ.*) EMPEROR v. WALLACE FLOUR MILL COMPANY, 29 Bom 193=6 Bom L R 735= 1 Cr L J 835.

—S. 398.

——Selling or exposing for sale fish intended for human consumption on foreshore of chowpatti—Chowpatti, if private market—Burden of proof—*See* City of Bombay Municipal Act (3 of 1888), S. 410. 2 Cr L J 604 (Bom).

—S. 402.

——*Fruits are articles of human food.*

Fruits are articles of human food within the scope of S. 402, Cl. 2 (*Patkar and Murphy JJ.*) BOMBAY MUNICIPALITY v. VENKANNA, AIR 1928 Bom 413=30 Bom L R 1128= 52 Bom 780=12 A I Cr R 30=113 I C 506= 30 Cr L J 168.

——*Ss. 402, 403 and 471—Private market — Accused constructing a structure consisting of shops abutting a street—Shops let to tenants—No intercommunication between the shops — Tenants not selling the same commodity—Shops and user were held not to constitute a private market within Ss. 402 and 403.*

The accused with the sanction of the municipality erected a structure designed to be let as small shops abutting on a street. The shops were let to tenants. There was no inter-communication between the shops. Each tenant was independent of the other. Majority of tenants sold fruits. The shops looked like stalls or booths. The customers purchased the goods standing on the pavement of the road and had no right to enter the shops.

Held, that the structure was nothing more than a collection of shops and its user did not constitute a private market within the meaning of Ss. 402 and 403; 9 Bom. 272; 11 Bom. 106; *Mayor of Manchester* v. *Lyons*, (1882) 22 Ch. D. 287; 10 Mad. 216, *Cons.* (*Patkar and Murphy JJ.*) BOMBAY MUNICIPALITY v. VENKANNA, AIR 1928 Bom 413=30 Bom L R 1128= 52 Bom 780=12 A I Cr R 30=113 I C 506= 30 Cr L J 168.

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888)

—S. 410.

——*Ss. 410, 398 — Sale of fish for human consumption from a basket placed on the foreshore of* Chowpatti—*Private market—Burden of proof—Bombay General Clauses Act (1 of 1904), S. 3 (10).*

The accused was found selling or exposing for sale, without license from the Municipal Commissioner, fish intended for human food on the *Chowpatti* foreshore, contrary to the provisions of S. 410 (1). The fish was kept in a basket which the accused had placed on the sand at some distance from the water, the place between the high and the low water marks. The fish was fresh fish and had been recently brought from one of the boats then lying in the back bay.

Held, that it was impossible to say that fresh fish was sold from a vessel, when, as a matter of fact, it had been sold from the basket on the shore and that therefore the accused was liable under S. 410 (1).

Held further, that it was difficult to see how a place like the whole of the foreshore of *Chowpatti* could be held to be a private market; and, even if this were not so, since the Municipality started their case by showing that the place in question was the foreshore of *Chowpatti*, that was sufficient to throw the onus upon the accused to show that the foreshore of *Chowpatti* was a private market within the meaning of S. 398.

Held also, that the Bombay Municipal Act,1888, applied to the spot in question. (*Russell and Aston JJ.*) EMPEROR v. BADHOOBAI, 7 Bom L R 726=30 B 126=2 Cr L J 604.

—S. 412A.

——*S. 412-A (b) — Ghee does not come in "other milk products."*

The words "other milk products" appearing in S. 412-A (*b*) should be construed *ejusdem generis* with reference to what precedes; those words and the meaning to be given to them should be less comprehensive than they would otherwise be if they stood by themselves without the words "milk, butter" preceding them. They would include such products of milk as are the direct results of milk and would be liable to speedy decay, like butter, as for example, whey, curd, or cream, and would not include ghee which is not the direct result of milk and is not liable to speedy decay. (*Mirza and Patkar JJ.*) RATANSI MIRJI v. EMPEROR, AIR 1929 Bom 274=53 Bom 627= 120 I C 356=31 Bom L R 581= 1929 Cr C 41=31 Cr L J 103.

—S. 429.

——*Ss. 429, 430—Bombay Public Conveyance Act (VI of 1863), S. 22—Penal Code, S. 269—Person suffering from dangerous disease—Carrying in a public conveyance.*

Where the driver of a public conveyance in the City of Bombay carries, in his conveyance, a person suffering from small-pox, he commits an offence against the provisions of S. 430 (3) of Bom. Act III of 1888 *Semble* : — There is an apparent antimony between S. 22 of Bom. Act VI of 1863 and Ss. 429 and 430 of Bom. Act III of 1888. (*Russell and Batty JJ.*) EMPEROR v. MYAJI ALIJI, 7 Bom L R 460=2 Cr L J 435.

—S. 430.

——Carrying person suffering from small-pox in a public conveyance—*See* City of Bombay Municipal Act (3 of 1888), S. 429 2 Cr L J 435 (Bom).

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888)

—S. 461.

——*Ss. 461 and 418—Power to frame bye-laws—Bom. Mun. Bye-laws Chap. III, Bye-law 4.*

The fourth bye-law prohibiting the use of unverified measures, whether correct or false is *ultra vires* under S. 461 (o); the Corporation can prevent the use of false measures. If they are suspected to be false they should be verified. *(Batchelor and Shah JJ.)* In re JIVRAJ DHANJI

A I R 1917 Bom 209=41 Bom 580=
19 Bom L R 358=40 I C 701=
18 Cr L J 701.

—S. 471.

See also, S. 231.

——Notice under S. 274 (1) vague — Action under S. 471—Legality - *See* ibid, S. 274 (1)

A I R 1952 Bom 194=1952 Cr L J 876.

——Offence under—Offence continuing—Starting point of limitation—*See* ibid, S. 514 (c)

A I R 1952 Bom 146=1952 Cr L J 694.

——*Non-compliance with S. 275 (1) — Notice under S. 278 (2), if necessary.*

Section 471, Bombay City Municipal Act creates two distinct offences: (1) the offence of disobedience of any requisition to remedy a defect to which attention of the owner or occupier might have been drawn by a notice under S. 278 and (2) a separate offence (not dependent on the issue of a notice in the first instance) which consists in not keeping in efficient repair every pipe conveying water from the municipal water works to such premises. No notice is required to be given in respect of keeping such works in proper repair, and it is not necessary that before a person can be convicted for not complying with the provisions of S. 275 he should be served with a notice under S. 278 (2). *(Beaumont C. J. and Rajadhyaksha J.)* MUHAMMAD ELIAS PATEL v. EMPEROR

A I R 1944 Bom 18=16 R B 252=
45 Bom L R 899=210 I C 412=
45 Cr L J 261.

——*Ss. 471, 305 — Prosecution under S. 471 — Burden of proof.*

In a prosecution under S. 471, Bombay City Municipal Act the onus is on the Municipality to prove that the street in respect of which notice under S. 305 was served, is a private street within S. 3 (y) of the Act. *(Broomfield and Wassoodew JJ.)* EMPEROR v. BYRAM KHODADAD

A I R 1943 Bom 68=45 Bom L R 60=
15 R B 380=205 I C 358=44 Cr L J 384.

——*Offence under — Warning and discharging the accused on his removing the nuisance is not a sentence according to law.*

Warning and discharging the accused on his removing the nuisance complained of is not a form of sentence or order that the Magistrate has power to pass in the case of an offence under S. 471; the accused should either be punished or acquitted. *(Fawcett and Mirza JJ.)* MERWANJI MISTRY v. EMPEROR

A I R 1928 Bom 152=
52 Bom 250=30 Bom L R 375=
109 I C 502=10 A I Cr R 286=
29 Cr L J 566.

—S. 507.

—— Order under—Non-compliance with—Offence, if continuing offence—Starting point of limitation —*See* ibid, S. 514 (c)

A I R 1952 Bom 146=
1952 Cr L J 694.

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888)

—S. 514.

——*Ss. 514 (c), 471 and 507—Order under S. 507 (2) to vacate premises by certain date — Non-compliance if continuing offence—Starting point of limitation.*

The words "within three months next after the commission of the offence" in S. 514 (c), City of Bombay Municipal Act, cannot be read as "within three months next after the *first* commission of such offence:" 31 Cri L J 1159, *Dissent.*

Where a tenant fails to comply with an order passed under S. 507 directing him to vacate the premises by a certain date in order to enable the landlord to comply with the municipal requisition under S. 354, the tenant commits an offence under S. 471 (b) of the Act which in its very nature is a continuing offence. The non-compliance of the order, though commenced on the date specified would continue all throughout the period of such refusal by him and it would certainly be a continuing offence giving rise to a new cause of action and a fresh starting point of limitation under S. 514 (c) every day it continued, *(Bhagwati and Vyas JJ.)* STATE OF BOMBAY v. DEVRAJ TULSI

A I R 1952 Bom 146=54 Bom L R 40=
21 Bom Cr C 292=I L R (1952) Bom 886=
1952 Cr L J 694.

—S. 515.

——*Private and public nuisances can be remedied by injunction by one or all residents affected—Court can order refusal to grant license for stables but the order does not govern all cases of license for stables.*

It is necessary for the protection of the health and comfort of the inhabitants of a big city like Bombay or Calcutta that any resident. who is affected by a nuisance in the manner mentioned in S. 3 (z) of the Municipal Act, should have a right to go to a Magistrate over the head of the Commissioner or the Corporation and ask that the Commissioner should be restrained from exercising his powers so as to affect the complainant's individual right as resident by the creation of a private nuisance. If private nuisance affects two or three houses, the inhabitants of the two or three houses might either join in a suit or join in a complaint before the Magistrate and ask the Magistrate to decide specifically that the particular nuisance is a private nuisance affecting the residents of houses *A*, *B* and *C*. With regard to a public nuisance also, any resident of Bombay can ask for an order under S. 515, and, if the Court finds a public nuisance proved, the order of the Court would give relief to the public of the locality as against the nuisance, and vacating of any one or more houses would not mean an abatement of the nuisance in respect of the public. In the case of a public nuisance, no particular limits need be defined. The relief which the Court can grant, under S. 515 of the City of Bombay Municipal Act, in cases of public as well as private nuisance is, *inter alia*, abatement of the nuisance by ordering the Commissioner not to grant a license for stables, etc. But it does not follow from the Court's making an order on the Commissioner that he should not grant a license, that that order is to govern all circumstances and all cases at all times. Where the Court passes an order under S. 515 to abate a nuisance with reference to a particular house, and that house falls vacant subse-

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888), S. 515

quent to the passing of the order and is not to be used any more for purposes other than those connected with the stables, the order ceased to have any operation. *(Taraporewala J.)* ALI MAHOMED SALEH MAHOMED v. MUNICIPAL COMMISSIONER OF BOMBAY

A I R 1925 Bom 458=27 Bom L R 581=87 I C 771

——*Magistrate may direct Municipal Commissioner to take measures in matters other than those referred to in sections mentioned in subs. (1)—Court is not competent to consider whether Legislature should have conferred such powers on Court—Mere residence is enough qualification for complaint — Mental assurance that licence would be granted does not absolve from duty not to cause nuisance inside — General considerations about public convenience should not override main purpose of section.*

Purely as a matter of construction there is nothing in the terms of the section to justify the contention that the second part of cl. (a) of sub-s. (2), which relates to the direction to the Municipal Commissioner to take such measures as to such Magistrate shall seem practicable and reasonable, applies only to the exercise of the powers under any one of the sections mentioned in sub-s. (1). The scheme of the section clearly is to give the right to any person to make a complaint where there is any nuisance or where in the exercise of any of the powers conferred by the respective sections, more than the least practicable nuisance has been created. The extent of the power of the Court is indicated in sub-s. (2), and the whole of cl. (a) of sub-s. (2) applies both to the case of nuisance, as well as to the case where in the exercise of powers under certain sections of the Act more than the least practicable nuisance is created. The argument, that the Legislature could not have contemplated that a Court should control and regulate the discretion of the Municipal Commissioner as to matters, about which the Municipal Commissioner would possess special knowledge, is not acceptable. This section appears to have been enacted for the protection of persons residing in the city; and it provides a remedy which is open to any resident of the City. The extent of the power of the Court is to be found in the words of cl. (a) of sub-s. (2). That provision undoubtedly implies some limitation upon the powers of the Commissioner and so some control over his acts where a proper case for giving direction to him in connection with a nuisance is made out. It is not open to a Court to consider whether the Legislature should have conferred such powers upon the Court or not. It may be that the absence of proceedings under this section has tended to create an impression as to the meaning and scope of this section which is not accurate. It is open to the Court to consider whether the existence of stables, having regard to all the facts, is or may be dangerous to life or injurious to health, even apart from the question of malaria. Whether the complainant is a paying guest or a tenant is not material. If he resides in the house that is sufficient for the purpose of enabling him to complain of the nuisance. Where a complaint was made against certain stables as a nuisance and the owner had incurred heavy costs in putting them up, and had sound grounds for expecting grant of licence through the

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888), S. 515

support of the Municipal Commissioner, *held* that though he may have felt assured in his mind on account of the support which he had of the Municipal Commissioner, so far as the licence was concerned, he was not absolved from the obligation to see that no nuisance was caused by him to any residents in the locality. It has also to be remembered that while under the Rent Act, he may not be able to eject his present tenants, this nuisance itself, if allowed to remain, may be an effective means of enabling him to get possession. Where it was argued that the Commissioner's discretion should not be interfered with so as to affect public convenience, *Held* that such general considerations cannot be allowed to override the main purposes of the section in dealing with a particular nuisance.

Per *Crump, J.* — The circumstance that the wrongdoer is in some sense a public benefactor has never been considered a sufficient reason for refusing to protect by injunction an individual whose rights are being persistently infringed. 2 Ch. D. 692; 2 Ch. 588, *Foll. (Shah, Ag. C. J. and Crump, J.)* BOMBAY MUNICIPALITY v. L. R. MALLANDAINE AIR 1924 Bom 241=48 Bom 241=25 Bom L R 1321=84 I C 854=26 Cr L J 374.

——*Person causing nuisance should ordinarily be treated as a necessary party to the proceeding.*

The person, who is said to have caused the nuisance, should be made a party to the proceedings, both in the inquiry which may be made by the Magistrate under S. 515 of the Act, and on the appeal in the High Court.

Quaere.—Is the Government Pleader entitled to be heard in a matter of this kind? *(Shah Ag. C. J. and Crump. J.)* BOMBAY MUNICIPALITY v. L. R. MALLANDAINE AIR 1924 Bom 241=48 Bom 241=25 Bom L R 1321=84 I C 854=26 Cr L J 374.

—S. 517.

——*Power of Municipal Commissioner to prefer charge against any person.*

Section 517 of the Act is permissive and does not in terms provide that the Commissioner may charge a person, but only that he may take proceedings against a person who is charged. But the section means that the Commissioner may prefer a charge against any person, and there is nothing in it to show that the Commissioner alone may take proceedings. *(Beaumont C. J. and Macklin J.)* EMPEROR v. KASSAM ALIBHAI

AIR 1934 Bom 459=36 Bom L R 965=7 R B 210=1934 Cr Cas 1330=59 Bom 53=153 I C 38=36 Cr L J 279.

—S. 521.

——Municipal Officer—Public Servant—*See* Penal Code (1860), S. 21 1 Cr L J 23 (Bom).

—S. 527.

——*Principle applicable to construction of S. 527 — Act of Corporation of issuing debentures with option of renewal and giving effect to such option —Suit against corporation on conversion of debentures—Whether in tort or on contract.*

The protection of the statute extends to acts done in direct execution of the powers conferred by the particular Act of the local authority, but it does not cover acts which are done in pursuance of a contract which the local authority is empowered to enter into, but is not required to enter into by its Act. This principle applies to the construction of S. 527, City of Bombay Municipal Act.

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1838), S. 527

A Municipal Corporation issued debentures under power given by S. 106, Bombay City Municipal Act. They contained a condition that the debentures could be renewed at any time at the option of the holder. Debentures were issued directly or endorsed over, to the plaintiffs and one *N* on such terms that any of those three persons could deal with the debentures. *N* died and the debentures which were then in the hands of one *A* for collection of interest, were wrongfully dealt with by him. The allegation was that he forged an endorsement of the debentures by *N* in favour of himself or of a nominee for himself, and subsequently endorsed the debentures over to the Bank of India. The Bank of India lodged the debentures with the Corporation, and the Corporation cancelled those debentures, and issued fresh debentures to the Bank of India. The plaintiffs brought a suit against Corporation and contended that as *N's* endorsement was forged, the debentures remained their property, and they asked first, for a declaration that the endorsement of *N* on the debentures was a forgery, and that the plaintiffs were the owners of the debentures, and that the defendants might be ordered to transfer and hand over to the plaintiffs the said debentures, or alternatively, to pay the plaintiffs the market value thereof, together with accrued interest:

Held, (i) that the cause of action was clearly in tort and not on contract;

(ii) that the issue of debentures containing an option of renewal, and the giving effect to that option were not acts done in direct execution of any power contained in the Bombay City Municipal Act, but were acts done under a contract authorized, but not required, by the Act. The worngful action charged against the Corporation was not an action which was directly required by the statute, and therefore S. 527 had no application to the case;

(iii) that the receipt by the Corporation of the plaintiff's debentures was not in itself wrongful. Their possession of the debentures only became wrongful when they were asked to return them to the plaintiffs and refused to do so. The plaintiff's cause of action therefore did not arise until a demand was made for the return of the property, that is, the debentures, and that demand was refused. *(Beaumont C. J. and B. J. Wadia J.)* VISHWANATH SADASHIV NATU v. MUNICIPAL CORPORATION, BOMBAY AIR 1938 Bom 410=40 Bom L R 685=11 R B 108=ILR (1938) Bom 715=177 I C 636.

—Sch. M.

—— *Part II of Sch. M — "Oil (other sorts)" includes sweet oil and cocoanut oil.*

The words "oil (other sorts)" in Part II of Sch. M to the City of Bombay Municipal Act, include sweet oil and cocoanut oil *(Shah and Crump JJ.)* NARANDAS KARSANDAS v. EMPEROR AIR 1921 Bom 445=45 Bom 1076=61 I C 49=23 Bom L R 353=22 Cr L J 321.

——*Part III—"Timber," if includes ply-wood.*

The word "timber" in Part III, Sch. M of the Bombay City Municipal Act, does not include ply-wood. The timber in ply-wood has reached a stage in its development at which it has acquired a distinctive name of its own, so that it can no longer be properly described as timber. *(Beaumont C. J. and Wassoodew J.)* AHMEDALLI ESUFALLI v. EMPEROR AIR 1938 Bom 282=40 Bom L R 222=10 R B 537=175 I C 358=39 Cr L J 575.

(BOMBAY) CITY OF BOMBAY MUNICIPAL ACT (III of 1888), Sch. M

(BOMBAY) CITY OF BOMBAY POLICE ACT (IV of 1902)

—S. 2

——*Street, whether public place.*

Any street which is a public highway is a public place within the meaning of S. 2. *(Stone C. J. and Lokur J.)* EMPEROR v. ABDUL LATIF AIR 1947 Bom 438=49 Bom L R 340=1947 A W R Sup 69=1947 O A Sup 69=231 I C 264=19 Bom Cr C 71=48 Cr L J 731.

—S. 12.

——*Ss. 12, 16 — Orders which could be issued by Police Commissioner—Construction of statute.*

The Commissioner of Police is competent to issue under the head of discipline and general government, under S. 12 of the Act, 1902, only orders having reference to the conduct of the Police Officers in their capacity as such officers and not over their conduct in other relations of life into which no element or question of their police duty enters. If that element enters into those relations then it becomes a matter of police discipline and the Commissioner's controlling authority comes into play. Even a police officer not actully at his post discharging the duty assigned to him, is, for the purposes of the Act, to be regarded as being at that post, with all the rights and obligations of his office attaching to him and that is the meaning of S. 160. The Court may have regard to considerations outside the language of the Act when construing expressions of doubtful import in a statute. *(Chandavarkar and Heaton JJ.)* EMPEROR v. ATMARAM GOVIND 31 B 480=9 Bom L R 681=6 Cr L J 47.

—S. 16

——Scope—Orders issued by Police Commissioner relating to discipline and general government of the Police force—Under S. 16 even when a Police Officer is not actually at his post discharging the duty assigned to him, is to be regarded as being at the post, with all rights and obligations of his office attaching to him. *See* ibid, S. 12. 6 Cr L J 47 (Bom).

—S. 22.

——*S. 22 (1) (f), (i), and (g)—Rules under S. 22 (1) (f), Rr. 4, 7 and 6—R. 6 in so far as it compels keeper of restaurant to obtain licence for non-prohibited hours is* ultra vires*—Under Rr. 4 and 7 necessity of keeper being present in premises only applies to period covered by licence.*

The second Proviso to S. 22 (1) (f), Bombay City Police Act means that the rules under S. 22 (1) (f) are not to require a licence to be obtained for the non-prohibited hours, whilst the effect of R. 6 is to insist on a person, who wants a licence to keep his premises open during the prohibited hours also obtaining a licence to keep it open during the non-prohibited hours.

Rule 6, therefore, in so far as it in effect compels the keeper of the premises to obtain a licence for hours which are not prohibited, *i. e.*, the hours between 5-30 A. M. and 9-30 P. M. is *ultra vires*

the Act under which the rules were made and therefore the licence referred to under R. 6 must be taken to cover only the prohibited hours after 9-30 P. M. According to natural construction of Rr. 4 and 7, the necessity of the keeper of a restaurant being present in the premises only applies to the period which is covered by the licence. *(Beaumont C. J. and N. J. Wadia J.)* EMPEROR v. S. R. KOPPALKAR

AIR 1942 Bom 190=44 Bom L R 228=
ILR (1942) Bom 231=15 R B 69=
201 I C 266=43 Cr L J 642.

——*S. 22 (b), (c) — Rules under — Keeping car standing in street.*

Where the offence did not consist in the accused driving the car in any part of the public street and obstructing the traffic by such driving but it occurred in his keeping the car standing near the kerb and thereby obstructing the traffic, the case would fall under the specific words of S. 22, cl. (c), Bombay City Police Act, and the rules framed thereunder rather than under any rule under S. 22 (b) of the Act.

Section 22 (c), speaks about regulating conditions under which vehicles may remain standing in streets, and R. 1 speaks of a person allowing his vehicle to be halted or kept standing at any street. Rule 12 framed under S. 22 (b) is quite general and speaks of any person occupying a portion of a street and thereby causing obstruction or inconvenience to the public. Besides the obstruction under R. 1 framed under S. 22 (c) must be wilful which is not the case under R. 12 framed under S. 22 (b) and there can be no conviction under the former rule unless that element is proved. *(Barlee and Divatia JJ.)* BHANA MAKAN v. EMPEROR

AIR 1936 Bom 256=38 Bom L R 432=
9 R B 50=1936 Cr Cas 702=
163 I C 847=37 Cr L J 883.

—S. 23.

——*S. 23 (2)—Promulgation of order under, prohibiting carrying of knife, sticks, etc. — Scope of order.*

(Obiter) — Unlike a knife, the sole purpose of which is to cut or sever solid matter and which is easily definable, a stick can be used for a multiplicity of domestic, occupational and recreational purposes. Hence, where an order under S. 23 (2) promulgated by the Commissioner of Police prohibits carrying of knives, sticks, etc., some authoritative clarification is required with regard to the prohibition against the carrying of sticks, in order that the executive officers of Government and the public may know to what extent the preservation of public peace and public safety requires the curtailment of such a normal action as taking out of an umbrella, and whether, for example, the cripple is to be deprived of his crutch. If it be not the intention to prohibit the use of such articles, it is not beyond the realms of linguistic definition so to say. *(Stone C. J. and Lokur J.)* EMPEROR v. ABDUL LATIF

AIR 1947 Bom 438=
49 Bom L R 340=
1947 A W R Sup 69=
1947 O A Sup 69=231 I C 264=
19 Bom Cr C 71=48 Cr L J 731.

——*S. 23 (2)—"Carry", meaning of.*

The word "carry" is of the widest import and covers the transportation of a weapon with or by

the person concerned, however he may attach it to his person. Having a knife folded in a closed position in one's pocket, while going along a street, is "carrying" within the meaning of S. 23 (1). *(Stone C. J. and Lokur J.)* EMPEROR v. ADBUL LATIF

A I R 1947 Bom 438=49 Bom L R 340=
1947 A W R Sup 69=1947 O A Sup 69=
231 I C 264=19 Bom Cri C 71=
48 Cr L J 731.

——*S. 23 (2) — Order under — Contravention — Irregularity in obtaining proof—Effect.*

Even where an irregularity had taken place in the method of obtaining proof that an offence of contravention of order under S. 23 (2) had been committed, it would be no reason for setting aside the conviction. *(Stone C. J. and Lokur J.)* EMPEROR v. ABDUL LATIF A I R 1947 Bom 438=
49 Bom L R 340=1947 A W R Sup 69=
1947 O A Sup 69=231 I C 264=
19 Bom Cri C 71=48 Cr L J 731.

——*S. 23 (2)—Knife*

Anything which is normally designated as a knife, the condition of which renders it capable of being used as a weapon of offence, falls within the class of objects which may be prohibited. *(Stone C. J. and Lokur J.)* EMPEROR v. ABDUL LATIF

A I R 1947 Bom 438=49 Bom L R 340=
1947 A W R Sup 69=1947 O A Sup 69=
231 I C 264=19 Bom Cr 71=
48 Cr L J 731.

——*Accused knowing that disobedience will result in conflict with police — Disobedience of order under S. 23 (2) constitutes offence under S 188, I. P. C.*

Where having regard to the circular issued by the accused and his admissions that he convened the meeting, there is adequate ground for drawing inference that the accused knew that the disobedience of the order of the Commissioner of Police would at least result in a conflict with police and the disobedience of the order under S. 23 (3) in such a case fulfils all the conditions necessary to constitute an offence under Penal Code, S. 188. A I R 1923 All 606, Ref. *(Patkar and Wild JJ.)* BHALCHANDRA TRIMBAK v. EMPEROR.

A I R 1929 Bom 433=54 Bom 35=
123 I C 497=31 Bom L R 1151 =
1929 Cr C 545=31 Cr L J 495.

——*S. 23 (3)* — Enlarges ambit of offence under Penal Code, S. 188 — Disobedience of order under S. 23 (3) is punishable under S. 127 and equally under Penal Code, S. 188: *Lowe* v. *Dorling and Son*, (1906) 2 K. B. 772 and *Rex* v. *Wright*, (1758) 1 Burr. 543, *Ref. (Patkar and Wild JJ.)* BHALCHANDRA TRIMBAK v. EMPEROR AIR 1929 Bom 433 =
54 Bom 35=123 I C 497=21 Bom L R 1151=
1929 Cr C 545=31 Cr L J 495.

——*S. 23 (3) — Order of Commissioner — Validity of.*

Power given to Police Commissioner can be used so as to interfere with rights of subjects as little as possible—Order issued by Police Commissioner prohibiting assembly to be convened even in private place is valid if necessary for public safety. 12 Bom 490, Rel. on.; *Duke of Bedford* v. *Dawson*, (1875)

(BOMBAY) CITY OF BOMBAY POLICE ACT (IV of 1902), S. 23

20 Eq 353, Ref. *(Patkar and Wild JJ.)* BHALCHANDRA TRIMBAK v. EMPEROR
A I R 1929 Bom 433=54 Bom 35=
123 I C 497=31 Bom L R 1151=
1929 Cr C 545=31 Cr L J 495.

——*S. 23 (3) — Promulgation of order — Order misdescribed as notification is not vitiated—Meeting convened against order of Police Commissioner —Order held duly promulgated under Penal Code, S. 188.*

On 19th July 1920, the Commissioner of Police issued an order, styling if a "notification" under S. 23 (3) prohibiting the President, the Secretary, the members of the Managing Committee and the members of the Girni Kamgar Union from holding convening, or calling together any assembly of mill hands or employers of the textile mills of Bombay for one week from the date of the order. The notification was duly promulgated in the mill area. On 13th July 1929, a circular was issued purporting to be signed by six persons including the accused inviting the strikers to attend the meeting. The meeting was held in the evening and in consequence the accused were placed before a Magistrate who convicted them under I. P. C., S. 143.

Held, that in issuing the order under S. 23 (3) the Commissioner of Police properly exercised his discretion for the preservation of the public peace and safety and that it was lawfully promulgated within the meaning of Penal Code, S. 188.

Held further, that the order in writing was not vitiated by the misdescription as a notification. *Sharp* v. *Wakefield*, (1891) A C 17 ; A I R 1924 Bom 1, Ref. *(Patkar and Wild JJ.)*, BHALCHANDRA TRIMBAK v. EMPEROR
A I R 1929 Bom 433=54 Bom 35=
123 I C 497=31 Bom L R 1151=
1929 Cr C 545=31 Cr L J 495.

——*S. 23 (3)—Scope—Any assembly or procession includes assembly in open space between chawls.*

The words "any assembly or procession" in S. 23 (3) are very wide and are not restricted to an assembly or procession in a public place or street but includes an assembly convened in an open space between the chawls. *(Patkar and Wild JJ.)* BHALCHANDRA TRIMBAR v. EMPEROR
A I R 1929 Bom 433=54 Bom 35=
123 I C 497=31 Bom L R 1151=
1929 Cr C 545=31 Cr L J 495.

—S. 27.

——*S. 27 (1) — Validity — Discrimination in procedure—Discrimination is based upon reasonable classification—Constitution of India, Art. 14.*

It is true that a procedure different from what is laid down under the ordinary law has been provided for a particular class of persons against whom proceedings could be taken under S. 27 (1) of the City of Bombay Police Act. But the discrimination, if any, is based upon a reasonable classification which is within the competency of the legislature to make. Having regard to the objective which the legislation has in view and the policy underlying it, a departure from the ordinary procedure can certainly be justified as the best means of giving effect to the object of the the legislature. In that view, S. 27 (1) does not contravene Art. 14 of the Constitution. *(Patanjali Sastri C. J., Mahajan, B. K. Mukherjea. S. R. Das and Chandrasekhara Ayyar JJ.)* GURBACHAN SINGH v. STATE OF BOMBAY A I R 1952 S C 221=
1952 S C J 321=1952 S C R 737=
54 Bom L R 849=1952 S C A 452=
1952 Cr L J 1147 (SC).

(BOMBAY) CITY OF BOMBAY POLICE ACT (IV of 1902), S. 27

Ayyar JJ.) GURBACHAN SINGH v. STATE OF BOMBAY A I R 1952 S C 221=
1952 S C J 321=1952 S C R 737=
54 Bom L R 849=1952 S C A 452=
1952 Cr L J 1147 (SC).

——*S. 27 (1)—Validity—Restrictions by S. 27 (1) upon fundamental right of free movement are reasonable—Constitution of India, Art. 19 (1) (d) and (5).*

There can be no doubt that the provision of S. 27 (1) of the Bombay Act was made in the interest of the general public and to protect them against dangerous and bad characters whose presence in a particular locality may jeopardize the peace and safety of the citizens. The restrictions that this law imposes upon the rights of the free movement of a citizen, are reasonable and come within the purview of clause (5) of Art. 19 of the Constitution.

The maximum duration of the externment order made under S. 27 (1) of the Bombay Act is a period of two years & the Commissioner of Police can always permit the externee to enter the prohibited area even before the expiration of that period. Having regard to the class of cases to which this sub-section applies and the menace which an externment order passed under it is intended to avert, it is difficult to say that this provision is unreasonable.

So far as procedure to be followed is concerned, it is true that the suspected person is not allowed to cross-examine the witnesses who deposed against him and on whose evidence the proceedings were started. But this by itself would not make the procedure unreasonable having regard to the avowed intention of the legislature in making the enactment. The law is certainly an extraordinary one and has been made only to meet those exceptional cases where no witnesses for fear of violence to their person or property are willing to depose publicly against certain bad characters whose presence in certain areas constitutes a menace to the safety of the public residing therein. This object would be wholly defeated if a right to confront or cross-examine these witnesses was given to the suspect. The power to initiate proceedings under the Act has been vested in a very high and responsible officer and he is expected to act with caution and impartiality while discharging his duties under the Act. *(Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das, and Chandrasekhara Aiyar JJ.)* GURBACHAN SINGH v. STATE OF BOMBAY A I R 1952 S C 221=
1952 S C J 321=1952 S C R 737=
54 Bom L R 849=1952 S C A 452=
1952 Cr L J 1147 (SC).

——*S. 27 (1) — Scope — Order of externment directing petitioner to leave Greater Bombay and go to Amritsar—Construction—Petitioner requesting Police to permit him to stay at Kalyan — Request granted—Order held must be construed as one of externment from Greater Bombay and not from State of Bombay.*

Two kinds of externment orders are contemplated by S. 27 (1) : one where externment is direct from Greater Bombay and the other where the externee is to remove himself from the State of Bombay. In the first class of cases the order has got to specify the place where the externee is to remove

(BOMBAY) CITY OF BOMBAY POLICE ACT (IV of 1902), S. 27

himself to and it must also indicate the route by which he has to reach that place. On the other hand, when the externment is from the State of Bombay, the externee can remain anywhere he likes outside the State and no place of residence can or need be mentioned.

An externment order directed the petitioner to remove himself out of Greater Bombay and go to his native place at Amritsar. The petitioner himself sought permission of the Commissioner of Police to stay at Kalyan which is within the State of Bombay, and the request was acceded to and the Police actually took the petitioner to Kalyan :

'*Held*' that the direction in the order to go to Amritsar indicated that the real intention of the order was to direct the externee to remove himself not only from Greater Bombay but from State of Bombay itself. In that view, the mention of the place of residence in the order was irregular. But whatever irregularity there might have been in the original order, was removed by the subsequent conduct of the petitioner which had the sanction and approval of the Commissioner of Police. In those circumstances, the externment order might be construed to be an order of externment from Greater Bombay and though there was a mistake regarding the place where the externee was to remove himself, the mistake was rectified by the petitioner choosing Kalyan as the place of residence and that choice being accepted and given effect to by the Police Department. *(Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.)* GURBACHAN SINGH v. STATE OF BOMBAY A I R 1952 S C 221= 1952 S C J 321=1952 S C R 737= 54 Bom L R 849=1952 S C A 452= 1952 Cr L J 1147 (SC).

——*S. 27 (1)—Externment order outside Greater Bombay—Place and route not specified—Validity.*

An order under S. 27 (1) directing the petitioner to remove himself out of the Greater Bombay without specifying the place and the route as required by sub-s. (1), is illegal. *(Bavdekar and Chainani JJ.)* HASANALLI v. STATE OF BOMBAY A I R 1951 Bom 432=53 Bom L R 681= 21 Bom Cr C 181=I L R (1952) Bom 90= 52 Cr L J 1442.

——*S. 27 (7)—Validity —Constitution of India, Arts. 13, 19 and 226.*

Sub-section (7) of S. 27 prevents the High Court from enforcing the fundamental rights conferred by Art. 19 (1), sub-cls. (d) and (e) of the Constitution in cases in which the order is invalid not on the grounds mentioned in sub-s. (7) of S. 27 but on other grounds, e. g., that the order imposes unreasonable restrictions or that it was made mala fide. This sub-section, therefore, is repugnant to the provisions of Art. 226 and is consequently void under Art. 13 of the Constitution. Sub-section (7) is also *ultra vires* of the Constitution, because it imposes an unreasonable restriction in the sense that it prevents a person against whom an order of externment has been made from questioning the validity of the order even on the ground that it has not been made in conformity with the provisions of the Statute, which authorised the making of such an order, or that it was passed mala fide.

(BOMBAY) CITY OF BOMBAY POLICE ACT (IV of 1902), S. 27

(Bavdekar and Chainani JJ.) HASANALLI v. STATE OF BOMBAY A I R 1955 Bom 432= 53 Bom L R 681=21 Bom Cr C 181= I L R (1952) Bom 90=52 Cr L J 1442

——*S. 27 (2-A) — Validity of — Constitution of India, Arts. 13 (1) & 15 (1).*

Under S. 27 (2-A), City of Bombay Police Act a person can be externed merely because he has once been convicted of the offences mentioned therein provided he was born outside Greater Bombay. But action on the same ground cannot be taken against a person born in the Greater Bombay. Section 27 (2-A) therefore discriminates against persons on ground of their place of birth and as such being repugnant to Art. 15 (1) of the Constitution is void under Art. 13 (1). Consequently any order passed under that sub-section is also void and of no effect. *(Rajadhyaksha and Chainani JJ.)* SHAIKH HUSEIN SHAIKH MAHOMED IN RE A I R 1951 Bom 285=53 Bom L R 57= 21 Bom Cr C 47=I L R (1951) Bom 175= 52 Cr L J 458 (2)

——*S. 27 (2-A)—Man of 22 externed because of petty theft by him at age of 14 — Order is shocking.*

It is shocking to find an order of externment made against a man of 22 years of age from the city where he has lived for many years because at the age of 14 he committed a petty theft. To make such an order is absolutely opposed to modern views on the subject of child criminality which refuse to treat a child as a criminal and is moreover in defiance of the spirit of the Bombay Children Act of 1936. *(Beaumont C. J. and Macklin J.)* EMPEROR v. CHHOTALAL BAPALAL A I R 1941 Bom 367=43 Bom L R 834= I L R (1941) Bom 690=14 R B 232= 197 I C 577=43 Cr L J 210

——*S. 27 (2-A)*—Offences arising out of the same transaction can be tried together under S. 235, Criminal P. C., but the Magistrate is not bound to try them together. He might pass separate orders in separate trials, although the offences arose out of the same transaction. The convictions referred to in S. 27 (2-A), Bombay City Police Act, need not be convictions arising in the course of separate transactions or convictions passed on separate dates. The Legislature did not contemplate that the practice of some Magistrates of convicting accused persons on more than one count in respect of the same transaction would involve two convictions within the meaning of S. 27 (2-A). *(Beaumont C. J. and Macklin J.)* EMPEROR v. CHHOTALAL BAPALAL A I R 1941 Bom 367= 43 Bom L R 834=I L R (1941) Bom 690= 14 R B 232=197 I C 577= 43 Cr L J 210

——*(As amended by Act XIV of 1938) — Order under, by Commissioner, if can be revised under S. 439, Criminal Procedure Code (Act V of 1898).*

Even the amendments to S. 27, Bombay City Police Act by Act XIV of 1938, have not the effect of constituting the Commissioner of Police a Court for the purposes of S. 27. When he makes an order under that section he is merely an executive officer and not a Court subordinate to the High Court whose proceedings are subject to revision. His order can be considered by a Court only when the validity of the executive order is called in

(BOMBAY) CITY OF BOMBAY POLICE ACT (IV of 1902), S. 27

question in a prosecution for breach of the order. *(Broomfield and Divatia JJ.)* ALLA DATTA v. EMPEROR
A I R 1941 Bom 334=14 R B 133=43 Bom L R 702=196 I C 537=43 Cr L J 25

——*S. 27 (2-A) — More than two convictions for separate offences—Offences forming part of same transaction — Case, if comes under S. 27 (2-A)—Police Commissioner acting under S. 27 (2-A) is acting not in judicial capacity but in administrative capacity.*

If in fact there are more than two convictions for separate offences, the case falls within S. 27 (2-A), Bombay City Police Act, even if all the offences have been in fact committed at one and the same time and as part of the same transaction. The Commissioner of Police, in deciding whether to make an externment order in a case falling within the sub-section, acts in an administrative capacity and not in a judicial capacity. He may know a great deal more about the persons to be externed than the Court which convicted him knew. The Commissioner is not bound only by the evidence given in Court, and may consider himself justified in making an order of externment in the public interest, although the actual offences of which the accused person has been convicted are not of a serious character. *(Beaumont C. J. and Sen J.)* EMPEROR v. ISHVARLAL CHHAGANLAL
A I R 1941 Bom 310=14 R B 129=43 Bom L R 511=196 I C 442=42 Cr L J 869

——It is clear from the language of S. 27, Bombay City Police Act, that the foundation for any order under the section is the movement or encampment of any gang or body of persons. The Commissioner of Police has no power under the section to deport any one whom he regards as a dangerous or undesirable character apart from his actions as a member of a gang or body of persons moving or encamping in the City. *(Beaumont C. J., Rangnekar, N. J. Wadia and Wassoodew JJ.)* YARMAHOMED AHMEDKHAN v. EMPEROR
AIR 1938 Bom 338=40 Bom L R 483=11 R B 53=ILR (1938) Bom 403=176 I C 839=39 Cr L J 792 (FB).

——*Order of deportation by Police Commissioner —Criminal Court's power to consider validity of order.*

The order of an executive officer not being an order of an inferior Criminal Court, cannot be set aside in revision but when an executive officer makes an order or issues a notification, and an attempt is made to enforce the execution of a penalty against a person committing a breach of such order or notification, it becomes the duty of the judicial authority to consider whether the order is properly made or not. Therefore, when the Commissioner of Police deports a person under S. 27, City of Bombay Police Act and arrests him for disobedience of the order, the Criminal Court has powers to consider whether the order of the Commissioner was justified on the evidence on record. *(Patkar Ag. C. J. and Murphy J.)* EMPEROR v. ANNA VITHOBA
AIR 1931 Bom 514=33 Bom L R 1164=1931 Cr Cas 946=Ind Rul (1932) Bom 100=135 I C 484=33 Cr L J 169.

(BOMBAY) CITY OF BOMBAY POLICE ACT (IV of 1902)

—S. 28.

——*Charge before Magistrate under S. 128 — Matters regarding which it is incumbent upon Magistrate to be satisfied.*

In all charges before a Magistrate under S. 128, City of Bombay Police Act, it is incumbent upon the Magistrate to be satisfied, first that the accused was informed by the Commissioner of the charge, against him with sufficient particularity to enable him to answer the charge, and that he was given an opportunity of so answering; and secondly, that there was material before the Commissioner of Police on which he could properly hold that the conditions of S. 27 had come into operation. *(Beaumont C. J., Rangnekar, N. J. Wadia and Wassoodew JJ.)* YARMAHOMED AHMEDKHAN v. EMPEBOR
AIR 1938 Bom 338=11 R B 53=40 Bom L R 483=ILR (1938) Bom 403=176 I C 839=39 Cr L J 792 (FB).

——*Ss. 28, 129— Conditions for issuing notice to prostitutes.*

Under S. 28, the Commissioner of Police can only serve the notice upon the person who comes within the scope of S. 28. He is not entitled to serve it upon any person whom he merely suspects to be guilty of the conduct therein referred to. The misconduct, or immoral conduct, must be a matter of fact and not a mere matter of suspicion. Conviction under S. 129, for non-compliance with notice under S. 28 would not be justified unless and until the Magistrate is satisfied that the notices were not only served but that they were properly and validly served, that is to say, until he is really satisfied that the women had really conducted themselves in the manner imputed to them under S. 28. *(Tyabji J.) In re* TARABAI IBRAHIM PURKAR
7 Bom L R 161=2 Cr L J 95.

——*Illegal notice—Cancellation—Rule under S. 45 (b), Specific Relief Act.*

Where the Commissioner of Police serves a notice on certain women under S. 28 of the Police Act to vacate the premises on the ground that they are prostitutes, but it is found that they are not prostitutes and the notice is illegal, the cancellation of the notice or the non-enforcing of it is an act clearly incumbent by law upon the Police Commissioner, so as to bring it under S. 45 (b), Specific Relief Act. Application under S. 45 (b) therefore can lie in such a case for an order upon him to cancel the notice and to forbear from enforcing same. *(Tyabji J.)* TARABAI IBRAHIM PURKAR, *In re*
7 Bom L R 161=2 Cr L J 95.

—S. 33.

——*S. 33 (g)—Arrest under bail.*

Magistrate has power to grant bail to an accused who has been arrested in pursuance of S. 54 (7) of the Criminal P. C., whom he has been asked to retain in custody, by the District Magistrate of a Native State.

Per *Fawcett J.* — As S. 57 (7) does not apply to arrests in Bombay, when the accused is arrested without warrant in Bombay, he must be deemed to have been arrested under S. 33 (g). But even in such a case under S. 23 of the Extradition Act, the Magistrate has power to grant bail. *(Marten and Fawcett JJ.)* SHRIRAM SHAMBHUDAYAL *In re*
AIR 1925 Bom 104=87 I C 100=26 Bom L R 984=26 Cr L J 948.

(BOMBAY) CITY OF BOMBAY POLICE ACT (IV of 1902)

—S. 40.

——*Ss. 40 (1) and 55— Command to an unlawful assembly to disperse—Magistrate cannot give.*

Only the officer in-charge of a section can command an unlawful assembly to disperse under S. 40 (1) and under S. 55, a Police Officer1 of superior rank if on the scene may perform this function. The Magistrate's giving the command under the directions of a competent Police Officer, who is himself present, is not sufficient. *(Macleod C. J. and Shah J.)* EMPEROR v. KESHEO GOVIND
AIR 1921 Bom 322=23 Bom L R 350=
60 I C 1008=22 Cr L J 320.

—S. 45.

——*Inquiry under, is quasi-judicial—Certiorari.*

In holding the inquiry under S. 45, the Chief Presidency Magistrate discharges quasi-judicial functions; he does not hold the inquiry in an executive capacity. The High Court will not interfere with the discretion of the Magistrate as to the nature of the inquiry he should hold nor would it interfere by deciding whether the ambit and the scope of the inquiry should have been different from what the Magistrate thought it should be. But if the Magistrate while holding the inquiry contravenes any rule or principle of natural justice the High Court would have jurisdiction to interfere by issuing a writ of certiorari and to prevent injustice being done to a party appearing before it. If the Magistrate permits his mind to be influenced by certain testimony, it is his duty if a testimony of an opposite character is sought to be adduced before him by the other party not to disallow it but to hear both the evidence and come to an impartial conclusion. In disallowing the evidence sought to be adduced in rebuttal, he acts in a manner which is not in conformity with the principles of natural justice. *(Chagla Ag. C. J. and Coyajee J.)* OSCAR H. BROWN v. NATHMAL HIRACHAND & Co., A I R 1948 Bom 236=
49 Bom L R 889=1948 A W B Sup 25=
1948 O A Sup 25=49 Cr L J 511.

——*Riot tax.*

The riot tax is not a Municipal tax in the sense of a tax, the benefit of which is retained by the Municipality. *(Blackwell J.)* MANCHERJI PALLONJI v. DINBAI NUSSERWANJI,
A I R 1941 Bom 260=43 Bom L R 543=
14 R B 43=195 I C 517.

——*Application for compensation — Order of Chief Presidency Magistrate — Revision — Chief Presidency Magistrate, whether* persona designata.

The special power conferred under S. 45 of the City of Bombay Police Act on the Chief Presidency Magistrate of Bombay is not as a Criminal Court, but as a *persona designata*, and no application for revision, therefore, lies to the High Court from an order of the Chief Presidency Magistrate dismissing a claim for compensation under the said section for absence and refusing to take the matter on his file. *(Madgavkar and Barlee JJ.) In re* USMAN HAJI MAHOMED, A I R 1930 Bom 486=
54 Bom 664=32 Bom L R 1138=
Ind Rul (1931) Bom 190=1930 Cr Cas 1022=
121 I C 590=32 Cr L J 397.

——*Scope.*

The Act does not generally, nor does S. 45 in particular, deal with criminal Courts or their

(BOMBAY) CITY OF BOMBAY POLICE ACT (IV of 1902), S. 45

special powers. The special power of the Chief Presidency Magistrate, under S. 45, is not as a criminal Court, but as a *persona designata* : AIR 1915 Mad 360 (2); 21 Bom. 279; A.I.R. 1923 Bom. 421; 36 Bom. 47 and A. I. R. 1930 Bom. 231, Ref. *(Madgavkar Ag. C. J. and Barlee J.)* USMAN HAJI MAHOMED *In re*,
A I R 1930 Bom 486=54 Bom 664=
32 Bom L R 1138=129 I C 590=
Ind Rul 1931 Bom 190=1930 Cr C 1022=
32 Cr L J 397.

—S. 57.

——*Offence committed in presence of Police Officer — First information in writing is not necessary.*

Where there was no informant as such, the alleged offence having been committed in the presence of the investigating officer himself, the Inspector is not bound to take down in writing any information relating to the commission of the offence, since he has the information himself. *(Wadia and Lokur JJ.)* EMPEROR v. JAYANTI LAL,
A I R 1944 Bom 139=
46 Bom L R 196=213 I C 174=
17 R Bom 47=17 Bom Cr C 227=
45 Cr L J 691.

—S. 58.

——*S. 58 (2)* — Order of Presidency Magistrate to investigate non-cognizable case — Non-compliance with S. 202 (1), Criminal P. C.—Magistrate is not deprived of his jurisdiction to try accused. *(Lords Macdermott, Reid, Radcliffe and Sir Madhavan Nair)* LUMBHARDAR ZUTSHI v. THE KING,
AIR 1950 PC 26=ILR (1950) Bom 470=
1950 A L J 120=1950 M W N 217 (2)=
63 M L W 197=54 C W N 368=
52 Bom L R 480=1950 A W R (Sup) 44 (2)=
1950-1 M L J 302=77 I A 62=
1950 M W N Cr 41 (2)=1950 A W R 445=
51 Cr L J 644 (PC).

—S. 63.

——*Dying declaration.*

Section 63 (2) excludes dying declaration from the prohibition contained in S. 63 (1). Consequently, a statement made by the deceased pointing out his assailant at the identification parade held by the Police is admissible as dying declaration under S. 32, Evidence Act. *(Lokur J.)* EMPEROR v. MAHADEO DEWOO,
A I R 1946 Bom 189=47 Bom L R 992=
1946 Bom Rul 215=18 Bom Cr C 190=
224 I C 261 = 47 Cr L J 590.

——*S. 63 (1) — S. 63 (1) does not exclude oral evidence of statements made before police investigation whether recorded or not—Oral statements recorded in* panchanama *before police are admissible for corroboration — Evidence Act (1872), S. 157—Criminal P. C. (1898), S. 162.*

Under S. 63 (1), Bombay City Police Act, though the documents containing statements of witnesses made before the police in the course of investigation cannot be tendered in evidence on behalf of the prosecution, yet S. 63 (1) does not exclude oral evidence of the statements, whether recorded or not. Thus, the oral statements of the witnesses

recorded in the *panchanama* in the presence of the police at an identification parade in the course of investigation under S. 63 (1) are admissible to corroborate the statements of those witnesses at the trial under S. 157, Evidence Act. *(Lokur J.)* EMPEROR v. MAHADEO DEWOO,

A I R 1946 Bom 189=47 Bom L R 992=
1946 Bom Rul 215=18 Bom Cr C 190=
224 I C 261=47 Cr L J 590.

——*Statements by witnesses to Police — Use of — Right to cross-examine such witnesses is privilege of defence—Court cannot call for such statements and use them for examining witnesses.*

Section 63, City of Bombay Police Act, is in the form in which S. 162, Criminal P. C., stood before it was amended in 1923, and is a good deal less wide than the amended S. 162. The right to cross-examine a prosecution witness on his statements made to the Police is a privilege conferred on the defence. Where the defence does not cross-examine the witnesses on their Police statements, it is illegal for the Court to call for the Police statements and put to witnesses questions founded on those statements. *(Beaumont C. J., N. J. Wadia and Sen JJ.)* EMPEROR v. KASAMALLI MIRJALLI,

A I R 1942 Bom 71=44 Bom L R 27=
I L R (1942) Bom 384=14 R B 357=
199 I C 202 = 43 Cr L J 529 (FB).

——*Evidence — Terms of S. 63 identical with old Criminal P. C., S. 162 — Objection to evidence must therefore fall under S. 63, Bombay City Police Act.*

The terms of S. 63 have remained unaffected by amendment of S. 162, Criminal P. C., by the Amending Act of 1923 and remain identical with the corresponding section of the old Code. Therefore, any objection to the evidence being admissible must fall within the terms of S. 63, Bombay City Police Act, 1902. *(K. Kemp J.)* EMPEROR v. WAHIDUDDIN HAMMIDUDDIN NO. 2,

A I R 1930 Bom 158=54 Bom 528=
Ind Rul 1930 Bom 429=1930 Cr C 482=
126 I C 333=32 Bom L R 327=
31 Cr L J 1003.

——*Criminal Procedure Code (1898), S. 162 — Statement made by witness to, and taken down in writing by, a Police Officer—Admissibility in evidence against accused — Purposes for which statement can be used.*

Having regard to S. 162 of the Code of Criminal Procedure (corresponding to S. 63 of the Bombay City Police Act, IV of 1902), the statement of a prosecution witness taken down in writing, and recorded by a Police Officer, cannot be admitted or used in evidence against the accused. *Per Russell, Ag. C. J.* — The document might be used to contradict the witness, not by putting the statement in as evidence, but it should be put in the hands of the Police officer who recorded it so that he can refresh his memory and contradict the statement of the witness. *Per Chandavarkar J.* — The use of the *writing* as evidence against the accused is opposed to the express terms of the section. The statement contained in the writing could be used to impeach the credit of such witness as provided in the Evidence Act. But to use the writing in evidence against accused is not permitted by the terms of the sections. *Per Batty J.* — The writing may be used for the purpose of refreshing the memory of the witness cross-examined, as to the fact of the statement either on behalf of the prosecution or on behalf of the defence. If the writing was treated by the prosecution only for the purpose of impeaching the credit, or in corroboration, of the witness who made it, it may be used for refreshing the memory of the witness cross-examined, either on behalf of the prosecution or defence, as to the fact of the statement. *Per Beaman J.*—The statement ought not to be admitted at all, or its contents allowed to be used by the prosecution, even for the purpose of contradicting the witness. If the "statement" might properly be admitted and used to contradict the prosecution witness who made it, then there is no reason why it should not be proved in the usual way and by the best evidence namely, the written record of it. Section 162 plainly constitutes an exception to the ordinary rule of evidence. The proviso engrafts an exception upon the exception. The proviso clearly limits the purpose of the concession, in derogation of the prohibition contained in the section, and the accused can get a copy of the recorded statements of witnesses for the prosecution, for the only purpose of breaking down the evidence of the prosecution witnesses. The case of a witness for the defence, whose statement may have been recorded by a policeman is not covered by the proviso. Nor does it allow the prosecution to impeach the credit of such a witness by examining him upon any written statements made by him to the police. The proviso could also have never intended to allow the prosecution to impeach the credit of its own witnesses for its own purposes, and against the wish of the accused, by reference to the police testimony. *(Russell, Ag. C. J., Chandavarkar, Batty, Davar and Beaman JJ.)* EMPEROR v. NARAYAN RAGHUNATH PATKI

9 Bom L R 789 = 2 M L T 414 =
32 Bom 111=6 Cr L J 164 (FB).

—S. 66.

——*Police can seize document for which search is made.*

The Police Officer conducting the search under S. 66, Bombay City Police Act is entitled to take possession of that for which he is authorized to search. This construction is supported by the terms of S. 68. *(Beaumont C. J. and Sen J.)* EMPEROR v. OSMAN CHOTANI

AIR 1942 Bom 289=44 Bom L R 618=
I L R (1942) Bom 767=15 R B 244=
203 I C 365=44 Cr L J 7.

——*Police, when entitled to search under S. 66 — If can search Income-tax Offices and seize documents specified in S. 54, Income-tax Act.*

What S. 66, Bombay City Police Act provides, is, not that something must be done voluntarily, but that the Police Officer must have reason to believe that the person, in whose possession or power such document or thing is believed to be, will not voluntarily produce the same. If the Police Officer knows that in point of fact that person cannot produce it, because by so doing he will be committing an offence, it is easy for him to conclude that the document will not be volun-

(BOMBAY) CITY OF BOMBAY POLICE ACT (IV of 1902), S. 66

tarily produced. All that the section means is that the Police Officer must be satisfied that the person in possession of the thing in question will not produce it of his own accord, or under the compulsion of a summons. If he is so satisfied, then he may search. Consequently under S. 66 the Police are entitled to search Income-tax Offices and seize the document specified under S. 54, Income-tax Act. *(Beaumont C. J. and Sen J.)* EMPEROR v. OSMAN CHOTANI A I R 1942 Bom 289= 15 R B 244 = 44 Bom L R 618 = I L R (1942) Bom 767=203 I C 365= 44 Cr L J 7.

—S. 70.

——Loitering, what is.

The word 'loitering' implies lingering or hanging about on a road. Hence, where the facts show some quick action on the part of the accused, he cannot be convicted of loitering. *(Divatia and Lokur JJ.)* EMPEROR v. IBRAHIM IBOO A I R 1945 Bom 65 = 17 R B 158 = 46 Bom L R 564 = 217 I C 235 = 46 Cr L J 258.

——Section must be read with S. 167 (2), Criminal P. C. *(Davis J. C.)* DHAMAN HIRANAND v. EMPEROR A I R 1937 Sind 251= 31 S L R 494=10 R S 124=171 I C 737= 39 Cr L J 10

——Ss. 70, 72 and 74—Police custody — Accused though arrested under requisition from Magistrate are in police-custody.

The mere fact that the Chief Presidency Magistrate is furnished with certain information to enable him to make the requisition does not mark the completion of police investigation and the commencement of an inquiry or trial before him. Therefore accused are, when arrested, not in Magistrate's custody but are in police custody. *(Macleod, C. J. and Coyajee J.)* P. B. PONDE v. EMPEROR A I R 1925 Bom 387= 49 Bom 623=27 Bom L R 612= 88 I C 605=26 Cr L J 1181

—S. 89.

——Ss. 89 (3) and 134 (2) — Notice — Service of order on the President, Secretary and Members of Committee or Union is sufficient in view of Ss. 89 (3) and 134 (2) and Cr. P. C., S. 69 (3) — Knowledge of service of notice may be proved by circumstances.

Having regard to the provisions of S. 134, Cl. (2), S. 89 (3) and Cr. P. Code, S. 69, Cl. (3), the service on the President, the Secretary, the Members of the Managing Committee and the Members of Union, of the order issued by Commissioner of Police and duly promulgated is not irregular. Though the order was not personally served on the accused, yet the knowledge of the order by the accused may be proved by circumstances which would clearly show or give rise to an inference that the accused had such knowledge: Rat Un. Cr. C. 30 and A I R 1927 Cal 28, *Ref. (Patkar and Wild, JJ.)* BHALCHANDRA TRIMBAK v. EMPEROR A I R 1929 Bom 433=54 Bom 35= 31 Bom L R 1151=1929 Cr C 545= 123 I C 497=31 Cr L J 495

(BOMBAY) CITY OF BOMBAY POLICE ACT (IV of 1902)

—S. 111.

——Premises—Meaning.

The word "premises" used in S. 111 of the City of Bombay Police Act does not include open plots of land and this section does not apply in cases of trespass upon open lands, which do not belong to Government or which are not appropriated to public purposes. *(Bavdekar and Chainani JJ.)* MULCHAND KHUSHIRAM v. STATE A I R 1952 Bom 302=54 Bom L R 158= 21 Bom Cr C 315=I L R (1952) Bom 762= 1952 Cr L J 1217

—S. 112.

——S. 112 (d)—Reputed thief.

The fact of there being two previous convictions for theft suffices to make the accused a 'reputed thief' within the meaning of cl. (d) of S. 112. *(Fawcett and Madgavkar JJ.)* EMPEROR v. CHAND MAHABOOB A I R 1926 Bom 46= 27 Bom L R 1388=91 I C 699= 27 Cr L J 123

—S. 120.

——"Otherwise."

The words "or otherwise" must be construed as having a limited signification, following as they do words of a limited description. They mean "in a manner similar to that of words or gestures." Therefore, merely sitting at the window without any act done of the nature indicated in cl. (a) of S. 120 would not be an offence. *(Chandavarkar and Knight JJ.)* EMPEROR v. NASHMIRBAI 10 Bom L R 92=7 Cr L J 118

—S. 122.

——Cr. P. C., S. 227 — Magistrate can alter a charge under S. 122 of Act to one under S. 352, I. P. C.

Where an accused is sent up on a police report for trial for an offence punishable under S. 122 of the Bombay City Police Act the trying Magistrate can alter the charge and convict him of an offence under S. 352, I. P. C. : 36 Cal 869, *Foll. (Marten and Madgavkar JJ.)* FRAMJI BOMANJI v. EMPEROR A I R 1926 Bom 255= 28 Bom L R 291=93 I C 896= 27 Cr L J 496

—S. 127.

——In all cases of contravention of orders promulgated under S. 23 (2), the nature of the weapon itself is a most material circumstance and must be taken into account when assessing the sentence which the law demands. Considering these facts, the sentences of two of the accused were reduced to imprisonment for one week. *(Stone C. J. and Lokur J.)* EMPEROR v. ABDUL LATIF A I R 1947 Bom 438=49 Bom L R 340= 1947 A W R Sup 69=1947 O A Sup 69= 231 I C 264=19 Bom Cr C 71= 48 Cr L J 731

——No special procedure is prescribed for offence under S. 127.

All the offences under a special law are tried in accordance with the Cr. P. Code, and there is no special procedure prescribed for an offence under S. 127 for disobedience of an order under S. 23 (3). *Institute of Patent Agents* v. *Lockwood*, (1894) A C 347 and *Queen* v. *Hall*, (1891) 1 Q B 747,

(BOMBAY) CITY OF BOMBAY POLICE ACT (IV of 1902), S. 127

Ref. (Patkar and Wild JJ.) BHALCHANDRA TRIMBAK v. EMPEROR A I R 1929 Bom 433= 54 Bom 35=123 I C 497=31 Bom L R 1151= 1929 Cr C 545=31 Cr L J 495

—S. 128.

——*Court should consider whether Police Commissioner's order under S. 27 (2-A) is legal — Court cannot consider reasons which induced Police Commissioner to make that order.*

All that the Court can do in a case under S. 128 is to consider whether the order of the Commissioner of Police was legal; and if it was, whether it has been broken; and if so, what is the proper punishment. It is not open to the Court to consider the reasons which induced the Commissioner of Police to make the order. Therefore, in awarding a sentence under S. 128, character of the conviction which brought the case under S. 27 (2-A) is irrelevant. The factors to be considered are whether the case under S. 128 is that of a first offence, or whether the accused has returned more than once wrongfully. But at the same time it must be remembered that an order of externment is made in the public interest, and it is a serious offence to ignore that order. The mere fact that it has only been ignored once is not a good reason for imposing a light sentence. Another factor is the age of the accused, but that is only relevant where the accused is very young or very old; yet another factor is the reason which may have prompted the accused to return to the place from which he was externed. If the accused proves conclusively that he had some reason unconnected with any criminal intent, that is a matter which may be taken into account in imposing the sentence. If, for instance, he proves that he came back to see his dying mother or something of that sort, any Court would take that into consideration in mitigation of the offence. The last ground is the period of time during which the accused may have remained in custody. That, no doubt is a matter to which the Court always pays some regard. *(Beaumont C. J. and Sen J.)* EMPEROR v. ISHVARLAL CHHAGANLAL

AIR 1941 Bom 310=43 Bom L R 511= 14 R B 129=196 I C 442=42 Cr L J 869

——*Charge under S. 128—Burden of proof.*

The burden is upon the prosecution to satisfy the Court that the order alleged to have been disobeyed was a valid one. *(Beaumont C. J., Rangnekar, N. J. Wadia and Wassoodew JJ.)* YARMAHOMED AHMEDKHAN v. EMPEROR

A I R 1938 Bom 338=40 Bom L R 483= 11 R B 53=I L R (1938) Bom 403= 176 I C 839=39 Cr L J 792 (FB).

——It is a well-established principle that where an Act confers upon an authority power to make an order in certain conditions, and it is sought to impose a penalty for breach of an order made by the authority, it is incumbent upon the Court hearing the charge to consider whether the order was properly made and to be satisfied on two points; first that the authority has acted reasonably and not capriciously or oppressively; and secondly, that the conditions imposed by the statute have been observed. Although, therefore, an order made under S. 27 is an order made by an executive officer, and is not subject to appeal or revision in any Court, yet, when an attempt is made to impose a penalty for breach of an order made under the section, the validity of the order can be impeached by the Court. *(Beaumont C. J., Rangnekar, N. J. Wadia and Wassoodew JJ.)* YARMAHOMED AHMEDKHAN v. EMPEROR

A I R 1938 Bom 338= 40 Bom L R 483=11 R B 53= I L R (1938) Bom 403=176 I C 839= 39 Cr L J 792 (FB).

(BOMBAY) CITY OF BOMBAY POLICE ACT (IV of 1902), S. 128

—S. 129.

——Notice under S. 28 — Failure to comply with, rendering person liable under S. 129 — Notice invalid—Enforcement—*See* City of Bombay Police Act (4 of 1902), S. 28 2 Cr L J 95 (Bom).

—S. 137.

——*Promulgation of order by Police Commissioner under S. 23 (2).*

Where the order of the Commissioner prohibiting carrying of weapons, etc., within the meaning of S. 23 (2) as amended in 1942, had been posted at street corners in various parts of the City and had been proclaimed at various places by beat of drum and had been announced in some of the newspapers of the city : *Held*, that promulgation of the order had taken place within the meaning of S. 137. *(Stone C. J. and Lokur J.)* EMPEROR v. ABDUL LATIF AIR 1947 Bom 438= 49 Bom L R 340=1947 A W R Sup 69= 1947 O A Sup 69=231 I C 264= 19 Bom Cri C 71=48 Cr L J 731.

BOMBAY CITY RATIONING REGULATION (1943).

—Cl. 43.

——*Baker's bread—Rationed bread, what is.*

It is only the baker's bread as defined in cl. 1-A (1) that can be supplied against the surrender of a bread ticket as provided in cl. 43 of the Regulation. Every other kind of baker's bread also is a rationed article and unless specially authorised, cannot be supplied without a bread ticket. *(Divatia and Lokur JJ.)* EMPEROR v. MERWAN KHODADAD

A I R 1944 Bom 318=46 Bom L R 488= 17 R B 144=ILR (1944) Bom 566= 216 I C 268=46 Cr L J 157.

BOMBAY CIVIL MEDICAL CODE

—R. 7.

——*Word "brought", meaning of.*

It would be unreasonable to suggest that R. 7 of the Bombay Civil Medical Code only applies in the case of a man who is not well enough to walk to dispensary. Having regard to the obvious purpose of the rule the word 'brought' should not be unduly stressed and it does not really mean anything other than "is admitted." *(Broomfield and Norman JJ.)* S. D. MARATHE v. PANDURANG NARAYAN JOSHI

A I R 1938 Bom 419=11 R B 98= 40 Bom L R 825=ILR (1938) Bom 770= 177 I C 589=39 Cr L J 903.

BOMBAY CIVIL SERVICES CONDUCT, DISCIPLINE AND APPEAL RULES

——Framed under R. 48 (2), Civil Services (Classification, Control and Appeal) Rules—Breach of—*See* Civil Services (Classification, Control and Appeal) Rules, Rr. 49, 14. A I R 1951 Bom 233.

BOMBAY CIVIL SERVICES CONDUCT, DISCIPLINE AND APPEAL RULES

—R. 21.

——'Trade', meaning of — *See* Penal Code (1860), S. 168. **A I R 1951 Bom 233.**

BOMBAY COASTING VESSELS ACT (XIX of 1838)

—S. 13.

——*Vessel registered in name of father of joint Hindu family — Death of father — Son plying without license—Offence.*

Where after father's death his son continued to ply a vessel without fresh registry he commits an offence under S. 13 of the Coasting Vessels Act on account of change of ownership by the father's death. *(Batchelor and Shah JJ.)* EMPEROR v. HARIDAS **38 Bom 111=21 I C 893=15 Bom L R 994=14 Cr L J 653.**

BOMBAY CO-OPERATIVE SOCIETIES ACT (VII of 1925)

—S. 47.

——Where an honorary organiser of Co-operative Credit Societies appointed as a liquidator under S. 47 by the Registrar commits misappropriation of money received by him as a liquidator, no sanction under S. 197, Criminal P. C., is necessary for his prosecution. *(Mirza and Broomfield JJ.)* GULABMIYA DAGUMIYA v. EMPEROR **A I R 1930 Bom 487=32 Bom L R 1134=Ind Rul (1931) Bom 152=1930 Cr Cas 1022=129 I C 344=32 Cr L J 281.**

—S. 60.

——Section 60, Bombay Co-operative Societies Act, refers only to offences under the Act and not to those under the Penal Code. *(Murphy and Sen JJ.)* SHRIDHAR MAHADEO PATHAK v. EMPEROR **AIR 1935 Bom 36=36 Bom L R 1133=1935 Cr Cas 70=7 R B 352=154 I C 600=36 Cr L J 532.**

BOMBAY COURT OF WARDS ACT (I of 1905)

—S. 44-A.

——Section 44-A of the Act gives the Court of Wards power to call for the production of documents for the purposes of the Act, not only for the purposes of S. 15 or S. 16 of the Act. What the purposes of the Act are, are clearly to be ascertained from S. 4 and other sections of the Act. *(Davis J. C. and Mehta J.)* TAKHTRAM TULSIDAS AMBWANI v. EMPEROR **A I R 1938 Sind 217=11 R S 90=I L R (1939) Kar 238=178 I C 381=40 Cr L J 75.**

——*Ss. 44-A, 15, 16 — Court of Wards party to civil suit—If deprived of power under S. 44-A.*

The Court of Wards is not rendered powerless and unable to act in protection of the Wards' estate only because a claimant to that estate chooses to file a suit in a Civil Court, nor can it be held that the Court of Wards is empowered to call for documents only when an enquiry under S. 15 or S. 16 of the Bombay Court of Wards Act, is pending. *(Davis J. C. and Mehta J.)* TAKHTRAM TULSIDAS AMBWANI v. EMPEROR **A I R 1938 Sind 217=11 R S 90=ILR (1939) Kar 238=178 I C 381=40 Cr L J 75.**

(BOMBAY) CRIMINAL MANUAL, 1947

—R. 119.

——*Bombay High Court Rules, Appellate Side, 1950, Rule 73 — Revision by Government against order discharging accused—Limitation.*

Rule 119 of the Criminal Manual issued by the Bombay High Court is merely a working rule issued for the guidance of the criminal Courts subordinate to the High Court and does not, and cannot, lay down any law on the subject of limitation. If an appeal against an acquittal could be filed by Government within six months from the date of an acquittal, the period for the filing of a revisional application, as far as Government is concerned, could obviously not have been intended to be less than six months. Even according to Rule No. 73 of the High Court Rules, Appellate Side, the period for the filing of revisional application by Government is six months from the decision complained against :

Held, that the lower Court should not have dismissed the revisional application made by the State of Bombay on 29-5-1950 against an order of discharge of an accused dated 9-1-1950, as barred by limitation. *(Rajadhyaksha and Vyas JJ.)* STATE v. RAMNIKLAL **AIR 1951 Bom 411=53 Bom L R 545=21 Bom Cr C 169=ILR (1952) Bom 6=52 Cr L J 1433.**

BOMBAY DECENTRALIZATION ACT (III of 1915)

——Since the amendment of the Bombay District Municipal Act by Bombay Act (III of 1915), it could not be said of Municipal Councillors that they were public servants who were not removable without the sanction of the Governor-in-Council. *(Ferrers J. C. and Aston A. J. C.)* SUGANCHAND v. NARAINDAS **AIR 1932 Sind 177=1932 Cr Cas 792=Ind Rul (1933) Sind 60=141 I C 530=34 Cr L J 171.**

BOMBAY DISTRICT MUNICIPAL ACT (III of 1901).

—S. 3.

——*S. 3 (12) — Interpretation — Definition of "building" is not exhaustive — It includes also foundation.*

The definition of the word "building" in S. 3 (7) is not intended to be an exhaustive definition. The word "include" is not equivalent to the word "mean". The word "building" is quite wide enough to include the foundations. *(Fawcett and Patkar JJ.)* CHOJAN LAL MOTIRAM v. EMPEROR **AIR 1927 Bom 401=51 Bom 818=29 Bom L R 733=8 A I Cr R 418=103 I C 602=28 Cr L J 714.**

——Ss. 3 (12) and 96—Vacant portion.

The accused left a vacant portion for passage between two proposed buildings the site of which belonged to him. Kurla Municipal Bye-Law No. 132 provided that the height of the building should not be more than the width of the street on which it abutted :

Held, that the vacant space left by the accused between his buildings was not a street within S. 3 (12). (Macleod C. J. and Shah J.) Tyaballi Mulla Lukmanji v. Emperor **A I R 1924 Bom 365=26 Bom L R 216=82 I C 52=25 Cr L J 1188.**

——S. 3 (12) — Street defined — Open space accessible to others is a street though owned privately.

BOMBAY DISTRICT MUNICIPAL ACT (III of 1901), S. 3

An open space owned by the accused but accessible to the occupiers of other houses in the same dehal is a street. "All other persons" would mean persons other than the occupier of such buildings and would not mean all occupiers, of all the buildings within that space. (Shah Ag. C. J. and Crump J.) Dayabhai Lallubhai v. Ahmedabad Municipality,

A I R 1924 Bom 116=25 Bom L R 1218=81 I C 638 =25 Cr L J 990.

——S. 3(7)—'Building' includes compound wall. (Macleod C. J. and Shah J.) Emperor v. Ramrao Abaji Prabhu,

A I R 1921 Bom 62=45 Bom 1151=23 Bom L R 831 =63 I C 158=22 Cr L J 622.

——S. 3 (7)—Building—Wire fence is not a building.

A wire fence is neither a "wall" nor an "enclosure," and is not a building under S. 3 (7) of the Act. The word "enclosure" used in the definition of "building" must be interpreted ejusdem generis with the preceding words "hut" and "shed" (i. e.) must be taken to refer to some fabric or structure or thing built in the more popular acceptation of the word. (Batchelor and Shah JJ.) Emperor v. Ranchodlal,

A I R 1917 Bom 233=41 Bom 563=19 Bom L R 521 =41 I C 656=18 Cr L J 832.

—S. 4.

——When Bombay Local Boards Act S. 4 (3) refers to a Municipal District it does not include a notified area. (Broomfield and Macklin JJ.) Mohiddin Bawasaheb Thakur v. Emperor,

A I R 1939 Bom 97=41 Bom L R 93=11 R B 318= 180 I C 940=40 Cr L J 522.

—S. 7.

——S. 7 (3)—Erection of fallen wall — See Bombay District Municipal Act (3 of 1901), S. 96,

12 Cr L J 1(Bom).

—S. 16.

——Ss. 16 and 45—Municipal Councillor—Removal from office.

A Municipal Councillor is a public servant not removable from office except by the State Government. (Shah C. J. and Baxi J.) Ibrahim A. Karim v. State,

A I R 1953 Sau 143=1953 Cr L J 1263.

——The word 'Commissioner' in S. 16, means Commissioner in Sind and cannot be read as meaning Commissioners other than Commissioner in Sind. (Ferrers J. C. and Aston A. J. C.) Sugan Chand v. Naraindas,

A I R 1932 Sind 177 = 1932 Cr Cas 792 = Ind Rul (1933) Sind 60=141 I C 530=34 Cr L J 171.

——The delegation of powers by the Governor in Council by virtue of Criminal P. C., would not have the effect of repealing or annulling the statutory provision contained in S. 16. (Ferrers J. C. and Aston A. J. C.) Sugan Chand v. Naraindas,

A I R 1932 Sind 177 = 1932 Cr Cas 792 = Ind Rul (1933) Sind 60=141 I C 530=34 Cr L J 171.

—S. 23.

——S. 23 (7) — Municipal Councillors moving resolution without complying with the provisions of Bombay District Municipal Act—Councillors can still be said acting in discharge of their duty—Complaint against them without sanction is liable to be dismissed—See Criminal P. C. (1898), S. 197,

A I R 1953 Sau 143=1953 Cr L J 1263.

—S. 42.

——Ss. 42 and 68 (a) — Order under S. 42 — District Magistrate—Powers of.

A District Magistrate cannot, by an order under S. 42 of the Act promulgated only in the Taluka head-quarters

BOMBAY DISTRICT MUNICIPAL ACT (III of 1901), S. 42

and containing no reference to any area, make punishable, acts done in a village 12 miles away, when the District Magistrate was not present at the time of the proclamation of the order.

Per Batchelor J.—The words "neighbourhood or vicinity" include only suburbs or immediate surroundings. The words "having jurisdiction"..."village" and "prohibit ...village" in S. 42 refer equally to the Magistrate of the first Class & to the District Magistrate. Section 42 plainly limits the prohibiting powers of the Magistrate, whether of the first class or of the District.

Per Chandavarkar J.—The conditions essential for the exercise of jurisdiction under S. 42 are that (1) the jurisdiction is conferred on the District Magistrate or the Magistrate of the First Class ; (2) there must have been jurisdiction over the town or village where the jurisdiction is intended to operate and (3) they must be present in such town or village or in the neighbourhood thereof at the time the jurisdiction is set in motion. (Chandavarkar and Batchelor JJ.) Emperor v. Dattatraya Laxman Sar Potdar,

36 Bom 504=14 Bom L R 158 = 14 I C 974 = 13 Cr L J 430.

—S. 45.

——A Municipal Councillor is a public servant not removable from office except by the State Government—See ibid, S. 16,

A I R 1953 Sau 143=1953 Cr L J 1263.

—S. 46.

——Rules and bye-laws—Distinction.

Rules and bye-laws differ from each other, in two salient matters : (1) rules have effect when they are approved whereas bye-laws require to be previously sanctioned ; when bye-laws are proposed, their drafts have to be published and objections and suggestions received and considered ; bye-laws can be made only after this procedure has been followed ; (2) there is no provision in respect of rules similar to the one in a case of byelaw permitting Municipality to prescribe fine for infringement of bye-law. (Barlee and Tyabji JJ.) Vishnushanker Vasantram v. Emperor,

A I R 1937 Bom 150=39 Bom L R 89=9 R B 365= I L R (1937) Bom 304=168 I C 219=38 Cr L J 538.

——Ss. 46, 48—Municipality, if can enact bye-law under S. 48, relating to payment of tolls or penalty for infringement of rule.

A Municipality cannot enact a bye-law under S. 48, Bombay District Municipal Act, imposing a penalty upon persons entering the limits of the Municipality with the intention of evading toll upon their conveyances as it imposes a penalty for the infringement of a rule. Matters relating to payment of tolls ought to be dealt with by rules under S. 46 and not bye-laws under S. 48. (Barlee and Tyabji JJ.) Vishnushankar Vasantram v. Emperor,

A I R 1937 Bom 150=39 Bom L R 89=9 R B 365= I L R (1937) Bom 304=168 I C 219=38 Cr L J 538.

—S. 48.

——Bye-law to be made by passing resolution after its sanction by Commissioner.

Under S. 48, Bombay District Municipal Act the bye-laws have to be made with the previous sanction of the Commissioner. The only way in which a Municipality can make a bye-law is by passing a suitable resolution, so that the resolution must be passed after the sanction of the Commissioner has been obtained. Therefore, it is wrong to say, that as soon as the sanction of the Commissioner is given, the proposed bye-law at once becomes operative. It must then be brought before the Municipality and considered. Where the Commissioner makes

BOMBAY DISTRICT MUNICIPAL ACT (III of 1901), S. 48

material alterations in the draft, the Municipality must follow the provisions of sub-s. (2) of S. 48, and invite criticism upon the altered bye-law, because the fact that the public have approved of the bye-law in one form is no justification for passing it in another form. (Beaumont C. J. and Wassoodew J.) Emperor v. Shirinbai Surabji Nagpurwala,

A I R 1941 Bom 66=42 Bom L R 1050=13 R B 299 =192 I C 816=42 Cr L J 331.

——S. 48 (f)—Information about children of school-going age — Bye-law 4 — Not ultra vires — Bombay Primary Education Act (I of 1918), S. 18 does not curtail powers of Municipality to frame bye-laws.

The accused was convicted for refusing to furnish information required by the Municipality under bye-law 4 framed under S. 48 (f) of the Bombay District Municipal Act, 1901, with regard to children of school-going age.

Held, that the bye-law is in no way inconsistent with the principal Act or with the rules made by the Local Government under Act I of 1918, (Primary Education Act). The powers of the Municipality to frame bye-laws under S. 48 of the principal Act are not in any way curtailed by the powers conferred under S. 18 of that Act. (Shah and Kajiji, JJ.) Emperor v. Parshotam Jagjivan

A I R 1924 Bom 47=25 Bom L R 767=77 I C 186 =25 Cr L J 330.

—S. 59.

——Ss. 59, cls. (4), (11), 76 — Goods in transit and not brought within octroi limits—Liability for octroi.

An octroi is a tax levied upon articles which are brought into the gates of a city, whether or not such articles are brought into the city for consumption or use therein. Hence goods which are dutiable are always liable to terminal tax or octroi even if they are in transit and not brought within octroi limits for consumption or use therein. (Rupchand and Mehta A. J. Cs.) Sajan v. Emperor

A I R 1935 Sind 245=29 S L R 54=8 R S 91=1935 Cr Cas 1308=159 I C 665=37 Cr L J 148.

—S. 61-D.

——Commissioner of Sind, whether Local Government.

The Commissioner of Sind is not a Local Government. (Ferrers, J. C. and Aston A. J. C.) Sugan Chand v. Seth Narain Das

A I R 1932 Sind 177=Ind Rul (1933) Sind 60= 141 I C 530=34 Cr L J 171.

—S. 76.

——Inspection of goods inside limits of Municipality or at place of exit — Legality — Refusal to show goods to octroi officer.

There is nothing in S. 76, Bombay District Municipal Act, to suggest that the octroi officer should ask for inspection only at the place where the goods enter the limits of the Municipality and not inside such limits or at the place of exit from such limits. It is, therefore, no argument that because the accused were not asked to show the bundle at the octroi station which was at the entrance to the local limits of the Municipality, they were entitled to refuse to give inspection when asked to do so within the local limits. (Rupchand and Mehta A. J. Cs.) Sajan v. Emperor

A I R 1935 Sind 245=29 S L R 54=8 R S 91=1935 Cr Cas 1308=159 I C 665=37 Cr L J 148.

—S. 77

——S. 77 (2) — Saurashtra Terminal Tax and Octroi Duty Ordinance (47 of 1949), S. 4 — Octroi Rules framed under Ch. II, Sch. 3, Rule 2 (1) — 'Import' means introduction of goods within octroi limits. (Shah C. J. and Baxi J.) State v. Koli Amra

A I R 1953 Sau 164=1953 Cr L J 1537.

——S. 77 (2)—Bona fide refusal to pay octroi duty is not intention to defraud municipality. (Shah C. J. and Baxi J.) State v. Koli Amra

A I R 1953 Sau 164=1953 Cr L J 1537.

——S. 77 (2) — Terminal tax levied by Kotri (Sind) Municipality in pursuance of S. 59 (1) (xi)—Non-payment of, if punishable under S. 77 (2).

When the Bombay District Municipal Act, 1901 came into force, the word 'octroi,' meant octroi as defined or described in cl. (iv) of S. 59 (1), and the same meaning must be given to word "octroi" in S. 77 (2) of the Act. The word "octroi" used in the Rules and Bye-laws framed by the Kotri Municipality in Sind in describing terminal tax levied in pursuance of cl. (xi) of S. 59 (1) is nothing more than a tax as described in S. 73 (1), Bombay Municipal Boroughs Act, 1925. The word "octroi" used in the description of terminal tax is an octroi which is not liable to be refunded; on the other hand, "octroi" referred to in cl. (iv) of S. 59 is clearly refundable. The connotation of the word "octroi" in the description of terminal tax in the Rules and Bye-laws of the Kotri Municipality is something quite different from the connotation of the word 'octroi" used in cl. (iv) of S. 59 (1). It is a recognised canon of construction that where in an enactment a word is defined or described, it must have the same meaning wherever it occurs in the enactment. Manifestly, the word "octroi" used in Rules and Bye-laws of the Kotri Municipality in Sind has not the same meaning as it has in cl. (iv) of S. 59 (1), Bombay District Municipal Act. Consequently, what is punishable under S. 77 (2), Bombay District Municipal Act, is the non-payment of octroi with the particular intention described in sub-s. (2) of S. 77, and not the non-payment of terminal tax which the Kotri Municipality is competent to levy: 22 Bom 843; A I R 1926 Bom 231; A I R 1939 All 736, Disting. (O'Sullivan and Thadani JJ.) Municipality of Kotri v. Abdul Rahman,

A I R 1948 Sind 57=49 Cr L J 91.

——S. 77 (2) — Intention to defraud is essential.

Before a person can be convicted of an offence under S. 77 (2), it must be proved that the person importing the goods had intention to defraud the Municipality. (O'Sullivan and Thadani JJ.) Municipality of Kotri v. Abdul Rahman,

A I R 1948 Sind 57=49 Cr L J 91.

——S. 77, Cl. 2—'Defraud'.

A man is defrauded if thereby he is deprived of some right or property to which he is entitled, and any act done with the intention of wrongfully depriving him of the benefit of such right would amount to an attempt to defraud him within the meaning of S. 77 (2). (Fawcett and Madgavkar JJ.) Emperor v. Harjivan Valji,

A I R 1926 Bom 231=50 Bom 174=28 Bom L R 115 =98 I C 407=27 Cr L J 1335.

—S. 86.

——Magistrate's order on appeal under S. 86 is not revisable by High Court under Cr. P. C., S. 435.

Under S. 86, a Magistrate hearing an appeal is merely an appellate authority having jurisdiction given by the Act to deal with the question of a civil liability. He is, therefore, not an inferior criminal Court within S. 435 and the High Court has no power to revise his order. 9 Bom. L. R. 1347, Foll. (Kincaid J. C. and Barlee, A. J. C.) Karachi Municipality v. Jafferji Tayabji,

A I R 1927 Sind 23=21 S L R 51=97 I C 647=27 Cr L J 1127.

BOMBAY DISTRICT MUNICIPAL ACT (III of 1901), S. 86

——Magistrate hearing appeal of nature mentioned in section — High Court's power of revision — Criminal Procedure Code (Act V of 1898), S. 435.

A Magistrate hearing an appeal of the kind mentioned in S. 86, Bombay District Municipal Act, is merely an appellate authority having jurisdiction given by the Act to deal with the question of a civil liability and therefore, is not an inferior Criminal Court, so as to attract the revisional jurisdiction of the High Court under S. 435, Criminal P. C. (Chandavarkar and Knight JJ.) In re Dalsukhram Hurgovindas,

9 Bom. L R 1347=6 Cr L J 425.

—S. 90.

——Ss. 90, 50 and 122 — Purpose not authorised by statute — Under S. 90 a Municipality cannot authorize the use of a strip of a street for purpose not authorized by statute—Corporation.

A strong presumption arises that the Legislature did not intend, by the general powers it gives to the Municipality, to discontinue or stop up public streets, that they should use that power for a purpose which contravenes the intention shown by S. 122. It rests upon anyone who supports the action of the Municipality to show that it had statutory authority to divert a portion of a public street for such a purpose. A Municipality has no power to authorize the use of a part of the street for the purpose of keeping logs of wood for sale. (Fawcett and Madgavkar JJ.) Emperor v. Vishvanath,

A I R 1926 Bom. 535 = 50 Bom. 674 = 28 Bom. L R 1033=97 I C 744=27 Cr L J 1160.

——S. 90 (3)—Manner of work must be specified.

Where the manner in which the work is to be carried out is not attempted to be specified, the conviction must be set aside. (Shah Ag. C. J. and Crump J.) Dayabhai Lallubhai v. Ahmedabad Municipality,

A I R 1924 Bom. 116 = 25 Bom. L R 1218 = 81 I C 638=25 Cr L J 990.

——Applies to old as well as new streets.

Section 90 is not confined to new public streets alone. It applies to all public streets whether old or new. (Raymond and Aston A. J. Cs.) Hyderabad Municipality v. Kazi Fakhrudin,

A I R 1925 Sind 90=81 I C 134 = 17 S L R 273=25 Cr L J 646.

—S. 92.

——Ss. 92 and 96 — Reconstruction of old buildings — Omission to give notice.

Notice or permission is required in the case of all buildings whether on a public road or in a private mohala. Section 96 of the Act does not empower the Municipality to deprive the owners of the legitimate use of their lands or to refuse permission to build at all, but confers a power of regulating the buildings with a view to secure their safety and sanitation. (Pratt J. C. and Hayward A. J. C.) Khusaldoss Moolchanda v. Emperor,

A I R 1918 Sind 53 (1) = 44 I C 346=11 S L R 90= 19 Cr L J 330.

—S. 96.

——Ss. 96 (5), 91-A—Application to re-build wall—Condition that wall should be set back to the regular line prescribed for the street — Legality of condition — Rebuilding without condition.

The petitioner applied for permission of the Municipality to rebuild a wall and the Municipality granted him permission, subject to the condition that the wall should be set back a certain specified distance from the street. The petitioner reconstructed the wall without complying with this condition and was prosecuted for doing so under S. 96 (5), Bombay District Municipal Act :

BOMBAY DISTRICT MUNICIPAL ACT (III of 1901), S. 96

Held, that until the Municipality prescribed a line under the powers which they acquired in 1927, on the notification of Government, they were not in a position to take advantage of S. 91-A and that the condition imposed by the Municipality was not justifiable under S. 96 (2), as the set-back required in this case was not in relation to any street existing or projected, but was really in relation to some future possible widening of the existing street, and hence the petitioner did not commit any offence. (Beaumont C. J. and Barlee J.) Onkardas Kishoredas Wani v. Emperor,

A I R 1934 Bom. 154=36 Bom. L R 217=6 R B 323 =1934 Cr Cas 541=148 I C 1008=35 Cr L J 834.

——"Regarding the limits, etc." refer to limits of building apart from its location.

The words "regarding the limits of the proposed building" in sub-s. (1) of S. 96, refer to the limits of the building apart from any question as to its location with reference to any existing or projected streets. (Fawcett and Patkar JJ.) Chhaganlal Motiram v. Emperor,

A I R 1927 Bom. 401= 51 Bom. 818 = 29 Bom. L R 733=8 A I Cr R 418=103 I C 602=28 Cr L J 714.

——"All information they may require" etc. — Demand for modified plan excluding land falling within alignment of a proposed street is included.

The words "all information they may require regarding the location of the building with reference to any existing or projected streets" in S. 96 (1) (b) are wide enough to include a demand for a modified plan, excluding certain land which falls within the alignment of a proposed street and proposed to be built upon. (Fawcett and Patkar JJ.) Chhaganlal Motiram v. Emperor,

A I R 1927 Bom. 401 = 51 Bom. 818 = 29 Bom. L R 733=8 A I Cr R 418=103 I C 602=28 Cr L J 714.

——"Further orders" also include demand for further particulars.

The words "further orders" in Cl. (b) of S. 96 (4) do not mean only orders of the kind referred to in sub-s. (2) and they include any demand for further particulars. (Fawcett and Patkar JJ.) Chhaganlal Motiram v. Emperor,

A I R 1927 Bom. 401= 51 Bom. 818 = 29 Bom. L R 733=8 A I Cr R 418=103 I C 602=28 Cr L J 714.

——Ss. 96 (5) and 161 (1)—Interpretation — Foundation begun long before 6 months — Walls begun within 6 months — Prosecution in respect of walls is in time — "Makes" means not only beginning of a building but also its continuance.

The erection of a wall of a building is a distinct stage from the stage of laying its foundations; and house-walls, as well as compound walls are covered by the word "building" in S. 96 : A. I. R. 1921 Bom. 62, Ref. The words "or makes" show that it is not only the mere beginning of a building that is punishable, but its continuance even to completion without the requisite permission, or in defiance of legal orders. Therefore, where the walls of a building for which no sanction has been obtained have been built within 6 months, prosecution in respect of such walls is in time although the foundation was begun long before 6 months. (Fawcett and Patkar JJ.) Chhaganlal Motiram v. Emperor,

A I R 1927 Bom. 401 = 51 Bom. 818=29 Bom. L R 733=8 A I Cr R 418=103 I C 602=28 Cr L J 714.

——S. 96 (5) — High Court will interfere in revision where Municipality has acted capriciously or unreasonably — Motive of Municipality is irrelevant where it has acted in accordance with law.

No doubt High Court will interfere where it is clearly shown that a Municipality, or other public body, has

BOMBAY DISTRICT MUNICIPAL ACT (III of 1901), S. 96

acted capriciously, arbitrarily, or unreasonably to the prejudice of the applicant, in delaying the sanction. But a Court of law is not entitled to go into the question of the exact motives with which the Municipality or an officer of the Municipality has acted, provided that the action taken is in accordance with law. The question of motive then becomes irrelevant. (Fawcett and Patkar JJ.) Chhaganlal Motiram v. Emperor,

A I R 1927 Bom 401=51 Bom 818=29 Bom L R 733 =103 I C 602=8 A I Cr R 418=28 Cr L J 714.

——Ss. 96, 92 and 91-A — Building beyond street line — Permission to build—Permission subject to keeping land within regular line of street unbuilt upon is legal—Building beyond the line is an offence.

The Rander Municipality granted permission to the accused to build, subject to the condition that the house should be built after leaving open the land within the alignment of the road in front. The accused, in spite of the condition, built up his house within the alignment.

Held, that the accused had offended against S. 96 as amended in 1914; for he was bound to ask for permission to re-construct his building within the regular line of the street and the Municipality were entitled to issue such orders as they thought proper not inconsistent with the Act and to impose in writing such conditions with reference to the location of the building in relation to any street existing or projected as they thought proper. Under S. 92 certain powers are given to a Municipality, if any of the conditions mentioned therein exist, to require the owner by written notice to remove his building to the regular line of the street or the front of the adjoining building on either side. (Macleod, C. J. and Coyajee, J.) Emperor v. Thakordas Motiram,

A I R 1925 Bom 505=89 I C 1031=27 Bom L R 1023=26 Cr L J 1463

——S. 96 (5) — Privies—Pen Municipality—By-law 9—Does not apply to privies built without permission.

So far as rule 9 is concerned, it seems clear that the communication that is required by rule 9 to be made after the completion of the privy relates to a privy with reference to which permission has been granted under rule 8, and not to a privy which has been constructed without the permission of the municipality. (Shah, Ag. C. J. and Fawcett J.) King-Emperor v. Ezekiel Moses Penkar,

A I R 1924 Bom 484 = 26 Bom L R 715=82 I C 362 =25 Cr L J 1290

——'Any building' in the section covers one in a private Mahala.

The words "any building" in S. 96 are wide enough to cover a building in a private Mahala. (Fawcett, J. C. and Kemp, A. J. C.) Emperor v. Jana Fakir,

A I R 1922 Sind 22 = 66 I C 999 = 15 S L R 171 = 23 Cr L J 343.

——Ss. 96 and 97 — Alteration of charge — Charge of offence under S. 96—Offence not proved — Charge cannot be altered into one under S. 97 read with S. 155.

The Magistrate, when once he had come to the conclusion that the offence of the accused of erecting huts on Municipal land without permission did not come within S. 96, could not alter the charge and treat the offence as if it was punishable under S. 97 read with S. 155. (Macleod, C. J. and Shah, J.) Matubhai M. Shah v. Emperor,

A I R 1922 Bom 97=66 I C 323=24 Bom L R 105= 46 Bom 657=23 Cr L J 259.

——Erection of stone compound wall at a distance is erecting building.

BOMBAY DISTRICT MUNICIPAL ACT (III of 1901), S. 96

Erecting a stone compound-wall at a distance from the house is erecting a building within the meaning of S. 96. (Macleod, C. J. and Shah, J.) Emperor v. Ramrao Abaji,

A I R 1921 Bom 62 = 45 Bom 1151 = 23 Bom L R 831=63 I C 158=22 Cr L J 622.

——S. 96 (5) — Order under the section final and irrevocable.

An order issued under the Act to build a house cannot be rescinded or varied from time to time. The whole tenor of the section is to consider the merits of the application and pass order once and for all. A conviction under a fresh order for non-compliance was held illegal. (Batchelor and Shah, JJ.) Karim Ranjam Khoji v. Emperor,

A I R 1916 Bom 48 = 19 Bom L R 65=39 I C 298= 18 Cr L J 458.

——S. 96 (7) — "Erecting a building" — Meaning of — Re-construction — Constructing side wall on old foundation.

The re-construction of a small wall upon its own foundation is not necessarily the "erection of a building" within S. 96. (Per Heaton, J.) (contra Chandavarkar, J.) "Building" as contemplated by S. 96 is the whole house and not a single wall of the house which is only a part of a building. It is a question of fact whether the re-construction of any particular wall or portions of a building is substantially a reconstruction of the building. (Scott, C. J., Chandavarkar and Heaton, JJ.) Emperor v. Braz H. De Souza,

35 Bom 412 = 13 Bom L R 494 = 11 I C 610=12 Cr L J 426.

——Erecting a building — Re-building a wall that had been fallen down—Material reconstruction.

Re-building of a whole wall after it has fallen down is a material reconstruction or an erection of a building within the meaning of S. 96. "Building" is defined in S. 7 (3), to include walls and by cl. (a) to S. 96 the expression "to erect a building" includes any material reconstruction of a building. Where therefore a person builds up a fallen wall without awaiting the permission and in contravention of prohibition order, he can be prosecuted under S. 96. (Batchelor and Rao, JJ.) Emperor v. Kalekhan Sardar Khan,

12 Bom L R 1060 = 35 Bom 236=8 I C 1050=12 Cr L J 1.

——S. 33 of Bombay District Municipal Act, 1873.

Section 96 of the present Act of 1901, differs in material particulars from S. 33 of the Bombay District Municipal Act of 1873. (Batchelor and Rao, JJ.) Emperor v. Kalekhan Sardar Khan,

10 Bom L R 1060=8 I C 1050=12 Cr L J 1.

——Information as to ownership—Jurisdiction of Municipality.

The question whether, under S. 96, the Municipality has jurisdiction or right to call for information regarding ownership must be decided on the circumstances of each case. Where a person produces the title-deeds and furnishes the information asked for, he is bound to wait for one month from that date for the orders of the municipality before he can proceed to build. (Chandavakar and Aston JJ.) Emperor v. Pranshanker Gavrishanker

6 Bom L R 581=1 Cr L J 748.

—S. 101.

——Ss. 101 (1) and 107 (1) — Distinction is difficult to make.

A notice served upon the respondent by which he is called upon to repair two sinks on the first storey so as to discharge waste water into the drainage-cess-pool falls under S. 101 (1) and not under S. 107. It is difficult to lay down with precision the scope of S. 107, sub-s. (1);

BOMBAY DISTRICT MUNICIPAL ACT (III of 1901), S. 101

and it may not be always easy to draw the dividing line between orders falling under S. 107 (1) and those under S. 107. (Shah and Kajiji JJ.) Emperor v. Ramchandra Gangadhar

AIR 1924 Bom 70=81 I C 972=25 Cr L J 1148.

—S. 107.

——Ss. 107 and 131—Notice cannot be served on a person as agent nor can he be prosecuted on such notice.

Under S. 154, cl. (2) it is open to the Municipality to issue the notice addressed to the owner of the premises without specifying his name. If they do so they can prosecute the trustee who was recovering rents from tenants of the property, as the owner of the premises under S. 3, cl. (8) of the Act, but he could not be prosecuted for failure to comply with notice addressed to another person and delivered to him as the agent of that person. (Kennedy J. C. and Rupchand Bilaram A. J. C.) Harsomal M. Gurubuxani v. Emperor

A I R 1925 Sind 262 = 18 S L R 90 = 88 I C 187 = 26 Cr L J 1099.

——Ss. 107 (2), 155—Removal of cess-pool—Direction to owner whether lawful—Disobedience of notice—Effect.

Direction to an owner or occupier to do a certain thing himself is not warranted by S. 107(2). That section provides that the Municipality may by written notice do the thing themselves. Hence, disobedience of the notice, directing an owner or occupier to remove a cess-pool within a week, is not an offence under S. 155 of the Act. (Scott C. J. and Heaton J.) Laduram Manormal v. Emperor

4 I C 835=11 Bom L R 1349=11 Cr L J 60.

—S. 113.

——House abutting private street — Height of the eaves cannot be regulated.

Section 113 which empowers the Municipality to regulate the height of the eaves does not apply to the eaves of a house which abuts on a private street : A I R 1920 Bom 308 ; A I R 1921 Bom 130 and 27 Bom 221, Dist. (Patkar and Baker JJ.) Emperor v. Gafur Daud Bohra

AIR 1929 Bom 286=31 Bom L R 578=120 I C 360= 1929 Cr C 37=31 Cr L J 108.

——Ss. 113 and 122—Bye-laws—Chapter XIV, 10 (3) — Shop boards projecting over public street—Tax.

Under S. 113 it is open to Municipality to prescribe rules for projections on public streets and a bye-law to that effect is not *ultra vires*. (Shah and Marten JJ.) Nagindas Chabildas v. Emperor

A I R 1918 Bom 207=42 Bom 454=20 Bom L R 388 =45 I C 503=19 Cr L J 599.

—S. 122.

——Municipality has no power to issue notice under.

Section 122 gives no power to a Municipality to issue a notice to a person alleged to have erected an encroachment to remove it. Although the Municipality may send such a notice, it is not a notice under the section. Such a notice may be sent as matter of courtesy, preliminary to the Municipality taking action under the powers given to them by the section to remove an encroachment themselves. (Macleod C. J. and Coyajee J.) Atmaram Shamji v. Emperor

AIR 1923 Bom 30 (1)=24 Bom L R 384=66 I C 817 =23 Cr L J 321.

——Offence of building landhi on public road without permission.

Though the offence of building a landhi on a public road without permission can come under the general words of clause 3 of the section the more specific and particular clause 1 must be held to apply to such a case

BOMBAY DISTRICT MUNICIPAL ACT (III of 1901), S. 122

under the rule of construction. (Pratt, Esq. and Crouch, Esq.) Imperator v. Hasomal

1 S L R 88 Cr=8 Cr L J 213.

—S. 125.

——Master's liability for acts of his contractor.

Where a contractor employed by a person stored building material outside the limits of the area for which permit has been granted to the person for the purpose, the person cannot be held responsible for the criminal act of his contractor and his conviction under S. 125 would be bad. (A. Lucas Esq. and R. Knight Esq.) Crown v. Tyebji Mulla Mahomed Bhy

1 S L R 15 Cr=9 Cr L J 257.

—S. 131.

——Liability of occupier.

An occupier of land cannot plead as a defence to a notice under S. 131, that none but the owner is responsible to remove a nuisance. (Kennedy J. C. and Aston A. J. C.) Haji Umar v. King-Emperor

A I R 1925 Sind 264 = 18 S L R 104 = 87 I C 104= 26 Cr L J 952.

——Ss. 131, 135, 155—Nuisance — Non-compliance with notice.

Section 131 of the Bombay District Municipal Act renders the owner liable for non-compliance with a notice issued under it, not when the Municipality considers vegetation to be rank or noisome, but only when the vegetation is actually so. To support a conviction under the section for non-compliance with a notice, the prosecution must establish affirmatively the objectionable character of the vegetation. Before non-compliance with a notice issued under S. 135 of the Act can form the subject of a conviction, it must be shown that there is some pool, ditch, tank, hole, water-channel, receptacle of foul water, etc., of the kind mentioned in the section, the filling, cleansing, drawing or removal of which the Municipality has directed by notice, or with regard to which, the Municipality has directed such measures to be taken, as it considers necessarily to abate or remove the nuisance. (Batty and Pratt JJ.) Emperor v. Anandrao Khanderao Raste,

9 Bom L R 247=5 Cr L J 252.

—S. 135.

——Ss. 131, 135 and 155 — Nuisance — Non-compliance with notice—See ibid, S. 131

5 Cr L J 252 (Bom)

—S. 139.

——There is no conflict between S. 139 of the above Act and S. 1, Bombay Markets and Fairs Act (IV of 1862). Where therefore a person establishes a cattle market on his private land within municipal limits, without permission from the District Magistrate as required by S. 1, Bombay Markets and Fairs Act, he is guilty under that section. (N. J. Wadia and Sen JJ.) Najmuddin Ibrahim Saheb Bobade v. Emperor,

AIR 1940 Bom 306=42 Bom L R 584 = ILR (1940) Bom 522=13 R B 155=191 I C 121=42 Cr L J 84.

—S. 142.

——Unwholesome food—Liability of commission agent.

Section 142, Bombay District Municipal Act, gives protection to mere bailees and not to agents who are not mere bailees of goods entrusted to them but may sell or otherwise dispose of the goods. (Wild J. C. and Rupchand A. J. C.) Harchandmal Dayaldas v. Emperor,

AIR 1931 Sind 39=25 S L R 87=1931 Cr Cas 199= 131 I C 134=32 Cr L J 664.

——Delegation of power to destroy articles.

Under the said section it is for the Magistrate to decide whether the article of food should be destroyed or should

BOMBAY DISTRICT MUNICIPAL ACT (III of 1901), S. 142

be disposed of, he cannot delegate this function to the Health Officer of the Municipality. (Wild J. C. and Rupchand A. J. C.) Harchandmal Dayaldas v. Emperor,

AIR 1931 Sind 89=25 S L R 87=1931 Cr Cas 199=131 I C 134=32 Cr L J 664.

——S. 142 (1)—A person found selling at a beef-stall meat unfit for human consumption may be ordered by the Municipality to destroy the unwholesome meat but the Magistrate cannot convict the person under S. 142 (1). (Shah and Kajiji JJ.) Emperor v. Haji Aboo,

AIR 1921 Bom 155=45 Bom 193=58 I C 157=22 Bom L R 889=21 Cr L J 733.

——Power of Secretary to institute prosecution — Jurisdiction of Court to try offence on Secretary's prosecution.

The Secretary of a Municipality, who is not authorized under S. 142 is not competent to prosecute any person for selling an article which is not what it is represented to be; and a conviction based on a prosecution instituted by the Secretary is illegal and without jurisdiction. S. 537 does not apply in such a case and the point can be raised for the first time in revision. (Lucas J. C. and Pratt A. J. C.) Tikam Kundanmal v. Emperor,

1 I C 941=3 S L R 13=9 Cr L J 449.

—S. 151.

——S. 151 (1)—Person manufacturing oil by machinery without license can be convicted.

A manufactory or place of business where machinery is used for the purpose of extracting oil does involve a risk of fire. A person can, therefore, be convicted for manufacturing oil by means of machinery within the Municipal district without obtaining a license in respect thereof. (Rupchand and DeSouza, A. J. Cs.) Hussain Haji Umar v. Emperor,

AIR 1929 Sind 50 = 23 S L R 125=115 I C 307=12 A I Cr R 260=30 Cr L J 442.

——For awarding continuing fine it must be proved that accused was continuing offence after prior conviction—Unless such charge is specifically made and finding is given as to number of days of continuing breach, an order awarding continuing fine is unwarranted.

Before a continuing fine is imposed for a continuing offence it must be alleged and proved that the accused had continued to use the premises for a specific number of days after his conviction, and that he had no license during those days. This charge must be the subject of a separate prosecution, and a separate inquiry. It is only on proof of the charge so laid that the Magistrate is called upon to exercise his discretion and to determine what would be the proper amount of fine per day which the accused should be made to pay and to give a finding as to the number of days for which such fine is to be levied. (Rupchand and DeSouza A. J. Cs.) Hussain Haji Umar v. Emperor,

AIR 1929 Sind 50=23 S L R 125=115 I C 307 = 12 A I Cr R 260=30 Cr L J 442.

——S. 151 (1) (n) — Interpretation — Keeping wood for selling comes properly within Cl. (n).

Where the accused used what is described as a shop for selling wood, and kept wood there in order to sell it: Held, that it is a case which properly comes within the meaning of Cl. (n), as there would be continual storing of wood for the purpose of selling it, and not a casual storage of a few days' supply for domestic use. 29 Bom. 193, Dist. (Shah and Fawcett JJ.) Emperor v. Nanubhai,

AIR 1926 Bom 546=50 Bom 760=28 Bom L R 1070 =97 I C 811=27 Cr L J 1179.

BOMBAY DISTRICT MUNICIPAL ACT (III of 1901), S. 151

——Ingredients of offence.

For a conviction under the section, it should be proved (i) that a notice has been given to accused under subsections (i) and (ii) that he uses the place in question or permits it to be used in the manner specified; the mere fact that notice in due form was given regarding the user of the place on a particular date cannot be conclusive evidence that there has been user of the place in such a manner as to be a nuisance after that date. (Fawcett, J. C. and Crouch, A. J. C.) Luindaram v. Karachi Municipality

A I R 1914 Sind 103 = 28 I C 111 = 8 S L R 238 = 16 Cr L J 255.

—S. 155.

——Ss. 155, 161 — Offence under Municipal Act and not under any other law—Complaint by private individual.

Under the Bombay Municipal Act, a prosecution in respect of an act which is an offence only under that Act and not under any other Act can be instituted by the Municipality alone and not by a private individual.

In regard to acts which are offences under the special law as well as offences under the general law, the fact that an act is an offence under a special law cannot exclude the right of any individual aggrieved to lodge a complaint under the more general law. But where an act is not an offence under the general law but under the special law, under which a certain public authority is invested with a definite duty and with definite powers to discharge it, the question is more doubtful. (Madgavkar and Barlee JJ.) In re Motilal Amratlal Shah

A I R 1931 Bom 141 = 32 Bom L R 1502 = 55 Bom 89 = Ind Rul (1931) Bom 150 = 129 I C 342 = 32 Cr L J 280.

——For daily fine, person must be first convicted for principal breach and secondly conviction for continuing the same.

There must first be a conviction for the breach, and again a subsequent conviction for continuing the breach from the date of the first conviction, before an order can be passed inflicting a daily fine. A. I. R. 1929 Sind 50, Foll. (Percival and Rupchand, A. J. Cs.) Jethanand v. Emperor

A I R 1929 Sind 52 = 23 S L R 222 = 115 I C 308= 12 A I Cr R 424=30 Cr L J 443.

——No previous conviction—Imposing daily fine is illegal.

A Court cannot sentence a person to pay a fine for a prospective offence, but can only impose a daily fine for failure or disobedience which is proved to have continued for a certain period after the date of the first conviction or after the date of such notice or requisition as may be required by the enactment. The last words in S. 155 show that there should be a conviction for a previous breach, and then a subsequent conviction for continuing the breach after the date of that first conviction, and therefore when there is no previous conviction under S. 155, a Magistrate cannot impose a continuing daily fine. (Fawcett and Madgavkar, JJ.) Emperor v. Dharala Mungal

AIR 1926 Bom 526= 28 Bom L R 1040 = 98 I C 400 =27 Cr L J 1328.

——Lawful order — Notice under S. 122 is not a lawful order and disobedience thereto is no offence.

Where the accused was served with a notice under S. 122 of the Act to remove an otla which he had constructed and was convicted under S. 155 for having disobeyed a lawful order, held, on application to the High Court that no notice need be issued under S. 122 and therefore disobedience of such a notice does not amount to

BOMBAY DISTRICT MUNICIPAL ACT (III of 1901), S. 155

disobedience of a lawful order within S. 155. (Macleod, C. J. and Coyajee, J.) Atmaram Shamji v. Emperor

AIR 1923 Bom 30= 24 Bom L R 384=66 I C 817 = 23 Cr L J 321.

——Removal of cess-pool — Direction to owner whether lawful — Disobedience of notice — Effect — *See* Bombay District Municipal Act (III of 1901), S. 107 (2)

11 Cr L J 60 (Bom)

——Ss. 131, 135 and 155 — Nuisance — Non-compliance with notice under S. 131 or S. 135—*See* ibid, S. 131

5 Cr L J 252 (Bom).

—S. 159.

——Notice under—Object of.

There is nothing in S. 159 of Bombay Act III of 1901 authorising a Municipality issuing a notice under that section to give any direction to the person to whom the notice is given to do anything that they may require The notice has to be simply an intimation to the occupier of land that the Municipality will enter for the purposes mentioned in the section at a specified hour on a specified day. The power of the Municipality to enter, no doubt carries with it, by necessary implication, an obligation on the part of the occupant of the land to whom the notice is given to give every reasonable facility to the Municipality to enter and not to obstruct. But, if the occupant does anything to prevent the entrance, it cannot be said that he disobeys the notice, for, the notice is a mere condition precedent to the right of the Municipality to enter. Once the notice is given, the right arises, and if the occupant does any act to prevent its exercise, his act may amount to wrongful restraint or wilful obstruction, but it has nothing to do with the question of obeying or disobeying the notice. (Chandavarkar and Batty JJ.) Emperor v. Purushottam Gopalshet Gandhi

6 Bom L R 538=1 Cr L J 601.

—S. 161.

——Application by accused under consideration—Time is not extended.

The delay caused by the fact that petitions made by the accused were under consideration cannot extend the period of six months allowed in such cases. (Percival and Rupchand, A. J. Cs.) Jethanand v. Emperor

A I R 1929 Sind 52=23 S L R 222=115 I C 308=12 A I Cr R 424=30 Cr L J 443.

——S. 161 (2) — Order of Magistrate — Revision — High Court.

The Magistrate referred to in S. 161 (2) of the Bombay District Municipalities Act is an inferior Criminal Court, and his orders are liable to revision by the High Court. (Heaton and Shah, JJ.) In re Dinbai Jijibhoy Khambata.

A I R 1919 Bom 93 = 52 I C 670 = 43 Bom 864=21 Bom L R 755=20 Cr L J 702.

——General authority to institute prosecution under Act given to Municipal Secretary.

Section 161 merely empowers the Municipality to expend Municipal funds on the prosecution of Municipal offences and nuisances generally. The general rule is that any person having knowledge of the commission of an offence may set the law in motion by complaint. In the Act there are no words which either directly or by implication take away the right that any member of the public has to set the law in motion by a complaint. Though it is desirable that the general power to prosecute should not be delegated by the Municipality to the secretary the Magistrate has jurisdiction when the complaint is filed by the Secretary. (Pratt Esq. and Crouch Esq.) Imperator v. Hasomal Shamdas.

1 S L R 88 Cr=8 Cr L J 213.

BOMBAY DISTRICT MUNICIPAL ACT (III of 1901)

—S. 180.

A notified area may be deemed to be a municipal district for the purposes of any section of the Act, which may have been applied to it. (Broomfield and Macklin JJ.) Mohiddin Bawasaheb Thakur v. Emperor,

AIR 1939 Bom 97= 41 Bom L R 93= 11 R B 318 = 180 I C 940=40 Cr L J 522.

—S. 188.

——Interpretation — Notified Area Rules — R. 18, Proviso 1.

Proviso to R. 18 contemplates that the occupier from whom the taxes are leviable should be a tenant of the property. AIR 1919 Bom 93, Ref. (Mirza and Patkar JJ.) In re Nurmahomed Karamelahi.

AIR 1929 Bom 273= 31 Bom L R 541=1929 Cr C 46 =119 I C 191=30 Cr L J 992.

——S. 188 (1)—Scope—Rules under, R. 27 (1), (2), (3), (4) and (5) — Permission cannot be refused for indefinite period— Notice given under R. 27 (1) — Conviction under R. 27 (5) is wrong.

An order refusing permission for an indefinite period cannot be passed. There is no justification for the conviction under R. 27 (5) if the petitioner has given notice as required by sub-rule (1) and the Municipal Committee have neither passed orders under sub-rule (2) nor issued any provisional order of demand for further particulars under sub-rule (3). (Macleod C. J. and Shah J.) Ardeshwar Jivanji Mistri v. Emperor,

AIR 1922 Bom 221=66 I C 331= 24 Bom L R 102= 23 Cr L J 267.

——S. 188 (1) — Application for permission to build — Model reply "permission refused" — Conviction under R. 27 (5).

Although the model reply of permission refused can be sent according to the provisions of rule 27 (3) all that the committee can do is to pass a provisional order directing that for a period which shall not be longer than one month from the date of such order the intended work shall not be proceeded with. (Macleod C. J. and Shah J.) Emperor v. Ardeshwar Jivanji.

AIR 1922 Bom 221=24 Bom L R 102= 66 I C 331= 23 Cr L J 267.

BOMBAY DISTRICT POLICE ACT (VII of 1867)

—S. 33.

——Scope— Deals with structures of temporary character —Building *pucca* structure—Remedy—Penal Code (1860), S. 269—Cri. Pro. Code, 1898, S. 133.

Per Chandavarkar J. — In S. 33 of the District Police Act, the Legislature intended to deal with structures of a temporary character, e.g., cases where a person, without intending to appropriate a public thoroughfare permanently to his own purposes, builds a temporary structure for a temporary purpose such as a booth, shed, stable or the like. Where, however, a person appropriates a public thoroughfare permanently to his own purposes and builds a pucca wall, he is liable to be proceeded with under S. 133, Criminal P. C., or punished of offences under S. 269, I. P. C.

Per Aston J.—Where a person builds a wall on ground forming part of a public street, he commits an act covered by S. 33, District Police Act. (Chandavarkar and Aston JJ.) Emperor v. Dewrao Chapaji,

6 Bom L R 358=1 Cr L J 328.

BOMBAY DISTRICT POLICE ACT (VII of 1867) —S. 61-D.

——Reputed thief—Essentials.

In order to prove that a person is a reputed thief, he need not necessarily have convictions for theft. Witnesses may be prepared to say that an individual is known to them as constantly coming in and out of their houses or yards stealing property of little value and such evidence might be sufficient to prove that the man is a reputed thief. But it cannot be said that a man is a reputed thief merely because he has been found at night in the company of another whose reputation as a thief has been proved by previous convictions. (Davis C. J.) Haroon Ahmed v. Emperor,

A I R 1941 Sind 208 = I L R (1941) Kar 322 = 14 R S 92=197 I C 69=43 Cr L J 112.

——Whether punishes person for being found in company of other whose reputation as thief is proved by conviction.

There is nothing in S. 61-D, Bombay District Police Act, which punishes a man for being found under suspicious circumstances. Three conditions are required to satisfy S. 61-D (1) lying or loitering in any street or yard or other place, (2) being a reputed thief, and (3) without being able to give a satisfactory account of himself. (Davis C. J.) Haroon Ahmed v. Emperor.

A I R 1941 Sind 208=I L R (1941) Kar 322=14 R S 92=197 I C 69=43 Cr L J 112.

BOMBAY DISTRICT POLICE ACT (IV of 1890) —S. 3.

——By reason of the definition of "subordinate ranks" added by the Government of India (Adaptation of Indian Laws) Order 1937, to S. 3, an Inspector of Police is included within that term. (Davis J. C. and Weston J.) Niaz Muhammad Muhammad Bakhsh v. Emperor,

A I R 1939 Sind 148 = 12 R S 18=I L R (1939) Kar 652=182 I C 513=40 Cr L J 695.

——S. 3 (e)—Definition of a street.

Street is said to include among other things any road or square, Court, alley or passage accessible to the public.

"Accessible to the public" means that any member of the public as such a member has access to the land. By "access to the land" is ordinarily to be understood unimpeded entrance on the land. (Batchelor and Heaton JJ.) Emperor v. Manilal Mohanlal,

15 I C 785=14 Bom L R 499=13 Cr L J 513.

—S. 6.

——Section does not confer on the Provincial Government the right to confer on Additional Superintendent of Police powers arising outside the Act, and the issue of warrant by Additional Superintendent under Bombay Prevention of Gambling Act is illegal. (Beaumont C. J. and Sen J.) Asgar Alli Mohammad Alli Heralwala v. Emperor.

A I R 1940 Bom 127=42 Bom L R 203=12 R B 487 =187 I C 459=41 Cr L J 485.

—S. 11.

——Ss. 11, 51 (e) and 53, Sch. B — What 'on duty' includes—Police Officer aiding another Officer outside his jurisdiction, but in same district where he serves, is deemed to be on duty—Penal Code, S. 353.

For the purposes of this Act, Police Officers of every grade are appointed to an entire district in which they have to serve and are to be deemed to be on duty in all parts of that district. Although a Police Officer may be outside the area of his jurisdiction, he is bound within the limits of the district for which he is appointed to aid another Police Officer when called on by him to do so or to keep order as required under Ss. 51 (e) and 53. Therefore, any person assaulting a Police Officer while he is engaged in discharging the duty under Ss. 51 (e) and 53 is guilty of an offence under S. 353, Penal Code. AIR 1918 All 238, Dist. (Kincaid J. C. and Aston A. J. C.) Khairo v. Emperor.

A I R 1925 Sind 280 = 88 I C 15 = 18 S L R 221 = 26 Cr L J 1071.

BOMBAY DISTRICT POLICE ACT (IV of 1890), S. 11

—S. 34.

——Section covers temporary withdrawal from duty — Fine of Rs. 25 held too light punishment.

Section 34, Bombay District Police Act covers both permanent and temporary withdrawal from his duties by a Police Officer. It is a very serious offence for a man employed in the Police force to withdraw himself from his duties even for a day without the permission of his superior officers. A fine of Rs. 25 only is therefore, too light a punishment for such an offence and much heavier penalty is necessary. (Lobo and O'Sullivan JJ.) Emperor v. Mohanlal Wadhumal.

A I R 1944 Sind 50=I L R (1943) Kar 530 = 16 R S 212=211 I C 473=45 Cr L J 400.

—S. 36.

——S. 36 (5) (c)—Applies where offence does not relate to any breach of duty by Police Officer as such but which may be committed by member of public.

The scope and purpose of S. 36 (2) (c), Bombay District Police Act, is clearly limited to offences committed by Police Officers as such. It cannot apply and is not intended to apply to a case where the offence committed or rather alleged to have been committed, does not relate to any breach of duty by a Police Officer as such but which is an offence which may be committed by a member of the public. (Davis J. C. and Weston J.) Mohomed Ramzan Khan Mahomed v. Emperor.

A I R 1940 Sind 192 = I L R (1940) Kar 443 = 13 R S 113=190 I C 447=41 Cr L J 955.

—S. 39-A.

——Rules under — R. 17 — Order of District Magistrate under—Interference by High Court under S. 435, Criminal Procedure Code.

When the District Magistrate passes orders under R. 17 of the rules for licensing and controlling places of public entertainment framed under S. 39-A, Bombay District Police Act, the District Magistrate or Magistrate of the District whichever he may be called, is not acting as an inferior Court within the meaning of S. 435, Criminal P. C. He is acting as an executive officer in the exercise of powers conferred upon him under S. 39-A, Bombay District Police Act. High Court cannot, therefore, under S. 435, Criminal P. C., interfere with this order. (Davis J. C. and Tyabji J.) Manghanmal Gianchand v. Emperor.

A I R 1939 Sind 340=I L R (1940) Kar 102=12 R S 170=185 I C 392=41 Cr L J 179.

——S. 39-A, Rule 33—License—Conviction.

The accused who had no license contracted with strolling actors for a performance. Having taken no actual part in the performance except that he got the price of the tickets sold for seeing the performance, the conviction of the accused is illegal. (Batchelor and Shah JJ.) Aba Waku Gondhali v. Emperor.

A I R 1916 Bom 260=18 Bom L R 188=33 I C 642= 17 Cr L J 162.

—S. 41.

——Order under is an executive order—Revision.

The order under any of the sections in Chapter IV (including S. 41) is an executive order and not one of an inferior Court with which a High Court can interfere. The mere fact that there is an enquiry of a judicial nature cannot suffice to give the High Court jurisdiction : ((1917) 11 S L R 113 ; (1910) 12 B L R 1029 and (1911) 5

BOMBAY DISTRICT POLICE ACT (IV of 1890), S. 41

S L R 54, Foll.). (Fawcett J. C. and Kincaid A. J. C.) Satan v. Emperor.

A I R 1922 Sind 21 = 15 S L R 126 = 64 I C 663 = 23 Cr L J 39.

——Brothel—Meaning of.

A brothel is a place resorted to by persons of both sexes, who are strangers to the occupancy, for the purpose of prostitution. If a woman plies the trade of a prostitute in her own house the house is a brothel. (Pratt J. C. and Fawcett A. J. C.) Emperor v. Versimal Bhagio Mal.

6 S L R 224=19 I C 714=14 Cr L J 282.

—S. 42.

——Ss. 42, 71—Magistrate apprehending breach of peace —Playing of music prohibited—Nature held *prima facie* legal — Onus to show illegality — Person ringing bell in temple once—Whether playing music.

Where apprehending that playing of music in temple during certain festival would inflame religious animosity and would lead to breach of the public peace, the Magistrate issues a notice under S. 42, Bombay District Police Act, forbidding the playing of music, the notice is *prima facie* legal and the onus of showing that it is unlawful is on the persons who wish to challenge it. And if in spite of such notice a person rings the temple bell once at the time of making *darshan*, the act does not amount to playing of music. (Barlee and Wassoodew JJ.) Emperor v. Ramkrishna Gopal Bhide.

A I R 1938 Bom 179=40 Bom L R 59=10 R B 454= 174 I C 478=39 Cr L J 408.

——A notification in compliance with S. 42 is a law and a legal process. (Mirza and Baker JJ.) Ramchandra v. Emperor.

A I R 1931 Bom 520 = 33 Bom L R 1169 = 55 Bom 725 = Ind Rul (1932) Bom 10 = 1931 Cr Cas 952=134 I C 1226=33 Cr L J 64.

——Ss. 42 and 44 — Highway — Procession — Right of public to use it in lawful manner—Restriction of right—Burden of proof—See Highway—Procession.

18 Bom L R 460.

——Ss. 42, 44 and 13—Scope of the sections.

The prohibition by the Government of Bombay Resolution of 6th May 1911 of Vyasantol processions for all time in Belgaum District is illegal and ultra vires and is not covered by S. 42 or S. 44 of the above Act. Section 42 limits Magistrate's power of prohibition both as regards time and as regards place, and S. 44 only provides for the maintenance of public order at unprohibited religious ceremonials. Section 13 (2) does not give any unlimited power of prohibition to the Government. (Batchelor and Shah, JJ.) Dundappa Mallappa Sigandhi v. Secretary of State,

37 I C 363=18 Bom L R 460.

—S. 43.

——Order of District Magistrate—Revision.

An order passed by a District Magistrate under S. 43 of the Act is an executive order and not an order of an inferior Criminal Court, and cannot be interfered with by the High Court in revision though it is ultra vires. The aggrieved party has in such a case a remedy under Ss. 13 (2) and 50 of the Act by petition to the Commissioner. A District Magistrate has no jurisdiction to eject any person from property under S. 43 of the Act without first taking temporary possession himself and the order of ejectment or exclusion can only operate for the period of his temporary possession. (Pratt J. C. and Hayward, A. J. C.) Dharmibai v. Emperor,

A I R 1918 Sind 49 = 11 S L R 113 = 45 I C 396 = 19 Cr L J 588.

BOMBAY DISTRICT POLICE ACT (IV of 1890) —S. 44.

——S. 44, Cl. (1)—Religious procession—Maintenance of order—Order by District Magistrate.

An order passed under S. 44 of the Bombay District Police Act should indicate the person or parties who are affected by it and also the occasion to which it is intended to apply. (Heaton and Shah JJ.) Abdul Hamid Rajabali v. Emperor,

A I R 1917 Bom 45=20 Bom L R 114=44 I C 590 = 19 Cr L J 366.

——Religious procession — District Magistrate — Order permitting carrying of emblem—High Court—Revisionary powers—(Criminal P. C., S. 435).

An order passed by a District Magistrate under S. 44 of the Bombay District Police Act, 1890, being a mere executive order, cannot be interfered with by the High Court under its criminal revisional jurisdiction. It is competent for a District Magistrate, acting under S. 44, to order that persons (in this case, Lingayats) forming a religious procession on a particular day and on specified roads may carry a particular emblem (in this case, Vyasantol). (Batchelor and Rao JJ.) In re Pandurang Shidrao,

12 Bom L R 1029=8 I C 747=11 Cr L J 705.

——Scope of—See Criminal P. C., S. 133,

2 Ind. Cas. 494.

—S. 46.

——S. 46 (3) — Validity—Constitution of India, Arts. 13 and 19 (1) (d) and (e).

Section 46 (3), Bombay District Police Act, has not been rendered void by Art. 13 of the Constitution on the ground that it contravenes the fundamental right under Art. 19 (1) (d) and (e). (Chagla C. J., Bavdekar and Shah JJ.) Abdul Rahiman Shamsooddin v. Emperor,

A I R 1950 Bom 374=52 Bom L R 558=ILR (1950) Bom 564=1950 Bom Cr C 202=52 Cr L J 1059 (FB).

—S. 46B.

——S. 46B (3)—Order of Government fettering discretion of Magistrate—Validity of detention.

What is essential in any orders passed under S. 46B for the detention of any person is that they should be passed by the District Magistrate alone in his sole discretion and upon his sole authority and responsibility. Where Government passes an order in a mandatory form that the total period of detention of a person shall exceed two months, the order interferes with the discretion of the District Magistrate and takes away from him the complete impartiality which he had in considering which, if any, of the three alternatives under S. 46B he should exercise. Hence the detention under such order is unlawful. (Stone C. J., Macklin, Sen, Chagla and Lokur JJ.) In re Yakubji Karimji.

A I R 1947 Bom 364=49 Bom L R 397=ILR (1947) Bom 524=49 Bom Cr C 128=48 Cr L J 912.

——S. 46B (3) Proviso (as amended in 1946) — Power of Provincial Government to order or extend detention — Order purporting to extend expired detention order of District Magistrate indefinitely whether legal.

No part of S. 46B gives the Provincial Government any power of detention. The power of detention and the responsibility for making detention orders is exclusively vested in the District Magistrate, such powers being circumscribed by three safeguards, viz., that orders are only valid for 15 days at a time, so that for each 15 days' period the District Magistrate has to re-apply his mind to the necessity of detaining the person in question, secondly, the detention comes to an end when the emergency ceases, and thirdly, the total period of detention shall not exceed two months, this is however subject to the first proviso to sub-s. (3), under which the Govern-

BOMBAY DISTRICT POLICE ACT (IV of 1890), S. 46B

ment's powers are limited to enlarging the maximum period of two months, in which the District Magistrate can, in any particular case, make detention orders, which are themselves only valid for 15 days each. An order of the Provincial Government purporting to extend an expired detention order of the District Magistrate indefinitely "until further orders of Government" is not warranted by the provisions of S. 46B. (Stone C. J., and Lokur J.) In re Navnitlal Hiralal,

A I R 1947 Bom 362=49 Bom L R 386=ILR (1947) Bom 489=19 Bom Cr C 117.

—S. 48.

——S. 48 (1) (a)—Rules under, published on July 19, 1934, for Ahmedabad, R. 1—If *ultra vires*.

The rules under S. 48 (1) (a), Bombay District Police Act must be made before the processions are contemplated, since it is obvious that after the assembly or procession has actually been constituted, the Police cannot proceed to make rules. They must make the rules with reference to possible future events. But the rules as made can only regulate the conduct of persons as members of assemblies and processions. Rule 1 does deal only with the conduct of the persons constituting processions. Such persons cannot go in procession along a street within the municipal limits of Ahmedabad without a pass. No doubt the rule involves that a person requiring a pass shall apply for it before the procession actually starts: but the actual prohibition under the rule is against some action by a person who is at the time a member of an assembly or procession. Therefore, there is no objection to the rule on the ground that it deals with those who have contemplated a procession and not with those who have formed a procession. The other objection that the rule prohibits a procession altogether, is not tenable. There is no prohibition against the forming of an assembly and the starting of that assembly into motion which would constitute a procession provided that the procession does not proceed along streets. There must be many open places in the limits of the Ahmedabad Municipality and five miles beyond, in which processions can be taken without a pass, but if they are to be taken along a street, where the Police necessarily have to control traffic, a pass has to be produced. (Beaumont C. J. and N. J. Wadia J.) Dinkar Krishnalal Mehta v. Emperor

AIR 1939 Bom 364=41 Bom L R 557=12 R B 154=184 I C 223=40 Cr L J 889.

—S. 51.

——S. 51 (1) (f)—Scope.

Section 51 (1) (f) imposes a direct duty on police officer as such, and does not contemplate a case when a Police Officer is merely obeying a summons of a Magistrate. (Davis C. J. and Tyabji J.) Mohd. Sidik-Hoji Ahmed v. Emperor

AIR 1945 Sind 48=ILR (1944) Kar 197=219 I C 307=46 Cr L J 576

——Ss. 51 (1) (d), 80 — S. 51 (1) (d), read with S. 80, is intended to protect Police Officer in certain cases against illegal arrest.

Clause (d) of S. 51 (1), imposes on the Police Officers the duty to arrest offenders. It does not authorise illegal arrest. This clause read with S. 80 was intended to protect in certain cases a Police Officer against illegal arrest, for otherwise the protective purpose of S. 80 would fail. (Davis C. J.) Mahmood Khan Daulat Khan v. Emperor

A I R 1942 Sind 106=ILR (1942) Kar 94=15 R S 58=202 I C 681=43 Cr L J 888.

BOMBAY DISTRICT POLICE ACT (IV of 1890), S. 51

——S. 51 (1) (d)—Offence under S. 5, Bombay Prevention of Gambling Act—Magistrate giving verbal order to Police Sub-Inspector to arrest.

Where in the case of an offence under S. 5, Bombay Prevention of Gambling Act, the Police Sub-Inspector arrests persons in pursuance of verbal orders given by the Magistrate, S. 51 (1) (a), Bombay District Police Act, has no application, for, the verbal order to arrest without a warrant such as S. 6, Bombay Prevention of Gambling Act, requires, is not an order lawfully given by a competent authority, for, the Magistrate has no power to give such an order. (Davis C. J.) Mahmood Khan Daulat Khan v. Emperor

AIR 1942 Sind 106=ILR (1942) Kar 94=15 RS 58=202 I C 681=43 Cr L J 888.

——Ss. 51 (1) (b), (a)—Scope of S. 51 (1) (b)—Statements of witnesses recorded by Police Officer under S. 162, Criminal P. C.

Section 51 (1) (b), Bombay District Police Act, covers the recording of statements by a Police Officer under S. 162, Criminal P. C., for the recording of statements of witnesses by a Police Officer in the course of an investigation is such a step, consistent with the law, in bringing offenders to justice, as is his duty to take under cl. (b) of sub-s. (1) of S. 51. (Davis C. J.) Mahmood Khan Daulat Khan v. Emperor

AIR 1942 Sind 106=ILR (1942) Kar 94=15 R S 58=202 I C 681=43 Cr L J 888.

——Search of person in public place, of stolen property—Search in a legal way—Damages.

Where in a street and in a place of public resort, a person has apparent possession of letters which a Police Officer honestly and in good faith suspects to be stolen property, the Police Officer is empowered by S. 51, cl. 3, Bombay District Police Act, to search for the same. Although it is very mortifying for him to be searched in the public street and also very mortifying for him that the Police approached his house, and rumour got about that his house is going to be searched, he cannot be held to have suffered any damage or loss which will be recognised by the law if the Police Officer has acted legally and with *bona fides*. (Aston A. J. C.) Asandas Hashmatrai v. Khanchand

A I R 1933 Sind 240=1933 Cr Cas 800=6 R S 189=143 I C 178.

——Ss. 51 (1) (b) and S. 80 (1)—Applicability of S. 80 (1).

The act of investigating police officer of reducing a statement of a witness in writing is one done under colour or in excess of duty imposed by S. 51 (1) (b) even if he acts *mala fide*.

Where an investigating police officer reduces a statement of a witness to writing, his act is one done under colour or in excess of a duty imposed or an authority conferred on him by S. 51 (1) (b), whether he acts *bona fide* or otherwise and even if he acts *mala fide* and in deliberate disregard of his proper duty or authority and deliberately takes down the statement of such witnesses incorrectly, S. 80 (3) applies : (1885) Rat 220 and 41 Bom 737, Foll. (Fawcett, Madgavkar and Mirza JJ.) Narayan Hari v. Yeshwant Raoji

AIR 1928 Bom 352=114 I C 246=30 Bom L R 1018 52 Bom 832=12 A I Cr R 154=30 Cr L J 278 (FB)

——S. 51 (b)—Police escorting person, to prevent breach of the peace—Police not in uniform—Assault—Offence—*See* Penal Code, S. 332

10 Cr L J 102 (Kathiawar).

BOMBAY DISTRICT POLICE ACT (IV of 1890)

—S. 53.

——Failure to obey order — Hindu procession proceeding in particular authorised street — Mahomedan procession coming in opposite direction ignoring orders of police to go by another route — Accused are guilty under Penal Code, S. 153.

In ordinary circumstances undoubtedly a police constable has not the power to stop a person from proceeding along a particular street and order him to go by another. He can stop him for a certain time in order to regulate traffic so as to prevent the traffic getting mixed up and obstructing passage along the street. Where the accused Mahomedans formed themselves into a procession, and proceeded along a certain route at the time when another procession of Hindus was passing in the opposite direction along the same route as settled by authorities, ignoring the orders of policemen stationed there to control traffic that they should go by another route, and a riot with injury to many persons was the result :

Held, that the act of the accused in refusing to comply with the orders of the police was an offence under Penal Code S. 153, the orders of the Police being valid under Bombay District Police Act, S. 53. (Fawcett and Mirza JJ.) Gulam Kadar v. Emperor

AIR 1928 Bom 156=30 Bom L R 367=10 A I Cr R 204=109 I C 217=29 Cr L J 489.

——S. 53 (1) (a) — Interpretation — Control — Meaning explained.

The ordinary meaning of the verb "control" conveys an idea of hindering or checking a person in doing something; and the extent of any particular prevention must depend upon the special necessities of the occasion. (Fawcett and Mirza JJ.) Gulam Kadar v. Emperor

AIR 1928 Bom 156=30 Bom L R 367=109 I C 217=10 A I Cr R 204=29 Cr L J 489.

—S. 57.

——Ss. 57 and 58 (2)—Finder of property — No claim by anybody.

Property not claimed by anybody after a proclamation is issued under S. 58 (2) should be made over to the finder. (Marten and Crump JJ.) In re, Maruti Bapuji Sonar.

AIR 1922 Bom 240=47 Bom 71=24 Bom L R 707=69 I C 96=23 Cr L J 656.

——Ss. 57 and 58 — Right of finder producing property before Magistrate upon requisition.

Where the finder hands over the property to the Police upon requisition, the Magistrate has no power under the Act, to order the property to vest in Government. (Chandavarkar and Russell JJ.) In re, Alimia.

14 Bom L R 304=15 I C 647=13 Cr L J 503.

—S. 58.

See ibid, S. 57.

—S. 61.

——S. 61 (1) (f)—Giving of dinner to people in street.

Where a person causes an obstruction in that he gives a caste dinner in the street outside his residence, the act of the accused amounts to an obstruction prohibited by Bombay District Police Act. (Beaumont C. J. and N. J. Wadia J.) Emperor v. Dharmappa Yellappa Sambrani.

AIR 1942 Bom 150=44 Bom L R 241=I L R (1942) Bom 235=15 R B 35=200 I C 344=43 Cr L J 701.

——S. 61 (o) — Failure to frame charge — Cr. P. Code, S. 403 (1) — Acquittal under S. 160, Penal Code, is a bar to subsequent trial under S. 61 (o).

Failure to frame alternative charges both under S. 160, I. P. C., and also under S. 61 (o), Bombay District Police Act, and acquittal under the former operates as a bar to the fresh prosecution under the latter. **45 Cal 727 and 1 B L R 15, Foll.** (Patkar and Baker JJ.) Emperor v. Kallasani.

A I R 1927 Bom 629 = 29 Bom L R 1478 = 106 I C 216=28 Cr L J 1032.

——S. 61 (a)—Ignorance of law is no excuse.

That the driver accused was ignorant of the requirements of law, by itself would not be a lawful excuse within S. 61 (a), for his driving a cart without a lamp. (Shah and Fawcett JJ.) Emperor v. Chhitia Dhuria.

28 Bom L R 1058=97 I C 976=27 Cr L J 1216.

——Lawful excuse.

Per Shah J. What a lawful excuse is, is a question which must be determined on the facts and circumstances of each case. (Shah and Fawcett JJ.) Emperor v. Bhangda Fakira.

AIR 1926 Bom 530=28 Bom L R 1061=97 I C 814=27 Cr L J 1182.

——S. 61 (a) — Interpretation — Lawful excuse must be reasonable and not opposed to any law—Person, driving a bullock-cart unexpectedly kept out till dark, is not reasonable excuse.

The word "excuse" in clause (a) of S. 61 conveys the idea of an excuse that is (a) reasonable and (b) not opposed to any law or principle of law. If an owner or driver of a vehicle fails to have a lamp available in cases where he may find such a lamp required by law, he is not "taking all steps reasonably practicable" to prevent the vehicle being without a lamp. There is, in such a case, an implied duty to have a lamp or lantern available when required; and therefore, the mere excuse that the accused was unexpectedly kept out till dark is not ordinarily a reasonable one except under exceptional circumstances. (Shah and Fawcett JJ.) Emperor v. Bhangda Fakira.

AIR 1926 Bom 530=28 Bom L R 1061=97 I C 814=27 Cr L J 1182.

——S. 61, Cl. (o)—Indecent exposure—Offence.

An ascetic wandering in public places in a town in a state of nudity is guilty of an offence under S. 61 (o) of the Act. (Beaman and Heaton JJ.) Emperor v. Maula Baba Fakir.

AIR 1918 Bom 254 (1)=19 Bom L R 907=43 I C 332=19 Cr L J 108.

——S. 61 (b)—Bicycle—Vehicle.

Within S. 61 (b) a bicycle is a vehicle driven by the man riding it. (Batchelor and Heaton JJ.) Emperor v. Kikabari Ranchhoddas.

AIR 1917 Bom 239 (1)=40 I C 289 = 41 Bom 464=19 Bom L R 349=18 Cr L J 641.

—S. 61A.

——Lands used as streets—Lands in Borsad temporarily vesting in Municipality do not cease to be lands included for purposes of Land Revenue Administration — Corporation.

The mere fact that the lands used as streets, vest for the time being in the Municipality, as trustees under the Bombay District Municipal Act, does not prevent the lands being included within the limits of the town for the purposes of the Land Revenue Administration and S. 61-A will apply to such lands. (Fawcett and Madgavkar JJ.) Chunilal Hargovan v. Emperor.

AIR 1927 Bom 67=28 Bom L R 1023=97 I C 668=27 Cr L J 1148.

BOMBAY DISTRICT POLICE ACT (IV of 1890)

—S. 61-D.

——Duty of Court.

It is particularly necessary that when there is a penal statute with sections of wide scope such as S. 61-D, Bombay District Police Act, those sections, when they are applied by a Magistrate should be carefully applied and the Magistrate should be careful that all conditions necessary for their application are satisfied before they are applied. (Davis C. J.) Rochi Bhojomal v. Emperor.

AIR 1941 Sind 16=I L R (1941) Kar 189 = 13 R S 190=192 I C 203=42 Cr L J 256.

——Only reference to previous convictions, by Magistrate —Such convictions neither proved nor offences specified.

The previous convictions for theft, or even for housebreaking, may be sufficient evidence of bad character, when such evidence is admissible, to sustain the charge that the accused are "reputed thieves." Even in summary proceeding previous convictions must be properly proved. Where it is not known for what offences the previous convictions were and the Magistrate merely refers to them but neither such convictions are proved nor are the offences specified, a conviction under S. 61-D cannot be sustained. (Davis C. J.) Rochi Bhojomal v. Emperor.

AIR 1941 Sind 16 = 13 R S 190 = I L R (1941) Kar 189=192 I C 203=42 Cr L J 256.

—S. 61-E.

——Burden of proof of innocence wrongly placed on accused — Case decided not on reasonable ground of belief that property was stolen but on failure of accused to explain possession.

Under S. 61-E, Bombay District Police Act, it is necessary, before the Magistrate can call upon the accused person to account for the possession of the property, that the Magistrate is satisfied that there is reason to believe that the property is stolen property. The place of residence of the applicant or his personal appearance are not matters relevant to the question whether the property was stolen property or not. Where, therefore, the burden of proof of innocence has been shifted to the accused, at the very outset of the case and the Magistrate has decided the case not on consideration whether there was reasonable ground to believe that the property was stolen, but on the consideration that the accused failed to account for his possession of it, the conviction is not justified and cannot be sustained. (Davis C. J. and Weston J.) Muhammad Vasi v. Emperor.

AIR 1942 Sind 50 = I L R (1941) Kar 554=14 R S 185=199 I C 137=43 Cr L J 528.

—S. 61-F.

——Highway—Obstruction—Exposures of wares—Detriments to traffic — Plea of customary right — Validity — Other side still open to traffic.

An encroachment made by an adjacent land-owner on the space occupied by a highway cannot be legalised by possession for any length of time and the defence of customary use is of no avail as it can never ripen into a legal right.

Where the accused was charged with having exposed his wares to sale on a portion of the street in front of his shop with the consequence that a crowd collected and caused obstruction to the traffic :

Held, that the public was entitled to the free use of any portion of the highway and the fact that in spite of the crowd, the other side of the road was still free and

BOMBAY DISTRICT POLICE ACT (IV of 1890), S. 61F

open to traffic was no defence. (Madgavkar and Murphy JJ.) Emperor v. Vadilal Devchand.

AIR 1931 Bom 326=33 Bom L R 663=1931 Cr Cas 582 = Ind Rul (1931) Bom 475 = 134 I C 363 = 32 Cr L J 1163.

—S. 62.

——Extension of the Prevention of Cruelty to Animals Act, S. 1 (2)—Does not repeal S. 62.

The mere extension of S. 1 (2) of the Prevention of Cruelty to Animals Act to a certain district does not repeal S. 62 of the District Police Act within that district. (Shah and Crump JJ.) Emperor v. Bhagwan Krishna,

A I R 1921 Bom 249=45 Bom 203=63 I C 824=22 Bom L R 892=22 Cr L J 696.

—S. 63.

——Ss. 63 (b) and 80 (3)—Seizure—Meaning of—Limitation.

So long as the property seized is maintained in the custody of the Police there is seizure and a prosecution instituted within 6 months of the restoration of the property is not barred under S. 80 (3) of the Act. (Batchelor and Shah JJ.) Madhav Ganpat Prasad v. Majid Khan Alifkhan,

A I R 1917 Bom 219=19 Bom L R 677=42 I C 146 =41 Bom 737=18 Cr L J 914.

—S. 66.

——S. 66, cl. (f) — Obstruction with permission of Municipality—Municipality authorising exposure of timber for sale—Public street obstructed — Person exposing is still not exempted under S. 61.

The mere fact that the Municipality has authorised some persons to use a portion of the public street for exposing logs of timber for sale, does not exempt those persons from being prosecuted under S. 61 (f) if such exposure has caused obstruction in that public street. (Fawcett and Madgavkar JJ.) Emperor v. Vishwanath Nana Karpe,

A I R 1926 Bom 535=97 I C 744=28 Bom L R 1033 =50 Bom 674=27 Cr L J 1160.

—S. 71.

——Mere ringing of bell in temple — Whether playing music.

The most barbarous form of music has at least rhythm, and there is none in this case. Accordingly, though a bell can be used for the production of music, the mere ringing of a temple bell does not amount to the making of music. Thus the mere ringing of bell not being an offence under S. 71, the existence of mens rea is not enough for conviction. (Barlee and Wassoodew JJ.) Emperor v. Ram Krishna Gopal,

A I R 1938 Bom 179 = 40 Bom L R 59=10 R B 454 =174 I C 478=39 Cr L J 408.

—S. 80.

See Defence of India Act (1939), S. 17.

——S. 80 (1) and (2)—"In good faith" — Presumption— Police party on duty must be presumed to be acting in good faith.

Per Stone C. J. — S. 80 (1) and (2) of the Police Act and S. 17 of the Defence of India Act give statutory protection to certain Government servants and a uniformed police party once assembled for duty and while on duty and returning from duty must be presumed to be acting in good faith, until the contrary is proved by strong and cogent evidence : (1929) 1 K B 419, Rel. on. (Stone C. J. and Lokur J.) Emperor v. Amimiya

AIR 1948 Bom 197=I L R (1948) Bom 103=19 Bom Cr C 193=49 Bom L R 829=49 Cr L J 216.

BOMBAY DISTRICT POLICE ACT (IV of 1890), S. 80

——S. 80 (2) and (3)—"Act done under colour or in excess of any such duty or authority."

On 9th August 1942, the District Magistrate of Kaira, under R. 56 (1) of the Defence of India Rules, made an order prohibiting any public procession, meeting or assembly within the district for a period of three months. On 18th August 1942, an armed force consisting of one Head Constable (accused No. 1) in command and seven other Constables, five being armed with rifles and three with lathis, while proceeding by train, got down at a station in the Kaira district on sighting a party of 34 students who had come from the Baroda State and where an unlawful assembly had been engaged in unlawful activities. The police party, who had been engaged for some hours in endeavouring to intercept the party from Baroda, approached them, beat them with lathis and opened fire, firing seven rounds of ball ammunition, which resulted in the death of four members of the party from Baroda and the wounding of ten others. All the constables having been put on their trial for murder, grievous hurt and other offences more than six months after the occurrence :

Held (1) as regards accused No. 1, that the use of force in the case was not so unjustified or so excessive as to amount to accused No. 1 ceasing to act in the discharge of his duty and under colour of office and, therefore, his case came within S. 80 (3) of the Police Act.

(2) as regards the remaining accused, that they were under the Head Constable's command and were executing the orders of their superior officer which were per se lawful, and which they were bound to obey. They were, therefore, entitled to the protection of S. 80, sub-s. (2) as well as sub-s. (3) and were also entitled to the protection of S. 17 of the Defence of India Act. (Stone C. J. and Lokur J.) Emperor v. Amimiya

A I R 1948 Bom 197=ILR (1948) Bom 103=19 Bom Cr C 193=49 Bom L R 829=49 Cr L J 216.

——S. 80 (3)—"Under colour of"—Expression does not mean "by virtue of".

The expression "under colour of" in S. 80 (3) does not mean the same thing as "by virtue of". Any rightful act in office is "by virtue of" office, and a wrongful act in office may be "under colour of" office. (Stone C. J. and Lokur J.) Emperor v. Amimiya,

A I R 1948 Bom 197=ILR (1948) Bom 103=19 Bom Cr C 193=49 Bom L R 829=49 Cr L J 216.

——S. 80 (3)—Scope.

All acts done by police officer as such do not necessarily fall within S. 80 (3) : A I R 1932 Sind 28; A I R 1942 Sind 106 ; A. I. R. 1945 Sind 48, Rel. on. (Davis C. J. and Thadani J.) Emperor v. Samuel N. Ghani

229 I C 158=48 Cr L J 268 (Sind).

——Protection, nature of.

It is not every act of a Police Officer which is protected but only an act done or intended to be done in pursuance of any duty imposed or any authority conferred by the provisions of the Act itself or by any rule, order or direction lawfully made or given thereunder. A police officer giving evidence on oath in a Court on having been summoned as a witness by the Court is not entitled to protection under S. 80 (3). (Davis, C. J. and Tyabji, J.) Mohd. Sidik-Haji Ahmad v. Emperor,

A I R 1945 Sind 48=I L R (1944) Kar 197=219 I C 307=46 Cr L J 576.

——S. 80 (1) — Nature of protection under S. 80 (1) — Applicability to acts not done in good faith — Illegal acts done with knowledge of illegality.

BOMBAY DISTRICT POLICE ACT (IV of 1890), S. 80

The words of S. 80 (1), Bombay District Police Act, are in some ways of limited scope. They do not extend a general protection to a Police Officer for all acts done in good faith under colour of his office, but the protection is limited to any act done in good faith in pursuance or intended pursuance of any duty imposed or any authority conferred on him by any provision of the Act or of any rule, order or direction lawfully made or given thereunder. The duty must be one imposed and the authority one conferred by or under the Act or any rule lawfully made or order given thereunder. One must, therefore, look to the provisions of the Act itself for the duty imposed or the authority conferred in the discharge or exercise of which a Police Officer has done the acts for which he claims protection. A person does not act in good faith within the meaning of S. 80 (1), when he knowingly breaks the law, and if a person does not act in good faith, S. 80 (1) does not apply. The section was not intended to apply to a case wherein a Sub-Inspector of Police with open eyes knowingly breaks the law. A person who knowingly breaks the law cannot invoke the protection of the law. Cases of this nature are not to be decided on the principle that all men are supposed to know the law; that ignorance of the law is no excuse. That principle may well apply in a case of estoppel.

Consequently, where a Police Officer arrests and confines a person for an offence under S. 5, Bombay Prevention of Gambling Act without the requisite warrant under S. 6, Bombay Prevention of Gambling Act, knowing full well that such warrant was condition precedent to his making the arrest, he cannot seek the protection of S. 80 (1), Bombay District Police Act. The fact that he could obtain warrant the following day after the arrest and not before cannot bring his case within S. 80 (1). (Davis C. J.) Mahmood Khan Doulat Khan v. Emperor,

A I R 1942 Sind 106 = I L R (1942) Kar 94=15 R S 58=202 I C 681=43 Cr L J 888.

——S. 80 (3) — The act for which protection is given by S. 80 (3) must be an act which appears to be done in the lawful discharge of a duty or in the lawful exercise of an authority conferred by the Bombay District Police Act or other law for the time being in force. This would not include acts which are obviously offences and in no manner reconcilable with the duties or functions of a Magistrate or Police Officer such as bribery or extortion. (Milne J. C. and Aston A. J. C.) Emperor v. Abdulla Khan,

A I R 1932 Sind 28=1932 Cr Cas 114=25 S L R 395 =Ind Rul (1932) Sind 33=136 I C 513=33 Cr L J 298.

——S. 80 (3) — Where a Police Officer is dealing with a complaint in his capacity as such his procedure would be under the colour of his duty and authority though he had made up his mind from the beginning to hold no real investigation. (Milne J. C. and Aston A. J. C.) Emperor v. Abdulla Khan,

A I R 1932 Sind 28 = 25 S L R 395 = 1932 Cr Cas 114 = Ind Rul (1932) Sind 33 = 136 I C 513 = 33 Cr L J 298.

——The word 'act' in S. 80 (3) should be taken as including omissions also. (Milne J. C. and Aston A. J. C.) Emperor v. Abdulla Khan,

A I R 1932 Sind 28 = 1932 Cr Cas 114 = 25 S L R 395 = Ind Rul (1932) Sind 33 = 136 I C 513 = 33 Cr L J 298.

——S. 80 (3)—Applicability to Crown prosecutions.

Section 80 (3), Bombay District Police Act, refers to all prosecutions, and covers a prosecution instituted by the

BOMBAY DISTRICT POLICE ACT (IV of 1890), S. 80

Crown. (Milne J. C. and Aston A. J. C.) Emperor v. Abdulla Khan,

A I R 1932 Sind 28 = 1932 Cr Cas 114 = 25 S L R 395 = Ind Rul (1932) Sind 33 = 136 I C 513 = 33 Cr L J 298.

——Ss. 80 (1) and 51 (1) (b) — Applicability — The act of investigating police-officer of reducing a statement of a witness in writing, is one done under colour or in excess of duty imposed by S. 51 (1) (b), even if he acts mala fide.

Where an investigating police-officer reduces a statement of a witness to writing, his act is one done under colour or in excess of a duty imposed or an authority conferred on him by S. 51 (1) (b), whether he acts bona fide or otherwise and even if he acts mala fide and in deliberate disregard of his proper duty or authority and deliberately takes down the statement of such witnesses incorrectly, S. 80 (3) applies. (1885) Rat 220 and 41 Bom 737, Foll. (Fawcett, Madgavkar and Mirza, JJ.) Narayan Hari v. Yeshwant Raoji

A I R 1928 Bom 352 = 30 Bom L R 1018 = 52 Bom 832 = 12 A I Cr R 154 = 114 I C 246 = 30 Cr L J 278 (F B).

——S. 80 (4)—Applicability—Suit for damages for assault and battery by police-officer while investigating cognizable offence—Police-officer is not entitled to notice either under S. 80 (4) or C. P. Code, S. 80.

A Sub-Inspector of Police while investigating a cognizable offence against two berads sent for the plaintiff and questioned him as to his connexion with the berads. The plaintiff disclaimed all knowledge about the berads. Then it was alleged, defendant 1, the Sub-Inspector, grew angry and abused the plaintiff and pulled him up by his moustache. It was further alleged that defendant 2 at the instance of defendant 1 beat the plaintiff. The plaintiff filed a suit to recover damages from the defendants for their alleged wrongful treatment of him. Held, that both the defendants were acting in the discharge of the duty imposed and the authority conferred by S. 51 (1), cl. (b), Bombay District Police Act, when they summoned the plaintiff and questioned him in regard to the alleged offence: but that the alleged assault or battery cannot be said to have been committed under colour or in excess of such duty or authority within S. 80 (1) and that the defendants are not entitled to notice either under S. 80 (4), Bombay District Police Act or C. P. Code, S. 80. 26 All 220, Diss. from; 41 Mad 792 (F B) and 7 A L J 301, Foll. (Fawcett Madgavkar and Mirza, JJ.) Narayan Hari v. Yeshwant Raoji,

A I R 1928 Bom 352 = 30 Bom L R 1018 = 52 Bom 832 = 12 A I Cr R 154 = 114 I C 246 = 20 Cr L J 278 (F B).

BOMBAY (DISTRICT) TOBACCO ACT (II of 1933).

—S. 17

——Licensee for wholesale sale of tobacco can sell tobacco wholesale either personally or through agent in places covered by licence.

A grantee of a licence for the privilege of selling tobacco wholesale, throughout the whole of the Bombay Presidency and Sind, with the exception of the City of Bombay can sell tobacco wholesale personally or through agents and servants at any place in Bombay Presidency and can conduct his business by means of travelling agents. It is not necessary for the agent to have a licence for hawking though his procedure would come within the definition of 'hawking,' since the licence for wholesale sale is wide enough to cover wholesale hawking.

BOMBAY (DISTRICT) TOBACCO ACT (II of 1933), S. 17

The agent, therefore, is not liable to prosecution under S. 17 of the Bombay (District) Tobacco Act, if he sells bidis wholesale to a tobacco merchant of certain place, covered by the licence of his principal. (Barlee and Sen, JJ.) Emperor v. Baburao Appa Lingayat,

A I R 1937 Bom 480=39 Bom L R 832=10 R B 251 =I L R (1937) Bom 931 = 172 I C 160=39 Cr L J 88.

BOMBAY ESSENTIAL SUPPLIES (TEMPORARY POWERS) AND THE ESSENTIAL COMMODITIES AND CATTLE (CONTROL) (ENHANCEMENT OF PENALTIES) ACT (XXXVI of 1947)

—S. 2.

——Repugnancy in Central and State Acts on same matter—See Essential Supplies (Temporary Powers) Act (1946) (as amended by Acts 19 of 1949 and 52 of 1950), S. 7,

A I R 1953 Bom 371=1953 Cr L J 1602.

——Ss. 2 (1) & 3—Magistrate referred to in S. 3—Competency to try offence under S. 2 (1)—Criminal P. C. (1898), S. 29.

In enacting S. 3, which lays down that any Presidency Magistrate or a specially empowered Magistrate of the First Class may impose enhanced penalties, the Legislature intended that the Court of the Magistrate referred to therein was also the Court which was competent to try offences under S. 2 (1). Cr. App. No. 800 of 1949 (Bom), Foll.

Dictum.—"Section 3 of Act XXXVI of 1947 might have been drafted better and should have specifically mentioned that, pursuant to the provisions of S. 29 (1), Criminal P. C. a Presidency Magistrate should be the Court to try the offence although the sentence for that offence was upto seven years' rigorous imprisonment. (Rajadhyaksha and Vyas JJ.) Akbaralli Tayaballi v. State,

AIR 1951 Bom 145=53 Bom L R 553=1951-21 Bom Cr C 176=52 Cr L J 1224

—S. 3.

——Competency to try offence under S. 2 (1) — See ibid, S. 2 (1).

AIR 1951 Bom 145=52 Cr L J 1224.

BOMBAY GENERAL CLAUSES ACT (III of 1886)

—S. 12.

See Bombay Village Police Act (3 of 1867), S. 15.

BOMBAY GENERAL CLAUSES ACT (I of 1904)

—S. 3.

See also (Bombay) City of Bombay Municipal Act (3 of 1888), S. 398.

——S. 3 (10)—City of Bombay—The word "City" in S. 24 City of Bombay Municipal Act (3 of 1888)—See (Bombay) City of Bombay Municipal Act (3 of 1888), S. 24

2 Cr L J 604 (Bom).

—S. 7.

——Words in notification referring to Ordinance, if can be substituted by words referring to Act—See Bombay Building (Control on Erection) Act (31 of 1948), S. 15.

AIR 1951 Bom 263=1952 Cr L J 277.

—S. 9.

——Words in notification referring to Ordinance, if can be substituted by words referring to Act—See Bombay Building (Control on Erection) Act (31 of 1948), S. 15.

AIR 1951 Bom 263=1952 Cr L J 277.

—S. 15.

——Ss. 15, 25—Notification empowering officers at certain places to issue warrants under S. 6 of Bombay Pre-

BOMBAY GENERAL CLAUSES ACT (I of 1904), S. 15

vention of Gambling Act, by virtue of their office—Officer holding such office, whether "specially empowered" —See Bombay Prevention of Gambling Act IV of 1887), S. 6.

AIR 1948 Bom 156=49 Cr L J 165.

—S. 17.

——Section 17 provides that for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, it is sufficient to mention the official title of the officer at present executing the functions. (Beaumont C. J, and Sen J.) Asgaralli Mahammedalli Heralwala v. Emperor,

AIR 1940 Bom 127=42 Bom L R 203=12 R B 487=187 I C 459=41 Cr L J 485.

—S. 21.

——Applicability—Previous notification can be rescinded only subject to conditions governing those notifications.

The resolution of the Municipality which purports to rescind the prior notification of 1919 must be published in the Local Government Gazette, and must have received the previous sanction of the Local Government because under S. 21 of the Bombay General Clauses Act (I of 1904) the Municipality would have the power of rescinding the notification published in 1919 subject to the sanction and conditions to which the first notification was subject. (Shah and Kajiji JJ.) Emperor v. Parshotam Jagjivan,

AIR 1924 Bom 47=25 Bom L R 767=77 I C 186=25 Cr L J 330.

—S. 25.

——Notification, D/- 15-1-1948 under Bombay Ordinance (1 of 1948)—Scope and extent of — See Bombay Building (Control on Erection) Ordinance (1 of 1948), S. 1 (4).

AIR 1953 S C 244=1953 Cr L J 1094 (SC).

——Words in Notification referring to Ordinance, if can be substituted by words referring to Act—See Bombay Building (Control on Erection) Act (31 of 1948), S. 15.

AIR 1951 Bom 263=1952 Cr L J 277.

BOMBAY HARIJAN (REMOVAL OF SOCIAL DISABILITIES) ACT, 1946 (X of 1947)

——Act intra vires of Provincial Legislature.

The Provincial Legislature concurrently with the Federal Legislature is competent to legislate with regard to all matters included in the Penal Code. They are also competent to legislate with regard to all matters relating to criminal law so long as they do not affect offences against laws which are enumerated in List I and List II in Sch. 7, Government of India Act, 1935, Reading Bombay Harijan (Removal of Social Disabilities) Act as a whole, it is clear that what the Legislature has done is to add to the body of criminal law. It has only created new offences. Therefore, this Act falls in item I, List III and it was competent to the Provincial Legislature to pass this piece of legislation. (Chagla C. J. and Gajendragadkar J.) Emperor v. Kalidas Amtharam,

A I R 1949 Bom 168=I L R (1949) Bom 25=51 Bom L R 100=50 Cr L J 635.

BOMBAY HARIJAN TEMPLE ENTRY ACT (XXXV of 1947)

——Object of.

The Bombay Harijan Temple Entry Act has a narrow and limited objective, however laudable that objective might be, and the limited objective is to raise the Harijans in status and to bring them up to the same position as high class Hindus in respect of temple entry. The object of this legislation is not to do away with the distinction between Hindus and Jains or the distinction between Hindu and Jain temples. This legislation was not passed in order to confer any rights upon high class Hindus. It was passed solely for the purpose of removing disabilities of Harijans. (Chagla C. J. and Gajendragadkar J.) Bhaichand Tarachand v. State of Bombay,

A I R 1952 Bom 233=54 Bom L R 69=I L R (1952) Bom 480.

—S. 3.

——Section if entitles Harijans to enter Jain temple.

The Bombay Harijan Temple Entry Act does not confer any right on Hindus to worship in a Jain temple. In a Jain temple Hindus are only allowed to worship provided they have acquired that right by law or by custom. If Hindus have a right to worship in a Jain temple, then by reason of that right a similar right must be conferred upon the Harijans. So that the rights of the Harijans have been made to approximate with the rights of the Hindus, but the right that a Hindu has is a right which was subsisting in him before the Act was passed; no new right has been conferred upon him by this Act. Therefore, if a Hindu can establish his right to worship in a Jain temple as having existed prior to the passing of the Act, then a Harijan can equally well claim the same right. (Chagla C. J. and Gajendragadkar J.) Bhaichand Tarachand v. State of Bombay

A I R 1952 Bom 233=54 Bom L R 69=I L R (1952) Bom 480.

—S. 4.

——Powers of Collector under section.

Whenever a Harijan is obstructed in the exercise of his right conferred by the Act, the Collector is competent only to order the prosecution of the person so obstructing under S. 4. But apart from such right he cannot compel the person to break open the lock or assist Harijans in entering the temple. (Chagla C. J. and Gajendragadkar J.) Bhaichand Tarachand v. State of Bombay,

AIR 1952 Bom 233 = 54 Bom L R 69=I L R (1952) Bom 480.

BOMBAY HIGH COURT ADMIRALTY RULES

—R. 3.

——Rr. 3, 4, 14, 15—Admiralty Jurisdiction — Bombay High Court — Service on ship — Writ of summons — Warrant of arrest.

It is not essential under the Admiralty Rules of the Bombay High Court to issue a writ of summons in addition to issuing a warrant of arrest. (Marten J.) Freeman v. S. S. "Calanda",

AIR 1923 Bom 51=24 Bom L R 1167=76 I C 433.

—R. 4.

——Service on ships — Writ of summons — Warrant of arrest — See Bombay High Court Admiralty Rules, Rr. 3, 4, 14, 15

A I R 1923 Bom 51.

—R. 14.

Service on ship — Writ of summons — See Bombay High Court Admiralty Rules—Rr. 3, 4, 14, 15

A I R 1923 Bom 51.

—R. 15.

——It is not essential to issue a writ of summons in addition to issuing a warrant of arrest — See Bombay High Court Admiralty Rules—Rr. 3, 4, 14, 15

A I R 1923 Bom 51.

BOMBAY HIGH COURT APPELLATE SIDE RULES (1950)

—R. 14.

——R. 14 (c) — Power of High Court to review its oral judgment delivered in Criminal appellate jurisdiction — See Criminal P. C. (1898), S. 367

A I R 1951 Bom 49=52 Cr L J 441.

—R. 158.

——Power of High Court to review its oral judgment delivered in Criminal appellate jurisdiction — See Criminal P. C. (1898), S. 367

A I R 1951 Bom 49 = 52 Cr L J 441.

BOMBAY HIGH COURT CRIMINAL CIRCULARS

—R. 11.

See also Criminal P. C. (1898), S. 544.

——Opportunity of being heard in support of appeal not given — Summary rejection of appeal — Legality — See Criminal P. C. S. 421.

2 Cr L J 58 (Bom).

BOMBAY HIGH COURT RULES (O. S.)

—R. 10.

——Whether ultra vires.

Rule 10 of the Appellate Side Rules, Bombay High Court, made under the Letters Patent, is not ultra vires. (Beaumont C. J., Blackwell and Rangnekar JJ.) In re Philip N. Godinho

A I R 1934 Bom. 70=6 R B 312=1934 Cr Cas 302=36 Bom. L R 1=58 Bom. 456=148 I C 664 (FB).

—R. 865.

——'Given in charge to the Jury,' meaning and significance explained.

The expression "given in charge to the jury" is used in R. 865 of the Bombay High Court Rules in a technical sense. Even if the prisoners were given in charge to a common jury, R. 865 will not operate as a bar to the trial of the prisoners by a special jury upon the altered charge. Apparently R. 865 is not designed to meet such a case. The question whether the prisoners have been given in charge to a jury must be determined by reference to the form of the oath administered and the procedure followed thereafter. But, where after the Clerk of the Court calls the prisoner to the Bar and makes the following statement: "Members of the jury, the prisoner stands indicted for that he, on the (stating the substance of the offences charged in the indictment). To this indictment he has pleaded not guilty and it is your charge to say, having heard the evidence, whether he is guilty or not", the prisoner is said to have been given in charge to the jury.

But where the substance of the offence charged in the indictment has not been stated to the jury and except the fact that the jury is sworn and allowed to be challenged with a view to their trying the prisoners in due turn, nothing has been done to warrant the supposition that the prisoners have been given in charge to the jury, the trial shall take place on the altered charge with a special jury. (Wassoodew J.) Emperor v. Yeshwant Vithu

A I R 1937 Bom. 260=39 Bom L R 355=10 R B 49=I L R (1939) Bom. 369=170 I C 153=38 Cr L J 850(2).

BOMBAY INDUSTRIAL DISPUTES ACT (XXV of 1938)

—S. 66.

——Participation in strike prior to its being declared illegal is punishable.

The plain meaning of S. 66, Bombay Industrial Disputes Act is that participation in a strike which is afterwards declared to be illegal is punishable. The fact that the section provides for the punishment of those who have gone on strike or who join a strike which has been held to be illegal shows that its intention was to make penal not merely the joining or taking part in a strike after it has been declared to be illegal, but also the participation in it prior to the declaration of illegality. The object of the section is to penalise those employees who go on strike without resorting to the remedies provided by Ss. 26, 27 and 28 of the Act. (Wadia and Lokur JJ.) Khandubhai K. Desai v. Emperor,

A I R 1944 Bom. 126 = I L R (1944) Bom. 339 = 46 Bom. L R 104=16 R B 373 = 212 I C 259 = 45 Cr L J 565.

BOMBAY INDUSTRIAL RELATIONS ACT (XI of 1947)

——Act if ultra vires—Constitution of India, Art. 19(1)(c).

There is nothing in the Act which renders the right guaranteed by Art. 19 (1) (c) to form associations or Unions illusory. The right to form Union does not carry with it the right to represent, when there is an industrial dispute before a conciliator or the Court of voluntary or compulsory arbitration, those persons or members of the Trade Union. There is consequently no abridgment of the right guaranteed by Art. 19 (1), cl. (c) by Ss. 27A and 30 of the Industrial Relations Act. (Bavdekar and Dixit JJ.) Raja Kulkarni v. State of Bombay

A I R 1951 Bom. 333 = 21 Bom. Cr C 112=53 Bom. L R 333=I L R (1951) Bom. 318=52 Cr L J 779.

—S. 27A.

——Ss. 27A & 30 — Validity — Constitution of India, Art. 14.

It is no breach of the Article of the Constitution providing for equality before the law and equal protection of the laws for the Legislature to make a classification on rational grounds. The provisions of Ss. 30 & 27A in so far as they make a distinction between a Union and a Union or between employers and employees for the purpose of representation before an Industrial Court do not contravene Art. 14 of the Constitution. (Bavdekar and Dixit JJ.) Raja Kulkarni v. State of Bombay,

A I R 1951 Bom. 105= 53 Bom. L R 333 = 21 Bom. Cr C 112=I L R (1951) Bom. 318=52 Cr L J 779.

—S. 30.

——Ss. 30 & 27A—If contravene Trade Unions Act (1926), S. 15 (d).

Section 15 (d), Trade Unions Act, 1926, merely renders lawful the expenditure of money belonging to a Trade Union on the conduct of a trade dispute. It does not render obligatory upon a Trade Union to expend any portion of its general funds upon such conduct. It cannot possibly be said, therefore, that in so far as Ss. 30 & 27A disentitle any Trade Union from appearing before an Industrial Court or any other Court these sections contravene S. 15 (d). (Bavdekar and Dixit JJ.) Raja Kulkarni v. State of Bombay

A I R 1951 Bom. 105 = 53 Bom. L R 333= 21 Bom. Cr C 112=I L R (1951) Bom. 318=52 Cr L J 779.

——"Is entitled to appear and act", meaning of.

A representative Union before it can bind the employees by any award which may be passed by the Industrial Court need not obtain an authorisation from the employees for appearing before the Industrial Court. The meaning of the words "is entitled to appear and to act" used in S. 30 of the Industrial Relations Act is that the representative Union will be entitled to both appear and to act for the employees before the Industrial Court without any authorisation from the employees. Ordinarily authorisation will be necessary; but S. 30 enables the representative Union to dispense with such authorisation.

BOMBAY INDUSTRIAL RELATIONS ACT (XI of 1947), S. 30

(Bavdekar and Dixit JJ.) Raja Kulkarni v. State of Bombay

A I R 1951 Bom. 105 = 33 Bom. L R 333=21 Bom. Cr C 112=I L R (1951) Bom. 318=52 Cr L J 779.

—S 95.

——S. 95 (2) — Industrial Disputes (Appellate Tribunal Act, 1950, S. 16—Decision of Appellate Tribunal if can be called in question.

Even assuming that the effect of S. 16 of the Appellate Tribunal Act which says that an award or decision of the Appellate Tribunal is to have the same effect as if it was an award of an Industrial Tribunal rendering it impossible for any one to call in question that decision because of the provisions of S. 95 (2) of the Industrial Relations Act, what cannot be called in question is the decision itself and not any point of law which may have been decided by the Court in order to arrive at the decision. Hence the decision of the Appellate Tribunal that the appeal filed before it is competent can be called in question in a prosecution under S. 27 of the Appellate Tribunal Act. (Bavdekar and Dixit JJ.) Raja Kulkarni v. State of Bombay

A I R 1951 Bom. 105 = 53 Bom. L R 333=21 Bom. Cr C 112=I L R (1951) Bom. 318=52 Cr L J 779.

—S. 97.

——Inciting illegal strikes — Power to detain person so inciting — Prior decision under S. 97 whether necessary —See Preventive Detention Act (1950), S. 3 (1)

A I R 1951 Bom. 33=52 Cr L J 418.

BOMBAY IRRIGATION ACT (VII of 1879)

—S. 61.

——S. 61, cl. 10 — Conviction under, when can be had.

Unless it is found that (1) the accused was responsible for the maintenance of a water-course or use of watre-course and (2) that there were certain proper precautions which should have been taken by him for preventing the waste of water, and that he neglected to take these precautions, he cannot be convicted under S. 61 cl. 10. (It is the duty of the Court to specify under what sub-section of S. 10 the conviction is). (A. Lucas Esq. and H. N. Crouch Esq.) Crown Haji v. Mir Mahmand walad Haji Sadnallah

1 S L R 32 Cr=9 Cr L J 271.

BOMBAY JAIL MANUAL

—Part I.

——R. 387 (c) — Administrative rules for guidance of Jail Authorities—Conflict between rules and order of Court — Order should be sent to High Court for consideration.

The rules of the Bombay Jail Manual are administrative rules for the guidance of the Jail Officials; and it is for the Jialor to keep in safe custody a prisoner consigned to his care under the lawful order of the Court, and where any conflict occurs between an order of the Court and administrative rules, the order of the Court should be sent to the High Court through proper channels for consideration and modification if need be. (Davis J. C. and Dadiba C. Mehta A. J. C.) Emperor v. Kodu

A I R 1936 Sind 125=9 R S 49=29 S L R 353=1936 Cr Cas 802=164 I C 576=37 Cr L J 1003.

—R. 392.

——Where a prisoner is awarded two consecutive sentences for separate offences, and while undergoing the first, the same is set aside with the result that there is no sentence on that count, the sentence on the second count which is upheld, must commence from the date of conviction, and any part of the sentence already served must be attributed to the only sentence legally existing.

BOMBAY JAIL MANUAL, R. 392

Rule 392 of the Jail Manual is invalid. (Beaumont C. J. and Wassoodew J.) Babibai v. Emperor

A I R 1942 Bom 342 = 44 Bom L R 807 = I L R (1944) Bom 82 = 15 R B 289 = 204 I C 23 = 44 Cr L J 150.

BOMBAY LAND REVENUE CODE (V of 1879)

—S. 40.

——Future growth—Forest.

The section does not imply that future growth in reserved forest would become Govt. property. (Shah and Hayward, JJ.) Emperor v. Yellappa Ramengowda

A I R 1921 Bom 435=22 Bom L R 884=58 I C 60=45 Bom 110=21 Cr L J 716.

——Breach of — *See* Bombay Land Revenue Code (5 of 1879), S. 103.

9 Cr L J 258 (F B) (Sind).

—S. 86.

——Ss. 86, 141 and 142—Penal Code, Ss. 378 and 424.

The honest removal of moveable property from the physical possession of another does not amount to an offence either under S. 378 or 424 of the Penal Code. But the removal of a property by a lessee from the guard of a watchman appointed under Ss. 86 and 141 B. L. R. Code gives rise to an offence punishable under S. 142. (Pratt, J. C. and Fawcett, A. J. C.) Lekhraj v. Immambux

5 S L R 130=12 I C 987=12 Cr L J 611.

—S. 103.

——S. 103 (as amended in 1913) — Survey Settlement—Government sanctioning rates on 5th July 1926 — Notification published on 26th July 1926 — Survey Settlement is legally introduced for 1925-26.

Two conditions are laid down under S. 103 to validate the introduction of the survey settlement, first, the sanction under S. 102, and second, the notice in accordance with the rules made by the Governor in Council. Where Government sanctioned the rates for the various classes of land recommended by the Commissioner on 5th July 1926 and the notification according to the rule was published by the Police Patil in the village on 26th July 1926.

Held, the introduction of the survey settlement was in the year 1925-26 and the notification inviting objections was superfluous. (Patkar and Murphy JJ.) Moreshwar Janardhan v. Emperor,

AIR 1928 Bom 497=30 Bom L R 1255=114 I C 854 =30 Cr L J 353.

——Survey Settlement—Government Resolution of 1903 and Note 19 of Anderson's Manual are only departmental orders having no force of statutory rules—Non-observance of these rules does not nullify the validity of the survey settlement legally introduced under S. 103.

Government Resolution No. 6141 of 1903 and note No. 19 in Anderson's Manual at p. 8 to the effect that when Government raises the rates proposed by the Settlement Officer, a fresh notice must be issued and a fresh opportunity of objection must be afforded, are departmental orders and have not the force of a legislative enactment or statutory rules. If the introduction of the settlement is legal under S. 103, the mere fact that certain formalities, which are required to be observed under a Government resolution, are not so observed, does not nullify the validity of the introduction of the survey settlement under S. 103. (Patkar and Murphy JJ.) Moreshwar Janardhan v. Emperor,

AIR 1928 Bom 497=114 I C 854=30 Bom L R 1255 =30 Cr L J 353.

—S. 142.

——Fine imposed under Code—Conviction.

BOMBAY LAND REVENUE CODE (V of 1879), S. 142

A conviction under the Penal Code stands on a different footing from a fine imposed under the Land Revenue Code. (Ferrers J. C. and Rupchand A. J. C.) Rasoolbux Gazi v. Emperor.

A I R 1933 Sind 276=1933 Cr Cas 950=6 R S 63 = 146 I C 407=35 Cr L J 26.

—S. 154.

——The section provides that the Collector may cause the defaulter's movable property to be distrained and sold. But the mamlatdar cannot destrain the same unless the authority has been delegated to him by the Collector. (Beaumont C. J. and Wadia J.) Sakharam Ramji Pawar v. Emperor

A I R 1935 Bom 233=37 Bom L R 362=1935 Cr Cas 658 = 8 R B 88 = 59 Bom 545 = 157 I C 859 = 36 Cr L J 1263.

—S. 157.

——Arrest—Provincial Insolvency Act, S. 23 — Person arrested under order of Manager, Encumbered Estates under S. 10, Sind Encumbered Estates Act read with S. 157, Bombay Land Revenue Act—Insolvency Court cannot grant him interim order of protection.

Where a person is arrested under the orders of the Manager, Encumbered Estates, under the provisions of S. 10 of the Sind Encumbered Estates Act read with S. 157 of the Bombay Land Revenue Code, the Insolvency Court has no jurisdiction to grant him an interim order of protection as he is not under arrest in execution of a decree of any Court for payment of money. (Kincaid J. C. and Barlee A. J. C.) Ghanshamdas Khatumal v. Manager, Encumbsred Estates,

AIR 1927 Sind 123=7 A I Cr R 345=99 I C 930=28 Cr L J 194.

—S. 189.

——Applicability to summary and formal enquiry.

Section 189, Bombay Land Revenue Code would apply as much to an enquiry relating to the Record of Rights under Chap. 10-A as to a summary or formal enquiry within the provisions of S. 196 of the Code. (Davis J. C. and Weston J.) Assudomal Ramandas Tando Muhammad Khan v. Jhamandas Hotchand Matli

A I R 1940 Sind 100=13 R S 73 = I L R (1940) Kar 435=190 I C 222=41 Cr L J 861.

—S. 214.

——S. 214—Rule 63.

The rule means that existing reserved trees belong to Govt. and future growth belongs to the occupier. (Shah and Hayward, JJ.) Emperor v. Yellappa Ramangowda.

A I R 1921 Bom 435=22 Bom L R 884=58 I C 60= 45 Bom 110=21 Cr L J 716.

BOMBAY LOCAL BOARDS ACT (VI of 1923)

—S. 4.

——S. 4 (3) — 'Notified area' under Bombay Municipal Act (III of 1901), whether 'municipal district' within meaning of S. 4 (3) — Local Board, if can levy octroi on goods imported in notified area within district.

There is a distinction between a municipal district and a notified area which is made clear in the Municipal Act. Notified areas are only constituted in cases when it is not expedient to constitute the area a municipal district and under S. 189, Bombay District Municipal Act, a notified area may be deemed to be a municipal district, although it is not one, but only for the purposes of any section of the Municipal Act, which may have been applied to it. When however, the Bombay Local Boards Act, in S. 4 (3) refers to a municipal district, it does not include a notified area. The District Local Board can, therefore, if duly empowered by its rules and by laws levy octroi on goods imported into a notified area within the limit of its district. (Broomfield and Macklin JJ.) Mohiddin Bawasaheb Thakur v. Emperor

A I R 1939 Bom 97=41 Bom L R 93=11 R B 318 = 180 I C 940=40 Cr L J 522.

—S. 102.

——Interpretation of.

Section 102, Bombay Local Boards Act, does not say that the rules, when sanctioned under S. 101 are to have the force of law, and, it cannot have been the intention of the Legislature to give legal effect in this way to rules not covered by the provisions of the Act. (Broomfield and Wassoodew JJ.) Dewa Mahadu Ambekar v. Emperor

A I R 1936 Bom 376=38 Bom L R 790=9 R B 159= 1936 Cr Cas 921=165 I C 637=38 Cr L J 37.

—S. 136.

——Charge under S. 409, Penal Code, if protected by S. 136.

A person accused of offences under S. 409, I. P. C., is not protected by S. 136, Bombay Local Boards Act as the act done by him cannot be said to have been done in his official capacity. (Davis C. J. and Waston J.) Nabibux Muhammad Sulleman v. Emperor

A I R 1942 Sind 45 = I L R (1941) Kar 557=14 R S 172=199 I C 198=43 Cr L J 514.

——S. 136 (2), Proviso—Prosecution instituted by Public Prosecutor is instituted by Provincial Government within the meaning of proviso.

The addition of the proviso to S. 136 (2), Bombay Local Boards Act, now recognizes for the purpose of time and notice, distinction between public prosecution and prosecutions on private complaints. The purpose of the proviso is to exclude from the protection of the section prosecutions by the Crown, prosecutions by or under the orders of the Provincial Government. The Provincial Government acts either through the Advocate-General or its Public Prosecutors. Hence, the prosecutions instituted by the Public Prosecutor are instituted by the Provincial Government within the meaning of the proviso. (Davis C. J. and Weston J.) Nabibux Muhammad Sulleman v. Emperor,

A I R 1942 Sind 45 = ILR (1941) Kar 557 = 14 R S 172=199 I C 198=43 Cr L J 514.

——Suit against District Local Board based on breach of contract—Special rule of limitation.

A suit for damages against a District Local Board based upon a breach of contract does not fall within the ambit of S. 136 of the Bombay Local Boards Act of 1923, and consequently the rule of limitation prescribed in that section does not govern such a suit. (Patkar and Murphy JJ.) District Local Board of Poona v. Vishnu Raghoba

A I R 1933 Bom 164=35 Bom L R 55=57 Bom 67= Ind Rul (1933) Bom 253=142 I C 625.

——S. 136 (2) — Sub-overseer and chairman taking false measurements and fraudulently obtaining money—Acts of accused held protected by S. 136, Local Boards Act and S. 197, Criminal Procedure Code (Act V of 1898).

A sub-overseer of the Local Board was, according to the rules of his employment, bound to supervise the works, to take measurements and to enter them in a measurement book maintained for the purpose and also to report to the District Local Board through the works committee, the progress of the works in his charge and their measurements for the purpose of making payment to the contractor. The sub-overseer was obliged to sign the bill in authentication of the measurements given in it and the charges made. The duties of the Chairman of the works committee were to take measurements and, in the absence of a completion certificate, countersign the bills of the contractor and see that the payment is made without undue delay. Accused No. 1 who was an overseer

of a Local Board and accused No. 2 who was an elected member of that Board and Chairman of the works committee were prosecuted for offences of cheating and falsification of accounts on the allegation that they had dishonestly taken false measurements of certain work of repairs on the road under their charge and fraudulently obtained from the President of the District Local Board certain amount by tendering a bill with the measurement sheet containing the false measurements attached to it duly signed by accused No. 1 and countersigned by accused No. 2 :

Held, that the preferring of the bill was an official act and it did not make any difference that in the discharge of the official duty a fraudulent statement was inserted in the bill. Therefore, the act complained of namely, the fraudulent and dishonest representation by means of the bill and measurement sheet, was protected under S. 136, Bombay Local Boards Act. Accused No. 2, as the member was also entitled to protection under S. 197, Criminal P. C. (Broomfield and Wassoodew JJ.) Vishnu Tatyaba Naik v. Emperor,

A I R 1941 Bom 85 = 42 Bom L R 1193 = 13 R B 323=ILR (1941) Bom 191=193 IC 229=42 Cr L J 441.

——Protection clauses in Act.

The protection clauses which are so commonly inserted in Acts conferring powers on public authorities or their officers are never intended to protect a dishonest rascal from the consequences of his rascality. They are only intended to protect people who from excess of zeal or negligence or other cause exceed their powers. (Beaumont C. J. and Sen J.) R. K. Naik v. Emperor,

A I R 1940 Bom 35=12 R B 316=41 Bom L R 1227 =ILR (1940) Bom 29=186 I C 133=41 Cr L J 256.

——Officer of Board delivering false bill — Prosecution under S. 420, Penal Code (Act XLV of 1860)—Protection of S. 136, if can be claimed.

An officer of the Board delivering a false bill deliberately is not acting or purporting to act in pursuance of the Act. If, therefore, he is prosecuted under S. 420, Penal Code, he is not protected by S. 136, Bombay Local Boards Act. (Beaumont C. J. and Sen J.) R. K. Naik v. Emperor,

A I R 1940 Bom 35=41 Bom L R 1227=ILR (1940) Bom 29=12 R B 316=186 I C 133=41 Cr L J 256.

——Ss. 136 (2), 119, 50 (as amended by Act XIII of 1935) — Sub-overseer under Local Board preparing false bills of work done and overcharging Board in course of duty—Prosecution after lapse of three months.

An overseer under a Local Board had as part of his duty, taking of measurements of repairs and other works done and preparing bills in respect thereof. He prepared false bills and overcharged the Board:

Held, that the acts which were alleged to constitute a criminal offence on the part of the accused were acts done by him, or, in any case, purported to have been done by him, in pursuance of the Local Boards Act, and whether they were bona fide or otherwise, he had no concern with these inaccuracies and intricacies. The plain language of S. 136 (2), Bombay Local Boards Act, afforded him immunity from prosecution after a lapse of three months from the date of the act complained of. (Davis J. C. and Lobo J.) Tara Chand Pribhdas v. Emperor,

A I R 1938 Sind 116 = 11 R S 7 = 32 S L R 622 = 175 I C 834=39 Cr L J 688.

——S. 136 (2), (as amended by Act XIII of 1935) — If contemplates distinction between public and private prosecutions.

Per Davis J. C. — A distinction between public and private prosecutions cannot be found in S. 136 (2), Bombay Local Boards Act. (Davis J. C., Rupchand and Mehta A. J. Cs.). Nuralhaqshah v. Emperor,

A I R 1937 Sind 129=9 R S 257=32 S L R 567=169 I C 274=38 Cr L J 723 (FB).

——S. 136 (2) (as amended by Act XIII of 1935) — President and servant of Taluka Board charged with offences under S. 120-B, read with S. 406 or S. 409, Penal Code and S. 406 or S. 409 and S. 477-A, read with S. 109, Penal Code (Act XLV of 1860) — Notice not given as required by S. 136 (2)—Prosecution more than three months after offence—S. 136 (2), if applies to offences.

Per Davis J. C. and Mehta. A. J. C. (Rupchand A. J. C. contra). — Section 136 (2), Bombay Local Boards Act as amended by Act XIII of 1935, applies only to acts done by protected persons in discharge of their public duties towards the public.

The President of a Taluka Local Board in his capacity as President, and a servant of the Board were charged with conspiring with a contractor to commit criminal breach of trust (S. 120-B with S. 406 or S. 409, Penal Code) and with the commission of criminal breach of trust and falsification of accounts (S. 406 or S. 409 and S. 477-A read with S. 109 (abetment) of the Penal Code). Notice required by sub-s. (2) of S. 136, Bombay Local Boards Act, was not served on the accused and the proceedings were commenced more than three months of the acts complained of :

Held, that the provisions of S. 136 (2), Bombay Local Boards Act, VI of 1923, as amended by Act, XIII of 1935, applied to the offences with which the applicants were charged :

Held, also that the argument that sub-s. (2) of S. 136, Bombay Local Boards Act, can apply only to acts done in good faith, could not stand in the face of the inclusion in sub-s. (1) and the exclusion from sub-s. (2) of these precise words. (Davis J. C., Rupchand and Mehta A. J. Cs.) Nuralhaqshah v. Emperor,

A I R 1937 Sind 129=9 R S 257=32 S L R 567=169 I C 274=38 Cr L J 723 (FB).

——(Amendment by Act XIII of 1935) —If retrospective.

The general rule of construction is nova constitutia futuris forman imponere debet, non praeteritis. But this rule does not apply to statutes relating to procedure and the law of limitation is a law of procedure. Such a law has retrospective effect unless there is a distinct provision to the contrary. Section 136 therefore has retrospective effect. (Davis J. C., Rupchand and Mehta A. J. Cs.) Nuralhaqshah v. Emperor,

A I R 1937 Sind 129=32 Sind L R 567=9 R S 257= 169 I C 274=38 Cr L J 723 (FB).

—S. 215.

——Rules 103 (1) and 40, Breach of.

Rule 40 was permissive and merely conferred certain privileges on persons obtaining permission under it, and that failure to apply for such permission did not amount to a breach for the Rule. Where a person removed stone from the earth for making lime, without permission of the Revenue authorities, and was convicted under Rules 103 (1) and 40 of the Land Revenue Code the conviction was reversed. (A Lucas, Esq., R. Knight Esq. and H. N. Crouch Esq.) Crown v. Mangho walad Vensi,

1 S L R 16 Cr=9 Cr L J 258 (FB).

BOMBAY MAMLATDARS' COURTS ACT (II of 1906)

—S. 23.

——Jurisdiction of Collector—Extent—Collector whether principal Court of jurisdiction under S. 195 (7) (iii), Criminal P. C.—See Criminal P. C. (1898), S. 195

6 Cr L J 225 (Bom).

BOMBAY MARKETS AND FAIRS ACT (IV of 1862)
—S. 1.
——Person establishing cattle market on private land within municipal limits — No permission of District Magistrate.

Where a person establishes a cattle market on his private land within the municipal limits, without permission from the District Magistrate as required by S. 1, Bombay Markets and Fairs Act, he is guilty under that section. (N. J. Wadia and Sen JJ.) Najmuddin Ibrahim Sahib Bobade v. Emperor

A I R 1940 Bom 306 = 42 Bom L R 584 = I L R (1940) Bom 522=13 R B 155=191 I C 121=42 Cr L J 84.

——S. 1, if in conflict with S. 139, Bombay District Municipal Act (III of 1901).

There is no conflict between S. 1, Bombay Markets and Fairs Act and S. 139, Bombay District Municipal Act. (N. J. Wadia and Sen JJ.) Najmuddin Ibrahim Saheb v. Emperor

A I R 1940 Bom 306=42 Bom L R 584=13 R B 155 =I L R (1940) Bom 522=191 I C 121=42 Cr L J 84.

BOMBAY MEDICAL ACT (VI of 1912)
—S 7.
——Accused, medical graduate, registered under S. 7, Bombay Medical Act — Accused's name removed from Medical Register being found guilty of infamous conduct (giving false medical certificate) — Accused nevertheless continuing to practise — Conviction under Ss. 32 and 34 of 1938 Act — Accused held was entitled to registration and was not guilty under Ss. 32 and 34. See Bombay Medical Practitioners Act (XXVI of 1938), Ss. 32, 34 and 36

A I R 1947 Bom 310=48 Cr L J 305 (FB).

BOMBAY MEDICAL PRACTITIONERS ACT (XXVI of 1938)
—S. 32.
——Ss. 32, 34 and 36 (c) — "Entitled to registration"— Meaning of—Accused, medical graduate, registered under S. 7, Bombay Medical Act — Accused's name removed from Medical Register being found guilty of infamous conduct (giving false medical certificate)—Accused nevertheless continuing to practise — Conviction under Ss. 32 and 34 of 1938 Act—Accused held was entitled to registration and was not guilty under Ss. 32 and 34.

Two classes of persons are envisaged by the Bombay Medical Act of 1912 and the Bombay Medical Practitioners Act of 1938, that is to say, persons "entitled to registration" and practitioners who are in fact "registered". The Acts give the latter class certain privileges, such as the right to give certificates and freedom from serving on inquests, which are denied to the former, and it can never have been the intention of the Legislature to set up a class of persons 'entitled to registration' limited to those persons who having attained the necessary scholastic qualifications, had paid the fee and satisfied the Registrar since upon such satisfaction they would in fact be registered under the Act. Hence every person who possesses the qualifications referred to in S. 7 (2) of the 1912 Act is, as a matter of status, a person "entitled to registration" under the Act and the payment of the fee and the giving of evidence to the satisfaction of the Registrar of his possession of the necessary educational qualifications fitting him for registration are not conditions precedent to the status of being a person "entitled to registration." The accused having passed the L. M. & S. examination of the Bombay University in 1915 got himself registered under S. 7, Bombay Medical Act, 1912. In 1924, his name was removed from the Medical Register, because he was found guilty of having issued a false certificate. Although his attempts to have his name re-entered in the Register were unsuccessful, he continued to practise medicine as before till 1945 when he was convicted under Ss. 32 and 34, Bombay Medical Practitioners' Act : Held that the accused was "entitled to registration" under S. 7, Bombay Medical Act, within the meaning of S. 36 (c), Bombay Medical Practitioners' Act and was, therefore, exempt from the application of Ss. 32 and 34 of the latter Act and committed no offence by continuing to practise medicine even after his name was removed from the Register. (Stone C. J., Lokur and Gajendragadkar JJ.) Joseph D'Silva v. Emperor

A I R 1947 Bom 310=49 Bom L R 6 =229 I C 178 I L R (1946) Bom 1069=48 Cr L J 305 (FB).

—S. 34.
——Accused's name removed from Medical Register— Accused nevertheless continuing to practise — Conviction under Ss. 32 and 34 — Legality. See Bombay Medical Practitioners Act, S. 32

A I R 1947 Bom 310=48 Cr L J 305 (FB).

—S. 36.
——S. 36 (c) — Accused's name removed from Medical Register—Accused nevertheless continuing to practise— Conviction under Ss. 32 and 34—Legality. See Bombay Medical Practitioners Act, S. 32

A I R 1947 Bom 310=48 Cr L J 305 (FB).

BOMBAY MONEY-LENDERS ACT (XXXI of 1947)
—S. 1.
——Object of Act.

The Act was intended to put down a very serious evil in the society. It was intended to keep control over money-lending transactions and to see that excessive rate of interest was not charged by money-lenders, and the only way that such control can be maintained is by providing penalties for doing money-lending business without a proper license from the State. (Chagla C. J.) Parashuram Laljishet Gujar, In re

A I R 1952 Bom 276 = 54 Bom L R 160 = 21 Bom Cr C 317=I L R (1952) Bom 914.

—S. 2.
——S. 2 (9) — Loan — Meaning of — Security if should fully cover.

The expression "loan" covers a loan which is secured as well as a loan which is unsecured, and it is immaterial whether the lender advances money on security which fully covers the loan advanced by him. (Chagla C. J. and Gajendragadkar J.) Jhaverilal Maganlal v. Emperor

A I R 1950 Bom 119=51 Bom L R 991=1949 Bom Cr C 119=I L R (1950) Bom 173=51 Cr L J 635.

—S. 5.
——Ss. 5, 10 and 34—Contravention of S. 5—Applicability of S. 34.

Section 10 has nothing whatever to do with S. 5. Section 10 refers only to those cases where the money-lender comes to Court for obtaining a decree, and the Court, instead of summarily dismissing his suit if he has no license, gives him an opportunity to obtain a license. Section 5 is a bar against doing any money-lending business at all without a license and if that provision is contravened, S. 34 becomes applicable, and the person doing money-lending business without a license commits an offence for which he can be punished. (Chagla C. J.) Parashuram Laljishet Gujar, In re

A I R 1952 Bom 276=21 Bom Cr C 317=I L R (1952) Bom 914=54 Bom L R 160.

BOMBAY MONEY-LENDERS ACT (XXXI of 1947), S. 5

——Ss. 5 and 25—Distinction.

Section 5 contains a mandatory provision prohibiting any money-lender from carrying on business without a license. Section 25 does not contain any such provision. It merely provides for fixing the maximum rate of interest by the Provincial Government and also for the Court declaring an agreement to charge higher rate of interest void. (Chagla C. J.) Parashuram Laljishet Gujar, In re

A I R 1952 Bom 276=21 Bom Cr C 317=I L R (1952) Bom 914=54 Bom L R 160.

—S. 10.

——Scope—*See* Bombay Money-lenders Act, S. 5

AIR 1952 Bom 276

—S. 25.

——Scope—*See* Bombay Money-lenders Act, S. 5

AIR 1952 Bom 276

—S. 34.

——Applicability—*See* Bombay Money-lenders Act, S. 5

AIR 1952 Bom 276.

BOMBAY MOTOR VEHICLES ACT (II of 1904)

—S. 3.

——Reckless or negligent driving.

Where the accused attempted to pass a victoria on his left but at the psychological moment, the driver of the victoria turned it suddenly to the left resulting in a collision, the accused cannot be convicted of negligent driving. S. 2 requires the Court to have regard not only to the side on which one vehicle passes another but to all circumstances including the nature, condition and use of the road and to the amount of traffic which actually is or may be expected. (Russell and Batchelor JJ.) In re Jehanger D. Davar

13 Bom L R 126=9 I C 945=12 Cr L J 167.

—S. 9.

——Ss. 9 and 13—Infringement of rules by driver.

It is not an abetment of the offence for the master to omit to give information to his servant, unless the omission were illegal, that is to say, in disobedience of an obligation imposed upon him by law. (Batty and Heaton JJ.) Emperor v. Coorverji Nasarwanji

9 Bom L R 161=5 Cr L J 176.

—S. 12.

——Rules under the Act — Omission of owner to give information of the rules to the driver.

Abetment by omission is punishable, only if the omission is an illegal omission. The owner of a motor car cannot, therefore, in the absence of any legal obligation be held guilty of abetment, in merely omitting to give information to his employees, as to the rules framed under the Bombay Motor Vehicles Act, 1904. (Batty and Heaton JJ.) Emperor v. Cooverjee Nasarwanji

9 Bom L R 159=5 Cr L J 173.

—S. 13.

See (1) ibid, S. 9

(2) Penal Code (1860), S. 109.

BOMBAY MOTOR VEHICLES RULES (1915)

—R. 19.

——R. 19 (1) — Rule, if covers a tram-car which is stationary—'Ordinarily,' significance of.

R. 19 (1) of the Bombay Motor Vehicles Rules which provides that a motor vehicle shall ordinarily pass a tram-car on the left or near side whether it be going in same or contrary direction, covers a tram-car which is stationary. The word 'ordinarily' in the rule denotes that the rule applies except in a case in which there is some impediment to passing the tram-car on the near side. The

BOMBAY MOTOR VEHICLES RULES (1915), R. 19

facts that there are pedestrians making it difficult for him to pass and there is plenty of room for him to pass on the right hand side, do not constitute an excuse for breaking the rule. (Beaumont C. J. and Murphy J.) Emperor v. W. M. Ribbans

AIR 1933 Bom 229=1933 Cr Cas 663=35 Bom L R 483=6 R B 24=144 I C 923 (1)=34 Cr L J 865 (1).

BOMBAY MOTOR VEHICLES TAX ACT (XXXIV of 1935)

——Bombay Motor Vehicle Tax Rules, R. 25 — Mere manager of company owning car—Liability.

A mere manager of a company which owns a motor car is not liable for breach of R. 25 of Bombay Motor Vehicles Tax Rules which requires the token to be carried on the car. (Beaumont C. J. and Wassoodew J.) K. P. K. Shetty v. Emperor

AIR 1943 Bom 69=45 Bom L R 69=15 R B 360=205 I C 227=44 Cr L J 363.

BOMBAY MUNICIPAL BOROUGHS ACT (XVIII of 1925)

—S. 3.

——S. 3 (21) — The hand lorry clearly falls within the definition of vehicle contained in S. 3, sub-s. (21). (Beaumont C. J. and Wassoodew J.) Emperor v. Hasan Mamad

AIR 1940 Bom 378=42 Bom L R 785=I L R (1940) Bom 774=13 R B 149=191 I C 465=42 Cr L J 164.

—S. 37.

——Ss. 37, 38, 178 — Prosecution for contravention of S. 178 — Standing Committee is competent to accord sanction for prosecution.

The Standing Committee can exercise two kinds of powers : (a) powers conferred upon it by the Act and (b) the residuary powers of the Municipality. The restriction on the Standing Committee imposed by S. 38 can only apply in respect of the residuary powers of the Municipality and not in respect of the powers which are conferred upon the Standing Committee by the Act. Hence the Standing Committee is competent to accord sanction for prosecution of persons for contravention of the provisions of S. 178. This power has not been taken away by S. 38 or R. 73 made by the Ahmedabad Municipality : (1935) 37 Bom L R 184, Rel. on. (Bavdekar and Chainani JJ.) Emperor v. Khuma Arjun

AIR 1950 Bom 75=51 Bom L R 850=20 Bom Cr C 103=51 Cr L J 404.

—S. 38.

——S. 38 — Prosecution for contravention of S. 178—Standing Committee is competent to accord sanction for prosecution. *See* Bombay Municipal Boroughs Act, 1925, S. 37

AIR 1950 Bom 75=51 Cr L J 404.

——Ss. 38, 58, 186 (2)—Power to delegate under S. 38—Whether applies to special functions allotted to standing committee—Power to Municipality to make rule delegating power or duty allotted by Act to standing committee to some other committee.

The power to delegate under S. 38, Bombay Municipal Boroughs Act is confined to the residuary powers of the Municipality exercisable by the standing committee and does not apply to special functions which are allotted to the standing committee under the Act. But under S. 58 (a) it is provided that a Municipality shall make rules not inconsistent with this Act regulating the conduct of its business and the delegation of any of its powers or duties to any

BOMBAY MUNICIPAL BOROUGHS ACT (XVIII of 1925), S. 38

committee or to the Chief Officer or the powers or duties of any committee to any other committee or to the Chief Officer. The section does in terms give power to Municipalities to make a rule delegating the powers or duties of one committee to another committee and under that section, the Municipality is competent to make a rule delegating a power or duty allotted by the Act to the standing committee to some other committee. (Beaumont C. J. and Wadia J.) Jesingbhai Chhaganlal Shah v. Emperor

AIR 1935 Bom 201=37 Bom L R 184=7 R B 505=1935 Cr C 588=156 I C 380=36 Cr L J 920.

—S. 80.

——Ss. 80, 81 — Individual notice under S. 81 proved—Presumption that notice under S. 80 was properly given.

If it is proved that individual notice was given under S. 81, Bombay Municipal Boroughs Act, the presumption as to official or legal acts under S. 114, Evidence Act, should be raised and it should be presumed that public notice was properly given of the assessment list, under S. 80, and that all formalities required for the proper assessment of the tax were followed by the Municipality. (Davis J. C. and Lobo J.) Jamnadas Tharoomal v. Emperor

A I R 1940 Sind 42 = 12 R S 223 = 187 I C 127 = 41 Cr L J 401 (2).

—S. 96.

——Intention to defraud must involve something in nature of cheating—*Bona fide* allegation that tax is not payable.

An intention to defraud, which no doubt generally has to be inferred from the conduct of the accused, must necessarily involve something in the nature of cheating. Section 96, Bombay Municipal Boroughs Act, and the bye-law made under it postulate that the Municipality is entitled to the tax, and anybody who seeks to deprive it of that tax by wrongful means can be charged. But a *bona fide* allegation that the tax is not payable, which allegation is subsequently proved to be ill-founded cannot justify a finding that there was an intention to defraud.

The applicant who was a contractor agreed to do certain work in connection with the Narbada Bridge, the bridge being just outside the limits of the Broach Municipality. Certain goods to be used in connection with the contract were consigned to the applicant at Broach Railway Station which was alleged by the prosecution to be within the terminal tax limits, and then those goods were sent on by rail to the Narbada Bridge siding which was outside the terminal tax limits. The applicant took delivery of goods at the siding without payment of terminal tax. The contention of the applicant was that he was not liable in respect of these goods for any terminal tax, since the goods were never in fact consigned to him, within the teminal tax limits, but were really consigned to him at the Narbada Bridge siding :

Held, that there was no reason whatever for thinking that the claim of the applicant to be exempt from the tax was not *bona fide*, and no intention to defraud was proved and that he was not guilty. (Beaumont C. J. and N. J. Wadia J.) Visram Valji v. Emperor

AIR 1935 Bom 162=37 Bom L R 102=1935 Cr Cas 322=8 R B 152=158 I C 1069=36 Cr L J 1511.

—S. 110.

——Ss. 110, 111 — Order by Magistrate under S. 110—Revision against—Nature of jurisdiction—Revision lies on civil side of High Court — Civil P. C. (1908), S. 115—Criminal P. C. (1898), S. 435 : A I R 1919 Bom 158=20 Cr L J 316, **Overruled.**

BOMBAY MUNICIPAL BOROUGHS ACT (XVIII of 1925), S. 110

Criminal Court may be constituted as a Court designata and civil jurisdiction may be conferred upon that Court. If a criminal Court exercises that jurisdiction, then it is not necessarily an inferior criminal Court within the meaning of the Criminal Procedure Code; and if a right of revision is given from a decision of such a Court, then that revisional application is civil in its character and not criminal. An application in revision made against an order of a Magistrate under S. 110, Bombay Municipal Boroughs Act, 1925, therefore, lies on the civil side and not on the criminal side of the High Court as the subject-matter of the decision of the Magistrate namely, rates and taxes is purely a civil matter : AIR 1919 Bom 158=20 Cr L J 316, **Overruled.** (Chagla C. J., Bavdekar and Shah JJ.) D'Monte v. Bandra, Borough Municipality

AIR 1950 Bom 397=52 Bom L R 537=I L R (1950) Bom 522=52 Cr L J 1411 (FB).

——Criminal Procedure Code, S. 435 — Further revision does not lie from revisional orders passed on order under S. 110.

There is no right conferred by the statute on any of the aggrieved parties to make a further application for revision against the order passed by the Sessions Court in revision of the order passed by the Magistrate on appeal, against a notice of demand, under S. 110, Bombay City Municipalities Act. (Patkar and Murphy JJ.) Ahmedabad Municipality v. Vadilal

AIR 1928 Bom 376=30 Bom L R 1084=112 I C 585 29 Cr L J 1081.

—S. 111.

——Order by Magistrate under S. 110—Revision against—Nature of jurisdiction — Revision lies on civil side of High Court—*See* ibid, S. 110

AIR 1950 Bom 397 (FB).

—S. 114.

——'Stop up' street does not cover case where Municipality authorises private person to build wall across public street for his own private purpose.

The Municipality is not the absolute owner of property which is vested in it as statutory body; the Municipality holds property as trustees and holds it for the purposes of the Act. Hence the power conferred for the purposes of the Bombay Municipal Boroughs Act to 'stop up' streets under S. 114 of the Act cannot be extended to cover a case, where the Municipality authorizes or rather purports to authorize, certain individuals to build a wall across a public street for their own purposes. (Davis C. J. and Weston J.) Chellaram Verhomal v. Emperor

AIR 1942 Sind 91=I L R (1942) Kar 90=15 R S 3=200 I C 741=43 Cr L J 714.

—S. 123.

——S. 123 (7) — A fence six feet in height consisting of wooden planks attached to posts embedded in the earth on the boundaries of a person's house is not a building as defined in S. 3 (2), not being 'wall' or 'enclosure.' Consequently, the erection of such a fencing without the permission of the municipality is not an offence under S. 123 (7). Merely because the wooden fence screens off completely the outer view, it cannot be regarded as an enclosure. (Broomfield and Wassoodew JJ.), Emperor v. Hasanbhai

AIR 1942 Bom 94=44 Bom L R 45=14 R B 383 = 199 I C 417=43 Cr L J 559

——S. 123 (5) — Municipality getting notice that accused is going to rely on S. 123 (5) — Municipality must allege what provisions of law accused has broken — Burden then

BOMBAY MUNICIPAL BOROUGHS ACT (XVIII of 1925), S. 123

shifts on accused to prove that he has not broken alleged provision of law.

As soon as the Municipality has notice that the accused is going to rely on S. 123 (5), Bombay Municipal Act, the Municipality must allege what provisions of the Act or bye-laws they say the accused has broken, which disentitles him to rely on S. 123 (5). When that allegation is made, the burden is upon the accused to prove that he has not committed the breach of the Act or bye-law as alleged. But unless the Municipality alleges a breach of some specific provision of the Act or bye-law, there is no issue on which any question of burden of proof can arise. The Court can go into the question of the right of the accused to rely on sub-s. (5) to S. 123, although it had no affirmative evidence that a particular provision of the Act or bye-laws had been broken. (Beaumont C. J. and Sen J.) Bhikhabhai Mortiram Adenwalla v. Emperor.

AIR 1942 Bom 28= 43 Bom L R 877=14 R B 282= 198 I C 120=43 Cr L J 313.

——S. 123 (7) and (5) — Prosecution under S. 123 (7)— Burden on accused to show that he comes within terms of S. 123 (5) and is relieved of the liability under S. 123 (7).

In the case of a prosecution under S. 123 (7), Bombay Municipal Boroughs Act, having regard to S. 105, Evidence Act, the burden is upon the accused, who relies upon the permission given to him by sub-s. (5) of S. 123 to prove that he comes within the terms of that sub-section and is thereby relieved of the liability which is otherwise upon him under sub-s. (7). It is a general provision which imposes the burden of bringing himself within an exception upon the person who relies upon the exception, and there is no distinction between a case in which the exception is contained in the body of the Statute imposing the prohibition and a case in which it is not so included. (Beaumont C. J. and Macklin J.) Emperor v. Dahyabhai

AIR 1941 Bom 273 = 43 Bom 519 = 14 R B 82 = 195 I C 825=42 Cr L J 783

——Notice—Whether can be endorsed on plan itself.

It is a proper notice to the Chief Officer as to work proposed to be constructed, to send a plan with the endorsement upon it saying that it was a plan as to the proposed drainage and septic tank. Notice need not be separate from the plan. It can be endorsed on the plan. (Beaumont C. J. and Divatia J.) Dhirajlal Dalsukhram v. Emperor

AIR 1938 Bom 186 = 40 Bom L R 67=10 R B 451= 174 I C 466 = 39 Cr L J 413

——Ss. 123, 137 — Notice of construction sent — Chief Officer not taking steps for one month — Consent, if presumed.

A building owner can proceed with the construction if even after a notice specifying the building sought to be constructed is given, the Chief Officer does not take any steps within a month in relation thereto ; the consent of the Chief Officer must, in such circumstances, be implied. (Beaumont C. J. and Divatia J.) Dhirajlal Dalsukhram v. Emperor.

AIR 1938 Bom 186 = 40 Bom L R 67 = 10 R B 451=174 I C 466=39 Cr L J 413.

——Reconstruction of a wall amounts to construction of a building.

Any material alteration or reconstruction of any wall amounts to a construction of a building within the meaning of S. 123, 35 Bom 236, Appr.; (1888) Rat Un-Cr C 402 and 35 Bom 412, Dist. (Patkar and Baker, JJ.) Emperor v. Chhotalal

AIR 1928 Bom 389 = 30 Bom L R 1082 = 112 I C 564=29 Cr L J 1060.

BOMBAY MUNICIPAL BOROUGHS ACT (XVIII of 1925) —S. 129.

——Notice not giving all particulars, if good.

The house-holder is entitled to know in the first instance what he is required to do, and the duty of the Chief Officer under S. 129 is to give a notice specifying the drain which he requires, stating the size, material, level and fall and a notice which does not comply with those requirements is not a good notice within S. 129. (Beaumont C. J. and Wassoodew J.) Emperor v. Trikamlal Keshavlal

AIR 1938 Bom 303 = 40 Bom L R 314 =11 R B 5= 175 I C 765 = 39 Cr L J 667

——Ss. 129, 193—Owner, if can be required to submit plan under S. 129 — Notice, requiring plan and to lay drain in accordance with it when passed—Plan not passed Notice, if proper — Owner, if can be convicted for its breach.

There is no power under S. 129, Bombay Municipal Boroughs Act, to require the owner of a building to submit a plan. Section 129 gives power to the Chief Officer to require something to be done, and it is for him to say what he requires to be done and not for the owner of the house or buildings to submit proposals. Where in a case the only notice given is to submit a plan, and then lay a drain in accordance with the plan when passed, and the plan is not passed, there is no proper notice within S. 129, and therefore the owner cannot be convicted under S. 193 for the breach of S. 129. (Beaumont C. J. and Wassoodew J.) Emperor v. Trikamlal Keshavlal

AIR 1938 Bom 303 = 40 Bom L R 314= 11 R B 5= 175 I C 765 = 39 Cr L J 667.

—S. 137.

——Ss. 137, 123 — Proper notice given — Building and drains constructed—Drains, if can be ordered to be demolished.

Municipality cannot order the drain to be demolished under S. 137, Bombay Municipal Boroughs Act, where the building including these drains has been built properly under sub-s. (5) of S. 123, after a proper notice under S. 123. (Beaumont C. J. and Divatia J.) Dhirajlal Dalsukhram v. Emperor

AIR 1938 Bom 186 = 40 Bom L R 67=10 R B 451= 174 I C 466 = 39 Cr L J 413.

—S. 149.

——House in ruinous or dangerous state — Option to take down house.

The wording of S. 149, sub-s. (2), Bombay Municipal Boroughs Act, is capable of the construction that the option is to rest with the Chief Officer of determining whether the house ought to be taken down, secured, or repaired, and that construction is the one most consonant with the general purpose of the section, and the option does not rest with the owner of the property. Consequently, a notice given by the Chief Officer requiring a person to take down the house is a good notice under S. 149, (Beaumont C. J. and Barlee J.) Bastiao, Andradez v. Emperor

AIR 1934 Bom 213 =36 Bom L R 430=6 R B 415= 1934 Cr Cas 760 = 149 I C 1129=35 Cr L J 1036 (2).

—S. 152.

——S. 152 (1) (a) — Introducing into street lorry on wheels with goods for sale is not setting up stall within S. 152 (1) (a).

Introducing into a street a lorry on wheels with goods for sale upon it does not amount to setting up a stall within S. 152 (1) (a). That sub-section deals with making some form of addition or annex more or less permanent, to a building in the street. It is directed against the man who has a shop or house in the street, and who

BOMBAY MUNICIPAL BOROUGHS ACT (XVIII of 1925), S. 152

encroaches upon the street by making some sort of addition to his house or shop. (Beaumont C. J. and Wassoodew J.) Emperor v. Hasam Mamad,

A I R 1940 Bom 378 = 42 Bom L R 785 = I L R (1940) Bom 774=13 R B 149=191 I C 465=42 Cr L J 164.

——Ss. 152 (1) (b), 3 (21)—Phrase "or any other thing" in S. 152 (1) (b), whether includes vehicle — Hand lorry, if falls within S. 3 (21).

The words "or any other thing" in S. 152 (1) (b) must be read ejusdem generis as the words "box, bale, package or merchandise." Those words do cover merchandise, and things in which merchandise can be packed, and any other thing must be of the same kind or genus and does not include a vehicle. A motor car or a motor lorry or a horse-drawn or hand-propelled vehicle though containing merchandise and left standing in a street, cannot be said to come within the section. (Beaumont C. J. and Wassoodew J.) Emperor v. Hasam Mamad,

A I R 1940 Bom 378 = 42 Bom L R 785 = I L R (1940) Bom 774=13 R B 149=191 I C 465=42 Cr L J 164.

—S. 159.

——Applicability—Essentials.

Under S. 159, it has got to be proved, firstly, that the accused is a person who has the building or land under his control; secondly, that he allowed the water to run upon any street, land or space, and thirdly, that the water was or was likely to become offensive. Waste water of the bleaching and dyeing departments of a mill would not necessarily be offensive or likely to become offensive in the absence of any proof. (Broomfield and Wassoodew JJ.) Emperor v. Champaklal Chunnilal Banker,

A I R 1941 Bom 156=43 Bom L R 110=13 R B 370 =194 I C 345=42 Cr L J 571.

——Waste water of dyeing and bleaching department of mill—Secretary of mill is not as such liable to be convicted under S. 159 as having control over premises.

The secretary of a mill is not as such liable to be convicted under S. 159 as being in control of the premises. Prima facie, the secretary of a mill would be a person to attend to the office and clerical work, but he would certainly not be a person to control the working of the mill or to see in what manner the waste water is to be discharged. That would be for the manager. If the secretary of the mill has control of the mill, there ought to be evidence to that effect. (Broomfield and Wassoodew JJ.) Emperor v. Champaklal Chunnilal Banker,

A I R 1941 Bom 156=13 R B 370=43 Bom L R 110 =194 I C 345=43 Cr L J 571.

—S. 167.

——"Cover over" and "fill up"—Applicability — Power to order levelling of low-lying land.

The words "cover over" in S. 167, were not intended to apply to land. The words "drain off" are the only ones which might be appropriate to cls. (a), (b) and (c) alike. It is by no means clear, therefore, that the words "fill up" were intended to apply to the land on which water accumulates. No doubt they would properly apply to filling up holes or depressions in a plot of land. It is extremely doubtful whether they would apply or could have been intended to apply to filling up in the sense of raising the level of a large area of land which is naturally low-lying land. The power to order levelling of this kind is on the face of it so harsh and oppressive that one cannot suppose that the Legislature intended to confer this power unless the language of the section is perfectly clear. (Broomfield and Sen JJ.) Emperor v. Don Fillius D'Silva

A I R 1937 Bom 165=39 Bom L R 77=9 R B 363= 168 I C 199=38 Cr L J 535.

——"Or to take away. . . . . shall prescribe", whether empowers levelling of low land on which water accumulates.

The words "or to take such order with the same for removing or abating the nuisance as the Chief Officer shall prescribe" in S. 167, must be considered with their context. Even under this clause it cannot be supposed that the Chief Officer has power to order levelling of a low-lying land on which water accumulates. (Broomfield and Sen JJ.) Emperor v. Don Fillius D'Silva

A I R 1937 Bom 165=39 Bom L R 77=9 R B 363= 168 I C 199=38 Cr L J 535.

——Nuisance—Opinion of Chief Officer — Production of notice signed by him.

Under S. 167 of the Bombay Municipal Boroughs Act what is required is that Chief Officer should be satisfied of the existence of a nuisance, because he is given power to issue the notice there provided for if in his opinion a nuisance exists. It is not necessary, therefore, that it should be proved by evidence that a nuisance exists in fact. It is, however, necessary that the opinion of the Chief Officer should be properly proved and it is not sufficiently done by the mere production of a notice signed by him. (Broomfield and Sen JJ.) Emperor v. Don Fillius D'Silva

A I R 1937 Bom 165=9 R B 363=39 Bom L R 77= 168 I C 199=38 Cr L J 535.

—S. 178.

——Prosecution for contravention of S. 178 — Standing Committee is competent to accord sanction for prosecution—See Bombay Municipal Boroughs Act, 1925, S. 37,

A I R 1950 Bom 75=51 Cr L J 404.

—S. 186.

——S. 186 (2)—Penalty, in anticipation of repetition of offence—Daily penalty.

A daily penalty under S. 186 (2), Bombay Municipal Boroughs Act cannot be imposed in anticipation of a repetition of the offence. The words of Cl. (2) of S. 186 of the Act are not so clear as to express a definite intention of the Legislature that an order of fine for future continuance of the nuisance must necessarily be passed in the same order as that which records the first conviction. Therefore, on the principle that a person should not be punished in anticipation of the commission of an offence, it is necessary in every case where a fine for continuance of the offence is sought to be imposed, for a fresh prosecution to be instituted. There must be a conviction for a previous breach and then a subsequent conviction for continuing the breach after the date of that first conviction before the daily penalty under S. 196 (2) can be imposed. (Davis C. J. and Weston J.) Tulsimal Tekchand v. Emperor,

A I R 1942 Sind 78 = I L R (1942) Kar 5 = 14 R S 214=200 I C 340=43 Cr L J 700.

BOMBAY MUNICIPAL CORPORATION ACT (III of 1888)

See Bombay City Municipal Act (III of 1888)

BOMBAY NATIVE PASSENGER SHIPS ACT, (X of 1887)

—S. 9.

——Ss. 9, 10 and 31 — 'Voyage' includes both outward and return journey — Ships carrying passenger — Certificate "A."

BOMBAY NATIVE PASSENGER SHIPS ACT (X of 1887), S. 9

The accused's steamer, left Bombay for Goa with passenger and back again to Bombay. He had a certificate 'A' as required by Ss. 9 and 10 of the Act but it had expired by the time of the return journey and he was charged for an offence under S. 31 of the Act. *Held*, he could not be convicted, as 'voyage' includes both the outward and the return journey and the certificate he had was enough. (Macleod C. J. and Shah J.) Emperor v. Machad,

AIR 1922 Bom 167=23 Bom L R 1200=69 I C 91 = 46 Bom 438=23 Cr L J 651.

BOMBAY PLEADERS' ACT (XVII of 1920)

——Mukhtyar—Cr. P. Code, S. 4 (1) (r) — Legal Practtioners' Act (XVIII of 1879), Ss. 6, 7 and 10.

In Bombay Presidency "Mukhtyar" is a person who can with the permission of the Court represent an accused in any proceeding within the meaning of S. 4 (1) (r), Cr. P. Code, and so a general order of a District Magistrate against employment of Mukhtyars in criminal cases in his district is improper. (Patkar and Baker JJ.) In re Bajirao Aboji Kulkarni,

AIR 1928 Bom 33=113 I C 402=29 Bom L R 1587= 107 I C 56=9 A I Cr R 403=29 Cr L J 226.

—S. 25.

——Accepting brief on both sides — Professional misconduct.

Where a Pleader presents a *vakalatnama* on behalf of an accused and on his behalf argues an application for bail, and at the hearing he presents another *vakalatnama* on behalf of the complainant but when the facts are brought to his notice, applies for the withdrawal of the second *vakalatnama*, the Pleader is guilty of professional misconduct and should be severely reprimanded. (Murphy Ag. C. J. and Macklin J.) Government Pleader, Bombay v. Romanlal,

AIR 1935 Bom 71=26 Bom L R 1225=7 R B 326 = 1935 Cr Cas 133=154 I C 335=36 Cr L J 507.

——Criticism pending trial in public meeting — Disciplinary action can be taken.

While certain persons were on their trial a resolution moved by the second and supported by the third opponent was passed under the presidentship of 1st opponent, a Dist. Pleader congratulating them upon their 'sacrifice.' *Held*: The main ground upon which the present opponents have transgressed the limits of proper conduct as pleaders appears to lie in the fact that they in a meeting assembled took part in the passing of a resolution which, in its effect would amount to a criticism of the pending proceedings. The opponents acted improperly in being parties to a resolution of this character. Anything done or said which may amount to criticism of any proceedings pending in a Court of Justice is calculated to hinder the even and impartial administration of justice. Pleaders have privileges, but they have responsibilities also, and a pleader who acts so as to hinder and embarrass the administration of justice is guilty of "improper conduct" within the meaning of those words as used in S. 26, Bombay Pleaders Act and such conduct furnishes "reasonable cause" for the exercise of disciplinary jurisdiction under S. 25. (Shah C. J. and Crump J.) Government Pleader High Court Bombay v. Vinayak Balvant,

AIR 1922 Bom 361 = 47 Bom 117 = 76 I C 78 = 24 Bom L R 1049

BOMBAY POLICE ACT (XXII of 1951)

—S. 56.

——Investing Addl. Distt. Magistrate with powers of Distt. Magistrate under future legislation — *See* Criminal P. C., S. 10 (2).

AIR 1953 Bom 401=1953 Cr L J 1576.

BOMBAY POLICE (DUTIES AND POWERS OF MAGISTRATES REGULATION (XII of 1827) —S. 27.

——Notice—Necessary conditions—Criminal P. C., 1898, Chap. VIII—It is only after proceedings have been taken against each person individually under Chap. VIII Criminal P. C., that a notice under S. 27 of the Regulation can be issued, and it is only on the failure of the accused to furnish security under that chapter that the restrictions mentioned in the latter half of S. 27 of the Regulation can be enforced and that too with the assent of the accused person. (Russell and Chandavarkar JJ.) Emperor v. Gahina *kom* Babaji,

7 Bom L R 459=2 Cr L J 433,

BOMBAY PREVENTION OF ADULTERATION ACT (V of 1925) —S. 4.

——S. 4 (1) (a) — Accused selling vinegar produced not by fermentation but by diluting acetic acid with water.

The question whether the particular article sold was not of the nature, substance or quality demanded so as to contravene the provisions of S. 4 (1) (a) of the Act, is a question of fact to be determined on the evidence.

The prosecution examined an analyzer who said that "vinegar" was the product of fermentation or brewing and that the substance sold by the accused was "artificial" or synthetic vinegar produced not by fermentation or brewing but merely by diluting acetic acid with water. The defence produced no evidence whatever:

Held, that the Magistrate was justified in finding the accused guilty under S. 4 (1) (a), Bombay Prevention of Adulteration Act. (Lobo J. C. and O'Sullivan J.) Parsram Tekchand v. Emperor,

AIR 1940 Sind 127 =ILR (1940) Kar 282=13 R S 54 =190 I C 159= 41 Cr L J 839.

——Alleged adulterated *ghee* taken from shop where sweetmeats were offered for sale—Presumption.

Section 4, Bombay Prevention of Adulteration Act, does not apply only to the sale of *ghee* simply as such but applies also to the sale of articles of food of which it is a necessary ingredient. The words of the section are wide enough to include articles of food which contain *ghee* mixed with other substance.

The fact that this *ghee* was taken from a shop where sweetmeats and *pakoras* were offered for sale, and indeed from a frying-pan in which other sweetmeats and *pakoras* were being made, makes it quite clear that the presumption apart, the admission of the accused himself apart, the sweetmeats and *pakoras* in his shop had been manufactured for sale within the meaning of S. 4 (1) (b) of the Act and that he was manufacturing and offering for sale sweetmeats and *pakoras* as containing pure *ghee* which contained the alleged impure *ghee*. (Davis J. C. and Tyabji J.) Nebhandas Hollaram v. Emperor,

AIR 1939 Sind 337=ILR (1940) Kar 91=12 R S 192 =185 I C 832=41 Cr L J 246.

——Burden to show that article is adulterated.

It is true that the burden of proof that the article of food is adulterated lies upon the prosecution, but that burden may in effect be assisted or even completely discharged by the admissions of the accused himself. (Davis J. C. and Tyabji J.) Nebhandas Hollaram v. Emperor,

AIR 1939 Sind 337=ILR (1940) Kar 91=12 R S 192 185 I C 832= 41 Cr L J 246.

— Ss. 4 (1), 3 (a), 4 (4) — Accused relying on defence of warranty— Whether entitled to adjournment for the purpose—Duty of prosecution.

Persons accused under the Bombay Prevention of Adulteration Act must realize that if they rely upon the defence of warranty they must prove it, and that they

BOMBAY PREVENTION OF ADULTERATION ACT (V of 1925), S. 4

must have their witnesses present at the date of hearing. They are not entitled to adjournments as of right for this purpose.

But they can be excused if they fail to state clearly their defence of warranty before the close of prosecution case, if neither the summons served on them nor the evidence for the prosecution makes it clear as to what case the accused has to meet. (Davis J. C. and Lobo J.) Choithram Menghraj v. Emperor,

AIR 1938 Sind 70=10 R S 269= 32 Sind L R 684= 174 I C 685=39 Cr L J 474.

——Ss. 4 (1), 3 (a), 4 (4) (a), 13 — Conviction under S. 4 (1), whether good.

Section 4 (1), Bombay Prevention of Adulteration Act contemplates three separate and distinct offences, under cls. (a), (b) and (c) respectively and a conviction under S. 4 (1) generally is bad in law. (Davis J. C. and Lobo J.) Choithram Menghraj v. Emperor,

A I R 1938 Sind 70 = 10 R S 269=32 Sind L R 684 =174 I C 685=39 Cr L J 474.

——S. 4 (1) (a)—Proprietor, a sleeping partner—Liability of—Purchase by public officer as such.

A proprietor of a shop is liable for the sale of adulterated food sold in his shop even when he is a sleeping partner, for it is not only the actual salesman who is responsible and who can be convicted under the Act for sale of adulterated food.

Even when a purchaser of adulterated food is a public officer, an offence under S. 4 (1) (a), 'Bombay Prevention of Adulteration Act, is committed in respect of adulterated food purchased by him as such public officer. (Davis J. C. and Lobo J.) Gobindram Jamiatrai v. Karachi Municipal Corporation,

A I R 1938 Sind 218=I L R (1939) Kar 191=11 R S 80=178 I C 119=40 Cr L J 7.

——Ss. 4 (4) (b), 5—Warranty, proof of.

Under S. 4 (4) (b), Bombay Prevention of Adulteration Act, it is the rule, that a warranty must be proved by the personal attendance in Court of the person by whom or on whose behalf it was given, and it may well be that this provision of S. 4 (4) (b) is to be read with S. 5, whereby provision is made for the punishment of the warrantor, in case a false warranty is given. It is the rule that the warrantor must personally attend in Court, and it is only in exceptional cases that he should not do so. (Davis J. C. and Lobo J.) Girdharilal Mohanji v. Emperor,

A I R 1938 Sind 72=10 R S 257=32 Sind L R 659= 174 I C 542=39 Cr L J 477.

—S. 12.

——S. 12 (1) — Complaint addressed to Bench of Magistrates as such — Verification of complaint signed by one Magistrate only.

In Hyderabad (Sind) the Magistrates who constitute the "B" Bench are Magistrates of the Second Class only when sitting together as a Bench and when sitting singly they are Magistrates only of the Third Class.

Where the record shows that the complaint was addressed to a Bench of Magistrates as such, from the mere fact that upon the verification of the complaint itself, there is only the signature of one Magistrate, it by no means follows that two agistrates were not present sitting as a Bench in the case. (Davis J. C. and Mehta J.) Lilaram Ladakmal v. Wadhumal Assudomal,

A I R 1938 Sind 209=I L R (1939) Kar 230=11 R S 100=178 I C 648=40 Cr L J 122.

BOMBAY PREVENTION OF ADULTERATION ACT (V of 1925)

—S 13.

——Accused must be told what he is said to have done which he ought not to have done.

In giving the particulars of the offence charged, it is better to set out the title of the Act and not merely an abbreviation, with which a particular accused may or may not be familiar. But in any case it is not enough merely to say that the offence has been charged under a particular section. The accused must be told what he is said to have done which he ought not to have done i. e., that he sold or offered or exposed for sale as eatable ghee a substance which was not eatable ghee. He must be told what the offence charged is, and that is particularly necessary under the Bombay Prevention of Adulteration Act, because under sub-s. (3) of S. 4 the seller may rely on a statutory defence, but he must give notice of that defence within three days of the service of the summons. If he does not know the particulars of the offence, it may be quite impossible for him to determine whether or not he can rely on the statutory defence. (Beaumont C. J. and Wassoodew J.) Emperor v. Shamlal Jamandas,

A I R 1941 Bom 19=42 B m L R 1028=13 R B 252 =192 I C 277=42 Cr L J 271.

——S. 13 (1) — Summons not applied for within 30 days of granting of certificate by analyst.

Section 13, Bombay Prevention of Adulteration Act, should be considered separately as regards its two subsections because sub-s. (1) relates to a condition of time, and that if it can be shown that a summons was not applied for within 30 days of the date of the grant of the certificate by the public analyst that would be fatal to the prosecution case, for time once gone is gone byond recall. This is not a mere irregularity which can be cured. It is a fatal defect in the proceedings in limine. (Davis J. C. and Mehta J.) Lilaram Ladakmal v. Wadhumal Assudomal,

A I R 1938 Sind 209=11 R S 100=I L R (1939) Kar 230=178 I C 648=40 Cr L J 122.

——S. 13 (2)—Omission of date from summons.

Although it is desirable indeed that the provisions of S. 13 (2), Bombay Prevention of Adulteration Act, should be closely followed, that the name of the complainant should be given, the name and place fixed for hearing should be shown, it cannot be held that if, for instance, the date be omitted from the summons, that could be said to be a fatal flaw in the proceedings. All that can be said is that it is an irregularity which can be cured if necessary, by an issue of amended summons and by the Magistrate allowing such adjournment as the omission of any particular from the summons may seem to require so as to give the accused the notice in the summons to which he is entitled. (Davis J. C. and Mehta J.) Lilaram Ladakmal v. Wadhumal Assudomal,

A I R 1938 Sind 209=11 R S 100=I L R (1939) Kar 230=178 I C 648=40 Cr L J 122.

— S. 14.

— Ss. 14, 16 — Accused, if can exercise his right to insist upon public analyst to be summoned and examined as witness even before accused leads evidence in defence —Presumption under S. 14 (1), whether applies to certificate of public analyst produced by accused.

Per N. J. Wadia J.—There is nothing in the language of Ss. 14 and 16, Bombay Prevention of Adulteration Act, to suggest that the ordinary rule with regard to the burden of proof in a criminal trial is to be departed from. Section 14 does not deal with the procedure to be followed in a trial under the Act : it merely lays down a rule of evidence and allows a presumption to be drawn. Section 16 nowhere says that the accused's right to insist

BOMBAY PREVENTION OF ADULTERATION ACT (V of 1925), S. 14

upon the public analyst being summoned and examined as a witness is to be exercised only after the accused has led evidence in his own defence challenging the correctness of the public analyst's certificate. The language of the section on the contrary appears to show clearly that it is open to the accused at the commencement of the trial, as soon as he is accused of the offence, to require the Court to summon the public analyst as a witness, and the section provides that if the accused deposits the requisite amount in Court, he is entitled as of right to have the public analyst called as a witness. (Broomfield and N. J. Wadia JJ.) Haridas Vallab Das v. Bombay Municipality,

A I R 1937 Bom 364=10 R B 141=39 Bom L R 629 =ILR (1937) Bom 751=170 I C 867=38 Cr L J 975.

——Per Broomfield J.—Section 14 (1) of the Act applies to any certificate of a public analyst and not only to a certificate on which the prosecution is based. There is no necessary connection between it and S. 16. The rebuttable presumption under S. 14 (1) will equally apply to a certificate of a public analyst produced by the accused himself. (Broomfield and N. J. Wadia JJ.) Haridas Vallab Das v. Bombay Municipality,

A I R 1937 Bom 364=10 R B 141=39 Bom L R 629 =ILR (1937) Bom 751=170 I C 867=38 Cr L J 975.

——Ss. 14 and 16—Evidence of public analyst—Right of accused to cross-examine — Prior condition of deposit of fees before summoning him.

Section 14 of the Bombay Prevention of Adulteration Act, has conferred upon the certificate of a public analyst a special privilege. It is provided that the production of such a certificate shall, until the contrary is proved, be sufficient evidence of the facts therein stated. This provision confers a privileged position on these certificates, but that privilege must not be so far extended as to deprive the accused person of the ordinary right to which every person accused of any offence is always entitled. He has a right to cross-examine any witness whom the prosecution has produced against him. This right is not to be taken away because for special reasons a public analyst has been allowed to give his evidence in writing and not by word of mouth. This the Act itself expressly provides. It confers upon the accused person the right to require the Court to summon the public analyst as a witness and it lays upon the Court the duty of summoning that witness accordingly, and this obligation cannot be defeated by imposing as a prior condition the deposit of a prohibitive fee. (Ferrers J. C. and O'Sullivan A. J. C.) Haji Gokal Jetha v. Emperor,

A I R 1935 Sind 5=1935 Cr Cas 46=7 R S 162=154 I C 514=36 Cr L J 571.

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887).

——Gaming in public place—Essentials.

When the Courts are concerned with a particular form of gaming made punishable under the Act and the charge is based on one of the ancillary acts in the definition, some connection ought to be shown between that act and the particular form of gaming which is the subject of the charge. The words "intended to aid or facilitate the various acts described" must be read as ancillary to the general words of the definition. Before convicting a man of aiding or facilitating an act it must be shown that that act has taken place and that it is an offence. If it be proved that gaming has taken place in a public place, then anyone who is shown to have aided or facilitated such gaming is guilty, although he has not himself taken part in the actual gaming. But it is impossible to convict

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887)

a person under the statute of aiding or facilitating in act when the act itself which he has aided or facilitated is not shown to be a criminal act. But if the charge is gaming in a public place and the only act alleged is one which facilitates the distribution of profits of some other kind of gaming, the ancillary act cannot be said to form part of the offence charged, unless it is an overt act which itself amounts to gaming in public place within the intendment of the section. To put in a nutshell, though the distribution of the winnings of gaming and any act facilitating the same is a gaming, it is not gaming in a public place, unless (a) the winnings are the winnings of gaming in a public place, in which case the mischief aimed at has been committed somewhere, or (b) the distribution or ancillary act is itself public. (Beaumont C. J. Broomfield and Norman JJ.) Emperor v. Somabhai Govindbhai,

AIR 1938 Bom 484=40 Bom L R 1082 = 11 R B 176 =I L R (1939) Bom 53 = 170 I C 588 = 40 Cr L J 97 (FB).

——Applicability of, to Delhi.

Bombay Prevention of Gambling Act applies to Delhi. (Addison J.) Ram Sahai v. Emperor,

AIR 1934 Lah 760=1934 Cr Cas 1121 (1)=35 P L R 614=7 R L 440=153 I C 443 (1)=36 Cr L J 418.

——Arrest by Police-officer authorized to arrest by Commissioner of Police and in his presence though not within view is not illegal.

Where the arrests by a Police-officer are under the express authority of the Commissioner of Police and in the presence of the Commissioner, though not within his view, the arrests by the Police-officer are not illegal. (Patkar and Wild JJ.) Emperor v. Ismail Hirji,

AIR 1930 Bom 49=124 I C 106=31 Bom L R 1349= 1930 Cr C 113=54 Bom 146=31 Cr L J 633.

——Complaint on oath may be oral or in writing—It need not be recited in warrant—Issuing of warrant raises presumption that complaint was on oath.

The complaint on oath referred to in S. 6 does not appear necessarily to be a complaint in writting on the filing of which process is to issue as in ordinary criminal trials. It may be either oral or in writing. It is not necessary that it should be recited in the warrant or set out in any complaint that may be subsequently filed before the Magistrate. The fact that the warrant has been issued would raise a presumption that omnia rite esse acta. (Mirza and Baker JJ.) Tribhowan Motiram v. Emperor,

AIR 1929 Bom 74=53 Bom 137 = 31 Bom L R 53= 117 I C 434=30 Cr L J 794.

——Cr. P. Code, S. 98 — Special warrant cannot be endorsed to another officer.

The special warrant when issued authorizes the officer or officers named therein to do all the things that are detailed in the warrant. It cannot be endorsed over to any other police-officer of similar rank. The only person who can execute such a warrant is the officer who is named in the warrant. (Mirza and Baker JJ.) Emperor v. Thavarmal Rupchand,

AIR 1929 Bom 157=31 Bom L R 158 = 53 Bom 367 =116 I C 251=12 A I Cr R 466=30 Cr L J 595.

——Specific evidence that game played was one of luck and not of skill must be given in doubtful circumstances, e. g., playing cards by respectable persons.

There is no doubt a presumption from the use of instruments of gambling like cards that gambling has taken place, yet where the circumstances are ambiguous,

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887)

it is more desirable that there should be some evidence that game actually being played at the moment was not a game of skill but of chance and that in view of the number and position and the income of players the game was one where loss might be the result not of lack of skill but of lack of luck which is the essence of the offence of gambling. (Kennedy J. C. and Rupchand Bilaram A. J. C.) Tillockchand v. Emperor,

AIR 1926 Sind 65=20 S L R 66=89 I C 396=26 Cr L J 1356.

——Common gaming house—Probability of profit to the owner is sufficient.

To prove that a particular house, room or place is common "gaming house" it need not be established that the owner or occupier takes a fixed commission which is irrespective of the result of gaming, or that he manipulates the conditions in such a manner that he cannot possibly lose. It is sufficient if the house is one in which instruments of gaming are kept or used for the profit or gain of the person keeping or using such place, i. e., where the person keeping or using the house knows that profit or gain will in all probability result from the use of the instrument of gaming. The profit or gain may not actually result from such use. But if profit or gain is the probable and the expected result of the game itself and if that is the purpose of keeping or using the instruments, it would be sufficient to bring the case within the scope of the definition. 23 Cr L J 196, Diss. (Shah Ag. C. J. and Coyajee J.) Emperor v. Dattatraya Shankar,

AIR 1924 Bom 184=47 Bom 960=25 Bom L R 1089 77 I C 995=25 Cr L J 531.

—S. 1.

——Applicability of Act to Kutch—Kutch (Application of Laws) Order 1948, S. 4.

Held after consideration of the relevant provisions of the Kutch (Application of Laws) Order, 1948, that it is necessary before the provisions of the Bombay Prevention of Gambling Act can be enforced in any part of Kutch that they should be applied by the Chief Commissioner by means of a Notification published in the Gazette. (Baxi J. C.) Osman Alarakhya v. Kutch State,

AIR 1951 Kutch 9.

—S. 3.

——Ss. 3 and 4—Common gaming house, proof of — Expectation of profits—Effect.

The words "or in any other manner" cannot be regarded as restricting the profit or gain of the owner or occupier of the house to profit or gain in a manner ejusdem generis with what precedes those words. Consequently, even the hope of making a profit out of the gambling itself is sufficient to satisfy the requirements of the definition of common gaming house. It may happen that the occupier of a house may allow it to be used by the public for gambling and he himself may take part in it in the hope of making a profit although he may not necessarily make it every time. Such a hope is sufficient to make the house a gaming house and the occupier is liable for keeping such a house. (Divatia and Lokur JJ.) Emperor v. Chiman Lall,

AIR 1945 Bom 305=47 Bom L R 75=1946 Bom Rul 40 (C N 7)=221 I C 18=47 Cr L J 109.

——"Using or keeping," meaning of.

The expression "using or keeping" in S. 3 means having a right to use or keep as in S. 4 (a) and if the accused is not a person having a right to use the passage then it would be irrelevant to prove that he is making a profit out of the gaming carried on there. To bring the case within the definition under S. 3 it is necessary to show

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 3

that profit was to be made for the person owning, keeping or using the passage. (Beaumont C. J. and Sen J.) Ibrahim Haji-Abdul Rahiman v. Emperor,

AIR 1940 Bom 129=42 Bom L R 161=12 R B 508= ILR (1940) Bom 322=188 I C 316=41 Cr L J 571.

——Ss. 3, 5, 7 — Person caught actually taking bets over telephone—Conviction under S. 5.

Section 3, Bombay Prevention of Gambling Act makes "gaming" within the meaning of the Act the collection or soliciting of bets, and it makes no difference if these bets are brought by a messenger or person or sent by telephone or sent and received by telephone. It is gaming within the definition of S. 3, and in S. 7 the word "persons," includes "person", the plural includes the singular. Therefore, a person caught actually in the act of taking bets over the telephone can be rightly convicted of gaming under S. 5. (Davis J. C.) Bhagwandas Ghanshamdas v. Emperor

A I R 1940 Sind 28=12 R S 219=I L R (1940) Kar 150=187 I C 78=41 Cr L J 399.

——Passage, if can be common gaming house.

A passage may be a place within the meaning of the Bombay Prevention of Gambling Act. A passage may also no doubt be a common gaming house if it otherwise satisfies the definition of such a place. (Broomfield Ag. C. J. and Sen J.) Krishanji Madhusudan v. Emperor

AIR 1940 Bom 18=41 Bom L R 1114=12 R B 338= 186 I C 242=41 Cr L J 273.

——Ss. 3, 4 (a)—Word "using" in S. 3 and words "having the use of" in S. 4 (a), meaning of.

According to the ejusdem generis rule of construction, the word "using" in S. 3 should connote some sort of right or some sort of possession. The words "having the use of" in S. 4 (a) imply something more than mere using even though the use may be habitual. (Broomfield Ag. C. J. and Sen J.) Krishnaji Madhusudan v. Emperor.

AIR 1940 Bom 18=41 Bom L R 1114=12 R B 338= 186 I C 242=41 Cr L J 273.

——S. 3 (a) — Persons performing operations necessary for gaming.

Persons taking part in operations to enable the game to be played, such as giving instructions to those who come to participate in it, etc., must be deemed to be gaming within the provisions of the Bombay Prevention of Gambling Act, as they actually assist in the gaming. (Davis J. C. and Mehta A. J. C.) Muhammad Hassan v. Emperor

AIR 1937 Sind 99=31 S L R 44=9 R S 255=169 I 35=38 Cr L J 668.

——Betting slips with numbers employed in satta gambling—Whether instruments of gaming.

Betting slips with numbers on it employed in satta gambling are instruments of gaming. (Addison J.) Ram Sahai v. Emperor

A I R 1934 Lah 760 = 35 P L R 614 = 1934 Cr Cas 1121 (1)=7 R L 440=153 I C 443 (1) = 36 Cr L J 418.

——Marked coin—If instrument of gaming.

A marked coin proved to have been used for the purpose of making a bet is an instrument of gaming within the meaning of S. 3 of the Bombay Prevention of Gambling Act. (Beaumont C. J. and Broomfield J.) P. X. D'Souza v. Emperor

AIR 1932 Bom 180=34 Bom L R 286=56 Bom 200= Ird Rul (1932) Bom 236 = 1932 Cr Cas 239 = 137 I C 188=33 Cr L J 404.

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 3

——S. 3 (6)—Money, whether means of gaming.

The words 'means of gaming' in S. 3 (6), are very wide, and money is generally a means of gaming, though all moneys are not instruments of gaming. If a particular coin or currency note has, in fact, been used as means of gaming, then that particular coin or currency note falls within the definition of "instruments of gaming'. (Beaumont C. J. and Broomfield J.) Pyarelal Gokulprasad v. Emperor

A I R 1932 Bom 194=34 Bom L R 278=56 Bom 192 =Ind Rul (1932) Bom 238=137 I C 181=33 Cr L J 385.

——Ss. 3, 4 and 6 — Scope — Passage surrounded by building appropriated for betting business — Passage is "place" within Ss. 3, 4, and 6.

Where the passages are surrounded by buildings and are closed at night by doors and the accused have appropriated them for the business of betting, the business of betting is localized and this localization converts the passage into a "place," within the meaning of Ss. 3, 4 and 6, 37 Bom 651, Rel. on. Powell v. Kempton Park Race Course Co., (1899) A C 143; Eastwood v. Miller, (1874) 9 Q B 440 and Brown v. Patch, (1899) 1 Q B 892, Ref. (Patkar and Wild JJ.) Emperor v. Ismail Hirji

A I R 1930 Bom 49 = 31 Bom L R 1349=1930 Cr C 113=54 Bom 146=31 Cr L J 633.

——Betting.

A bet need not be as regards the issue of a future uncertain event and may be upon a past event, e. g., whether a particular horse won a race in a certain year. In such a case the bet is upon the accuracy of the information, belief or memory of the parties and the event is the proof that one or the other was accurate. A person may bet against what he believes the issue will be, e. g., a man may bet against a horse which he believes will win in order to secure himself against loss in either event. Thacker v. Hardy (1878) 4 Q B D 685; Carlill v. Carbolic Smoke Ball Co., (1892) 2 Q B 484, Rel. on. (Patkar and Wild JJ.) Emperor v. Ismail Hirji

AIR 1930 Bom 49=31 Bom L R 1349=1930 Cr C 113 =124 I C 106=54 Bom 146=31 Cr L J 633.

——Instrument of gaming—Public Gambling Act (1867), S. 1—Books of record are instruments of gaming.

Books used for the purpose of registering or recording any gaming transaction would fall within the definition of "instruments of gaming". 6 Bom L R 249; 29 Bom 264; and 40 Bom 263, Rel. on. A register or record of transactions in American Futures was held to be an instrument of gaming. 28 Bom 616, Dist.; so also a book which contained a register of Kacha Khandi transaction and Teji Mandi transactions. A I R 1922 Bom 408 and 37 Bom 264, Ref.; 24 Bom 227, Rel. on.; Thacker v. Hardy, (1878) 4 Q B D 685, Dist. (Mirza and Baker JJ.) Emperor v. Thavarmal Rupchand

A I R 1929 Bom 157=53 Bom 367=116 I C 251=31 Bom L R 158=12 A I Cr R 466=30 Cr L J 595.

——Common gaming house — Probability of profit to the owner is sufficient.

To prove that a particular house room or place is common "gaming house" it need not be established that the owner or occupier takes a fixed commission which is irrespective of the result of gaming or that he manipulates the conditions in such a manner that he cannot possibly lose. It is sufficient if the house is one in which instruments of gaming are kept or used for the profit or gain of the person keeping or using such place, i. e., where the person keeping or using the house knows that profit or gain will

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 3

in all probability result from the use of the instrument of gaming. The profit or gain may not actually result from such use. But if profit or gain is the probable and the expected result of the game itself and if that is the purpose of keeping or using the instruments., it would be sufficient to bring the case within the scope of the definition. 23 Cr L J 196, Diss.

In order to satisfy the definition of "common gaming house" the prosecution must establish that the person who kept and used the house knew that profit or gain will in all probability result from the use of the instruments of gaming. The profit or gain may not actually result from such use. But if profit or gain is the probable and an expected result of the game itself and if that is the purpose of keeping or using the instruments it would be sufficient. It must also be established that the purpose is profit or gain. This may be done either by showing that the owner was charging for use of instruments or use of house, room or place or in any other manner possible under the circumstances. (Shah Ag. C. J. and Coyajee J.), Emperor v. Dattatraya Shankar,

A I R 1924 Bom 184=25 Bom L R 1089=47 Bom 960 =77 I C 995=25 Cr L J 531.

——Instruments of gaming —Book recording bets.

A book used for recording entries of the bets made by those frequenting a place is an instrument of gaming within S. 3. (Batchelor and Hayward JJ.), Mani Lal Mangalji v. Emperor,

A I R 1915 Bom 218=40 Bom 263=31 I C 1003=17 Bom L R 1080=16 Cr L J 827.

——Instrument of gaming—Single page of paper used for registering wager—A single page of paper used for registering wagers is an instrument of gambling within the meaning of S. 3 of Act IV of 1887. (Batty and Aston JJ.) Emperor v. Lakhamsi Malsi,

29 Bom 264=6 Bom L R 1091=1 Cr L J 1074.

—S 4.

See also ibid, Ss. 6 and 7.

Synopsis

1. "Common gaming house" See under ibid, N. 3—Evidence and Proof.
2. Confiscation of money. See under ibid, N. 10—Punishment.
3. Evidence and proof.
4. "Having the use of."
5. Instruments of gaming.
6. Interpretation.
7. Joint owner.
8. Nature of offence.
9. Procedure.
10. Punishment.
11. Revision.
12. Scope.

—1. "Common Gaming house." See under ibid, N 3, Evidence and Proof.

—2. Confiscation of money. See under ibid, N 10, Punishment.

3. Evidence and proof.

——Conjoint effect of Ss. 6 (ii) (a) and 7 — Artificial method of proof —Liability under Ss. 4 and 5.

The conjoint effect of Ss. 6 (ii) (a) and 7 is to create a wholly artificial method of proof. If the Police Officer making the entry is duly authorised in that behalf and, if

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 4—3. Evidence and proof

previous to entry he had "reason to suspect" that the place "is used as a common gaming house", and if on such entry any instrument of gaming is seized, then until the contrary is proved, the instrument of gaming itself shall be the evidence that the place is a common gaming house, and that all the persons found therein, whether present for the purpose of gaming or not, commit an offence and are liable under S. 5. But the artificial method of proof does not extend to incriminating any particular person with an offence under S. 4, though it may not need very much evidence to prove who is the person who under S. 4 (a) "opens, keeps, or uses the place for the purpose of a common gaming house," or who, under S. 4 (b) "being the owner or occupier knowingly or wilfully permits the place to be opened, occupied, kept or used by some other person for the purposes aforesaid". (Stone C. J. and Lokur J.) Emperor v. Mahomed Dawood,

A I R 1948 Bom 67=49 Bom L R 603=19 Bom Cr C 149=48 Cr L J 1002 (2).

——Instrument of gaming not introduced by bogus punter.

If instruments of gaming are found, which are not introduced by the bogus punter himself like marked coins, that is a very good independent corroboration of the punter's evidence that the marked coin was also an instrument of gaming (Broomfield Ag. C. J. and Sen J.) Krishnaji Madhusudan v. Emperor,

A I R 1940 Bom 18=41 Bom L R 1114=12 R B 338 =186 I C 242=41 Cr L J 273.

——Ss. 4, 5, 6—Evidence of bogus punters.

The bogus punters are usually very unsatisfactory witnesses. It does not much matter whether they are called accomplices or spies or Police agents. No doubt it is very difficult to get better evidence and the Police may have to make use of such people, and if their evidence is corroborated and fits in reasonably well with the prosecution case, the Court may be justified in relying on it. But if the punter is called as a witness and does not support the prosecution case, it is obviously worse than if he was not called at all. (Broomfield Ag. C. J. and Sen J.) Baptist D'Souza v. Emperor.

AIR 1939 Bom 465=41 Bom L R 974 = 12 R B 229 185 I C 203=41 Cr L J 127.

——Ss. 4, 5, 6 — Finding of marked coins and slip of paper with figures.

The mere fact of the finding of the marked coins and the slip of paper with figures on it in the room is sufficient to justify the conviction only if the evidence makes it perfectly clear that these articles were instruments of gaming. (Broomfied Ag. C. J. and Sen J.) Baptist D'Souza v. Emperor.

AIR 1939 Bom 465=41 Bom L R 974=12 R B 229= 185 I C 203=41 Cr L J 127.

——Ss. 4, 5, 6—Statements of Police long after event.

The Court cannot possibly be expected to rely on the mere statements of the Police Officers long after the event without any independent corroboration. (Broomfield Ag. C. J. and Sen J.) Baptist D'Souza v. Emperor.

AIR 1939 Bom 465=41 Bom L R 974=12 R B 229= 185 I C 203=41 Cr L J 127.

——Ss. 4, 5—Owner of house and players having cash.

The fact that each of the players including the owner had cash in his possession does not prove that any one of them was receiving remuneration for the use of the instruments of gaming. Play goes on in many private houses; and players will usually be found to have cash; but from these two things alone it is not legitimate to draw an inference that the host is deriving from his visitors profit or

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 4—3. Evidence and proof

gain from the use of his house and his cards. (Ferrers J. C. and Rupchand A. J. C.) Emperor v. Asial.

AIR 1935 Sind 102=7 R S 240 = 1935 Cr Cas 520= 29 S L R 19=156 I C 294=36 Cr L J 902.

——Ss. 4 and 5—Evidence of a stranger recording a bet is admissible to show nature of house.

The evidence of a stranger who recorded a bet is admissible as part of the evidence to show that the house in question is a common gaming-house under S. 4 or S. 5. (Marten and Madgavkar JJ.) Emperor v. Abasbhai.

AIR 1926 Bom 195 = 50 Bom 344=28 Bom L R 272 =93 I C 967=27 Cr L J 503.

——Ss. 4 and 5—Stranger obtaining a bet on horse race—Other documentary evidence as betting books—House can be inferred to be common gaming house.

From the fact that a stranger went into the house and obtained a bet on a horse race, coupled with the discovery of documentary evidence, such as betting books, etc., found when the police searched the house very shortly afterwards, the proper inference that the house was a common gaming house can be drawn. (Marten and Madgavkar JJ.) Emperor v. Abasbhai.

AIR 1926 Bom 195=50 Bom 344 = 28 Bom L R 272 =93 I C 967=27 Cr L J 503.

4. "Having the use of"

——Ss. 4 (a), 3, 5, 7 — Instruments of gaming found in passage — Accused having right to use it as means of passage to his residence — Whether he has right to use it within meaning of S. 4 (a).

Where instruments of gaming are found in a passage on the ground floor used by the accused as a means of passage to his rooms on the second floor, the accused cannot be said to have a right to the use of the passage within the meaning of S. 4 (a), Bombay Prevention of Gambling Act, in the absence of evidence that the landlord or his agent knew the purposes for which the passage was being used or that the accused had any right to use it except as a means of passage. Under such circumstances the accused cannot be convicted under S. 4 (a), for, in the absence of any evidence to the contrary, it cannot be inferred that the accused had any right, express or implied, to remain in the passage for the purpose of gambling or carrying on his business or for any other purpose. (Beaumont C. J. and Sen J.) Ibrahim Haji-Abdul Rahiman v. Emperor.

AIR 1940 Bom 129=42 Bom L R 161=12 R B 508= I L R (1940) Bom 322=188 I C 316=41 Cr L J 571.

——S. 4 (a)—"Having the use of" imply something more than mere using even though the use may be habitual. (Broomfield Ag. C. J. and Sen J.) Krishnaji Madhusudan v. Emperor.

AIR 1940 B m 18=41 Bom L R 1114=12 R B 338= 186 I C 242=41 Cr L J 273.

——S. 4 (a) — Mere trespasser, if can be convicted under S. 4 (a).

The words "having the use of," in S. 4 (a), Bombay Prevention of Gambling Act must be read "ejusdem generis" with the previous words "owner or occupier" and mean "a person having the right to the use of" under some title, e. g., a licence which is less than ownership or right of occupation. The whole of S. 4 is directed against those who enable premises to be used as a common gaming house. Therefore, in the absence of evidence from which it can be held that the accused had got anything in the nature of a licence to use the place as a common gaming house from a person entitled to give such

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 4—4. "Having the use of"

licence, he cannot be convicted under S. 4 (a). (Beaumont C. J. and Sen J.) Gulam Husain Rawji v. Emperor,

AIR 1940 Bom 62=41 Bom L R 1326 = 12 R B 310 =I L R (1940) Bom 105=186 I C 148=41 Cr L J 253.

——Gaming-house—Habitual use is not necessary.

Under S. 4 it need not be shown that the house was habitually used for gaming. (Kincaid J. C. and Lobo A. J. C.) Bhanji v. Emperor

A I R 1926 Sind 254=20 Sind L R 10=96 I C 217= 27 Cr L J 905.

——Ss. 4, 5, 7—Keeping common gaming house.

In order to establish an offence under S. 4 of keeping a "common gaming house," it is necessary to show, in the first place, that the person charged is the owner, or occupier or a person "having the use" of the place alleged to be kept as a common gaming house in question. It is not sufficient to show that the accused used the place for the purpose of gaming there. A building used as a jamatkhana, accessible to all such members of a certain community, as had no place to live and were too poor to afford a room on rent, frequented by gamblers, and wherein instruments of gaming were found, may be presumed to have been "used" as common gaming house. But it cannot be presumed that the room was "kept" by any person as common gaming house. (Batty and Aston JJ.) Emperor v. Walia Musaji

29 Bom. 226=7 Bom. L R 16=2 Cr L J 26.

5. Instruments of gaming.

——Ss. 4, 4 (a), 5 — Marked coin, when instrument of gaming.

A marked coin may no doubt be an instrument of gaming. It becomes an instrument of gaming if it has in fact been used as a means of gaming. (Broomfield Ag. C. J. and Sen J.) Krishnaji Madhusudan v. Emperor

A I R 1940 Bom. 18 = 41 Bom. L R 1114 = 12 R B 338=186 I C 242=41 Cr L J 273.

——Ss. 4 and 5—Instruments of gaming.

Telegrams announcing certain events and pieces of paper used by brokers for recording transactions are not instruments of gaming under the Act. (Beaman and Macleod JJ.) Jesang Motilal v. Emperor

A I R 1915 Bom. 48=17 Bom. L R 600 = 30 I C 124 =16 Cr L J 572.

6. Interpretation.

——Club and common gaming house, distinction.

In the case of a club, it is not usual for a charge to be made for the profit and benefit of the owner or occupier of the premises. In the case of a common gambling house, all those participating in the game pay certain amount for the benefit of the owner of the premises. The other point is that in the case of a club, the place is not open to any member of the public, but only to members of the club and perhaps their guests. (Broomfield Ag. C. J. and Sen J.) Emperor v. Kallappa Gurappa Kotagunshi

A I R 1939 Bom. 481 = 41 Bom. L R 970 = 12 R B 231=I L R (1939) Bom. 679 = 185 I C 315=41 Cr L J 157.

——Ss. 4, 7, 12—"Place" in S. 4, if excluded by S. 12—Shop abutting on to a public street, whether 'place' within meaning of S. 4—Search warrant—Presumption under S. 7.

A place may be a 'place' within the meaning of S. 12, Bombay Prevention of Gambling Act and still be a place within the meaning of S. 4. The word "place" in S. 4 has a wide meaning. Section 12 does not exclude the application of S. 4 in proper cases even though in certain circumstances S. 12 might apply to the same "place."

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 4—6. Interpretation

Hence, a place such as a shop abutting on to a public street although a 'place' within the meaning of S. 12, is still a 'place' within the meaning of S. 4, and a search warrant under the Act can be issued and presumption under S. 7 can be drawn against the keeper of such a shop kept for the purposes of gaming for profit and he can be convicted under S. 4. (Davis J. C.) Sat Narain Amratlal v. Emperor

A I R 1939 Sind 184=10 R S 60=I L R (1939) Kar 741=183 I C 562=40 Cr L J 817.

——S. 4 (a)—Place, meaning of.

A small open space surrounded by houses on all sides and accessible only by a narrow lane is a 'place' within S. 4 (a) of the Act. (Batchelor and Shah JJ.) Fattu Mahomed v. Emperor

37 Bom. 651=20 I C 609 = 15 Bom. L R 689=14 Cr L J 449.

7. Joint owner.

——Joint owner of house present when gambling presumed to be going on — If can be convicted for having knowingly permitted it to be so used.

Where the joint owner of house is present when gaming is presumed to be going on in his house, he can be convicted under S. 4 for having knowingly permitted the house to be used as a gaming-house. (Mirza and Broomfield JJ.) Emperor v. Nanalal Dwarakadas

A I R 1930 Bom. 350=I R 1930 Bom. 462 = 126 I C 894=1930 Cr C 782=32 Bom. L R 794=31 Cr L J 1112.

8. Nature of offence.

——Offences under Act, if cognizable offences within S. 4 (1) (f), Criminal Procedure Code (Act V of 1898).

The special provisions of the Bombay Prevention of Gambling Act are designed to exclude the general powers of arrest generally to be exercised by Police Officers. It is a special power of arrest to be exercised in special circumstances subject to certain conditions precedent under special authority by certain Police Officers and Magistrates. In such circumstances offences under the Act are not cognizable offences under S. 4 (1) (f), Criminal P. C. The special provisions at the end of Sch. II, Criminal P. C., support this view. Therefore, an offence under S. 5, Bombay Prevention of Gambling Act, is not a cognizable offence. (Davis C. J.) Mahmood Khan Doulat Khan v. Emperor

A I R 1942 Sind 106 = I L R (1942) Kar 94=15 R S 58=202 I C 681=43 Cr L J 888.

——Offence, if non-cognizable.

An offence punishable under S. 4, Bombay Prevention of Gambling Act is a non-cognizable offence (Beaumont C. J. and Broomfield J.) Raghunath Lahnusa Walvekar v. Emperor

A I R 1932 Bom. 610 = 1932 Cr Cas 868 = 34 Bom. L R 901 = Ind Rul (1932) Bom. 484 =139 I C 281=33 Cr L J 733.

——Ss. 4 and 5—Procedure—Offence under, is cognizable within Criminal Procedure Code, S. 4 (1) (f).

As under S. 6 certain officers have power to issue warrants of search and also of arrest, and to cause search or arrest without warrant personally, the offence under S. 4 or 5 of Bombay Act IV of 1887 is a cognizable offence under S. 4 (1) (f), Criminal P. C. (Marten and Madgavker JJ.) Emperor v. Abasbhai

A I R 1926 Bom. 195 = 50 Bom. 344=28 Bom. L R 272=93 I C 967=27 Cr L J 503.

9. Procedure.

——Magistrate trying offence under S. 4 summarily—Section 530 (q), Criminal P. C., applies. (Davis J. C. and

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 4—9. Procedure

Tyabji J.) Emperor v. Mahanand Kherajmal,

A I R 1939 Sind 341=I L R (1940) Kar 123=12 R S 169=185 I C 543=41 Cr L J 190.

——Ss. 4, 5, 6 — Warrant in name of Sub-Inspector—Arrest by constable, Sub-Inspector being nearby.

Where a warrant is in the name of a Sub-Inspector and he is present near the room used for gambling purposes but the accused is actually arrested by his constable who had already entered the room, the irregularity is not such as would vitiate the warrant or the proceedings in any way. (Broomfield Ag. C. J. and Sen J.) Baptist D'Souza v. Emperor,

A I R 1939 Bom 465=41 Bom L R 974=12 R B 229 =185 I C 203=41 Cr L J 127.

10. Punishment.

——S. 4 (a) — Sentence of imprisonment for first offence —Accused's inability to pay fine may be treated as special reason within S. 4 (a), proviso and smaller fine imposed.

The vice of a fine as a means of punishment is that its severity necessarily depends on the financial position of the accused. A fine of Rs. 1,000 may be an inconsiderable punishment for a rich man, whilst a fine of Rs. 50 may be a very heavy punishment for a poor man. The Court has discretion under S. 4 (a) to impose a sentence of imprisonment or fine; and where the accused is shown to be gambling on a large scale, and may be presumed to be making a good deal of money out of it, it may be that the only punishment, likely really to act as a deterrent, would be imprisonment. Prima facie, however, it is undesirable to impose a sentence of imprisonment for a first offence. If a Magistrate does not think that a sentence of imprisonment is called for, and comes to the conclusion that the accused is not likely to be able to pay as much as Rs. 500, and that to impose such a fine would in fact mean sending the man to prison, the Magistrate is perfectly justified in treating that as a special reason within the meaning of the proviso to S. 4 (a) for imposing a smaller fine. (Beaumont C. J. and Sen J.) Emperor v. Karsandas Nanji,

A I R 1942 Bom 206 (2)=44 Bom L R 443=15 R B 107=201 I C 508=43 Cr L J 759.

——Inability to pay is special reason for imposing lesser fine.

It is within the meaning of the proviso of the clause relating to the imposition of punishments for offence under S. 4, Bombay Prevention of Gambling Act for the Court to put on record as a special reason for the imposition of a lesser fine, the inability of the accused to pay it. (Davis J. C.) Narsi Devji v. Emperor,

A I R 1940 Sind 187 = 13 R S 112=190 I C 703=41 Cr L J 959.

——Ss. 4, 5—Conviction of accused under Ss. 4 and 5 on same facts and acts — There should be only one punishment.

Where the prosecution have relied upon the same facts and upon the same acts of the accused to prove that the offences under Ss. 4 and 5 were committed, the accused may be convicted under both sections but there should be one punishment for both. (Davis J. C.) Bhagwandas Ghanshamdas v. Emperor,

A I R 1940 Sind 28 = I L R (1940) Kar 150=12 R S 219=187 I C 78=41 Cr L J 399.

——S. 4, whether enumerates four distinct offences—"Offence," meaning of — For enhanced punishment convictions need not be under same clause.

In S. 4, Bombay Prevention of Gambling Act, there is not an enumeration of four distinct offences but a definition of one offence, which is generally described in the margin as "keeping common gaming house," by reference to four variations of it. According to the ordinary use of language, 'offence' as used in the penal part of the section must mean an offence under any clause of the definition, and a person who is convicted under any of the cls. (a), (b), (c) or (d) of the definitive part of the section is liable to enhanced punishment as provided in the penal clauses if he has been previously convicted of an offence or offences under any other clause of the definition. In order to render him liable to enhanced punishment the convictions need not be under the same clause. (Broomfield and Macklin JJ.) Emperor v. Appa Ganpat,

A I R 1935 Bom 399=37 Bom L R 656=1935 Cr Cas 1110=8 R B 182=159 I C 176=37 Cr L J 43.

——Ss. 4 (a), 5 — Conviction — Confiscation of money found on person.

The Magistrate cannot order the money found on the person of the accused to be confiscated on his conviction. (Pratt Esq. and Crough Esq.) Imperator v. Hiro wd. Bhojraj,

1 S L R Cr 64=8 Cr L J 182.

11. Revision.

——Ss. 4, 5, 6—Power of superintendence of High Court —Case of wrong conviction.

Where certain persons were convicted under Ss. 4 and 5, Bombay Prevention of Gambling Act, but the majority of them were acquitted on appeal on the ground that the warrant under S. 6 being issued by an officer not empowered to do so, the conviction was illegal. On revision by two of the accused who did not appeal, the Sessions Judge referred the matter to the High Court :

Held, that in view of S. 439 (5), Criminal P. C., revision did not lie, but as the case was one of wrong conviction on the face of it, it was desirable to use the power of superintendence in judicial matter which vested in the High Court under S. 107, Government of India Act, to set aside the conviction. (Broomfield and Sen JJ.) Emperor v. Jamnadas Nathji Shah.

A I R 1937 Bom 153=39 Bom L R 82=I L R (1937) Bom 263=9 R B 393=168 I C 718=38 Cr L J 606.

12. Scope.

——Conviction under S. 4—Requirements of.

The thing necessary to be proved for conviction under S. 4, Bombay Prevention of Gambling Act, is that the owner or the keeper of the house was in some way or other deriving a profit from the use of the instruments of gaming or of the house. (Ferrers J. C. and Rupchand A. J. C.) Ismail Varyo v. Emperor

A I R 1934 Sind 129 = 28 S L R 81 = 1934 Cr Cas 1065=7 R S 95=152 I C 400=36 Cr L J 304.

——Ss. 4, 12, object of — Gambling in Machwa hired by accused for the purpose.

In S. 4, of the Act, the mischief aimed at is the practice of individuals making a profit by providing a spot of their own selection, known as a place where gambling is to be carried on, and making a livelihood by attracting people to a place which they would not otherwise frequent. In S. 12, however, the offence is, not that the individual members are making a profit at all, but simply that they are carrying on their gambling with such a publicity that the ordinary passer-by cannot well avoid seeing it and being enticed — if his inclinations lie that way — to join in or follow the bad example openly placed in his way. Under S. 4 comparative privacy for profit, and under S. 12 bad public example and accessibility to the

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 4 -12. Scope

public, would seem to constitute the gravamen of the offence. S. 12 aims at gambling in a public place or thoroughfare and ordinarily applies to persons sitting on or near a road or public place with no intervening obstruction to the public view where there is voluntary publicity. Gambling in Machwa (boat) which was chartered by the accused and was used by them for the purpose in the Bombay Harbour, could not be said to be gambling in a public place, street, or thoroughfare, within the meaning of S. 12, of the Act. (Russell and Batty JJ.) Emperor v. Jusub Ally

29 Bom 386=7 Bom L R 333=2 Cr L J 252.

—S. 5.

——Conviction — Confiscation of money found on person —*See* Bombay Prevention of Gambling Act (4 of 1887), Ss. 4 (a), 5

8 Cr L J 182 (Sind).

——Trial by Magistrate issuing warrant whether illegal.

It is wrong in principle that the Magistrate who issues the warrant under S. 6 should be the same judicial authority who should try the accused who has the right to challenge the propriety of that very warrant. Section 556 of the Criminal P. C., does not apply to such a case but a more important and a more fundamental legal principle is involved. The trial by the Magistrate who issues warrant is, therefore, illegal. (Chagla and Gajendragadkar JJ.) Emperor v. Valli Mohammad Sheikh Mahammad

A I R 1948 Bom 72 (1) = 49 Bom L R 618 = 1947 A W R (Sup) 128 = I L R (1947) Bom 559 = 19 Bom Cr C 164=1947 O A Sup 128=48 Cr L J 1001.

——Ss. 5 and 6 — Arrest and confinement of person for offence under S. 5 — No warrant under S. 6 — Police Officer knowing that such warrant is condition requisite for arrest:

Held, that the Police Officer could not seek protection under S. 80 (1), Bombay District Police Act. (Davis C. J.) Mahmood Khan Doulat Khan v. Emperor

A I R 1942 Sind 106=I L R (1942) Kar 94 = 15 R S 58=202 I C 681=43 Cr L J 888.

——Ss. 5 & 6—'Found' in S. 5, meaning of.

A prosecution under S. 5, Bombay Prevention of Gambling Act, need not necessarily be preceded by a search under S. 6. A prosecution under S. 4 or S. 5 might be launched on evidence quite independent of Police evidence, for example, the evidence of neighbours, and it is not possible to read S. 6 as laying down a condition precedent to the launching of a prosecution under S. 4 or S. 5. Sections 6 and 7 are enabling sections, and give powers to the Police to facilitate proof of their case, but do not make a search obligatory before any case be launched. (Beaumont C. J. and Macklin J.) Emperor v. Shankar Venkusa Chavan

A I R 1935 Bom 39=36 Bom L R 1113=7 R B 355=1935 Cr Cas 73=154 I C 634=36 Cr L J 543.

——Wager.

Date of horse race postponed — Bets were entered into irrespective of adjournment — Accused not contending that either race or particular horse should run on given particular date—Agreement to bet held to be wager amounting to offence.

Evidence in a case showed that the race which was to be run on 29th September was adjourned to 6th October early in the morning and still in the afternoon of that day bets were entered into with regard to the meeting which had already been adjourned, and the bets were to remain good for the race that was to be run on 6th October. The accused did not intend either that the race

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 5

should run on 29th September or that a particular horse should run that day, as the condition of the agreement.

Held, that even though the race was postponed, the agreement to bet would be a wager and would amount to an offence under S. 5. (Patkar and Wild, JJ.) Emperor v. Ismail Hirji

A I R 1930 Bom 49 = 31 Bom L R 1349=1930 Cr C 113=54 Bom 146=31 Cr L J 633.

——"Found in Gaming house." — Person seen coming out of gaming-house and arrested then — He is found in the house.

When a police officer armed with a warrant sees a person come out of a house, and he is arrested as he comes out, he is found in the house. "Found in the house" does not mean "arrested in the house": 8 B. H. C. R. 1. and 22 P. R. 1895, Rel. on. (Mirza and Baker, JJ.) Tribhowan Moti Ram v. Emperor

A I R 1929 Bom 74=53 Bom 137 = 117 I C 434=31 Bom L R 53=30 Cr L J 794.

——Procedure — Honorary Magistrate can issue warrant under S. 5.

Whatever the powers of the Honorary Magistrate may be under the Cr. P. Code, there is nothing in the Bombay Gambling Act which requires that a Magistrate issuing a warrant thereunder should be vested with any special jurisdiction. All that is required is that there should be a warrant by a First Class Magistrate and therefore an Honorary First Class Magistrate is entitled to issue a search warrant. (Kennedy J. C. and Rupchand Bilaram A. J. C.) Tillockchand v. Emperor.

A I R 1926 Sind 65 = 20 S L R 66 = 89 I C 396=26 Cr L J 1356.

——Ss. 5 and 6—Search under—Procedure—Cr. P. Code, Ss. 103 and 243.

Searches under a special or a local law need not be conducted in accordance with the Cr. P. Code. The absence of Mashirs at a search held under the Bombay Gambling Act 1887, does not make the search illegal. (Fawcett J. C. and Crump A. J. C.) Emperor v. Aslum.

A I R 1914 Sind 158 (2)=8 S L R 213=27 I C 910 = 16 Cr L J 238.

——Ss. 5 and 12 — Presumption under S. 5, if applies to S. 12.

The reason underlying the presumption in S. 5 of the Act does not apply to cases under S. 12. An actual taking part in gambling must be proved for a conviction under S. 12. (Beaman and Rao JJ.) Emperor v. Hira Lal Motilal.

15 Bom L R 331=20 I C 143=14 Cr L J 383.

—S. 6.

See also ibid, Ss. 4 and 7.

SYNOPSIS.

1. Evidence and proof.
2. Forfeiture of money found.
3. "Found" in common gaming house.
4. Presumption under S. 7—See also under ibid, S. 7.
5. Procedure.
6. Scope.
7. Search.
8. "Specially empowered".
9. Specification of place in warrant.
10. Validity of warrant.

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 6

1. Evidence and proof.

——Ss. 6, 7—Police sending bogus punters to lay bets — Their evidence must be corroborated by independent evidence.

Evidence of bogus punters sent by the police to lay bets by giving marked currency notes must be corroborated by independent evidence before it is accepted. Obviously the evidence of one bogus punter cannot ordinarily be used to corroborate the evidence of another, nor can the finding of marked coins normally be regarded as corroboration of the bogus punter's evidence. Similarly the seizure of other documents along with the marked currency notes, when their contents cannot be deciphered, can hardly be used to corroborate the evidence of those punters: A I R 1937 Bom 385, Rel. on. (Sen and Gajendragadkar JJ.) Emperor v. Hormazdyar Ardeshir Irani.

A I R 1948 Bom 250 = I L R (1948) Bom 199 = 19 Bom Cr C 223=50 Bom L R 163=49 Cr L J 362.

——Evidence — Extraneous evidence to prove special warrant cannot be allowed.

A warrant is not a special warrant if it is not on the face of it a special warrant ; and if it is not directed to a special officer, extraneous evidence cannot be admitted to prove that it was meant to be executed by a Special Police Officer personally and only by him. (Barlee and Kalumal A. J. Cs.) Assudomal v. Emperor.

A I R 1930 Sind 59 = 119 I C 535 = 23 S L R 441= 1930 Cr C 123=30 Cr L J 1075.

2. Forfeiture of money found.

——Ss. 6, 8—Money found in coat pocket of accused convicted of gaming.

It was not the intention of the Legislature that moneys should be forfeited when there is no reason to believe that these moneys were connected with the gaming. The power of forfeiture exercisable by the Magistrate under S. 8 is discretionary. Where the money seized was found in the coat pocket of the accused it cannot be said, in the absence of any satisfactory explanation by him that this money was not rightly seized under S. 6 and was not connected with the gaming of which he has been convicted. (Davis J. C.) Bhagwandas Ghanshamdas v. Emperor

AIR 1940 Sind 28 = 12 R S 219 = ILR (1940) Kar 150=187 I C 78 = 41 Cr L J 399.

3. "Found" in common gaming house.

——Arrest in neighbouring house where accused had taken shelter — Accused if can be said to be 'found.'

• There is no sufficient reason for restricting the 'prima facie' meaning of the word 'found' in S. 6. A person may be said to be found in a place where he is actually present, and there is nothing in the section to show that the word "found" refers only to a finding by the Police. Where the accused is arrested in a house near a common gaming house, where he had taken shelter, they must be deemed to be 'found' in the common gaming house within the meaning of S. 5 and it is necessary that he should have been found there by the Police. (Beaumont C. J. and Macklin J.) Emperor v. Shankar Venkusa Chavan

AIR 1935 Bom 39 = 36 Bom L R 1113=7 R B 355= 1935 Cr Cas 73 = 154 I C 634 = 36 Cr L J 543.

4. Presumption under S. 7

See also under ibid, S. 7.

——Ss. 6 & 7 — Issue of special warrant — Grounds for — Warrant issued merely on the ground that gambling was going on in certain house—Warrant is defective.

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 6—4. Presumption under S. 7

Section 6 of the Act must be construed strictly because S 7 gives to an arrest and seizure under it an operation different from that of the general presumption of innocence in criminal cases. The complaint envisaged by the proviso to S. 6 is a complaint that the house, room or place to be entered into is used as a common gaming house, and the Magistrate has to be satisfied that there are good grounds to suspect that it is so. Where the complainant did not complain, nor was the Magistrate who issued the special warrant satisfied that there were good grounds to suspect that the house of accused was used as a common gaming-house, and the only satisfaction he had being that gambling was being carried on in the said house, the warrant is defective. In such a case no presumption under S. 7 can arise and it will be for the prosecution to establish by evidence in the ordinary way that on the facts proved the accused were guilty of the offences charged. (Shah C. J. and Baxi J.) State v. Sukhlal Kunverji

AIR 1952 Sau 76=1952 Cr L J 1088.

——Issue of proper warrant under S. 6 — Presumption under S. 7 — Rebuttal—See Public Gambling Act (1867), S. 5

5 Sau L R 79.

——The reason for suspicion which is referred to in cl. (a) of S. 6 must obviously include information given by a Police informant, for, in many cases, it is only upon such information that the Police can act at all; and so far as the seizure of all things reasonably suspected to have been used or intended for the purpose of gaming under cl. (c) is concerned, it cannot be expected that the Police Officer must wait for a translation or interpretation of a writing, otherwise unintelligible to him, found upon slips of paper on the person of the suspected man. He must judge and be judged by all the surrounding circumstances and the information he then possessed. He may, particularly where his information is that the betting is betting in American Futures, have reason to suspect that when slips of paper with writing upon them are considered of sufficient importance by the suspected person to be kept upon his person, those slips of paper are betting slips used or intended to be used for the purpose of gaming even though the writing is to him unintelligible at the time.

Where the Sub-Inspector finds, upon the information of the Police informant that in a particular house gambling in American Futures is going on, a number of persons of different communities having no particular relationship with each other sitting at a table in a room in that house at midnight who can give no satisfactory account of their presence and who were found to possess on them considerable sums of money, while slips of paper with unintelligible writing upon them were found upon one of them, the Sub-Inspector has every reason to suspect, that these slips of paper with the unintelligible writing contain the record of bets and under the circumstances the Court can raise presumption against the accused which puts upon them the burden of proof under S. 7. Upon the failure of the accused, under such circumstances, to give an account of their presence in the room on the particular night, the High Court shall not interfere in revision and acquit them. (Davis J. C. and Mehta J.) Emperor v. Ali Molo

AIR 1938 Sind 228 = 11 R S 150 = ILR (1939) Kar 217 = 179 I C 794 = 40 Cr L J 271.

——Ss. 6, 7 — Presumption under S. 7, when can be raised.

No presumption under S. 7 should be drawn when there is nothing to show that the house was entered under a

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 6—4. Presumption under S. 7

warrant duly issued under S. 6. The mere assertion of the Police Inspector that information was given on oath to the Magistrate granting the warrant, is not sufficient to come to the conclusion that the warrant was properly issued under S. 6, and to apply the provisions of S. 7 to the case. The mere finding of instruments of gambling in the house entered under the warrant is not proof that it was used as a common gaming house. (Lucas J. C. and Crouch A. J. C.) King-Emperor v. Kadir.

3 S L R 78=3 I C 893=10 Cr L J 406.

——Ss. 6, 7 — Presumption under S. 7— Duty of Magistrate.

The presumption under S. 7 will arise, only when it is proved that the warrant was issued under S. 6, hence in every case the Magistrate must exhibit and bring on record the complaint on oath and the warrant. (Pratt Esq. and Crouch Esq.) Imperator v. Paman.

1 S L R 67 Cr=8 Cr L J 185.

——Ss. 6, 7—Arrest and search—Presumption under S. 7 Criminal P. C. (1898), Ss. 65 and 105.

The presumption under S. 7 can arise only when there has been an arrest and search under S. 6. Under S. 6 the Magistrate, who has the power to give authority, under a special warrant to a police officer of the designated class, to search and arrest must be presumed to have the authority to arrest and search himself if necessary. As that section has provided as to the authority empowered to issue a warrant for arrest or search or the persons to whom and the conditions under which such warrants can be issued the provisions of the Criminal P. C., cannot apply in respect of those matters for purposes of S. 7. Even then the provisions of S. 6 will be subject to the general provisions of Ss. 65 and 105 of Criminal P. C., and a Magistrate or other officer mentioned in the section while himself acting must strictly comply with those two sections. The Magistrate acting on information under the section must have complaint before him made on oath to set him in motion. Then only the arrest and seizure will be legal and bring into operation the provisions of S. 7. The Magistrate who acts himself supplies the place of the warrant which is a necessary part of the evidence of the prosecution and must therefore give evidence. The Magistrate making an arrest and seizure himself must personally enter the house with any necessary assistance. As S. 7 gives a presumption different from the general presumption of innocence in criminal case, S. 6 must be strictly construed. (Chandavarkar and Pratt JJ.) Emperor v. Kaitan Duming Farnad.

9 Bom L R 695=31 Bom 438=6 Cr L J 60.

5. Procedure.

——District Superintendent of Police if can administer oath to complainant.

Section 6, Gambling Act, confers the power inter alia on the District Superintendent of Police to receive a complaint on oath in cases contemplated by the section and such a power necessarily implies that the District Superintendent of Police is competent in cases contemplated by S. 6 to administer an oath to the person making the complaint before him. (Mirza and Baker JJ.) Tribhowan Moti Ram v. Emperor.

AIR 1929 Bom 74=53 Bom 137 = 31 Bom L R 53= 117 I C 434=30 Cr L J 794.

——Ss. 6, 7 and 10 — Magistrate — Power to examine prisoner—Cr. P. Code, S. 342.

A Magistrate has power to examine as witnesses persons arrested and brought before him under S. 6 (b) of the Act. The special procedure of the Gambling Act overrides the general law of procedure in S. 352, Cr. P. C., whenever it is inconsistent with it : 31 Bom 423 at 445, Foll. (Pratt J. C. and Fawcett A. J. C.) Liladhar Umersi v. Emperor.

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 6—5. Procedure

AIR 1914 Sind 45 = 8 S L R 309 = 29 I C 79 = 16 Cr L J 447.

——Procedure.

Though it is desirable to formally produce a warrant under S. 6 still where the complainant states on oath that he searched the house under a warrant and his complaint on oath appears in the proceedings and it is not alleged that he searched the house under any other warrant or that it was not regularly issued, the irregularity may be excused: 28 Bom 533, com. (Pratt J. C. and Hayward A. J. C.) Abdullah v. Emperor.

5 S L R 40=9 I C 895=12 Cr L J 149.

——Further inquiry before issue of warrant.

Under S. 6 it is not obligatory on the Magistrate to make further inquiry before the issue of a warrant if he considers it unnecessary. (Pratt Esq. and Crouch Esq.) Imperator v. Paman.

1 S L R 67 Cr=8 Cr L J 185.

——Requirements.

Section 6 does not make it obligatory on a Magistrate, before issuing a warrant, to make inquiry after receiving information. Under the section it is not necessary that the informant should have knowledge about gambling if the informant can testify to a reasonable suspicion that any house, room or place is used as a common gaming house; that is sufficient. (Pratt Esq. and Crouch Esq.) Imperator v. Hiro wd. Bhojraj.

1 S L R Cr 64=8 Cr L J 182.

6. Scope

——Ss. 6 and 7 — Search warrant — Form of — Use of wrong form—Presumption under S. 7, whether arises.

A Magistrate, while issuing a search warrant under S. 6 should take care to see that a proper form is used, and if he has to use any other form, he has to make the necessary corrections so as to comply with the requirements of that section. Section 6 must be construed strictly, because S. 7 gives to an arrest and seizure under it an operation different from that of the general presumption of innocence in criminal cases. Section 6 does not require that information should be given in writing before the issue of warrant. All that it requires is that there should be a complaint or information on oath and it may be either oral or in writing. It is not necessary that it must appear in the warrant itself that a complaint or information was given on oath, (1928) 31 Bom L R 53, Rel. on. Where there is nothing to show that a search warrant is issued under S. 6 and the form used is one under S. 96, Criminal P. C., without any alterations, no presumption under S. 7 can arise. (Lokur and Dixit JJ.) Emperor v. Pokka Kuslappa.

AIR 1947 Bom 329 = 49 Bom L R 150=230 I C 424 =48 Cr L J 644.

——Discretion to be used—Warrant—Second warrant.

The provisions of S. 6 are somewhat exceptional and a lax administration of the law would easily convert them into an instrument of prosecution. It is left to the discretion of Officers of Police of no very exalted rank to displace the ordinary presumption of innocence and to lay on the accused the burden of proving that a place in which he is found is not a common gaming house. Such a discretion must be used with the utmost care. An Officer of Police who issues the warrant under S. 6 of the Act must be careful to confine himself exactly within the limits which the Act lays down. If he over-steps the line, he leaves behind him his special prerogative and no extraordinary presumption will arise out of anything he may do.

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 6—6. Scope

There is no express provision in S. 6 empowering the issue of a second warrant on the strength of the sworn testimony on which a prior warrant has been issued, and assuming that there is an ambiguity on that point it must be held that a second warrant can only issue on the strength of a fresh sworn testimony. (Ferrers J. C. and Rupchand A. J. C.) Emperor v. Asiat.

AIR 1935 Sind 102=1935 Cr Cas 520 = 7 R S 240= 29 S L R 19=156 I C 294=36 Cr L J 902.

——S. 6 is wide enough to include a complaint on oath made by a Police-officer. (Mirza and Broomfield JJ.) Emperor v. Nanalal Dwarkadas.

AIR 1930 Bom 350=Ind Rul 1930 Bom 462=126 I C 894=1930 Cr C 782=32 Bom L R 794=31 Cr L J 1112.

——There is nothing illegal if the warrant is issued to the Police-officer who has sworn on the complaint before the District Superintendent of Police. (Mirza and Broomfield, JJ.) Emperor v. Nanalal Dwarkadas,

A I R 1930 Bom 350=Ind Rul 1930 Bom 462=126 I C 894=1930 Cr C 782=32 Bom L R 794=31 Cr L J 1112.

——Under S. 6 the Commissioner of Police can arrest without warrant. 31 Bom 438 and A I R 1926 Bom 195, Rel. on. (Patkar and Wild, JJ.) Emperor v. Ismail Hirji,

A I R 1930 Bom 49 = 31 Bom L R 1349=1930 Cr C 113=124 I C 106=54 Bom 146=31 Cr L J 633.

——S. 6 does not impose any limitation on power of any person to make complaint.

Section 6 does not impose any limitation on the power of any person to make a complaint on oath to the Commissioner of Police. As a general rule any person, having knowledge of the commission of an offence, may set the law in motion by a complaint, even though he is not personally interested or affected by the offence. 13 Bom 600, Foll.; A I R 1929 Bom 74, Ref. (Patkar and Wild, JJ.) Emperor v. Ismail Hirji,

A I R 1930 Bom 49 = 31 Bom L R 1349=1930 Cr C 113=54 Bom 146=31 Cr L J 633.

7. Search.

——Searches under.

It is not essential that a search made under S. 6, Bombay Prevention of Gambling Act, should necessarily conform to the provisions of S. 103, Criminal P. C. (Beaumont C. J. and Broomfield J.) Raghunath v. Emperor,

A I R 1932 Bom 610 = 34 Bom L R 901 = Ind Rul (1932) Bom 484=1932 Cr Cas 868=139 I C 281=33 Cr L J 733.

——S. 6 and Cr. P. C., S. 103—Searches made by Police Officers.

A search made by police officers without Mashirs is illegal under S. 103, Cr. P. C., but not under S. 6 of Bom. Prevention of Gambling Act. (Hayward, J. C. and Fawcett, A. J. C.) Kadir Mohamed v. Emperor,

A I R 1917 Sind 16 = 10 S L R 137 = 37 I C 33=18 Cr L J 49.

8. "Specially empowered."

——Ss. 6 and 7 (As applied to Saurashtra).

'Specially empowered' — Meaning of — Notification empowering whole class of District Superintendents of Police to issue warrants under S. 6 (2) — Presumption under S. 7 cannot be made. A I R 1948 Bom 156, Foll.; A I R 1943 Sind 107, Ref. (Shah C. J. and Baxi J.) State v. Soni Dharamshi Bhanji,

6 Sau L R 40.

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 6—8. "Specially empowered"

——Ss. 6, 7 — Special warrant — Requirements—Non-compliance—Public Gambling Act (1867), Ss. 5, 6.

A special warrant issued under S. 6 should be one which is specially directed to a Police Officer by name. Where the name of the Sub-Inspector is not mentioned in the warrant and it is simply addressed to the Sub-Inspector of Police of a certain Police Station, the warrant does not supply the requirements of a special warrant under S. 6 and the presumption under S. 7 cannot arise. (Shah C. J. and Chhatpar J.) State v. Bhagwanlal,

A I R 1951 Sau 55=52 Cr L J 812.

——(As substituted by Bom. Act 1 of 1936)—"Specially empowered"—Notification of 1928 — Validity after 1936.

By a Notification issued by the Bombay Government, No. 3842/2. H. D.. dated August 23, 1928, Assistant Superintendents and Deputy Superintendents of Police at six specified places including the Poona City were by virtue of their office empowered to issue warrants under S. 6. Section 6 was re-enacted in 1936 by Bom. Act I of 1936. But no similar notification was issued under the new section. C, who was the Deputy Superintendent of Police at Poona issued a warrant under S. 6 on November 10, 1944. On the question of validity of the warrant:

Held that under S. 15, Bombay General Clauses Act, the Government could appoint any Assistant or Deputy Superintendent of Police to exercise the function of issuing a warrant under S. 6 of the Bombay Prevention of Gambling Act not only by name but also by virtue of office. When a class of officials is invested with powers to try certain offences or to do certain functions, they are "generally empowered", but if any persons are so empowered by name or in virtue of their offices, they are said to be "specially empowered". In view of S. 25, Bom. General Clauses Act, the notification of 1928, which contained nothing inconsistent with the new S. 6 of the Act, was still in force, and Mr. C holding the office of the Deputy Superintendent of Police, Poona City, must be held to have been "specially empowered" to issue warrants under that section. The warrant issued by him was, therefore, legal and valid: A I R 1943 Sind 107, Dissent.; A I R 1915 Mad 1159 and A I R 1924 Mad 256, Ref. (Stone C. J. and Lokur J.) Emperor v. Savlaram Kashinath,

A I R 1948 Bom 156 = 19 Bom Cr C 165 = 49 Bom L R 798=49 Cr L J 165.

——S. 6 (2)—Deputy Superintendent of Police should be empowered by name.

Sub-section (2) of S. 6, Bombay Prevention of Gambling Act, requires that when a Deputy Superintendent of Police is especially empowered by Government under this sub-section he should be specially empowered by name and not merely by virtue of his office. No real administrative difficulty can arise if it is remembered that once a Deputy Superintendent of Police has been especially empowered by name he carries those powers with him when he is transferred from one post of Deputy Superintendent of Police to another. (Davis C. J. and Weston, J.) Emperor v. Udho,

A I R 1943 Sind 107 = I L R (1943) Kar 20=15 R S 173=206 I C 331=44 Cr L J 502.

——Bombay District Police Act (IV of 1890) — Powers under, if can be conferred on Additional Superintendent of Police – Issue of warrant by such officer — S. 17, Bombay General Clauses Act (I of 1904).

Section 6, Bombay District Police Act, does not confer on the Provincial Government the right to confer on the

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 6—8. "Specially empowered"

Additional Superintendent of Police powers arising outside the Bombay District Police Act, and the powers arising under S. 6, Bombay Prevention of Gambling Act are outside the Bombay District Police Act. The words "specially empowered by Government in this behalf" in S. 6, Bombay Prevention of Gambling Act only cover the Assistant or Deputy Superintendent of Police. So that a Magistrate of the First Class or a District Superintendent of Police can exercise the power without any special authority from Government; but there is nothing said about an Additional Superintendent of Police. Although the Additional District Superintendent of Police is carrying out all the powers under the Bombay District Police Act, of a District Superintendent of Police he is not in fact a District Superintendent of Police, and he cannot be given power to issue a warrant under S. 6. Section 17, Bombay General Clauses Act, 1904, does not apply to this case at all.

Hence the Additional Superintendent of Police, Panch Mahals District, has no power to authorize the issue of a search warrant under S. 6, and where the conviction turns upon the presumption arising under S. 7 on a search under S. 6, the conviction must be set aside, as the presumption does not arise. (Beaumont C. J. and Sen J.) Asgaralli Mahammedalli Heralwala v. Emperor,

A I R 1940 Bom 127=42 Bom L R 203=12 R B 487 =187 I C 459=41 Cr L J 485.

——Special warrant must be directed to person by name.

A special warrant must be a warrant which is specially directed to a person by name and not one which can be endorsed over to any other police-officer of a similar rank. 3 S L R 56, Foll. (Barlee and Kalumal, A. J. Cs.) Assudomal v. Emperor,

A I R 1930 Sind 59 = 119 I C 535 = 23 S L R 441= 1930 Cr C 123=30 Cr L J 1075.

——S. 6—Form of warrant—Delegation of authority.

A warrant issued under S. 6 of the Act, should specify the officer to whom the authority is given and the only person who can execute the warrant is the person named therein. He cannot delegate it to another officer. (Lucas J. C. and Crouch A. J. C.) Crown v. Mithu,

3 S L R 56 Cr=2 I C 371=10 Cr L J 3.

9. Specification of place in warrant.

——Warrant under—Essentials of description of house to be searched—Falsa demonstratio non nocet.

Though it is usually desirable that warrant issued under a particular statute should show on its face that the conditions precedent required by the statute have been complied with, it is not essential that it should do so. Where a warrant issued under S. 6, Bombay Prevention of Gambling Act, stated that a complaint on oath had been made but did not state that the person who issued the warrant had reason to suspect that the house in question was used as a common gaming house :

Held, that the warrant was a valid one.

If such a warrant wrongly describes the property to be searched, then, it is a bad warrant. But a description may be good in part and bad in part, and the Court may reject the bad part on the principle of falsa demonstratio non nocet. (Beaumont C. J. and Nanavati J.) Vallibhai v. Emperor,

AIR 1933 Bom 79=34 Bom L R 1447 = Ind. Rul. (1933) Bom 74=141 I C 346=34 Cr L J 137 (2).

——Construction—Provisions should be strictly construed.

The powers given under S. 6 were very wide and are apt seriously to interfere with the liberty and property of the subject; the section therefore should be strictly construed and the conditions required for its coming into

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 6—9. Specification of place in warrant

operation should be strictly complied with. Where a warrant contained somewhat inaccurate description of the place to be searched but it was clear from the rest of the description contained in the warrant that the inaccuracy was not so material or substantial as to mislead a stranger if one were to go to the locality and attempt to find the place intended to be raided, with the help of the warrant.

Held, that the inaccuracy did not amount to more than a misdescription and was not of a nature to vitiate the warrant. A. I. R. 1926 Bom. 195, Dist.

Per Baker J. — The absence of numbers of buildings would not vitiate the warrant if the buildings to be searched are otherwise sufficiently described. 6 Bom. L. R. 52; A. I. R. 1926 Sind 254; (1905) A. W. N. 105, Ref. (Mirza and Baker JJ.) Emperor v. Thavarmal Rupchand,

AIR 1929 Bom 157=31 Bom L R 158=116 I C 251= 53 Bom 367=12 A I Cr R 466=30 Cr L J 595.

——Warrant comprising more than one tenement does not cease to be special.

The words "house, room or place" contained in S. 6 have no reference to a particular house, room or place, or to houses, rooms or places if they are owned by one and the same person and are used for a common purpose. The words should be taken broadly as meaning houses, rooms or places apart from the more restricted notion of a tenement. If the houses, rooms or places have substantially been utilized for the common purpose of gambling it would not matter if the houses, rooms or places comprised more than one tenement. The fact therefore that the warrant comprised more than one tenement would not make it a general warrant. The term "special warrant" has reference only to the limitation as regards the person or persons who would be competent to execute it. (Mirza and Baker JJ.) Emperor v. Thavarmal Rupchand,

AIR 1929 Bom 157=53 Bom 367 = 31 Bom L R 158 =116 I C 251=12 A I Cr R 466=30 Cr L J 595.

——Warrant—Description of locality in.

A warrant issued under S. 6 is not illegal merely because it fails to correctly specify the locality of the house or room which happens to be accurately described therein. (Chandavarkar and Aston JJ.) Emperor v. Krishna Rutna Dalvi,

6 Bom L R 1099=1 Cr L J 5.

10. Validity of warrant.

——Warrant under—Presumption as to validity.

In the case of a warrant issued under S. 6, the presumption under S. 114, illus. (e) of the Evidence Act arises that the officer issuing the warrant has performed his duty correctly and when that presumption is not rebutted, the warrant cannot be held to be invalid for want of evidence to prove that the requirement of the proviso to S. 6 was complied with: AIR 1933 Bom 79 and AIR 1946 Mad 465, Foll. (Stone C. J. and Lokur J.) Emperor v. Savlaram Kashinath,

AIR 1948 Bom 156=19 Bom Cr C 165=49 Bom L R 798=49 Cr L J 165.

——Where a Head Constable of Police who was appointed to hold charge of a Police Station applies and gets a warrant under S. 6 of the Bombay Prevention of Gambling Act, addressed to him under the denomination of "Officiating Sub-Inspector," the warrant is defective and the presumption which might otherwise have arisen under S. 7 cannot be drawn. (Ferrers J. C. and Rupchand A. J. C.) Ismail Varyo v. Emperor,

AIR 1934 Sind 129=1934 Cr Cas 1065=28 S L R 81 7 R S 95=152 I C 400=36 Cr L J 204.

——Direction to seize money, effect of.

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 6—10. Validity of warrant

A direction to seize money found on the persons of the people in a gaming house does not altogether vitiate the warrant under the above Act. (Hayward J. C. and Fawcett A. J. C.) Bagumal Wadhumal v. Emperor,

AIR 1917 Sind 43=10 S L R 134=37 I C 54=18 Cr L J 70.

—S. 7.

See also ibid, Ss. 4 and 6.

SYNOPSIS

1. Description of place in warrant.
2. Evidence and proof.
3. Instruments of gaming.
4. Interpretation.
5. Powers of Commissioner of Police
6. Presumption under the section. See also ibid, S. 6.
7. Rebuttal of presumption.

1. Description of place in warrant.

——Omission to mention sub-division of a house is not material.

If the description of the warrant is such that an ordinary person can identify the spot, the Crown can take advantage of the presumption created by S. 7. An omission to mention sub-division of a building is immaterial. 6 Bom L R 52, Rel. on. (Kincaid J. C. and Lobo A. J. C.) Bhanji v. Emperor,

AIR 1926 Sind 254 = 20 S L R 10=96 I C 217=27 Cr L J 905.

2. Evidence and proof.

——Admissibility—Matter found in illegal search.

If a search warrant is illegal, then what is found as a result of that search can be put in evidence in a criminal case. 35 All 358, Rel. on. (Marten and Madgavkar JJ.) Emperor v. Abasbhai,

AIR 1926 Bom 195=93 I C 967=50 Bom 344=28 Bom L R 272=27 Cr L J 503.

—Complaint and warrant not formally exhibited—Duty of Court.

Where both the complaint made under S. 6 and the warrant issued thereon are actually on record but are not formally exhibited as evidence, the Magistrate should, in the exercise of a wise discretion, before the close of the prosecution case, draw the attention of the prosecution to the fact that the documents have not been exhibited, and ascertain whether or not they are to be regarded as having been produced as evidence for the prosecution under S. 244, Cr. P. C. (Lucas J. C. and Crouch A. J. C.) Crown v. Gholam Hoosein Karimbux,

3 S L R 84=3 I C 895=10 Cr L J 408.

3. Instruments of gaming.

——Marked currency notes given by bogus punter and recovered upon raid — They are not instruments of gaming.

Marked currency notes recovered from a shop raided by police officers under that Act, which notes had been handed over to the shop keeper by the bogus punters after being marked cannot be treated as instruments of gaming: A I R 1932 Bom 194 and A I R 1940 Bom 18, Rel. on. (Sen and Gajendragadkar JJ.) Emperor v. Hormazdyar Ardeshir Irani.

AIR 1948 Bom 250=I L R (1948) Bom 199=19 Bom Cr C 223=50 Bom L R 163=49 Cr L J 362.

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 7

4. Interpretation.

——The word 'persons' includes 'person.' The plural includes the singular. (Davis J. C.) Bhagwandas Ghanshamdas v. Emperor

AIR 1940 Sind 28=ILR (1940) Kar 150=12 R S 219 187 I C 78=41 Cr L J 399.

——A shop abutting on to a public street although a place within the meaning of S. 12, is still a place within the meaning of S. 4 and a search warrant under the Act can be issued and a presumption under S. 7 can be drawn against the shop-keeper. (Davis J. C.) Sat Narain Amratlal v. Emperor

A I R 1939 Sind 184=12 R S 60=I L R (1939) Kar 741=183 I C 562=40 Cr L J 817.

——Ss. 7, 4 and 5—"Keeping" and "using"—*See* Bombay Prevention of Gambling Act (4 of 1887), Ss. 4, 5 and 7.

2 Cr L J 26 (Bom)

5. Powers of Commissioner of Police.

——Powers of Commissioner.

The Commissioner of Police can himself do that which under Section 6 he can authorise a Subordinate Police Officer to do. 31 Bom 438, Foll. (Batchelor and Rao, JJ.) Emperor v. Jaffur Mahomed

37 Bom 402=15 Bom L R 106=19 I C 204=14 Cr L J 204.

6. Presumption under the section.

See also ibid, S. 6.

——Ss. 7, 6—There must be warrant under Section 6 at time of raid, to enable Court to raise presumption under S. 7—In the absence of provision in the Act in this behalf provisions in Criminal P. C. apply (Criminal P. C. (1898), Ss. 102 (1) and 80 (1)).

One of the conditions which must be fulfilled before the Court is entitled to raise any presumption under Section 7 is that the Police Officer must have entered the room "under Section 6" which means that his entry must be authorised by a special warrant issued to him under Section 6. If the Police Officer, to whom a special warrant has been properly issued under Section 6 of the Act, omits to keep it with him when entering the house, his entry cannot be said to be "an entry under S. 6" so as to entitle the Court to raise the presumption under Section 7. His entry without the warrant is illegal and the Court is not entitled to raise any presumption under Section 7. The warrant entitles the Police Officer both to enter and search the house and also to arrest persons found therein. It is therefore a warrant which is both a search warrant and warrant of arrest. Though the Bombay Prevention of Gambling Act does not make it clear whether the Police Officer should carry the warrant with him when in execution of the warrant he enters a house or arrests persons found there, the Criminal P. C., contains provisions on this point. Both in the case of search warrants and warrants of arrest under Ss. 102 (1) and 80 (1) of the Cr. P. C., the officer executing the warrant is required to keep the warrants with him. If he fails to do so, his entry in the premises or the arrest is illegal. The fact that no one may have demanded to see the warrant and tamely submitted to the search or arrest does not make these proceedings legal. In the absence of any provisions in the Gambling Act, the above provisions should govern the searches and arrests under S. 6 and presumption under Section 7 can only be made if the Police Officer had the warrant in his possession at the time of entering the premises. (Shah C. J. and Baxi J.) State v. Durlabhji Anadji.

AIR 1952 Sau 81=1952 Cr L J 1208.

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 7—6. Presumption under the section

——Seizure of articles which police suspected to be instruments of gaming cannot raise presumption under S. 7.

Seizure of certain articles, from a shop which is entered into under S. 6, cannot bring the case under the first part of S. 7 and cannot raise a presumption under S. 7, merely because the police suspected these articles to be instruments of gaming. (Sen and Gajendragadkar JJ.) Emperor v. Hormazdyar Ardeshir Irani

AIR 1948 Bom 250=ILR (1948) Bom 199 = 19 Bom Cr C 223=50 Bom L R 163=49 Cr L J 362.

——First Class Magistrate searching premises instead of issuing a warrant under S. 6 — Magistrate must give evidence of search and arrest—No presumption under S. 7 can be raised in absence of evidence of searching Magistrate. 31 Bom 438, Rel, on. (Davis C. J. and Thadani J.) Emperor v. Chabaldas

AIR 1947 Sind 112=I L R (1946) Kar 174=228 I C 170=47 Cr L J 109.

——Recovery of instruments of gaming on search — Presumption.

Where a house is searched on the authority of a warrant duly issued and the gambling is found going on in the house and instruments of gaming are also found therein, the presumption under S. 7 arises and dispenses with the necessity of direct evidence that the gaming was being carried on for the profit of the keeper of the house. It is then for the accused to rebut the presumption. (Divatia and Lokur JJ.) Emperor v. Chiman Lall

AIR 1945 Bom 305=47 Bom L R 75=1946 Bom Rul 40 (C N 7)=221 I C 18=47 Cr L J 109.

——Presumption under S. 7—When arises.

The presumption under S. 7, Bombay Prevention of Gambling Act, will arise only if the house has been entered under warrant issued under the provisions of S. 6. If there has not been an exact compliance with the requirements of S. 6, then the warrant is not duly issued. (Ferrers J. C. and Rupchand A. J. C.) Emperor v. Asiat

AIR 1935 Sind 102=7 R S 240 = 1935 Cr Cas 520= 29 S L R 19=156 I C 294=36 Cr L J 902.

——Presumption—Special warrant not issued under S. 6 —Presumption cannot be drawn.

No presumption under S. 7 can be drawn where the warrant is not a special warrant issued under S. 6 of the Act. (Barlee and Kalumal, A. J. Cs.) Assudomal v. Emperor

A I R 1930 Sind 59=119 I C 535 = 23 S L R 441 = 1930 Cr C 123=30 Cr L J 1075.

——If search warrant is bad, presumption under S. 7 cannot be made but that does not prevent prosecution from establishing their case by other evidence.

If the warrant under which a search is made is bad, then the presumption under S. 7 of the Act cannot be made, but the mere fact that such presumption cannot be raised does not prevent the prosecution from establishing by evidence in the ordinary way that on the facts proved the accused were guilty of the offences charged. 37 Bom 402, Foll. (Marten and Madgavkar JJ.) Emperor v. Abasbhai

AIR 1926 Bom 195=50 Bom 344=28 Bom LR 272= 93 I C 967=27 Cr L J 503.

——Presumption under when cannot be raised. Where the warrant is not issued to a Police Officer, no presumption under S. 7 of the Gambling Act arises, and the prosecution must prove that the house in question is a common gaming house. (Lucas Esq.) Crown v. Chellaram.

2 S L R 40 Cr.=10 Cr L J 205.

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 7—6. Presumption under the section

——Ss. 6 and 7—Presumption—Validity of warrant disputed—Proof.

Before drawing any presumption of guilt against the accused under S. 7 the trying Magistrate must be satisfied that the warrant issued by the Police Officer under S. 6 was a valid one. Mere reference to an uncertified copy of the statement made by the informer, without calling for further proof, is not enough. In such a case it cannot be said that the Magistrate had sufficient materials to hold that the warrant was a valid one. (A. Lucas Esq. and H. N. Crouch Esq.) Crown v. Seju Walad Chatu.

1 S L R 27 Cr=9 Cr L J 267.

7. Rebuttal of presumption.

——Issue of proper warrant under S. 6 — Presumption under S. 7—Rebuttal — See Public Gambling Act (1867), S. 5.

5 Sau L R 79.

——Second part, applicability of — Articles seized should be suspected to be instruments of gaming.

The second part of S. 7 of the Act is intended to apply to such things as may appear to be or may reasonably be suspected to be instruments of gaming though they cannot be proved to be such instruments. But the accused should be given an opportunity to rebut the presumption, arising in such a case under second part of S. 7. Observations of Beaumont C. J. in A I R 1939 Bom 339, Commented upon. (Sen and Gajendragadkar JJ.) Emperor v. Hormazdyar Ardeshir Irani.

A I R 1948 Bom 250 = I L R (1948) Bom 199 = 19 Bom Cr C 223=50 Bom L R 163=49 Cr L J 362.

——Ss. 7, 5 — Accused failing to rebut presumption under S. 7—His conviction under S. 5 is justified.

Where the prosecution proves the facts necessary to raise the presumption under S. 7 they need not prove anything further, and it becomes necessary for the accused to prove that the passage was not a common gaming house. Where he fails to rebut the presumption under S. 7 his conviction under S. 5 is justified. (Beaumont C. J. and Sen J.) Ibrahim Haji-Abdul Rahiman v. Emperor.

A I R 1940 Bom 129=42 Bom L R 161=12 R B 508 =I L R (1940) Bom 322=188 I C 316=41 Cr L J 571.

——Presumption under S. 7—When rebutted.

There may perhaps be a casus omissus under the Act, viz., where the place in which gaming is carried on is neither a public place, because the public have not access to it nor a common gaming house within the definition because there is no person who can be described as an owner, occupier or person using or having the use of the place for whose benefit the gaming is carried on. Under S. 7 of the Act, a presumption arises when instruments of gaming are found in a place that it is a common gaming house. But if the circumstances show that the only person who can make a profit from the gaming is not the owner, occupier or person using or having the use of the same within the meaning of Ss. 3 and 4 of the Act, the presumption must be rebutted and no conviction would be possible either under S. 4 or S. 5. (Broomfield Ag. C. J. and Sen J.) Krishnaji Madhusudan v. Emperor.

A I R 1940 Bom 18=41 Bom L R 1114=12 R B 338 =186 I C 242=41 Cr L J 273.

——Ss. 7, 5 — Presumptions under S. 7 — Onus to prove that place was not common gaming house is on accused—Onus not discharged.

The presumptions under S. 7 which arise from the finding of instruments of gaming in a place, are that the place was used as a common gaming house and that the

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 7—7. Rebuttal of presumption persons found there were there for the purpose of gaming. So, where the Crown has proved the finding of instruments of gaming, and the presence of the accused in the place, the burden is thrown upon the accused to show that the place was not a common gaming house. Where the accused has not discharged this burden, his conviction under S. 5 is justified. (Beaumont C. J. and Sen J.) Gulam Hussein Rawji v. Emperor.

A I R 1940 Bom 62=41 Bom L R 1326=12 R B 310 =I L R (1940) Bom.105=186 I C 148 = 41 Cr L J 253.

——Presumption under—When arises and how rebutted.

Section 7, Bombay Prevention of Gambling Act, as amended, provides that in certain events the house, room or place raided under S. 6 shall be presumed to be used as a common gaming house until the contrary is proved : There are two events on which that presumption arises. The first event is when any instrument of gaming has been seized in the house, room or place entered under S. 6 or about the person of anyone found therein. There is no particular difficulty in determining when that event occurs. All that the Court has to do is to see whether the documents and things found in the house raided fall within the definition of "instruments of gaming." If they do then the presumption arises. The other event is more difficult to determine. The occurrence of that event requires two things to be proved : first, that something has been seized, which is other than an instrument of gaming, and secondly, that the Police Officer had reasonable grounds for suspecting that the thing so seized was an instrument of gaming. When these two things are proved, then the Court must presume that the house, which has been entered, was used as a common gaming-house until the contrary is proved. But obviously if the only evidence of the house being used as a common gaming-house lies in the seizure in the house of something which is in fact not an instrument of gaming, although the Police Officer had reasonable grounds for suspecting that it was an instrument of gaming then there is no evidence of such user and the presumption is rebutted. The presumption arising in the second event specified in S. 7 must always be still-born, because it is rebutted by proof of the very event which gives it birth, namely seizure of something other than an instrument of gaming. The second event can only arise, when it is proved that the thing which was found in the house raided was not an instrument of gaming ; and, directly it is proved, the evidential value of the thing found is destroyed. (Beaumont C. J. and N. J. Wadia J.) Emperor v. Nathalal Vanmali.

A I R 1939 Bom 339 = I L R (1939) Bom 434 = 41 Bom L R 548=12 R B 155=184 I C 252=40 Cr L J 891.

——Hindus gambling on satam day—Local custom—Non-admission of non-Hindus — Presumption under S. 7, rebuttal of.

Where certain Hindus were found gambling in a house on satam day on which according to a local custom Hindus used to gamble and no non-Hindus were admitted to the house :

Held that the presumption under S. 7, Bombay Prevention of Gambling Act, was sufficiently rebutted by the fact that it was the satam day on which the gambling was going on and that no non-Hindus were admitted to the premises. (Ferrers J. C. and Rupchand A. J. C.) Pabumal v. Emperor.

A I R 1933 Sind 42 = 1933 Cr Cas 188 = Ind Rul (1933) Sind 102 (2)=27 S L R 32=142 I C 522 (1)=34 Cr L J 356.

——Ss. 7, 4 (a) — Keeping common gaming house—Search by police— Finding of slips of paper with names

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 7—7. Rebuttal of presumption of horses and sums of money — Presumption — How rebutted.

The accused, a medical practitioner, was charged with keeping a common gaming house and thereby committing an offence under S. 4 (a) of the Bombay Prevention of Gambling Act. He was convicted on the evidence that on a Police raid on his dispensary, some slips of paper with names of horses with sums of money marked against some of them were found. The Police could not find betting books of any sort :

Held, (i) that if a presumption arose from the evidence under S. 7 of the Act that the house or room was used as a common gaming house, then that presumption was rebutted by the fact that nothing was found in the house to suggest that it was being used as a common gaming house.

(ii) that the documents found in the house were perfectly consistent with the persons who were there, that is the accused, being merely engaged in making private bets for their own entertainment and the total absence of any books relating to book-making showed that no business of a common gaming house was being conducted. (Beaumont C. J. and Broomfield J.) Rustam Cursetji Law v. Emperor

AIR 1932 Bom 181 = Ind Rul (1932) Bom 228—34 Bom L R 267 = 1932 Cr Cas 240 = 136 I C 868 = 33 Cr L J 389.

——Ss. 7, 6, 5 and 4— Presumption under S. 7 — House occupied temporarily whether a gaming house.

The presumption under S. 7 of the Act is rebuttable. The fact that the accused occupied the house temporarily when they were out for a picnic and were playing there for small stakes is sufficient to rebut the presumption arising under S. 7 that the house was a common gaming house. (Shah and Martin, JJ.) Chiman Lal v. Emperor

AIR 1917 Bom 230 =19 Bom L R 693=41 I C 997= 18 Cr L J 885.

——Presumption under S. 7 — Rebuttal evidence held sufficient.

Where a warrant was issued upon the sworn information of a person who was an avowed gambler, and who was not even subjected to the test of cross-examination, and when the premises were entered into the accused, who belonged to the same caste, were found engaged in preparing tea and some articles of the game of cricket, as well as some cards and dice in a cupboard in the wall and a money box, with a little cash in it were found on the premises, and the accused asserted that the premises were used by them as a club :

Held, that the presumption under S. 7 is only evidence until the contrary is made to appear and that this presumption had sufficiently been rebutted under the circumstances of the case. (Lucas J. C. and Crouch A. J. C.) Tyab Ali Mohamed Ali v. Emperor

3 S L R 80 = 3 I C 894 = 10 Cr L J 407.

—S. 8.

——The power of forfeiture exercisable by the Magistrate under S. 8 is discretionary (Davis J. C.) Bhagwandas Ghanshamdas v. Emperor

AIR 1940 Sind 28 = ILR (1940) Kar 150 = 12 R S 219 = 187 I C 78 = 41 Cr L J 399.

——Money found when can be forfeited.

Section 8, Bombay Prevention of Gambling Act does not provide for the forfeiture of money found on the persons of those in the common gaming house; and it would appear that money found on the persons of those gaming or present in the common gaming house and so on can be forfeited only as instruments of gaming within the definition of S. 3. That definition is wide because it covers any article used or intended to be used as the

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 8

subject or means of gaming or proceeds of gaming, so that any money or currency notes used or intended to be used as a means of gaming or the proceeds of gaming found on the person of one present in the common gaming house for the purpose of gaming and so on, can be forfeited, but the prosecution must, of course, show that any particular money to be forfeited as a means of gaming falls within the definition of "instruments of gaming" in S. 3. (Davis J. C.) Doongersi Awchar v. Emperor

AIR 1940 Sind 22 = ILR (1940) Kar 125 = 12 R S 221 = 186 I C 883 = 41 Cr L J 385.

—— Gambling in common gambling house—Cash and ornaments.

A Magistrate has no power under S. 8 of the Act to order forfeiture of cash, ornaments and currency notes found on the person of the accused convicted of gambling in a common gambling house. (Shah and Crump JJ.) Sadashiv Bab Abbu v. Emperor

AIR 1920 Bom 311=22 Bom L R 197 = 55 I C 864= 21 Cr L J 384.

—— Ss. 8 and 6 (c) — Scope of

Second para of S. 8 refers to S. 6 (c) and the articles liable to seizure and forfeiture are those used or intended to be used for gambling and found within the premises. (Batchelor and Heaton JJ.) Rasul Gulab Kadia v. Emperor

AIR 1917 Bom 238 (1) = 19 Bom L R 352 = 40 I C 311 = 18 Cr L J 663.

—S. 10.

—— Power of Magistrate to examine accused.

Under S. 10 a trying Magistrate cannot examine any of the accused persons, while he is still an accused person and has obtained no order of discharge or acquittal. (Batchelor and Hayward JJ.) Babi Lal Balvant v. Emperor

AIR 1915 Bom 123=17 Bom L R 1078=32 I C 130= 17 Cr L J 2.

—S. 11.

—— Motives of informant.

The motives of the informant are altogether irrelevant and S. 11 shows that the Legislature recognized that the informant might be actuated only by the hope of a reward. (Pratt Esq. and Crouch Esq.), Imperator v. Paman

1 S L R 67 Cr = 8 Cr L J 185.

—S. 12.

See also Ibid, S. 4.

SYNOPSIS

1. Abetment.
2. Applicability.
3. Evidence and proof.
4. "Found gaming".
5. "Game".
6. Gaming in public street.
7. Instruments of gaming.
8. Public place.
9. Punishment.

1. Abetment.

—— Aider and abettor, whether punishable.

Under S. 12 of the Bombay Prevention of Gambling Act only those persons who are gaming are punishable and those who aid and abet are not punishable. (Tek Chand J.) Shadi Ram v. Emperor

AIR 1933 Lah 513 (1)=Ind Rul (1933) Lah 139 (1)= 34 P L R 173=1933 Cr Cas 772 (1) =141 I C 543 (2)= 34 Cr L J 174.

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 12

2 Applicability.

— Section 12 does not exclude the application of S. 4 in proper cases even though in certain circumstances S. 12 might apply to the same "place". (Davis J. C.) Sat Narain Amratlal v. Emperor

AIR 1939 Sind 184 = 12 R S 60=ILR (1939) Kar 741 = 183 I C 562 = 40 Cr L J 817.

—S. 12 (a) — Accused travelling in train — Wagering chits and money representing winnings which accused intended to distribute at some other place, found in his possession.

Where an accused travelling in a train is arrested he cannot be convicted under S. 12 (a) for being found in possession of wagering chits and money representing winnings which the accused intended to distribute at some other place, unless those winnings are shown to be winnings of gaming in a public place. (Beaumont C. J., Broomfield and Norman JJ.) Emperor v. Somabha Govindbhai

AIR 1938 Bom 484 =40 Bom L R 1082=11 R B 176 = ILR (1939) Bo n 53 = 178 I C 588 = 40 Cr L J 97 (F B).

——Ss. 12 (a), 3 — Conviction of being reasonably suspected to be gaming—"Gaming in public place"—Essentials for.

It would be a remarkable departure from the accepted principles of criminal justice if the mere fact of being reasonably suspected by a Police Officer were to be held sufficient to justify a conviction of a criminal offence. A man may be arrested on a reasonable suspicion of gaming in a public place but he can only be convicted of the offence at which S. 12, Bombay Prevention of Gambling Act is aimed, viz., actual gaming in public. (Beaumont C. J., Broomfield and Norman JJ.) Emperor v. Somabhai Gobindbhai

A I R 1938 Bom 484 = 40 Bom L R 1082 = 11 R B 176=I L R (1939) Bom 53 = 178 I C 588 = 40 Cr L J 97 (F B).

3. Evidence and proof.

——S. 12 (a)—Accused charged under section—Evidence of punter and 'panch'—Corroboration.

Two persons were harged with committing an offence under S. 12 (a) and there was before the Court the evidence of the punter and the 'panch'. The punter gave evidence to the effect that he was given a marked two rupee note and was instructed to go to accused No. 1 and lay a bet of Rs. 2 on Bombay 7 and that he accordingly went up to accused No. 1 and offered the said bet on Bombay 7. The evidence of the 'panch' witness was to the effect that he had accompanied the punter that the punter had gone up to accused No. 1, that accused No. 2 was also present there that he (punter) had given the marked two rupee note to accused No. 1 and had asked him (accused No. 1) to lay it as a bet on Bombay 7, that the said marked currency note was accepted by accused No. 1 and that thereafter the recording of the bet was done by accused No. 2 :

Held, that the evidence of the punter and the 'panch' was satisfactorily corroborated, not only by the 'find' of the marked currency note from the possession of the accused No. 1 but also by the slip which contai ied a record of the bet which was laid by the punter with accused No. 1 and, therefore, the evidence was sufficient to establish the offence against both the accused. (Rajadhyaksha and Vyas JJ.) State v. Jayantilal Govinddas

A I R 1953 Bom 82 = 54 Bom L R 790 = 22 Bom Cr C 4=I L R (1953) Bom 91=1953 Cr L J 390.

4. "Found gaming."

——Apprehension of person, whether should be in actual act.

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 12—4. "Found gaming"

Section 12, Bombay Prevention of Gambling Act, does not require that the Police should apprehend persons in the actual act of gaming. The words "are found gaming" in S. 12 have a wider meaning than "seen gaming." The word "found" is more akin to the word "discovered" in its nature and purpose, and if people are found by the Police in such circumstances that it is clear that when the Police came upon the scene they were engaged in gaming, it does not matter that dice and darts were not seen actually thrown. The transaction as a whole must be looked at, and not one particular minute or second of time. (Davis J. C. and Mehta A. J. C.) Ghanshamdas v. Emperor

A I R 1936 Sind 126 = 29 S L R 349 = 1936 Cr Cas 803=9 R S 50=164 I C 642=37 Cr L J 1005.

5. "Game."

——Person selling tickets, person receiving wager and person holding dart to be thrown and person receiving dart from board are all gaming.

In a game of darts a person who sells the ticket and receives the wager takes just as great a part in the act of gaming as does the person who hands the dart to the individual who is to try his chance and as does the third individual who removes the dart from the board and all the three can be held to be engaged in a gaming within the provision of the Bombay Prevention of Gambling Act. (Davis J. C. and Mehta A. J. C.) Ghanshamdas v. Emperor

A I R 1936 Sind 126 = 29 S L R 349 = 1936 Cr Cas 803=9 R S 50=164 I C 642=37 Cr L J 1005.

——Dart game.

The law is enacted for the average man and not for a person of unusual skill, and the question whether in a game of dart, chance or skill is a deciding factor is to be decided by taking the case of an average man. (Davis J. C. and Mehta A. J. C.) Ghanshamdas v. Emperor

A I R 1936 Sind 126 = 29 S L R 349 = 1936 Cr Cas 803=9 R S 50=164 I C 642=37 Cr L J 1005.

——Game—Meaning of.

Game in S. 12 does not include a wager ; betting on a horse race is not covered by S. 12. (Heaton and Shah JJ.) Emperor v. Vithaldas Hirji

A I R 1917 Bom 200=19 Bom L R 830 = 42 I C 920 =19 Cr L J 3.

6. Gaming in public street.

——Person sitting in a shop readily accessible to public is liable.

A person sitting in a shop at a place where he is readily accessible to any person who wished to bet with him from the public street without having to enter the shop at all, is liable for betting or gaming in the street under S. 12 : 15 Bom. L. R. 101 ; 30 Bom. 348 and 31 Cal. 910, Dist. (Fawcett and Madgavkar JJ.) Fakirbhai v. Emperor

A I R 1926 Bom 149=28 Bom L R 92=93 I C 244= 27 Cr L J 452.

7. Instruments of gaming.

——Currency notes and cash if used for gaming are instruments of gaming.

Although currency notes and cash found on the person alleged to be a gambler cannot in themselves be regarded as "instruments of gaming" yet if they are used as a subject or means of gaming they would fall within the definition of "instruments of gaming" : 16 Bom. 283 (F.B.). Held, overruled by Act VI of 1919. (Mirza and Baker JJ.) Tribhowan Moti Ram v. Emperor

A I R 1929 Bom 74=53 Bom 137 = 117 I C 434=31 Bom L R 53=30 Cr L J 794.

8. Public place.

——Place—Room in hotel in exclusive possession of occupier cannot be deemed to be a 'place' within the meaning of S. 12. (Shah C. J. and Baxi J.) State v. Maganlal Panachand

A I R 1953 Sau 112=6 Sau L R 414 = 1953 Cr L J 1183.

——Passage as place accessible to public.

Obiter.—In cases where the passage is a place to which the public have access or are permitted to have access there might be an offence under S. 12 of the Act. (Broomfield Ag. C. J. and Sen J.) Krishnaji Madhusudan v. Emperor

A I R 1940 Bom 18=41 Bom L R 1114=12 R B 338 =186 I C 242=41 Cr L J 273.

——"Any place to which public have or are permitted to have access", construction—Invitation to public.

No distinction can be made, in construing the expression "any place to which the public have or are permitted to have access" in S. 12, Bombay Prevention of Gambling Act, between a right conferred on the public by a statutory provision or a resolution of a Municipality, and a right conferred on the public by a private owner, and the deciding factor is not whether the place is or is not owned by a private individual or a statutory body, but the use to which it is put. If a private owner invites either expressly or by implication the public generally to enter his garden, then so long as that invitation is extended to the public generally, so long the garden is a place to which the public have or are permitted to have access within the meaning of the section. The fact that the owner reserves to himself the right to exclude undesirables is not the deciding factor. (Davis J. C. and Lobo A. J. C.) Tahirali v. Emperor

A I R 1936 Sind 90=30 S L R 72=9 R S 29 = 1936 Cr Cas 674=164 I C 58=37 Cr L J 876.

——S. 12 (a)—Object of amendment.

The object of the amended S. 12 (a) was to free the word "place" which had been originally used in that section from the restricted meaning which it was held to bear, appearing as it did between the expression "public street" and the word "thoroughfare." (Mirza and Broomfield JJ.) Mangubhai Dahyabhai v. Emperor,

AIR 1930 Bom 369=54 Bom 491=I R 1930 Bom 465 =127 I C 81 = 32 Bom L R 790 = 1930 Cr C 848=31 Cr L J 1119.

——S. 12 (a)—Hotel — "Any place to which public have or are permitted to have access" includes hotel.

The words in the amended S. 12, Gambling Act, "in any place to which the public have or are permitted to have access" would include a hotel. The public have a right to go to a hotel provided there is accommodation available in it, and can be said to have or to be permitted to have access to it. 30 Bom 348 and 13 Cr L J 167, Expl. and Dist. (Mirza and Broomfield JJ.) Mangubhai Dahyabhai v. Emperor

AIR 1930 Bom 369=54 Bom 491=I R 1930 Bom 465 =127 I C 81=32 Bom L R 790 = 1930 Cr C 848 = 31 Cr L J 1119.

——S. 12 (a)—Public place—Mutt.

A Mutt, which is enclosed in a compound wall and is managed by the Swami, who can keep out people, if he

BOMBAY PREVENTION OF GAMBLING ACT (IV of 1887), S. 12—8. Public place

chooses, is not a public place. (Batchelor and Rao JJ.) Emperor v. Chinnappa,

15 Bom L R 101=19 I C 167=14 Cr L J 167.

——Ss. 4 and 12—Object of—Gambling in machwa hired by accused for purposes of gambling, whether gambling in public place—See ibid, S. 4.

2 Cr L J 252 (Bom).

9. Punishment.

——Conviction —Confiscation—Order for sale of instruments of gaming.

In S. 12, Bombay Prevention of Gambling Act, before as well as after amendment, it would appear that the forfeiture of money and the severer penalties imposed by the section relate to a person convicted of wagering or betting but not to a person convicted merely of gaming. Where there has been a conviction under S. 12, the money and the instruments of gaming will not be forfeited and will be returned to the owner of the instruments. In the section there is a direction that all instruments of gaming found in such public place shall be destroyed and not ordered to be sold. (Davis J. C. and Mehta A. J. C.) Muhammad Hassan v. Emperor,

AIR 1937 Sind 99=31 S L R 44 = 9 R S 255 = 169 I C 35=38 Cr L J 668.

——Disproportionate punishment to be avoided.

There should be no disproportionate punishment in the case of very petty offences. (Beaman and Heaton JJ.) Mahomed Nethee v. Emperor,

AIR 1916 Bom 98 (1) = 41 Bom 149 = 18 Bom L R 940=37 I C 305=18 Cr L J 97.

—S. 13.

——Ss. 13, 4—Game of cards called pettin-ata.

"Mere skill" means pure skill, skill and nothing else. A game in which there is a substantial element of chance cannot be described as a game of mere skill or pure skill. As the Bombay Prevention of Gambling Act now stands, and in particular in view of the provisions of S. 13, it is clear that if a game is played for stakes, it amounts to gaming and comes within the mischief of the Act, quite irrespective of the question whether chance or skill predominates, provided of course that it is not a game of mere skill, that is to say, a game in which there is no element of chance at all. Of course, if the element of chance in a game is so small as to be negligible, it may be reasonable to ignore it. A game of cards called pettin-ata played for money stake is not a game of mere skill, and comes within the mischief of the Bombay Prevention of Gambling Act. (Broomfield Ag. C. J. and Sen J.) Emperor v. Kallappa Gurappa Kotagunshi,

AIR 1939 Bom 481=41 Bom L R 970=12 R B 231= I L R (1939) Bom 679=185 I C 315=41 Cr L J 157.

——Game of skill—Element of chance predominating.

No game can be a game of skill alone, and in any game in which even great skill is required, chance must play a certain part. Even a skilled player in a game of mere skill may be lucky or unlucky, so that we think that even in a game of mere skill chance must play its part. But it is not necessary to decide in terms of mathematical precision the relative portion of chance to skill when deciding whether a game is a game of mere skill within the provisions of S. 13. Where the elements of chance most strongly predominate, the game is not a game of mere skill. (Davis J. C. and Mehta A. J. C.) Muhammad Hassan v. Emperor,

AIR 1937 Sind 99 = 31 S L R 44 = 9 R S 255 =169 I C 35=38 Cr L J 668.

BOMBAY PREVENTION OF HINDU BIGAMOUS MARRIAGES ACT (XXV of 1946).

——Validity—Constitution of India, Art. 25.

A sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole. It is rather difficult to accept the proposition that polygamy is an integral part of Hindu religion. But even assuming that polygamy is a recognized institution according to Hindu religious practice, the right of the State to legislate on questions relating to marriage cannot be disputed. Marriage is undoubtedly a social institution, an institution in which the State is vitally interested. If, therefore, the State of Bombay compels Hindus to become monogamists, it is a measure of social reform, and the State is empowered to legislate with regard to social reform under Art. 25 (2) (b) notwithstanding the fact that it may interfere with the right of a citizen freely to profess, practice and propagate religion. Therefore, this legislation does not contravene Art. 25 (1) of the Constitution : (Chagla C. J. and Gajendragadkar J.) State of Bombay v. Narasu Appa Mali,

AIR 1952 Bom 84=53 Bom L R 779 = 21 Bom Cr C 244=I L R (1951) Bom 775=1952 Cr L J 354.

——Validity.

Bombay Prevention of Hindu Bigamous Marriages Act is a valid Act. (Chagla C. J. and Gajendragadkar J.) State of Bombay v. Narasu Appa Mali,

AIR 1952 Bom 84=53 Bom L R 779= 21 Bom Cr C 244=I L R (1951) Bom 775=1952 Cr L J 354.

——Validity — Constitution of India, Art. 15.

It cannot be held that the Bombay Prevention of Hindu Bigamous Marriages Act discriminates against the Hindus in preference to the Christain and the Parsi citizens of the State, in so far as it subjects the Hindus alone to the specially severe provisions as to punishment and procedure. It was for the legislature to take into account the social customs and beliefs of the Hindus and other relevant considerations before deciding whether it was necesssary to provide for special provisions in dealing with bigamous marriages amongst them. If the legislature acting on these considerations wanted to provide for a special procedure in dealing with bigamous marriages amongst the Hindus it cannot be said that the legislature was discriminating against the Hindus only on the ground of religion. (Chagla C. J. and Gajendragadkar J.) State of Bombay v. Narasu Appa Mali,

AIR 1952 Bom 84=53 Bom L R 779=21 Bom Cr C 244=ILR (1951) Bom 775=1952 Cr L J 354.

——Validity—Constitution of India, Art. 15 (1).

Even if it is held that personal laws fall within Art. 13 (1), the provisions of personal laws permitting polygamy do not amount to a discrimination against women only on the ground of sex. It cannot be held that the Bombay Prevention of Hindu Bigamous Marriages Act discriminates against the Hindus in preference to the Mahomedans. (Chagla C. J. and Gajendragadkar J.) State of Bombay v. Narasu Appa Mali,

A I R 1952 Bom 84=53 Bom L R 779=21 Bom Cr C 244=I L R (1951) Bom 775=1952 Cr L J 354.

——Validity—Constitution of India, Arts. 14, 15.

Article 14 does not lay down that any legislation that the State may embark upon must necessarily be of an all-embracing character. The State may rightly decide to

BOMBAY PREVENTION OF HINDU BIGAMOUS MARRIAGES ACT (XXV of 1946)

bring about social reform by stages and the stages may be territorial or they may be community-wise. If there is a discrimination against the Hindus in the applicability of the Bombay Prevention of Hindu Bigamcus Marriages Act, that discrimination is not based only upon ground of religion. Equally so, if the law with regard to bigamous marriages is not uniform, the difference and distinction is not arbitrary or capricious, but is based upon reasonable grounds. (Chagla C. J. and Gajendragadkar J.) State of Bombay v. Narasu Appa Mali,

A I R 1952 Bom 84=53 Bom L R 779=21 Bom Cr C 244=ILR (1951) Bom 775=1952 Cr L J 354.

—S. 4.

——Ss. 4 and 5—The second marriage need not be valid marriage for offence under Act.

It is not necessary in order to commit an offence under the Act that a valid second marriage should be solemnised. It is enough in law if the parties accused of bigamous marriage go through a form of marriage when the first marriage is still subsisting. The bigamous marriage may be in a Gandharva form, which is obsolete to-day under Hindu Law. (Chagla C. J. and Bhagwati J.) Emperor v. Manju Hanumant Naik,

A I R 1948 Bom 374=ILR (1948) Bom 412=19 Bom Cr C 284=50 Bom L R 379=49 Cr L J 685.

—S. 5.

——Offence under, need not necessarily be tried by Court of Session but can be tried by Presidency Magistrate or Magistrate of First Class.

An offence under S. 5 is not an offence against "other Law" within the meaning of that expression as used in second Schedule to the Criminal Procedure Code but it is an offence which has been made an offence under S. 494 of the Penal Code itself. Hence the proper forum for the trial of the offence is not necessarily the Court of Sessions but may be a Presidency Magistrate or a Magistrate of the First Class. (Chagla C. J. and Bavdekar J.) Atmaram Narayan v. Emperor.

A I R 1949 Bom 71=50 Bom L R 576=I L R (1948) Bom 631=20 Bom Cr C 3=50 Cr L J 147.

——The second marriage need not be valid marriage for offence under Act: See ibid, Ss. 4 and 5,

A I R 1948 Bom 374=49 Cr L J 685.

——Ss. 5, 6, 9 — Bigamous marriage — Complaint by private party is not necessary.

Under S. 9 of the Act the offences under the Act are cognizable. Therefore, every offence falling under the Act can be taken cognisance of under the provisions of the Criminal P. C., without any complaint being made by any person aggrieved by such offence. Whereas S. 198 of the Code restricts cognizance of certain offences only to cases where a complaint by private party is made, offences under the Bombay Act although they may fall under S. 494, Penal Code, are made cognizable without a complaint of a private party. Consequently when a second marriage is contracted by a Hindu which has been rendered void by this Act and which is made an offence under S. 494 of the Penal Code, no private complaint is necessary as contemplated by S. 198 of the Criminal P. C. (Chagla C. J. and Bhagwati J.) Emperor v. Manju Hanumant Naik,

A I R 1948 Bom 374=ILR (1948) Bom 412=19 Bom Cr C 284=50 Bom L R 379=49 Cr L J 685.

BOMBAY PREVENTION OF HINDU BIGAMOUS MARRIAGES ACT (XXV of 1946)

—S. 9.

——Bigamous marriage — Complaint by private party is not necessary—See ibid, Ss. 5, 6, 9,

A I R 1948 Bom 374=49 Cr L J 685.

BOMBAY PREVENTION OF PROSTITUTION ACT (XI of 1923).

—S. 3.

——Ss. 3 and 10 (1)—Arrest without complaint—Arrest by police-officer without complaint is illegal—Magistrate has no jurisdiction to try the accused.

A police-officer, who is not specially authorised by the Commissioner of Police as required by S. 10 (1), cannot arrest a woman under S. 10 (1) without a complaint under S. 3 of the Act, and the Magistrate has no jurisdiction under S. 190 of the Criminal P. C., to try the woman so wrongly arrested for the offence, unless a complaint within the meaning of S. 4 (1) (h) is made to him. (Marten and Fawcett, JJ.) Candri Bawoo v. Emperor,

A I R 1925 Bom 131 = 49 Bom 212 = 26 Bom L R 1225=85 I C 57=26 Cr L J 441.

—S. 6.

——Procuration — Brothel-keeper availing herself of the supply of the procuress is guilty of abetment.

Section 6 is directed against attempts to seduce the virtue of a woman or a girl for the purpose of prostitution, whether with or without her consent or whatever her age. The section is directed against both a brothel-keeper and her procuress; the brothel-keeper who avails herself of the supply of the procuress is guilty of abetment of the offence under S. 6, Bombay Act XI of 1923. The brothel-keeper facilitates the prostitution and completes it. (Madgavkar J.) Emperor v. Vithabai Sukha,

A I R 1928 Bom 336=52 Bom 403=30 Bom L R 613=11 A I Cr R 221=112 I C 209=29 Cr L J 993.

—S. 7.

——Prostitute—Mistress is not necessarily prostitute.

The idea underlying prostitution is that a woman should surrender her body for a monetary consideration to some one who is not in law entitled to have sexual intercourse with her. The position of a mistress is not necessarily that of a prostitute. The relationship is of a more permanent nature than the casual relationship implied in prostitution. Having a stray paramour would not constitute a woman a prostitute. (Mirza and Murphy JJ.) Emperor v. Lalya Bapu,

AIR 1929 Bom 266= 31 Bom L R 521 = 117 I C 336 =30 Cr L J 787.

——The matter whether a woman is an ordinary or common prostitute rests more on degree than on kind. (Mirza and Murphy JJ.) Emperor v. Lalya Bapu,

AIR 1929 Bom 266=31 Bom L R 521=117 I C 336= 30 Cr L J 787.

—S. 9.

——S. 9 (1) — Validity — Constitution of India, Arts. 13 and 19.

Section 9 (1), Bombay Prevention of Prostitution Act, imposes an unreasonable restriction on the fundamental rights of the citizen under Art. 19 (1) (d) & (e) of the Constitution and it is void inasmuch as it fails to provide

BOMBAY PREVENTION OF PROSTITUTION ACT (XI of 1923), S. 9

for a reasonable opportunity being given to the person affected by S. 9 (1) to be heard in his defence. (Chagla C. J. and Gajendradkar J.) Shantabai In re,

AIR 1951 Bom 337=53 Bom L R 142=21 Bom Cr C 94=ILR (1951) Bom 621=52 Cr L J 897.

——S. 9 (1)—Notice under—Non-compliance with S. 9 (1) —Validity.

When a person is called upon under S. 9 (1) to remove himself or herself to a particular place, that place must be clearly indicated in the order. It is not sufficient for the police authorities to tell the person affected that he must go outside the place from which the person is sought to be evicted. Further, S. 9 (1) also makes it incumbent upon the police authorities to indicate the route or routes by which the person has to remove himself from the place which he has to vacate. Finally, S. 9 (1) empowers the Police Commissioner or the District Magistrate to serve a notice upon a woman who resides in, uses or frequents any house, room or place in which the business of a common prostitute is carried on. All these three expressions indicate different sets of facts and the Commissioner of Police must make up his mind and decide which particular set of facts applies to the person against whom the notice is being served. Where the notice issued under S. 9 (1) does not comply with any of these conditions it is bad. (Chagla C. J. and Gajendragadkar J.) Shantabai In re,

AIR 1951 Bom 337= 53 Bom L R 142 = ILR (1951) Bom 621=21 Bom Cr C 94=52 Cr L J 897.

BOMBAY PRIMARY EDUCATION ACT (IV of 1923)

—S. 9.

——S. 9 (1)—An administrative officer of a School Board appointed under S. 9 (1) can be removed by the local authority without the previous sanction of the Government when there is a clear majority of two-thirds of the whole number of councillors and no sanction under S. 197, Criminal P. C., is necessary for his prosecution. (Patkar Ag. C. J. and Murphy J.) S. S. Shirke v. Emperor,

AIR 1931 Bom 527=33 Bom L R 1177=1931 Cr Cas 959=134 I C 1240 (1)=33 Cr L J 78.

BOMBAY PRIMARY EDUCATION (DISTRICT MUNICIPALITIES) ACT (I of 1918)

—S. 9.

——Ss. 9, 10 and 8 (b) — Scope—Provision mandatory—Right of parents to give education elsewhere not taken away—Object is that the child should get education somewhere — Instruction need not conform to standards in recognised schools.

The words "and after such enquiry as it considers necessary" in S. 9 are not merely permissive. That expression has a compulsory force, regard being had to the object of the enactment, to the wide powers conferred on the committee in derogation of the parents' rights and to the language of S. 9 itself. It is clearly the function of the Court when a complaint is made under S. 10 to see whether it is proved that the parent failed to send the child to a recognised school, without reasonable cause on or after the date specified in the attendance order. The Act does not inflict penalty on a parent for a mere failure to carry out an attendance order passed under S. 9. For, it is not to be supposed, unless the statute clearly said so, that once attendance order is made by the school committee under S. 9, the parent is for all time deprived of the right to give efficient instruction to his own child otherwise than in a recognised primary school. The main object of the enactment is to see that a child is not left without the benefit of education. It is sufficient if it is receiving efficient instruction elsewhere than in a recognised primary school. It is not essential that the instruction in order to be efficient within the meaning of S. 8 (b) should conform to the standard as adopted in the recognised primary school. (Shah Ag. C. J. and Coyajee J.) King-Emperor v. Nemchand Natha,

AIR 1924 Bom 105=47 Bom 942 = 25 Bom L R 896 =77 I C 226=25 Cr L J 338.

BOMBAY PRIMARY EDUCATION (DISTRICT MUNICIPALITIES) ACT (I of 1918), S. 9

—S. 10.

——S. 10—Conviction under—Essentials to be observed.

The two necessary conditions of a valid conviction under S. 10 are : (1) there must be an order passed by the School Committee under S. 9 i.e., an order passed in strict compliance with the procedure laid down in that section, (2) the parent must be shown to have failed to comply with the provisions of S. 7 on and after the date specified in such order.

The powers conferred under the Act on the School Committee are wide. They are in curtailment of the right of the parent to give efficient instruction to his child according to his own ideas. It is therefore essential that an attendance order passed by the Committee must be shown to have been passed in strict compliance with the procedure therein prescribed, namely "after giving the parent an opportunity of being heard" and after such enquiry as it considers necessary. The second requirement of S. 10 is that it must be shown that the parent has failed to comply with the provisions of S. 7 on or after the date specified in the attendance order passed by the Committee. (Shah A. C. J. and Coyajee J.) Emperor v. Nemchand Natha,

AIR 1924 Bom 105 = 77 I C 226 = 47 Bom 942 =25 Bom L R 896=25 Cr L J 338.

BOMBAY PRIZE COMPETITION TAX ACT (IX of 1939)

—S. 2.

——The word "competition" means the act of seeking, or endeavouring to gain, what another is endeavouring to gain at the same time. It is wrong to say that the word "competition" implies some sort of skill or at any rate some sort of striving or contention. (Broomfield and Lokur JJ.) Emperor v. Nilkanth Balaji Pathak,

AIR 1943 Bom 72 = 45 Bom L R 56 = ILR (1943) Bom 96=15 R B 370=205 I C 397=44 Cr L J 407

—S. 4.

——The secretary of charitable society promoted a scheme which was described as a Novel Gift Scheme. A large number of tickets which were in the form of a receipt for a donation of two annas to the charity were issued in books of forty. The tickets or receipts were all numbered, but four had the same number and together formed what was described as a full donation receipt. In each book one full donation receipt was guaranteed a prize of two rupees, if it happened to be of the winning number. There were some other prizes including one of Rs. 2,500. All the prize winning numbers were selected beforehand and lodged with a bank :

Held, that the scheme amounted to a competition within the meaning of the Act. (Broomfield and Lokur JJ.) Emperor v. Nilkanth Balaji Pathak,

AIR 1943 Bom 72 = 45 Bom L R 56 = ILR (1943) Bom 96=15 R B 370=205 I C 397=44 Cr L J 407.

BOMBAY PROBATION OF OFFENDERS ACT (XIX of 1938)

—S. 4.

——Ss. 4, 5 — Applicability to offences under Bombay Prohibition Act.

There is no provision in the Bombay Prohibition Act, 1949, which provides that the Probation of Offenders Act, 1938, should not be used in the case of offences falling under that Act. Action can, therefore, be taken under Ss. 4 and 5 of the Bombay Probation of Offenders Act even in the case of offences, other than that of consuming liquor, punishable under the Bombay Prohibition Act. (Bavdekar and Chainani JJ.) Josheph Simon v. State.

A I R 1951 Bom 416 (1) = 53 Bom L R 680 = I L R (1951) Bom 700=52 Cr L J 1408.

—S. 5.

——Applicability to offences under Bombay Prohibition Act—*See* ibid, S. 4

AIR 1951 Bom 416 (1)=52 Cr L J 1408.

BOMBAY PROHIBITION ACT (XXV of 1949)

——Application of Act to State of Saurashtra by notifications — Notifications not expressed to be made by or by order of Raj Pramukh—Application whether valid.

Rule 11 of the Rules of Business framed in pursuance of S. 6 of the Saurashtra State Regulation of Government Ordinance 1948, is not mandatory but only directory because it does not lay down that if the provision of the affirmative rule is not complied with, adverse consequences will follow. Hence, where notifications bringing into force in the State of Saurashtra the Bombay Prohibition Act, 1949, as adapted and applied by the Saurashtra State is signed by a person who is a Secretary to the Government of Saurashtra the mere fact that the orders contained in the notifications are not expressed to be made by or by order of the Raj Pramukh does not make such orders ipso facto invalid. (Shah C. J. and Chhatpar J.) Kadiani Bai Nandu Valji v. State

AIR 1951 Sau 79=1952 Cr L J 28.

—Preamble.

——Validity of Act — Certain provisions of Act declared invalid—Rest of Act declared valid : AIR 1951 Bom 210 : 52 Cr L J 80 (FB), Reversed.

The following provisions of the Bombay Prohibition Act, 1949, are invalid :

(1) Cl. (c) of S. 12, so far as it affects the possession of liquid medicinal and toilet preparations containing alcohol.
(2) Cl. (d) of S. 12, so far as it affects the selling or buying of such medicinal and toilet preparations containing alcohol.
(3) Cl. (b) of S. 13, so far as it affects the consumption or use of such medicinal and toilet preparations containing alcohol.
(4) Cl. (a) of S. 23, so far as it prohibits the commendation of any intoxicant or hemp.
(5) Cl. (b) of S. 23 in entirety.
(6) Cl. (a) of sub-s. (1) of S. 24, so far as it prohibits commendation of any intoxicant or hemp.
(7) Sub-s. (1) of S. 136, in entirety.
(8) Cls. (b), (c), (e) and (f) of sub-s. (2) of S. 136, in their entirety.

The rest of the provisions of the Act are valid. The declaration that some of the provisions of the Act are invalid does not affect the validity of the Act as it remains.

(*Note.*—Reversing the decision of the Bombay High Court, the Supreme Court has declared 'valid' the following sections, Rules and Notifications, namely : Ss. 2 (24), 24 (1) (b), 39, 52, 53, 139 (c), Rule 67 of the Bombay

BOMBAY PROHIBITION ACT (XXV of 1949), Preamble

Foreign Liquor Rules framed under S. 143, and notifications Nos. 10484/45 (c) and 2843/49 (a), dated 30-3-1950. To this extent the decision in A I R 1951 Bom 210 : 52 Cr L J 80 (FB) is reversed. (Fazl Ali, Patanjali Sastri, B. K. Mukherjea, S. R. Das and Bose JJ.) State of Bombay v. Balsara

AIR 1951 S C 318 = 1951 S C J 478 = 1951-2 M L J 141 = 53 Bom L R 982=1951 S C R 682 = 52 Cr L J 1361 (SC).

—S. 1.

——Certain provisions of Act held to be void — Whole Act, if void—Constitution of India, Art. 13 (1).

The Prohibition Act is both an amending and consolidating Act and it contains other provisions besides provisions with regard to prohibition. If the whole Act were to be declared void, then not only the provisions with regard to prohibition would go, but also the provisions with regard to Abkari, Excise, etc. It is impossible to say that the provisions with regard to prohibition are inextricably bound up with the provisions with regard to other matters that the Legislature has dealt with in this Act. The whole Act cannot, therefore, be declared to be void. The question of severability of void portion of the statute from the rest of the statute can be considered under Art. 13 (1) of the Constitution. (Chagla C. J., Gajendragadkar and Tendolkar JJ.) Fram Nusserwanji v. State of Bombay.

AIR 1951 Bom 210=52 Bom L R 799=I L R (1951) Bom 17=52 Cr L J 80 (FB).

—S. 2.

——Ss. 2 (22) and 66 (b)—Possession of prohibited article.

Where the rectified spirit found in possession of the accused was 94 v/v of ethyl alcohol it fell within the definition of intoxicant as given in S. 2 (22), possession of which, without permit, is prohibited by S. 66 (b). (Mahajan, Bose and Jagannadha Das JJ.) Vijendrajit Ayodhya Prasad Goel v. State of Bombay

AIR 1953 S C 247=1953 S C A 395=1953 S C J 328 =1953 All W R (Sup) 70 = 1953 M W N 552 = 1953 Cr L J 1097 (SC).

——S. 2 (24) — "Liquor" includes all liquids containing alcohol—See Govt. of India Act (1935), Sch. VII, List II, Entry 31

AIR 1951 S C 318=52 Cr L J 1361 (SC).

——S. 2 (22) — Notifications and orders under, dated 16-6-1949—Provisions, if ultra vires as offending against Art. 19 (1) (f) of the Constitution.

To the extent to which the Prohibition Act prevents the possession, use and consumption of beverages and medicines and toilet preparations containing alcohol for legitimate purposes the provisions are void as offending against Art. 19 (1) (f) of the Constitution even if they may be within the legislative competence of the Provincial Legislature. (Chagla C. J., Gajendragadkar and Tendolkar JJ.) Fram Nusserwauji v. State of Bombay

AIR 1951 Bom 210=52 Bom L R 799=I L R (1951) Bom 17=52 Cr L J 80 (FB).

—S. 12.

——Ss. 12 to 17 — Provisions relating to export and import, if ultra vires — Government of India Act (1935), S. 297 (1) and Sch. VII, List II, Items 27 and 29.

It is only when the Provincial Legislature is dealing with Entries 27 and 29 relating to trade and commerce within the Province and production, supply and distribution of commodities that the Legislature has no power of prohibiting or restricting the entry into or export from the Province of goods of any class or description. Implicit

BOMBAY PROHIBITION ACT (XXV of 1949), S. 12

in this prohibition is the competence of the Legislature to affect inter-State commerce when it is legislating in respect of entries other than Entries 27 and 29. When it is so legislating its powers are plenary and in the exercise of those powers it may even affect inter-State commerce. Therefore, the provisions relating to export and import contained in the Prohibition Act are intra vires of the Legislature. (Chagla C. J., Gajendragadkar and Tendolkar JJ.) Fram Nusserwanji v. State of Bombay

AIR 1951 Bom 210=52 Bom L R 799=I L R (1951) Bom 17=52 Cr L J 80 (FB).

[Reversed in AIR 1951 S C 318 : 52 Cr L J 1361 (SC).]

—S. 13.

——Provision relating to export and import are intra vires—See ibid, S. 12

AIR 1951 Bom 210=52 Cr L J 80 (FB).

—S. 14.

——Provisions relating to export and import are intra vires—See ibid, S. 12

A I R 1951 Bom. 210=52 Cr L J 80 (FB).

—S. 15.

——Provisions relating to export and import are intra vires—See ibid, S. 12

A I R 1951 Bom. 210=52 Cr L J 80 (FB).

—S. 16.

——Provisions relating to export and import are intra vires—See ibid, S. 12

A I R 1951 Bom. 210=52 Cr L J 80 (FB).

—S. 17.

——Provisions relating to export and import are intra vires—See ibid, S. 12

A I R 1951 Bom. 210=52 Cr L J 80 (FB).

—S. 23.

——Ss. 23 (a) and (b) and 24 (1)—Sections are ultra vires as offending against Art. 19 (1) (a) of the Constitution. (Chagla C. J., Gajendragadkar and Tendolkar JJ.) Fram Nusserwanji v. State of Bombay

A I R 1951 Bom. 210 = 52 Bom L R 799 = I L R (1951) Bom. 17=52 Cr L J 80 (FB).

—S. 24 (1).

——Section is ultra vires as offending against Art. 19(1)(a) of the Constitution—See ibid, S. 23 (a)

A I R 1951 Bom. 210=52 Cr L J 80 (FB).

—S. 39.

——S. 39 whether contravenes Constitution of India, Art. 14.

There is nothing wrong 'prima facie' in the legislature according special treatment to persons of the armed forces who form a class by themselves in many respects and who have been treated as such in various enactments and statutory provisions. Hence, S. 39, in so far as it affects the military and naval messes and canteens, warships and troopships, cannot be held to be invalid, on the ground that it contravenes Art. 14 of the Constitution : 52 Cr. L. J. 80 (FB), REVERSED. (Fazl Ali, Patanjali Sastri, B. K. Mukherjea, S. R. Das and Bose JJ.) State of Bombay v. Balsara

A I R 1951 S C 318=1951 S C J 478=1951-2 M L J 141=53 Bom. L R 982 = 1951 S C R 682 = 52 Cr L J 1361.

——Section, if void as offending against Art. 14 of the Constitution.

There is no logic or reason behind the provision contained in S. 39 which contemplates the issue of a permit for the use or consumption of foreign liquor which can

BOMBAY PROHIBITION ACT (XXV of 1949), S. 39

only be described adequately as a cumulative permit for drinking for all persons found on cargo boats etc. The classification, therefore, offends against Art. 14 of the Constitution and is void. (Chagla C. J., Gajendragadkar and Tendolkar JJ.) Fram Nusserwanji v. State of Bombay

A I R 1951 Bom. 210 = 52 Bom. L R 799 = I L R (1951) Bom. 17=52 Cr L J 80 (FB).

[Reversed in A I R 1951 S C 318=52 Cr L J 1361.]

—S. 40.

——Word "Addict" in medical certificate required under rules framed should be replaced by words used in S. 40 (1) (b) or words corresponding to them. (Fazl Ali, Patanjali Sastri, B. K. Mukherjea, S. R. Das and Bose JJ.) State of Bombay v. Balsara

A I R 1951 S C 318=1951 S C J 478=1952-2 M L J 141= 53 Bom. L R 982 = 1951 S C R 682 = 52 Cr L J 1361.

——Medical certificate—Form of.

Insistence upon a medical certificate in the form of a declaration that a person is an addict is not at all warranted by the provisions of the Act. The authority which issues permits has only to be satisfied that the conditions laid down in S. 40 (1) (b) are satisfied. It cannot in any way add to these conditions. (Chagla C. J., Gajendragadkar and Tendolkar JJ.) Fram Nusserwanji v. State of Bombay

A I R 1951 Bom. 210 = 52 Bom. L R 799 = I L R (1951) Bom. 17=52 Cr L J 80 (FB).

——S. 40 (c)—Classification of foreigners does not offend against Art. 14 of the Constitution. (Chagla C. J., Gajendragadkar and Tendolker JJ.) Fram Nusserwanji v. State of Bombay

A I R 1951 Bom. 210 = 52 Bom. L R 799 = I L R (1951) Bom. 17=52 Cr L J 80 (FB).

—S. 52.

——Ss. 52, 53 and 139 (c)—Sections and Notification No. 10484/45 (c), if ultra vires.

In leaving it to Government to issue permits in cases other than those provided for by the Act, in permitting Government to vary or substitute conditions of the licence, and in permitting Government to exempt persons or classes from the provisions of the Act, the Legislature was clearly delegating to Government its own power of legislation which it cannot do. Therefore, Ss. 52 and 139 (c) and S. 53 to the extent to which they empower the Government to vary or substitute any of the conditions provided by the Act for licences, permits, passes, or authorisations granted under the Act, are void on the ground that they constitute delegation of legislative powers.

As S. 139 (c) is ultra vires, the Notification No. 10484/45 (c) dated 30-3-1950 issued by the Government of Bombay under S. 139 (c) is also ultra vires. (Chagla C. J., Gajendragadkar and Tendolkar JJ.) Fram Nusserwanji v. State of Bombay

A I R 1951 Bom. 210 = 52 Bom. L R 799 = I L R (1951) Bom. 17=52 Cr L J 80 (FB).

—S. 53.

——Sections 53, 52 and 139(c) and Notification No. 10484/45 (c), if ultra vires—See ibid, S. 52

A I R 1951 Bom. 210=52 Cr L J 80 (FB).

——S. 53, Proviso — Proviso is ultra vires as offending against Art. 19 (1) (a) of the Constitution. (Chagla C. J., Gajendragadkar and Tendolkar JJ.) Fram Nusserwanji v. State of Bombay

A I R 1951 Bom. 210 = 52 Bom. L R 799 = I L R (1951) Bom. 17=52 Cr L J 80 (FB).

—S. 65.

——S. 65 (1)—Trial for more than one offence—Sentence —See Criminal P. C. (1898), S. 35

A I R 1951 Bom. 244.

——S. 65 (b)—General principles as to punishments—See Criminal P. C. (1898), S. 32

(1953) 6 Sau L R 181.

—S. 66.

——S. 66 (b) — Person drinking eau-de-cologne commits offence. (Shah C. J. and Baxi J.) State v. Haku Khoda

A I R 1953 Sau 161=1953 Cr L J 1521.

——Ss. 66 (b) and 81 — Possession of article — Evidence Act (1872), S. 3.

Where all that was suggested by the defence was that the articles found in the godowns were planted there by the police but it was not said that the godown was accessible to all and the police might have kept the spirit there and the suggestion could not bear examination in view of the evidence, the Magistrate was justified in those circumstances in drawing the inference that these articles were in possession of the accused who was in possession of the godown and the Supreme Court would not disturb the decision. (Mahajan, Bose and Jagannadha Das JJ.) Vijendrajit Ayodhya Prasad Goel v. State of Bombay

A I R 1953 S C 247 = 1953 S C A 395 = 1953 S C J 328=1953 All W R (Sup) 70=1953 M W N 552=1953 Cr L J 1097 (SC).

——S. 66 (b)—Person found drunk — Burden of proof — Evidence Act (1872), Ss. 101 to 103 and 106.

Positive facts must always be proved by the prosecution. But the same rule cannot apply to negative facts as regards which the rule about the burden of proof would be governed by S. 106, Evidence Act. The case of unauthorised possession of liquor presents points of distinction from the case of unauthorised drinking of liquor and the considerations which determine the burden of proof in the case of unauthorised possession of liquor do not apply to the case of unauthorised drinking. Consequently, while the person in possession of liquor need not prove that it is an exempted liquor, a person who is proved to have drunk liquor can only escape conviction if he can show that the liquor consumed by him was exempted liquor. (Shah C. J. and Baxi J.) State v. Talshi Sadul

A I R 1953 Sau 14=1953 Cr L J 105.

——S. 66 (b)—Illegal possession of Bhang—To constitute offence punishable under S. 66 (b) accused must be found to be in conscious possession of offending article—Accused carrying a packed tin containing bhang on his head — Prosecution must show that he had knowledge of its contents especially when accused had given an explanation that he was carrying it as a coolie without knowledge of its contents—In absence of such proof accused is entitled to acquittal — (Evidence Act (1872), Ss. 101 to 103 and 106). (M. C. Shah C. J. and J. A. Baxi J.) State v. Sindhi Lohana Puranmal Bhagatdas

A I R 1953 Sau 6=5 Sau L R 78=1952 Cr L J 1757.

——S. 66 (b) — Possession — Meaning of — Hired coolie carrying tin containing contraband article to station — Offence.

Possession made punishable under S. 66 (b) must be conscious and intelligent possession. It implies knowledge and there can be no possession when there is no knowledge on the part of the accused that he was carrying a contraband article.

The accused was seen carrying a tin on his head, which was found to contain bhang. The accused stated that he was working as coolie and some one had hired him to

take the tin to the railway station and that he was not aware of its contents :

Held, that in view of the facts of the case the mere carrying on of the tin would not constitute possession of the offending article. It was for the prosecution to show that the accused was conscious that the tin contained bhang and it was only then that the accused could be considered to be in possession of the offending article. (Shah C. J. and Baxi J.) State v. Lohana Puranmal.

AIR 1953 Sau 6=5 Sau L R 78=1952 Cr L J 1757.

——S. 66 (b)—Offence under — Duty of prosecution to prove consumption of liquor within limits of Magistrate's jurisdiction — Failure to prove — Presumption under S. 114, Evidence Act, if can be drawn — Evidence Act (1872), S. 114.

In order that a Magistrate may have jurisdiction to convict a person for the offence of drinking an intoxicant without a permit, it is necessary for the prosecution to prove that the intoxicant was consumed within the limits of his jurisdiction.

Where the accused is merely found drunk within the local limits of the jurisdiction of a Magistrate it would be for the prosecution to prove the place where the liquor was consumed in order to give the Magistrate jurisdiction to try the case. If the prosecution fails to prove this, the Court is not justified in drawing a presumption under S. 114, Evidence Act, that the accused must be considered to have taken liquor at the place where he is found, especially when there is a possibility of the accused reaching that place within a short period of time. (Shah C. J. and Chhatpar J.) State v. Pranjivan Gandalal.

AIR 1952 Sau 35=4 Sau L R 264=1952 Cr L J 737.

——S. 66 (b)—Onus — Prosecution need not prove that liquor taken was prohibited liquor — It is for accused to show that it was medicated liquor.

All that the prosecution has to prove for bringing home a charge under S. 66 (b) to an accused person is that he has drunk liquor in contravention of a permit, pass, license or authorisation. Once that burden is discharged by the prosecution, i. e., once it is proved by the prosecution that a person has drunk or consumed liquor without a permit it is for that person to show that the liquor drunk by him was not prohibited liquor, but was alcohol or liquor which he is permitted by law to take, e. g., medicated alcohol. The prosecution is not to discharge the burden of the accused, and if in answer to a charge of drinking liquor without a permit the accused suggests that the liquor which was drunk by him was not liquor in a prohibited form or was alcohol in a medicated form, he must show it. The prosecution cannot possibly prove that no form of medicated alcohol was taken by the accused. (Rajadhyaksha and Vyas JJ.) Rangrao Bala Mane v. State.

AIR 1952 Bom 327=54 Bom L R 325=21 Bom Cr C 329=I L R (1952) Bom 979 (DB).

——S. 66 (b)—Mere drinking of liquor is offence.

The consumption of liquor is made punishable under S. 66 (b) and the widest and best known form of consuming liquor is to drink liquor. The "mere drinking of liquor" is also an offence under the Act. There is nothing in the language of S. 66 (b) or in the language of any other section in the Act to suggest that the term "consume" is used in the Act in the sense of use for commercial purposes or use on a large scale, and under S. 66 (b) an individual who consumes liquor on any scale whatsoever, small or large, without a permit, license,

BOMBAY PROHIBITION ACT (XXV of 1949), S. 66

pass, etc., is liable to be punished. (Rajadhyaksha and Vyas JJ.) Rangrao Bala Mane v. State.

AIR 1952 Bom 327=54 Bom L R 325=21 Bom Cr C 329=I L R (1952) Bom 979.

——Accused tried at one trial for offences under Ss. 65 (b), (f) and 66 (b) — Conviction — Separate sentences — See Criminal P. C. (1898), S. 35.

AIR 1951 Bom 244.

——S. 66 (b)—Country liquor—Proof of.

Unless it is proved that the pot found in possession of the accused contained country liquor the conviction cannot be sustained. Where the question of the liquid in dispute being liquor or otherwise is vital to the prosecution, it is the duty of the Medical Officer to examine the liquid by applying the necessary test and to give a definite opinion one way or the other, instead of giving inconclusive and indefinite opinion. Evidence that the liquor was red coloured and that it emitted a smell like that of liquor is inconclusive and it cannot be taken to mean that the liquid was definitely country liquor. (Shah C. J. and Chhatpar J.) State v. Miyana Daud Malu.

(1951) 4 Sau L R 199.

——Ss. 66 (b), 84 — Alteration of conviction—(Criminal P. C. (1898), S. 423).

The Offence under S. 66 (b) is more grave than under S. 84 and before altering the conviction from one under S. 84 to one under S. 66 (b) opportunity ought to be given to the accused to meet the charge for it may be that he may have a valid defence to that charge. (M. C. Shah C. J. and S. J. Chhatpar J.) State v. Magan Visa.

4 Sau L R 67.

—S. 81.

——Possession of article—See ibid. S. 66 (b).

AIR 1953 S C 247=1953 Cr L J 1097 (S C).

—S. 84.

——Alteration of conviction from S. 84 to S. 66 (b)—See Bombay Prohibition Act (XXV of 1949), S. 66 (b).

4 Sau L R 67.

—S. 85.

——S. 85 (2)—Trial for first time under—Procedure—See Criminal P C. (1898), S. 4 (1) (v) & (w).

AIR 1951 Bom 332=52 Cr L J 693.

——S. 85 (1) & (2) — Offences under — Distinction — Sentence.

The accused under the influence of drink abused and assaulted a woman on a public road and was convicted under S. 85 (1) and (2), Bombay Prohibition Act and sentenced to a fine of Rs. 10.

Held, that the conviction ought to be properly under cl. (2) and not under cl. (1) of S. 85 of the Act. The offences mentioned in the two clauses are two different offences. Under cl. (1) the accused is merely found drunk and incapable of taking care of himself, whereas under cl. (2) he does a positive act, viz., behaves in a disorderly manner under the influence of drink. Hence the conviction under cl. (1) must be set aside.

Held further that the sentence awarded was inadequate and a deterrent sentence is called for. (Sentence enhanced to one month's rigorous imprisonment.) (Shah C. J. and Chhatpar J.) State v. Luvar Premji Lawji.

(1951) 4 Sau L R 157.

—S. 116.

——Offences under Act — Sentence for more than three months can be awarded even in cases of summary trials —Criminal P. C. (1898), S. 262 (2) has no application.

BOMBAY PROHIBITION ACT (XXV of 1949), S. 116

(Bavdekar and Chainani JJ.) Emperor v. Narji Bhalji Bhil.

AIR 1950 Bom 273=52 Bom L R 321=I L R (1950) Bom 428=1950 Bom Cr C 172=51 Cr L J 1303.

——Section authorises all Magistrates trying offences under Act to follow summary procedure—Magistrate not empowered to try cases summarily is competent to try offences under Act provided he is empowered to try them under second schedule to Criminal P. C.- Criminal P. C. (1898), Ss. 260 and 261. (Bavdekar and Chainani JJ.) Emperor v. Narji Bhalji Bhil.

AIR 1950 Bom 273=52 Bom L R 321=I L R (1950) Bom 428=1950 Bom Cr C 172=51 Cr L J 1303.

—S. 136.

——S. 136 (1)—Section, if ultra vires as offending against Art. 22 (2) of the Constitution.

The prohibition law does not deal with maintenance of public order, the security of the State, or the maintenance of supplies and services essential to the community and, therefore, the provisions of the law to the extent that they make it possible under S. 136 (1) for a police-officer to detain a person without being produced before a Magistrate for a period not exceeding fifteen days is void, apart from the question as to whether the Legislature was competent to enact this provision. (Chagla C. J., Gajendragadkar and Tendolkar JJ.) Fram Nusserwanji v. State of Bombay.

AIR 1951 Bom 210=52 Bom L R 799=I L R (1951) Bom 17=52 Cr L J 80 (FB).

——S. 136 (2) — Cls. (b) and (c) of sub-s. (2) are void as offending against Cls. (d) and (e) of Art. 19 of the Constitution—Cl. (2) of S. 136 (2) is void as offending against Art. 19 (1) (g) of the Constitution—Cl. (f) is void as offending against Art. 19 (1) (f). (Chagla C. J. Gajendragadkar and Tendolkar JJ.) Fram Nusserwanji v. State of Bombay.

AIR 1951 Bom 210=52 Bom L R 799=I L R (1951) Bom 17=52 Cr L J 80 (FB).

—S. 139.

——S. 139 (c)—Section and the Notification No. 10484/45 (c) if ultra vires — See ibid, S. 52.

AIR 1951 Bom 210=52 Cr L J 80 (FB).

BOMBAY PROVINCIAL MUNICIPAL CORPORATIONS ACT (LIX of 1949)

—S. 69.

——It is not correct to restrict the meaning of the words "take proceedings" to actually filing a complaint. Those words may mean to lodge the complaint oneself. But they also mean to do an act by which a prosecution would be lodged—See ibid, S. 481.

A I R 1953 Bom 365=1953 Cr L J 1454.

—S. 481.

——Ss. 481 and 69—Object of S. 481.

It is not correct to restrict the meaning of the words "take proceedings" to actually filing a complaint. The object of S. 481 is that whenever it is alleged that any person has committed an offence under the Municipal Act, or under the rules framed under the Act, he should not be prosecuted, unless either the Commissioner himself, or some responsible officer has had an opportunity of applying his mind to the question as to whether a prosecution should or should not be instituted. But once this has been done, there does not seem to be any particular necessity for requiring that, if it is decided to prosecute, the complaint must actually be lodged by the Commis-

BOMBAY PROVINCIAL MUNICIPAL CORPORATIONS ACT (LIX of 1949), S. 481

sioner, or the officer, to whom his powers are delegated. (Bavdekar and Chainani JJ.) State v. Manilal Jethalal,

A I R 1953 Bom 365 = 55 Bom L R 377 = 1953 Cr L J 1454.

——"Take or withdraw proceedings" — (Words and Phrases).

The words "take proceedings" may mean to lodge the complaint oneself. But it also means to do an act by which a prosecution would be lodged. Similarly, in the case of withdrawal, the words "withdraw from proceedings" can also be interpreted to mean to do an act by which the withdrawal will be lodged. (Bavdekar and Chainani JJ.) State v. Manilal Jethalal,

A I R 1953 Bom 365 = 55 Bom L R 377 = 1953 Cr L J 1454.

—Chap. IX.

——Ch. IX, R. 11 (1) (a)—"Premises"—Meaning.

The definition of "premises" is an inclusive definition; it does not restrict the expression "premises" to buildings or structures. But the definition does not mean that in every case premises must necessarily mean both buildings and open lands. It would depend upon the context whether in a particular section "premises" means lands and buildings or only buildings or only lands. Thus, where a requisition is made under R. 11 (1) (a) with regard to a building and if the complaint is that the occupants of that particular building do not have the necessary facilities in the nature of water-closets and p ivies, then "premises" in this rule can only mean the building and not the land on which the building stands. (Chagla, C. J.) Gulam Kadar Inamdar v. State,

A I R 1953 Bom 90=54 Bom L R 805=I L R (1950) Bom 138=1953 Cr L J 416.

——Ch. IX, R. 11 (1) (a)—Scheme of R. 11 — Owners of land and building different—Liability.

The scheme of Rule 11 is that if conveniences are to be provided in a particular building, it is the owner of that building who is liable to carry out the requisition made by the Municipality, and not the owner of land. Hence, the owner of the land cannot, on his failure to comply with the requisitions contained in the notice given by the Municipality, be prosecuted under R. 11 when he happens to be a different person from the owner of the building. (Chagla, C. J.) Gulam Kadar Inamdar v. State,

A I R 1953 Bom 90=54 Bom L R 805=I L R (1953) Bom 138=1953 Cr L J 416.

BOMBAY PUBLIC CONVEYANCES ACT (VII of 1920)

——Offence under—Right of Railway Police to complain —Duty of Court.

Whether the Railway Police have the powers of the ordinary Police or not, they have the right to complain of an offence punishable by the Bombay Public Conveyances Act and Magistrates on such complaints are bound to deal with the case on the evidence before them. (Beaumont C. J. and Broomfield J.) Emperor v. Baloo Babji,

A I R 1932 Bom 256=34 Bom L R 275=1932 Cr Cas 296 = Ind Rul (1932) Bom 241 = 137 I C 8 = 33 Cr L J 462.

—S. 2.

——S. 2 (b)—Interpretation—Plying for hire and 'letting for hire' distinguished.

There seems to be a difference between "letting for hire" and "plying for hire." If A keeps motors at Poona in order to let them out to clients who wish to go to Mahabaleshwar the motors would not become on that account public conveyances; it would be otherwise if A

BOMBAY PUBLIC CONVEYANCES ACT (VII of 1920), S. 2

kept a motor bus which plied regularly between Poona and Mahabaleshwar. (Macleod, C. J. and Crump, J.) Emperor v. Nasarvanji Bawanji,

A I R 1923 Bom 248 = 25 Bom L R 95=72 I C 70= 24 Cr L J 310.

—S. 24.

——Essentials — Licensee of public conveyance himself taking his family or permitting unlicensed driver to take his family for a treat.

To convict an accused under S. 24 of the Bombay Public Conveyances Act, it is not sufficient merely to show that the accused is a licensee of a public conveyance and that he permitted it to be driven by a driver who is not licensed; it must be shown that when this unlicensed driver was driving, he was driving a public conveyance for use as such. The section does not mean that if the licensee of a public conveyance himself takes his family out for a treat or permits an unlicensed driver to take his family out for a treat, an offence is committed, for, the public conveyance is not then used for the purpose of public conveyance at all. It is used for the purpose of private conveyance. It is not being plied for hire or for carrying members of the public for hire. (Davis J. C. and Lobo J.) Bhojraj Pheroomal v. Abdul Waheed,

A I R 1938 Sind 190 = 11 R S 68 (1)=I L R (1939) Kar 187=177 I C 783=39 Cr L J 976.

—S. 26.

——Plying of public conveyance without licence within the railway yard—Whether offence under S. 26 — Competency of Railway Police to set the law in motion— 'City of Bombay', limits of.

Where a person plied a public conveyance for which he did not hold a licence within the Railway yard of the Victoria Terminus Station, Bombay, and was charged by the Railway Police for an offence under S. 26, Bombay Public Conveyances Act :

Held, (i) that the place where the conveyance was plied, though included in a general police district by the Governor-General in Council, was not outside the City of Bombay to which the Act applied and the accused committed an offence under S. 26;

(ii) that the Railway Police had all the powers of the general Police within their special district and hence were competent to set the law in motion. (Patkar and Barlee JJ.) Emperor v. Alli Hassan Limbuwala,

A I R 1933 Bom 63 = Ind Rul (1933) Bom 151 = 34 Bom L R 1662 = 1933 Cr Cas 180=141 I C 790=34 Cr L J 225.

——Licence—Driving without licence—Licence suspended by Assistant Superintendent of Police under powers orally delegated by Superintendent of Police under S. 12 (2) — Conviction for failure to produce license is bad—Bombay General Clauses Act (Bom. I of 1904), S. 19.

Where the accused, a licensed public conveyance driver, was convicted under S. 26 (2) of Act VII of 1920 for failure to produce his licence and it was found that his licence had been suspended by Assistant Superintendent of Police under S. 12 (2) in exercise of the powers delegated to him only orally by the Superintendent of Police. Held, the conviction of the accused was illegal. The delegation of powers under the Act of 1920 can be effected but in a case where there has been an exercise of a power under alleged delegated authority, it is clearly necessary that the delegation should be clearly shown. The question of such authority should not depend on a general verbal order but it should be by written orders, giving references to the various sections of the Act and specifying particular powers and duties delegated to an

BOMBAY PUBLIC CONVEYANCES ACT (VII of 1920), S. 26

Assistant or Deputy Superintendent of Police. (Fawcett and Madgavkar, JJ.) Emperor v. Karim,

A I R 1926 Bom 77 = 27 Bom L R 1421=91 I C 886 =27 Cr L J 150.

BOMBAY PUBLIC SECURITY MEASURES ACT (VI of 1947) —S. 2.

SYNOPSIS

1. Externment order.
2. Failure to comply with order.
3. Grounds of detention.
4. Order of detention.
5. Powers of Court.
6. Rights of detenu.
7. Satisfaction of detaining authority.
8. Scope.

1. Externment order.

——S. 2 (1) (b) — Externment order under—Validity — Constitution of India, Arts. 13 and 19 (1) (d) and (e) and (5).

Per Chagla C. J. and Bavdekar J.; (Shah J., contra) — Bombay Act VI of 1947, to the extent that it empowers the Government to issue an externment order under S. 2 (1) (b), is void under Art. 13 (1) of the Constitution, inasmuch as it imposes a restriction on the fundamental rights of the citizen under Art. 19 (1), sub-cls. (d) and (e), such a restriction being an unreasonable restriction.

Per Shah J. (contra). — The provisions of S. 2 (1) (b), Public Security Measures Act, are not inconsistent with the provisions of Part III of the Constitution of India and therefore not void. The restriction involved in an order of externment passed under S. 2 (1) (b) cannot be said to be an unreasonable restriction on the fundamental right of a citizen under Art. 19 (1) (d) and (e).

Per Chagla C. J. — No period for the duration of the externment order is laid down in the statute.

The person against whom an order of externment is to be made has no right whatever to be heard in his defence before he is asked to leave his home and hearth and go and reside in some other place. There is no obligation upon the authority to tell him what he is charged with or what are the grounds against him which make it incumbent upon the Government to ask him to leave his home town. Nor is there any obligation upon the authority to hear the person against whom the order is intended to be made in his defence before the order is made. The restriction imposed on the fundamental rights is not a reasonable restriction.

The Constitution has made the Courts the custodians of the fundamental rights of the citizens, and it is in that spirit and in that capacity that the Court must look upon the nature of the restriction, and even though the absence of a particular safeguard may not be the violation of a fundamental right as such, even so the absence of such a safeguard may result in the restriction not being a reasonable restriction.

Per Bavdekar J. — In case the existing laws which restrict the freedom referred to in cl. (1) of Art. 19 must be reasonable, it is obvious that they must provide that any person whose right, for example, of freedom of movement, is restricted must be given an opportunity, may be after an interim order restricting his rights is passed ex parte, of showing cause why an order under a Security Act restricting his movements should not be passed. The right of hearing before condemnation is admittedly a component of the rights which taken together constitute rights of natural justice, and, in case legislation which restricts the fundamental rights has got to be pronounced to be reasonable, it must give the person whose freedom is restricted, an opportunity to be heard. The manner in which he is to be heard is, of course, a different matter.

Per Shah J. (contra). —There is nothing in the Constitution of India which enables the Court to declare a piece of legislation as void merely because the Legislature thought it expedient to provide that the satisfaction of an executive officer instead of a Court should be a condition precedent to the issue of an order intended to protect either the security of the State or the interest of the general public.

In terms the order passed under S. 2 (1) (b) may be unlimited in duration but it is not necessary that the executive officer who possesses the order must necessarily pass an order of an unlimited duration, nor can the order be really said to be of unlimited duration in view of the fact that the parent Act under which the orders are passed is necessarily of a temporary character passed in order to meet an emergency, and the effectiveness of the order would remain so long as the statute under which the orders are passed would remain operative.

The sole ground of absence of a provision for being heard either before or after the passing of the order of externment, which is less drastic than an order of detention, cannot render the provision of S. 2 (1) (b) void or inoperative as from 26th January 1950. The Constitution has not provided for a right of being heard before any restriction on any fundamental right is placed, and in the absence of such a provision made expressly or by necessary implication, a provision which enables an externment order to be passed cannot be deemed to be void merely on the ground that it may be regarded as contrary to rules of natural justice. (Chagla C. J., Bavdekar and Shah JJ.) Jeshing Bhai v. Emperor

A I R 1950 Bom 363 = 52 Bom L R 544 = I L R (1950) Bom 539=1950 Bom Cr C 188.= 52 Cr L J 120 (F B).

2. Failure to comply with order.

——S. 2 (6) —Order under S. 2 (1) to furnish security — Failure to comply, does not amount to contravention of the order within the meaning of S. 2 (6). (Bavdekar and Chainani JJ.) Government of the Province of Bombay v. Laxman Govind,

A I R 1950 Bom 257 = 52 Bom L R 226 = 1949 Bom Cri Cas 152 = I L R (1950) Bom 321 = 51 Cr L J 972.

3. Grounds of detention.

——S. 2 (1) (a) — Grounds of detention — Detaining authority not properly applying its mind to question of detention — High Court can interfere —Some grounds of detention good and some bad — Whole order is not vitiated — Inciting ignorant people to resort to criminal activities held to be bad ground for want of precision : A I R 1948 Bom 334 (FB), Foll. (Weston and Shah JJ.) In re Bhaurao Karbhari Aware

A I R 1950 Bom 126 = 51 Bom L R 1338 = 1949 Bom Cri Cas 121 = I L R (1950) Bom 177 =51 Cr L J 665.

——S. 2 (A1)—Detention for collateral purpose.

Once the detaining authority makes up his mind to detain a person who is alleged to have committed an offence then, it would not be permissible to him to investigate the offence while still keeping the person under detention and not complying with the provisions of the law with regard to investigation. If the purpose of detain-

BOMBAY PUBLIC SECURITY MEASURES ACT (VI of 1947), S. 2—3. Grounds of detention

ing a person is to deprive him of rights and safeguards under Cr. P. C., and to carry on an investigation without the supervision of the Court then the detention is mala fide and cannot be justified. (1948) Cr. Appln. No. 18 of 1948 (Bom), Overruled. (Chagla C. J., Gajendragadkar and Dixit JJ.) Maledath Bharathan Malyali v. Commr. of Police

A I R 1950 Bom 202=52 Bom L R 268 = 1949 Bom Cri Cas 157=I L R (1950) Bom 438=51 Cr L J 1126.

——Order under, stating detenu was acting prejudicial to public safety of Sholapur city — Order under S. 3, giving grounds having no connection with tranquillity of city of Sholapur—Order of detention held bad.

Where the District Magistrate had not applied his mind to the facts of the case at the time when he signed the order of detention under S. 2 (1) (a), inasmuch as the order passed under S. 2 stated that the detenu was acting in a manner prejudicial to the public safety, etc., of the Sholapur city, but the grounds mentioned in the order passed under S. 3 had no connection whatsoever with the tranquillity of the city of Sholapur:

Held that the order of detention was bad. (Sen and Jahagirdar JJ.) Bashan Madar Korbu v. Emperor

A I R 1949 Bom 37=19 Bom Cr C 267=50 Bom L R 290=49 Cr L J 645.

——Communication under S. 3, giving grounds for order under S. 2, held bad — See Bombay Public Security Measures Act (VI of 1947), Ss. 3 and 2

A I R 1948 Bom 360=49 Cr L J 524.

4. Order of detention

——S. 2 (1)—Order of detention may be oral — Written order coming after actual detention — Onus is on authority to show that it was 'satisfied' before actual arrest and that detention was in consequence of such 'satisfaction'. (Bhagwati J.) Anwari Begum v. Commr. of Police, Bombay

A I R 1949 Bom 82=50 Bom L R 593=20 Bom Cr C 20=50 Cr L J 196.

——S. 2 (1) (a) — Order based on acts done while person was within jurisdiction — Temporary absence of person from jurisdiction — Order operates when such person returns within jurisdiction.

When an order under the Act is based on acts which, prima facie, are alleged to have been done by the detenu while he was at a place within jurisdiction, the order is rightly passed and would operate when the detenu again appears at the place after his temporary absence from the jurisdiction. (Sen and Jahagirdar JJ.) In re Moinuddin Abdullamia Koreishi

A I R 1949 Bom 86=50 Bom L R 579=I L R (1949) Bom 303=20 Bom Cr C 6=50 Cr L J 202.

——S. 2 (1) (a) and S. 2 (4)—Sub-ss. (1) (a) and (4) have to be read together — District Magistrate cannot pass order under S. 2 (4) detaining person in jail situated outside his territorial jurisdiction—Such an order cannot be validated by Government.

Sub-s. (4) of S. 2 has to be read with S. 2 (1) (a). An order passed under S. 2 (1) (a) if it merely says that a certain person be detained would be incomplete and unenforceable unless some place of detention is mentioned therein, and though under S. 2 the two orders can be separately passed, still the orders passed under S. 2 (1) (a) and S. 2 (4) have got to be read together and they form one order and they cannot be separated.

BOMBAY PUBLIC SECURITY MEASURES ACT (VI of 1947), S. 2—4. Order of detention

Thus, where the District Magistrate of Sholapur passes an order under S. 2 (4) detaining a person in the Yeravada Jail in the Poona District, the order is without jurisdiction, in view of the Notification No. 670, dated 26th April 1947, under which the powers have to be exercised by the District Magistrate within the jurisdiction. Such an order cannot be separated from the one passed under S. 2 (1) (a). Such an illegal order cannot be revalidated under S. 2 (4) by the Government. Cr. App. Nos. 660 to 662 of 1947 (Bom), Foll. (Sen and Jahagirdar JJ.) Bashan Madar Korbu v. Emperor

A I R 1949 Bom 37=19 Bom Cr C 267=50 Bom L R 290=49 Cr L J 645.

5. Powers of Court.

——Ss. 2 and 3— Satisfaction of Magistrate — Grounds for—Court cannot enter into — But Court is entitled to see whether authority has applied its mind — Place of detenu's activity not mentioned either in order of detention or in grounds therefor or in affidavit — Authority held did not apply its mind — Detention held bad (Sen and Jahagirdar J.) Pandurang Govind Pathak In re

A I R 1949 Bom 84=19 Bom Cr C 300=50 Bom L R 446=I L R (1948) Bom 426=50 Cr L J 199.

——Prosecution first and order of detention under the Act on very same grounds is not contemplated.

The Act which contains very special and wide power does not contemplate that there should be prosecution first for the purpose of securing conviction, and that when after that long drawn-out process was over, the Police Commissioner should have recourse to those special powers and arrest the accused on those very grounds on which he should in the very first instance have been detained. (Desai J.) Hirji Shivram v. Commr. of Police

A I R 1948 Bom 417=19 Bom Cr C 254 = 50 Bom L R 210=49 Cr L J 579.

——Order under — Omission of reference to peace and tranquillity of Province—Defect held not material when subsequent order under S. 3 specifically mentioned the place.

Where the District Magistrate in his order under S. 2 says that he was satisfied that the detenu "was acting in a manner prejudicial to the public safety and the maintenance of public order and tranquillity and was carrying on subversive propaganda", he must say that the activities of the detenu affected the peace and tranquillity of a Province or any part thereof. It is only "satisfaction" in this sense that it would give to the District Magistrate the jurisdiction to make an order. But when the District Magistrate has specifically given the description of his state of mind, the omission of any reference to peace and tranquillity of the Province would be a serious defect. When the territories of an Indian State and of the Province of Bombay are so interwoven, the order should make it clear that the basis for taking action is the satisfaction of the District Magistrate that the detenu is acting in a manner prejudicial to the public safety, the maintenance of public order, or the tranquillity of the Province or any part thereof. However, the defect would not be considered to be a fatal one, when on the very day the order under S. 2 is passed a communication under S. 3 was served on the detenu giving the grounds for the order of detention, and making it clear that the District Magistrate had satisfied himself that the detenu was acting in a manner prejudicial to the public safety and tranquillity of a particular town (which was named) and that what was sought to be maintained was the

BOMBAY PUBLIC SECURITY MEASURES ACT (VI of 1947), S. 2—5. Powers of Court

public order and tranquillity of that town. (Rajadhyaksha and Jahagirdar JJ.) In re Krishnaji Gopal Brahme

A I R 1948 Bom 360=50 Bom L R 175=49 Cr L J 524.

——Order under, asserting existence of state of mind and belief—Court cannot consider adequacy or otherwise of reasons for it.

Where the District Magistrate making an order under S. 2 asserts the existence of a state of mind and belief which satisfied the requirements of the section, the Court cannot go beyond it and consider the adequacy or otherwise of the reasons which go to establish that state of mind : (1942) 1 K B 87; (1942) A C 206; 32 A I R 1945 P C 156 and 33 A I R 1946 Bom 32; Rel. on. (Rajadhyasha and Jahagirdar JJ.) In re Krishnaji Gopal Brahme

A I R 1948 Bom 360=50 Bom L R 175=49 Cr L J 524.

——Ss. 2 and 3—Detention order — Grounds mentioned under S. 3 must be clear, precise and accurate — Some grounds outside scope of Act — Whole order is vitiated—Some of grounds mentioned, vague and indefinite but not outside scope of Act—Remaining grounds if good are sufficient to justify detention order.

Grounds of detention furnished to the detenu under S. 3, after an order of deten ion under S. 2, must be clear, precise and accurate so as to make it clear to the person detained what he is charged with and what has moved the Government to deprive him of his liberty and should be communicated after careful consideration. The grounds which are vague and indefinite and which contain no particulars whatever are no grounds at all within the meaning of S. 3.

If a reason is given for the detention of a person which is not within the scope and ambit of the Act conferring the power upon the Government to detain, then the whole order is vitiated notwithstanding the fact that the other reasons given are good, because something may have operated upon the mind of the detaining authority which is foreign and extraneous to the purpose of the Act. But if some of the grounds given are not outside the scope and ambit of the Act but are merely vague and indefinite, it cannot be said that some extraneous consideration has weighed with the detaining authority in making the order it has made. Therefore, the Court must draw a sharp distinction between a ground which is outside the purview of the statute and a ground which is bad because it lacks precision and accuracy. In the latter case the ground has to be completely ignored as if no ground was furnished at all. If after eliminating the grounds which are no grounds at all, inasmuch as they furnish no precise information to the detenu, there still remain a ground or grounds which are precise and accurate and which can justify the order, then there is no reason why the order made by the detaining authority should not stand. If the Court can come to the conclusion that there is a ground or grounds which are within the ambit of the Act and which the detaining authority can legitimately consider in order to be satisfied that it is necessary to detain the person concerned, then the Court must uphold the order. 30 AIR 1943 F C 1 (FC), Explained. (Chagla A. C, J., Rajadhyaksha and Gajendragadkar JJ,) In re Rajadhar Kalu Patil

AIR 1948 Bom 334=I L R (1948) Bom 213=19 Bom Cr C 242=50 Bom L R 183=49 Cr L J 465 (FB).

6. Rights of detenu.

——S. 2 (1) (a)—Order under, good ex facie and valid—Detenu might successfully controvert it — Court satisfied that detaining authority had applied its mind — Detenu

BOMBAY PUBLIC SECURITY MEASURES ACT (VI of 1947), S. 2—6. Rights of detenu

can show that facts relied upon by the authority were false—Detenu can rely for this purpose on statement of grounds and particulars furnished to him—For showing falsity of facts relied on he can file affidavit — Authority also can file affidavit.

It is open to the detenu to prove facts which might successfully controvert the order of detention although it might be ex facie a good and a valid order. He can be allowed to show that the order was not made bona fide but for ulterior purposes, or that it was made without sufficient application of the mind of the detaining authority to the facts or requirements of law, or that it was passed on a ground outside the scope of the Act or that it was passed, at least partially, on a proposition of fact which is shown to be false. A I R 1945 P C 156, Rel. on; (1942) A C 206; (1942) A C 284, Considered; (1839) 2 Ad. & El. 731; (1917) A C 260, Ref.

In such case the presumption omnia essa rite acta cannot be applied. When under a statute enacted in more peaceful and normal times an executive officer of the status of a District Magistrate has been given an authority to interfere with the liberty of a subject, and it has become manifest in numerous instances that such an officer is often prone to be careless, arbitrary and mechanical, and even to act mala fide or with an ulterior object, in making use of the power of detention conferred on him, the Court would not be justified in relying on the said principle. In such circumstances it becomes its plain duty to scrutinize the order made and the grounds given therefor with the utmost care and anxiety and to make every legitimate inference in favour of the subject. A I R 1949 Bom. 84, Rel. on.

Ordinarily, where the Court is satisfied that the facts and materials before the District Magistrate were considered by him, and that they were such as could lead to his satisfaction in the sense required by S. 2 of the Act, the Court would not go behind the order; but the Court would in such cases assume that the authority had made every reasonable endeavour, consistently with his responsibilities, to ascertain the facts correctly. Where however, a fact relied on is found to be false, and the said authority, by applying his mind to materials before him, could have found out the falsity of the said fact, such falsity would vitiate the order as showing an insufficient application of mind on his part to the facts before him. Where, however, the falsity is such as could not thus ordinarily be found out in the process of applying his mind to the facts, the question is somewhat more difficult.

It is legitimate for the detenu to rely on the statements of grounds and particulars furnished to him in order to show that a fact alleged therein is false. For that purpose he is allowed to rely on his own affidavit and the affidavits of persons acquainted with such facts. Statements are not tested in the manner of regular evidence given at trials. It would ordinarily not be right for the Court in such a case to set down a question of fact as a question to be decided on any evidence except that furnished by the affidavits. If the Court is satisfied that the order has been made bona fide, there would ordinarily be every reason to accept a statement of fact mentioned in the grounds when it is reinforced by the detaining authority's affidavit. But there may be cases in which, though the authority was bona fide satisfied in terms of S. 2, an essential or significant fact may be successfully falsified by the petitioner and the Court would be inclined to hold that the satisfaction was based on a proposition of fact not found to be tenable, and the Court would be

BOMBAY PUBLIC SECURITY MEASURES ACT (VI of 1947), S. 2—6. Rights of detenu

entitled to interfere. A I R 1945 P C 156, Rel. on. (Sen and Jahagirdar JJ.) In re Moinuddin Abdullamia Koreishi

AIR 1949 Bom 86=50 Bom L R 579=I L R (1949) Bom 303=20 Bom Cr C 6=50 Cr L J 202.

——Ss. 2 and 3—Detention of person without showing order under S. 2 (1) (a) for some days, deprecated.

Detention of person without being shown an order of detention for some days and then serving him not an order of detention under S. 2 (1) (a) but notice under S. 3 setting forth grounds of detention, deprecated. (Sen and Jahagirdar JJ.) Bashan Madar Korbu v. Emperor,

AIR 1949 Bom 37=19 Bom Cr C 267=50 Bom L R 290=49 Cr L J 645.

——Order of detention regular in point of form—Onus is on detenu to show that order was made mala fide.

Where an order of detention under the Act is regular in point of form, the onus is cast on the person detained to show that it is in effect no order within the meaning of the Act whether because the mind of the detaining authority had not been applied or it was made mala fide; and unquestionably the onus is a heavy one. (1942) 1 K B 87, Ref. (Desai J.) Hirji Shivram v. Commr. of Police,

AIR 1948 Bom 417=19 Bom Cr C 254=50 Bom L R 210=49 Cr L J 579.

7. Satisfaction of detaining authority.

——S. 2 (6) and (1)—Offence under S. 2 (6)—Satisfaction of detaining authority—Burden and nature of proof.

In the case of prosecution under S. 2 (6) for contravention of order under S. 2 (1) the burden is upon the prosecution to establish every ingredient which goes to constitute the offence and one of the most important ingredients is that the detaining authority was satisfied as to the matters set out in S. 2 (1) before the order was made. It is not sufficient to tender the order which states that the detaining authority is satisfied. The detaining authority must step into the witness box and make that statement on oath in order to enable the accused to challenge that statement, if he is so advised, in cross-examination. (Chagla C. J. and Gajendragadkar J.) Emperor v. Bhiku,

AIR 1950 Bom 330=52 Bom L R 223=1949 Bom Cr C 149=52 Cr L J 1184.

——Question of application of mind by detaining authority is really question of its satisfaction—Affidavit by authority that it applied its mind to the question supported by affidavit by successor authority—Authority held applied its mind. (Bavdekar, Dixit and Jahagirdar JJ.) In re Jayantilal Nathubhai Parekh,

AIR 1949 Bom 319=51 Bom L R 653 = ILR (1949) Bom 508=20 Bom Cr C 81=51 Cr L J 184 (FB).

——"Satisfaction" of detaining authority — Burden to establish absence of satisfaction.

The "satisfaction" of the detaining authority is a condition precedent to the exercise of the powers under the section. But all the same, what the Courts have got to see, when subsequently an application is made challenging the existence of that satisfaction, is whether there was the subjective satisfaction of the authority which made the order and not whether there were grounds upon which a reasonable person could be satisfied that it was necessary to make the order; such being at times called an objective test of the satisfaction. But the satisfaction of the mind is just as much a state of fact as, for example, the state of digestion, of the person who makes the order, and consequently if any one challenges that the authority which made the order had not the state of mind which could be described as a state of "satisfaction", it is open to the Court to say that it must be satisfied as to the

BOMBAY PUBLIC SECURITY MEASURES ACT (VI of 1947), S. 2—7. Satisfaction of detaining authority

state of the mind of the person who made the order and to take evidence as to the existence of the state of mind. The burden is upon the person who challenges the bona fides of the officer and he must discharge that burden, which is heavy, by leading evidence.

The only condition precedent which has been laid down for the validity of the order is the satisfaction of the District Magistrate, and if the District Magistrate was satisfied, then the order cannot be challenged subsequently on the ground that the evidence upon which it was based was false. The Court is only concerned with the question as to whether the District Magistrate was satisfied. The question may involve in a suitable case an investigation whether sufficient care was or was not exercised, but it is not open to the Court to sit in appeal over an order which has been passed by a District Magistrate, much less it is open to it to consider circumstances made out before it in which it would have passed the order or take evidence as to the conclusion of the fact found by the District Magistrate. (1948) Cri. Appeal No. 920 of 1948, decided on 15-6-1948 and Cri. Appeal No. 848 of 1948, decided on 7-6-1948, Explained; 1941-2 All E R 665 ; (1942) A C 206 and A I R 1948 Bom 334 (FB), Rel. on. (Bavdekar, Dixit and Jahagirdar JJ.) In re Jayantilal Nathubhai Parekh,

AIR 1949 Bom 319 = 51 Bom L R 653=ILR (1949) Bom 508=20 Bom Cr C 81=51 Cr L J 184 (FB).

——S. 2 (1) (b) and (6)—Accused charged with contravention of order under S. 2 (1) (b)—Validity of order challenged—Merely tendering of order by prosecution is not sufficient — Prosecution must call in evidence of Police Commissioner—He must state that he was satisfied that accused was acting in prejudicial manner—In cross-examination accused can challenge order on ground that it was made arbitrarily, capriciously or mala fide: A I R 1938 Bom 338 (FB), Foll. (Chagla C. J. and Gajendragadkar J.) Emperor v. Abdul Majid Abdul Aziz,

AIR 1949 Bom 387=51 Bom L R 568=ILR (1939) Bom 363=20 Bom Cr C 47=51 Cr L J 47 (DB).

——Ss. 2 and 3—Satisfaction of Magistrate—Grounds for —Courts cannot enter into — But Court is entitled to see whether authority has applied its mind—Place of detenu's activity not mentioned either in order of detention or in grounds therefor or in affidavit — Authority held did not apply its mind—Detention held bad.

Satisfaction contemplated by S. 2 is of the authority making the order, and the Court is not entitled to consider whether the grounds of the order (so far as they can be ascertained) are such as would satisfy itself. But the Court, when the order is challenged, is entitled to enquire, whether the alleged satisfaction is real satisfaction or something else indicating an omission on the part of such authority to apply its mind to the facts of the case and to draw legitimate conclusion therefrom. If the authority has not applied an unbiased mind to the facts, it must be held that it is not a case of real satisfaction.

If the District Magistrate has from the beginning applied an unbiased mind to the facts, he would want to be as fair as possible to the detenu, and this would ordinarily be shown, when he furnishes the grounds of detention under S. 3, by his giving him (subject to the reservations indicated in the said section) as clear and precise grounds as reasonably possible. It is, however, important to bear in mind that as regards the "other particulars," he has the discretion to withhold such of them as are not, in his opinion, necessary for the purpose of enabling the detenu to make the representation.

One thing which the authority has to apply its mind to is the question of its jurisdiction. From this point of view the place where the detenu is regarded as having

BOMBAY PUBLIC SECURITY MEASURES ACT (VI of 1947), S. 2 — 7. Satisfaction of detaining authority

been acting in any of the manners mentioned in S. 2 assumes importance ; this is one of the particulars which would be required to be stated in the detention order or the statement of grounds. The application of the detaining authority's mind to the relevant facts and considerations being the necessary prerequisite to its satisfaction, it is open to the detenu to contend and to show that the application of its mind was non-existent or so faulty as to render the alleged fact of its satisfaction questionable and uncertain. Prima facie, the fact that the place of the detenu's activities is mentioned neither in the order nor in the grounds of detention nor in the affidavit is an indication that the question was not present in the District Magistrate's mind when he made the detention order. In the circumstances it could not be said that the District Magistrate was satisfied that the detenu was acting in a manner prejudicial to the maintenance of public order at any place within the area with reference to his acts or activities in which a valid order of detention could be made against him. In such a case the order of detention is bad. When under a statute enacted in peaceful and normal times an executive officer of the status of a District Magistrate has been given the authority to interfere with the liberty of a subject, and he has been often proved to be careless, arbitrary and mechanical, and even to act mala fide or with an ulterior object, in making use of the power of detention conferred on him, the Court would not be justified in relying on the principle omnia esse rite acta. In such circumstances it becomes the plain duty of the Court to scrutinise the order made and the grounds given therefor with utmost care and anxiety and to make every legitimate inference in favour of the subject : A I R 1948 Bom 360; (1942) A C 206, Rel. on. (Sen and Jahagirdar JJ.) In re Pandurang Govind Phatak,

AIR 1949 Bom 84 = ILR (1948) Bom 426 = 19 Bom Cr C 300=50 Bom L R 446=50 Cr L J 199.

——S. 2 (1)—Order of detention may be oral — Written order coming after actual detention—Onus is on authority to show that it was satisfied before the actual arrest and that detention was in consequence of such satisfaction.

There is nothing in the terms of S. 2 (1) to lay down that the detention order should be an order in writing and that it cannot be an oral order passed by the detaining authority after taking into account all the circumstances of the case which go to satisfy him that the detenu is acting in the manner prescribed by S. 2 (1) of the Act before a valid detention order can be made by him against the detenu. This being the position, wherever it is pointed out by a petitioner in the case of a particular detenu that the arrest of the detenu was made at a particular point of time which is anterior to the order of detention being in fact served upon him, the onus lies on the detaining authority to satisfy the Court by the proper materials put before the Court that in fact the satisfaction came before the actual arrest of the detenu was effected under his order and that the detention of the detenu was in pursuance of and in consequence of such satisfaction on his part within the meaning of S. 2 (1) of the Act. Unless and until the detaining authority satisfies the Court in this behalf, the detention order which on prima facie appearance is signed and served after the actual arrest, is liable to be set aside. (Bhagwati J.) Anwari Begum v. Commr. of Police, Bombay,

AIR 1949 Bom 82=50 Bom L R 593=20 Bom Cr C 20=50 Cr L J 196.

8. Scope

——"Is acting" — Period of two months prior to date of order cannot be considered as outside its scope.

The expression 'is acting' refers to a reasonable period which could be regarded as present and not past, so that

BOMBAY PUBLIC SECURITY MEASURES ACT (VI of 1947), S. 2—8. Scope

acts done in the approximate and immediate past might legitimately form the basis of an order of detention. An act may take some time for being reported to the police, and thereafter further time would be required for investigation by the police, for their making report to the District Magistrate and for the latter Officer's considering the report before making an order. In view of such requirements, a period, say of two months, prior to the date of the order cannot be considered as outside such period as may reasonably be regarded within the scope of the expression "is acting.' (Sen and Jahagirdar JJ.) In re Moinuddin Abdullamia Koreishi

AIR 1949 Bom 86 = 50 Bom L R 579 = ILR (1949) Bom 303 = 20 Bom Cr C 6 = 50 Cr L J 202.

——Action under, suggesting that order of Magistrate is intended to be superseded is not permissible.

It is not permissible for the Commissioner of Police to lend himself to any course of action which suggests that he arrogates to himself the right to review the judgment of the Magistrate. He must respectfully abide by it. Where then a situation arises which lends itself to the construction that the action of the Police Commissioner is an attempt to supersede the order of the Magistrate, Courts of Justice must be vigilant to see that justice is not brought into ridicule and rendered impotent and that a tendency towards autocracy does not prevail in the minds of the representatives of democracy. (Desai J.) Hirji Shivram v. Commissioner of Police

AIR 1948 Bom 417=19 Bom Cr C 254= 50 Bom L R 210=49 Cr L J 579.

——"Is acting"—Meaning of —Prompt action under the Act is contemplated —Dentention for acts done in remote past is not intended.

In any case, where public interest demands that the detenu should forfeit his individual liberty in the interests of public welfare, the Commissioner of Police should act promptly in the exercise of those special powers, the due exercise of which has been left to his sole and uncontrolled and unquestionable decision. It is significant that the words used in S. 2 are the words "is acting". The word "is" is capable of only one meaning, namely, that within a reasonable distance of time as compared with the date of the making of the order by the Commissioner of Police, the detenu has acted or was acting in a manner prejudicial to public safety. It is not within the scope nor is it the intention of the Act that for acts done by the detenu in the remote past or what may be considered as remote past having regard to the distance of time which separates the alleged acts from the date of the making of the order, that the detenu shall be kept in custody under the Act, A I R 1945 Bom 533, Disting. (Desai J.) Hirji Shivram v. Commr. of Police

AIR 1948 Bom 417 = 49 Cr L J 579 = 19 Bom Cr C 254 = 50 Bom L R 210.

—S. 3.

——Order of detention by District Magistrate under delegated powers—Representation against order.

Notwithstanding any delegation the detenu is given a right to make a representation to the Provincial Government. Where the order merely mentions that the detenu is entitled to make representation against the order and that he should address it to the District Magistrate, there is a failure to tell that the detenu has a right to make a representation to the Provincial Government and there is no compliance with the mandatory provisions of S. 3. In such a case, there is a defect in the procedure.

But this defect in procedure would not invalidate the statement of grounds and particulars furnished by the

BOMBAY PUBLIC SECURITY MEASURES ACT (VI of 1947), S. 3

detaining authority to the detenu. (Bavdekar, Dixit and Jahagirdar JJ.) In re Jayantilal Nathubhai Parekh

AIR 1949 Bom 319 =51 Bom L R 653 = ILR (1949) Bom 508=20 Bom Cr C 81 = 51 Cr L J 184 (FB).

——Supplying grounds and other particulars for detention.

It is not sufficient compliance with S. 3 that there should be in the grounds which have been furnished to the detenu a re-production of the words of the section like "You are acting in a manner prejudicial to the public safety and the maintenance of public order." The grounds have to be something more than the mere reproduction of the words of the section. The particulars have to be supplied, but only those particulars may be supplied which are, in opinion of the detaining authority, sufficient to enable the detenu to make a representation : (1942) A C 206 and (1942) A C 284, Considered.

If the detaining authority gives to the detenu its conclusions of fact and such particulars as are in its opinion sufficient to make representation and it could be said from the grounds which are given and the particulars which are furnished that the order for the detention of the detenu could reasonably be made, then there has been compliance with the mandatory provisions of S. 3. But this is not as a matter of fact a necessary test. But there must be a disclosure to the detenu of the conclusions of fact of the detaining authority, and if the grounds together with such particulars as are furnished are sufficient to show to the Court that the detaining authority could reasonably have come to the conclusion that the detenu was acting in a manner prejudicial either to the public peace or the maintenance of public order or the tranquillity of the area in respect of which the order has been made, then the grounds cannot be said to be bad.

When particulars as distinct from grounds are to be given, the only requirement which the section contemplates is that the particulars should be, in the opinion of the detaining authority, sufficient to enable the detenu to make a representation. It is not possible to subject the particulars to any objective test of sufficiency : 1942 A C 206, Ref. (Bavdekar, Dixit and Jahagirdar JJ.) In re Jayantilal Nathubhai Parekh

AIR 1949 Bom 319 = 51 Bom L R 653 =ILR (1949) Bom 508 = 20 Bom Cr C 81 = 51 Cr L J 184 (FB).

——Notice under—Grounds furnished should be definite and precise — To say that detenu has been "inciting workers to commit acts of violence" is vague and insufficient to enable detenu to make representation against order of detention.

The whole object of furnishing grounds and particulars to the detenu under S. 3, would be frustrated unless they are definite and precise. They are intended to serve a definite purpose under S. 3, i. e., of enabling the detenu of making a representation against the order and that purpose cannot be served unless the detenu knows what exactly has moved the Government to deprive him of his liberty.

Where the notice served on the detenu under S. 3 gave the ground for his detention, to be that "he has been inciting workers to commit acts of violence and thereby acting in a manner prejudicial to public safety and tranquillity of Greater Bombay" without particularising the class of workers and mentioning the time during which the detenu was supposed to have incited them :

Held that the notice was vague and indefinite and that the particulars given were not such as to enable the detenu to make a representation to the Provincial Government against the order and afford him the earliest opportunity of doing so. Crl. Appl. No. 524 of 1947, D/-

BOMBAY PUBLIC SECURITY MEASURES ACT (VI of 1947), S. 3

29-10-1947 (Bom), Foll. A I R 1945 Bom 212, Ref. (Desai J.) Anant Mahadev Mandekar, In re

AIR 1949 Bom 95 = 20 Bom Cr C 17 =50 Bom L R 590=50 Cr L J 320.

—— Grounds supplied on February 25, saying detenu was active worker of certain organization — Organization already declared illegal on 8th February—Order held referred to activities prior to 8th February.

Where the District Magistrate in the statement of grounds furnished on February 25, 1948, said that the detenu was "an active worker of the Muslim National Guards" in Ahmedabad, an organization which was declared illegal on February 8, 1948, it could not be said that it was the intention of the District Magistrate to mean that the detenu had been an active worker of the Muslim National Guards after February 8, particularly as that was a date on which the detenu was away from Ahmedabad. The order referred to activities prior to the 8th February. A I R 1948 Bom 334 (FB); AIR 1931 Bom 129, Ref. (Sen and Jahagirdar JJ.) In re Moinuddin Abdullamia Koreishi

AIR 1949 Bom 86 = 50 Bom L R 579 = ILR (1949) Bom 303 = 20 Bom Cr C 6 = 50 Cr L J 202.

——Satisfaction of Magistrate — Grounds for — Courts cannot enter into — But Court is entitled to see whether authority has applied its mind—Place of detenu's activity not mentioned either in order of detention or in grounds therefor or in affidavit—Authority held did not apply its mind—Detention held bad : See ibid, Ss. 2 and 3 :

AIR 1949 Bom 84 = 50 Cr L J 199.

——Grounds held neither vague nor bad in law.

The notice under S. 3 gave five grounds for detention, viz., (1) that the detenu was a known 'mawali' of Falkland Road locality, (2) that he was a trafficker in opium, (3) that there were a number of 'mawalis under him, (4) that he extorted money from prostitutes and (5) that he was also responsible for stabbing cases on Falkland Road.

Held that 'mawali' connotes a person who is a bully and also a person who is a menace to the peace and tranquillity of the part of the city where he may happen to be the person in power. There was nothing vague about it.

Held also that grounds 2 and 4 read in connection with grounds 1 and 3, did not leave any doubt that the activities of the detenu in that matter would certainly lead to a position which will be prejudicial to the public safety or the tranquillity or the peace of the part of the city wherein the detenu carried on his activities.

Held further that the only reasonable interpretation of ground 5 was that the detenu was acting in that particular manner and was concerned with and was responsible for stabbing cases on Falkland Road, that had connection not with any remote past but had connection with what happened in the immediate past or recently before the order of detention was made against the detenu.

The grounds of detention were therefore not vague or bad in law. (Bhagwati J.) Anwari Begam v. Commr. of Police, Bombay

AIR 1949 Bom 82 = 50 Bom L R 593=20 Bom Cr C 20 = 50 Cr L J 196.

——Grounds supplied should disclose state of mind of detaining authority and show that it had applied its mind with diligence — Detenu charged with inciting labourers of Tata Air India, Bombay—No such company found in existence — Tatas having interest in many air companies — No indication as to which company was meant — Error held material and showed want of due care and caution on part of authority.

BOMBAY PUBLIC SECURITY MEASURES ACT (VI of 1947), S. 3

The detaining authority has such wide powers given to it under the Act that where the Court is left with any discretion at all to investigate the ground given by the Commissioner of Police, the Court must do so vigilantly in order to find out whether that degree of care and caution has been exercised by the detaining authority which the law requires. The Commissioner of Police need give no particulars, need state no facts. He can take refuge behind public interest and behind the language of Ss. 2 and 3. But when he does give grounds and those grounds have to be given by him as a statutory obligation—he must take meticulous care to see that whatever is stated in those grounds is stated with absolute accuracy. The emphasis is not so much on the accuracy, or on the nature or extent of the error; the emphasis is on the state of the mind of the detaining authority. If the state of the mind of the detaining authority discloses that he has been casual in his approach and that he has not applied his mind with that diligence which it is necessary when the question is of taking away the liberty of a subject, the Court will certainly interfere and will set at liberty the detenu arrested by the order of the detaining authority.

Where the ground supplied to the detenu under S. 3 for his detention was that he was inciting a section of labourers of Tata Air India, Bombay, and it was found that there was no company as Tata Air India but Air India Ltd., which did not belong to the Tatas and that the Tatas had interest in more than one air companies but there was no indication as to which company was meant :

Held that apart from the question of prejudice to the detenu, the error which was not trivial showed want of due care and caution on the part of the detaining authority and that therefore the detenu was entitled to be released. (Chagla C. J. and Gajendragadkar J.) In re Shoilen Dey,

A I R 1949 Bom 75=50 Bom L R 596=I L R (1948) Bom 651=20 Bom Cr C 23=50 Cr L J 173.

——Detention of person without showing order under S. 2 (1) (a) for some days, depricated — See ibid, Ss. 2 and 3,

A I R 1949 Bom 37=50 Cr L J 129.

——Ss. 3 and 2—Communication under S. 3, giving grounds for order under S. 2, held bad.

In the communication addressed to the detenu under S. 3 the authority need not disclose all the facts, but the communication must give sufficient indication to the detenu as to the reasons which impelled the authority to take action. The section draws a distinction between the grounds and the particulars. With regard to the latter, the section makes the authority the sole judge of their sufficiency or otherwise to enable the detenu to make a representation. The whole object of the section is to convey to the detenu the conclusion which the authority has drawn from the facts placed before it and such other particulars as would, in its opinion, be sufficient to enable the detenu to make representation. Although they may not be exhaustive, the grounds and the particulars should be sufficiently precise so as to make it possible for the detenu to make representation and, if possible, remove any misapprehension on the part of the District Magistrate.

Where the grounds communicated to the detenu for an order under S. 2 passed against him were: (1) that he was an active leader of a subversive organisation at Amalner, (2) that he had been carrying on subversive propaganda among the people to prepare and use illegal and violent ways, and (3) that he was thus acting in a

BOMBAY PUBLIC SECURITY MEASURES ACT (VI of 1947), S. 3

manner prejudicial to the public safety and maintenance of public order and tranquillity in Amalner town :

Held, that the communication purported to give "grounds" and not "particulars," that the ground conveyed no precise information to the detenu and did not enable him to make proper representation to the District Magistrate; and that the notice under S. 3 therefore was bad. (Rajadhyaksha and Jahagirdar JJ.) In re Krishnaji Gopal Brahme,

A I R 1948 Bom 360 = 50 Bom L R 175=49 Cr L J 524

——Detention order — Grounds mentioned under S. 3 must be clear, precise and accurate — Some grounds outside scope of Act—Whole order is vitiated — Some of grounds mentioned, vague and indefinite but not outside scope of Act—Remaining grounds if good are sufficient to justify detention order—See ibid, Ss. 2 and 3,

A I R 1948 Bom 334=49 Cr L J 465 (FB)

—S. 6.

——S. 6 (1)—"Inhabitant"—Meaning of—Collective fine imposed on owner of pan-shop, a resident of another locality—Order is valid.

The word "inhabitant" as used in S. 6 is not used in the sense of residents of the particular locality or permanent residents thereof, but in the sense of the persons who are besides being permanent residents, also the occupants in the sense of carrying on business. Hence, an order imposing collective fine on an owner of a pan-shop who is a resident of another locality would be justified under S. 6. (1837) 6 A & E 153, Rel. on. (Bhagwati J.) Abdul Gani v. Commissioner of Police, Bombay,

A I R 1949 Bom 365=51 Bom L R 633=51 Cr L J 7.

—S. 9A.

——Order under—Writ of certiorari.

An order issued by the Government under S. 9A is not an executive order but a judicial or quasi-judicial order against which a writ of certiorari can be issued. (Chagla C. J. and Tendolkar J.) Ramesh Thaper v. Province of Bombay,

A I R 1950 Bom 213 = 52 Bom L R 62 = 1949 Bom Cr C 139=51 Cr L J 1184.

—S. 12.

——Validity—See Constitution of India, Art. 14.

Although the first part of S. 12 may indicate and imply a process of classification, the section, in so far as it authorises the Government to direct particular 'cases' to be tried by the Special Court, does not purport to proceed upon the basis of any classification at all. Further, there is no nexus which connects the basis on which the supposed classification is founded with the objects of the Act and hence it is not a permissible classfication.

A I R 1952 S C 235=1952 Cr L J 1167 (SC).

——Validity — Section is unconstitutional as contravening Art. 14 of the Constitution — (Constitution of India, Art. 14).

(Majority view: Patanjali Sastri C. J. dissenting): Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure.

The Bombay Act, besides providing for enhanced punishment and whipping, eliminates the committal proceedings, permits the Special Judge to record only a memorandum of the evidence, confers on him a larger power to refuse to summon a defence witness, than what is conferred on a Court by S. 257 (1), Criminal P. C., and also deprives the accused of his right to apply for a transfer or for revision. These departures from the ordinary law cause prejudice to person subjected to the

BOMBAY PUBLIC SECURITY MEASURES ACT (VI of 1947), S. 12

procedure prescribed by the Act and constitute a discrimination against the persons tried by the Special Judge. In view of these departures from the ordinary law brought about by the Bombay Act, S. 12 of the Act in so far as it authorises the Government to direct specific and particular 'cases' to be tried by the Special Judge is unconstitutional and void.

(Per Patanjali Sastri C. J.)—The procedural variations brought about by the Bombay Act in the recording of evidence and the summoning of witnesses are not so serious as to amount to a denial of the equal protection of the laws within the meaning of Art. 14. Even if the accused were to be tried under the normal procedure of the Criminal P. C., after 26th January 1950, the omission to record the evidence in full and the refusal to summon a witness in the circumstances mentioned in S. 13 of the Bombay Act may well be regarded as mere irregularities curable under S. 537 of the Code. As regards transfer, it does not fit in with the scheme of trial before Special Judge, and, unless any system of trials by Special Court is to be condemned as violative of Art. 14, a prohibition of transfer cannot be regarded as falling within the inhibition of Art. 14. (Patanjali Sastri C. J. Mahajan, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) Lachmandas Kewalram v. State of Bombay,

A I R 1952 S C 235 = 1952 S C J 339=1952 M W N Cr 200=1952 M W N 752 = 1952 S C R 710=54 Bom L R 854=1952 S C A 352=1952 Cr L J 1167 (SC).

——Cases referred to Special Judge before constitution—Validity of special procedure after coming into force of Constitution —(Constitution of India, Arts. 14, 13 (1)).

(Majority view, Patanjali Sastri C. J., Contra.) — If in the absence of any special provision to the contrary no person has a vested right in procedure, it must follow as a corollary that nobody has a vested liability in matters of procedure in the absence of any special provision to the contrary. If this is the position when the law of procedure is altered by statute, the position would not be different when the Act prescribing the discriminatory procedure becomes void by reason of its repugnancy to the equal protection clause of the Constitution. Although the substantive rights and liabilities acquired or accrued before the date of the Constitution remain enforceable nobody can claim after that date, that those rights or liabilities must be enforced under that particular procedure although it has, since that date, come into conflict with the fundamental right of equal protection of laws guaranteed by Art. 14.

The special procedure prescribed by the Bombay Act constitutes a departure from the ordinary law of procedure and is, in some important respects, detrimental to the interest of the persons subjected to it and as such is discriminatory. As the Act was valid in its entirety before the date of the Constitution, that part of the proceedings before the Special Judge, which, up to that date, had been regulated by this special procedure cannot be questioned, however discriminatory it may have been but the continuation of the application of the discriminatory procedure to their cases after the date of the Constitution constitutes breach of their fundamental right guaranteed by Art. 14 and being inconsistent with the provisions of that Article the special procedure becomes void under Art. 13 and as there is no vested right or liability in matters of procedure the accused are entitled to be tried according to the ordinary procedure after the date of the Constitution.

Held that the conviction of the accused on trial after the date of the Constitution according to the special procedure and the sentences passed on them could not be

BOMBAY PUBLIC SECURITY MEASURES ACT (VI of 1947), S. 12

supported and were set aside. (Patanjali Sastri C. J. Mahajan, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) Lachmandas Kewalram v. State of Bombay,

A I R 1952 S C 235=1952 S C J 339=1952 M W N Cr 200=1952 M W N 752 = 1952 S C R 710=54 Bom L R 854=1952 S C R 352=1952 Cr L J 1167 (SC).

—S. 21.

——Provincial Government not bound to specify circumstances of delegation of power nor bound to impose and set out conditions of exercise of power.

It is an absolute power which the Provincial Government has got to delegate, and it may but is not bound to specify circumstances under which the power is delegated and it may but is not bound to impose and set out the conditions under which the power may be exercised. (Desai J.) Usha Durgaprasad Bakhale v. Commr. of Police

A I R 1949 Bom 73=50 Bom L R 588 = 20 Bom Cr C 15=50 Cr L J 155.

——Words "if any" govern both clauses, "in such circumstances" and "under such conditions."

The words "if any" in S. 21 govern both the clauses "in such circumstances" and "under such conditions" and make it clear that the general delegation may, if the Provincial Government so choose, be qualified by such circumstances and conditions as may be specified. (Rajadhyaksha and Jahagirdar JJ.) In re Krishnaji Gopal Brahme,

A I R 1948 Bom 360=50 Bom L R 175 = 49 Cr L J 524.

BOMBAY RATIONING ORDER (1943)

——Scheme—Unauthorised supply of rationed article.

According to the scheme of the Bombay Rationing Order, while obtaining of a rationed article without a ration document is prohibited by a clause in the Order itself, the prohibition of a supply of a rationed article without a document is left to be dealt with by Regulations, since different considerations arise in cases of different rationed articles to be supplied. (Divatia and Lokur JJ.) Emperor v. Merwan Khodadad

A I R 1944 Bom 318=46 Bom L R 488=17 R B 144 =ILR (1944) Bom 566=216 I C 268=46 Cr L J 157.

——Scope—Supply of bread in contravention of ticket—Offence.

Clause 43 enjoins the wholesale or retail distributor to supply to the holder of a bread ticket, bread only upto the quantity of units printed on the bread ticket. Therefore, if he supplies any quantity either without a bread ticket or in excess of the quantity mentioned in the bread ticket, he contravenes the provisions of the Regulation and as those provisions are prescribed under the Bombay Rationing Order, he must be held to have contravened the provisions of cl. 6 of that Order also. (Divatia and Lokur JJ.) Emperor v. Merwan Khodadad

A I R 1944 Bom 318=46 Bom L R 488=17 R B 144 ILR (1944) Bom 566=216 I C 268=46 Cr L J 157.

—Cl. 6

——Deliberate and grave breach of rationing regulations —Deterrent sentence should be passed. — See Defence of India Rules (1939) R. 81,

AIR 1947 Bom 335=48 Cr L J 399.

——Cls. (6) and (7) — Unauthorised obtaining or supplying rationed article—Offence.

Clauses (6) and (7) of Bombay Rationing Order read together make it an offence under R. 81 (4), Defence of India Rules, 1939 either to obtain or to supply a rationed article except under and in accordance with the provisions

BOMBAY RATIONING ORDER (1943), Cl. 6

prescribed by or under the Bombay Rationing Order. (Divatia and Lokur JJ.) Emperor v. Merwan Khodadad,

AIR 1944 Bom 318=46 Bom L R 488=17 R B 144=ILR (1944) Bom 566=216 I C 268=26 Cr L J 157.

—Cl. 7.

——Cls. (7), (9)—Scope—Obtaing rationed article without ticket.

Clauses (7) and (9) read together prohibit the obtaining of a rationed article without a ration document and that document must, at that time, be available for lawful use and must be lawfully used.

Clause (9) does not, in terms, apply to a distributor but only to the persons seeking to obtain a rationed article. (Divatia and Lokur JJ.) Emperor v. Merwan Khodadad,

AIR 1944 Bom 318=46 Bom L R 488=17 R B 144=ILR (1944) Bom 566=216 I C 268=46 Cr L J 157.

BOMBAY RENT RESTRICTION ACT (XVI of 1939) —S. 10.

——S. 10 (1)—"Any person" includes clerk, empowered to get rents collected, keep accounts and manage property.

The expression, "any person" in S. 10 (1) includes also mehta (clerk), empowered to get rents collected, keep accounts, and manage the property, and who comes within the definition of the expression "landlord."

Consequently where such a person accepts premium (Pugree) for transferring the tenancy of premises under his management he commits an offence punishable under S. 10 (4): (1921) 3 K B 404, Ref. (Rajadhyaksha and Jahagirdar JJ.) Emperor v. Dattatraya Sitaram Biniwala,

AIR 1948 Bom 239=19 Bom Cr C 228=50 Bom L R 169=49 Cr L J 341.

BOMBAY RENTS, HOTEL AND LODGING HOUSE RATES (CONTROL) ACT (LVII of 1947) —S. 15.

——Relinquishment of tenancy — Meaning — See ibid, S. 19 (2).

AIR 1952 S C 156=1952 Cr L J 836 (SC).

—S. 18.

——"In respect of"—Premium

The very comprehensive expression, viz., "In respect of", used by the Legislature can only lead to the conclusion that the Legislature wanted the penal consequences of S. 18 to apply to any nexus between the receipt by a landlord of a premium and the grant of the lease, and the nexus is present and clearly present where a case arises where the landlord accepts a premium for the purpose of granting a lease in future.

If as owners of an incomplete building the accused accepted Rs. 2,400 from the complainant in respect of an agreement between them that the accused were bound to give and the complainant was entitled to take possession of a flat in the said building as soon as the said building was completed on a certain agreed rent per month, the acceptance of Rs. 2,400 by the accused falls within the mischief of S. 18. (Chagla C. J., Dixit and Shah JJ.) Tolaram Relumal v. State

A I R 1953 Bom 347=55 Bom L R 366=ILR (1953) Bom 1007=1953 Cr L J 1445 (FB).

—S. 19.

——S. 19 (1)—Relinquishment and assignment of tenancy —Distinction—Transfer of Property Act (1882), S. 108 (j).

The distinction between an assignment on the one hand and relinquishment or surrender on the other is too plain to be ignored. In the case of an assignment, the assignor continues to be liable to the landlord for the performance of his obligations under the tenancy and this liability is contractual while the assignee becomes liable by reason of

BOMBAY RENTS, HOTEL ETC., ACT (LVII of 1947), S. 19

privity of estate. The consent of the landlord to an assignment is not necessary, in the absence of a contract or local usage to the contrary. But in the case of relinquishment, it cannot be a unilateral transaction; it can only be in favour of the lessor by mutual agreement between them. The relinquishment of possession must be to the lessor or one who holds his interest. In fact, a surrender or relinquishment terminates the lessee's rights and lets in the lessor. (Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das and Chandra Sekhara Aiyar JJ.) W. H. King v. Republic of India,

AIR 1952 S C 156=1952 S C J 133=1952 S C R 418=54 Bom L R 435=1952 S C A 306=1952 Cr L J 836.

——Ss. 19 (2), 15—Relinquishment of tenancy—Meaning —Held transaction amounted to assignment—(Conviction set aside—(Interpretation of statutes.)

As the statute creates an offence and imposes a penalty of fine and imprisonment the words of the section must be strictly construed in favour of the subject. The Court is not concerned so much with what might possibly have been intended as with what has been actually said in and by the language employed.

A received Rs. 29,000 from B and in return handed over the vacant possession of his flat to B under a written document which stated: "I hereby hand over vacant possession of my flat No. . . . etc., to Mr. . . . . from this day onward and that I have no claim whatsoever over this flat and Mr. . . . . will pay the rent directly to the landlord." On being prosecuted under S. 19 (2) of the Bombay Act:

Held that the document did not evidence any relinquishment of tenancy of the premises within S. 19 (1) of the Act and hence A could not be convicted under sub-s. (2).

Further that the transaction merely amounted to an assignment of tenancy which though declared unlawful under S. 15 was not made an offence by the Act. (Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das and Chandra Sekhara Aiyar JJ.) W. H. King v. Republic of India,

AIR 1952 S C 156=1952 S C J 133=1952 S C R 418=54 Bom L R 435=1952 S C A 306=1952 Cr L J 836.

—S. 24.

——Complaint under S. 24 (4) before application under S. 24 (2)—Maintainability.

Sub-sections (2) and (3) of S. 24 make provision for the restoration of the essential supply or service, which has been wrongfully cut off or withheld. But in order to protect the tenants from harassment, the Legislature has gone further and has made it an offence to cut off or withhold any essential supply or service without just or sufficient cause. There is nothing in the section which makes it obligatory on a tenant to approach a civil Court for the restoration of the essential supply or service before filing a criminal complaint. It cannot be said that a complaint under sub-s. (4) cannot lie, unless an application has first been made to a civil Court for the restoration of the essential supply or service under sub-s. (2) of S. 24. (Bavdekar and Chainani JJ.) Haji Mahomed v. State.

AIR 1952 Bom 399=54 Bom L R 426=21 Bom Cr C 337=ILR (1953) Bom 12=1952 Cr L J 1347.

BOMBAY RENT (WAR RESTRICTIONS) ACT (BOM. ACT II of 1918) —S. 7.

——S. 7 (1) — Standard rent — Additional charges for supplying electric light—No offence.

The supplying of electric light on the passages of the building was a matter of arrangement or contract between the tenant and the landlord and does not necessarily

BOMBAY RENT (WAR RESTRICTIONS) ACT (BOM. ACT II of 1918), S. 7

form a part of the rent and a landlord who charges a fair rent for electric supply to the tenant is not guilty of having charged excess rent under S. 7 (1). (Shah and Kajiji JJ.) Emperor v. Ramgopal Ruphji

A I R 1921 Bom 162=22 Bom L R 900 = 58 I C 149 =21 Cr L J 725.

BOMBAY RETAIL TRADE CONTROL AND LICENSING ORDER (1942) —Cl 3.

——Cl. 3 (1)—Clause prohibits engaging in undertaking involving retail sale or storage and not sale — Isolated instances of sale are insufficient to justify conviction under clause.

It is not the sale but the engaging in an undertaking involving the retail sale or storage of any controlled article that is prohibited by Cl. 3 (1), so that it would not be isolated instances of sale but a regular course of business or trade that would be required to be proved against a person charged under that clause to justify his conviction. (Macklin and Sen JJ.) Emperor v. Mahomed Musa

A I R 1947 Bom 163=48 Bom L R 761 = 230 I C 48 =48 Cr L J 492.

——Single transaction of large quantity does not offend against S. 3. (N. J. Wadia and Weston JJ.) Purushottam Deoji v. Emperor

A I R 1944 Bom 247 = 46 Bom L R 449 = I L R (1944) Bom 429=17 R B 201=217 I C 373 = 46 Cr L J 354.

BOMBAY SALT ACT (II of 1890) —S. 3.

——S. 3 (o)—The effect of the definition of "removal" in S. 3 (o) is to provide that where it is proved that the person in possession of or removing salt is a servant or agent, then the possession or removal shall be deemed to be that of the master or principal, to the exclusion of liability of the servant or agent and the servant cannot be convicted under S. 47 (a). (Beaumont C. J. and Sen J.) Emperor v. Laxman Krishna Naik

A I R 1942 Bom 25=43 Bom L R 869 = 14 R B 323 =198 I C 437=43 Cr L J 369.

—S. 47.

——See also Penal Code, S. 117.

——Ss. 47, 28, 3 (o)—"Removal," meaning—If restricted to removal from salt works.

The two words "removal" and "transportation" are used in S. 47, Bombay Salt Act interchangeably. The word "removal" does not refer only to salt removed from the salt-works of Government under S. 28. (Beaumont C. J. and Sen J.) Emperor v. Laxman Krishna Naik

A I R 1942 Bom 25=43 Bom L R 869 = 14 R B 323 =198 I C 437=43 Cr L J 369.

——S. 47 (c) — Accused convicted under S. 47 (c) of the Act and S. 17(1), Criminal Law Amendment Act—If legal.

The accused were found with two boxes containing contraband salt and stamped with the name of an association declared unlawful by the Government of Bombay. They were convicted under S. 47 (c) of the Bombay Salt Act of being in possession of contraband salt and also of an offence under S. 17 (1) of the Criminal Law Amendment Act for assisting the operations of an unlawful association :

Held, that there was only one act and the accused could not be convicted twice under two different enactments for the same act. (Beaumont C. J. and Murphy J.) Emperor v. Bhogilal Chimanlal

A I R 1931 Bom 409=33 Bom L R 648 = Ind. Rul. (1931) Bom 457=1931 Cr Cas 895 = 134 I C 345 = 32 Cr L J 1145.

BOMBAY SALT ACT (II of 1890), S. 47

——Abetment of offence under the Act.

An abetment of an offence under the Salt Act can be punished under S. 117, Penal Code, if the offence falls within the scope of that section. (Beaumont C. J. and Murphy J.) Ganesh Vaman Joshi v. Emperor

A I R 1931 Bom 140 = 33 Bom L R 56 = Ind Rul (1931) Bom 233=55 Bom 353 = 1931 Cr Cas 188=130 I C 25=32 Cr L J 471.

——S. 47 (a) — Proof of intention not necessary — The provisions of S. 47 (a) of the Bombay Salt Act, 1890, do not, in express terms or by necessary implication, make intention or knowledge an essential ingredient of the offence ; hence, to support a conviction under the section, mere removal of salt in contravention of any license or permit is sufficient and it is not necessary to prove dishonest intention on the part of the accused. (Chandavarkar and Aston JJ.) Emperor v. Magan Lal Dulabhai

28 Bom 348=6 Bom L R 93=1 Cr L J 104.

BOMBAY SHOPS AND ESTABLISHMENTS ACT (XXIV of 1939) —S. 2.

——Undoubtedly, the word "employer," according to its ordinary meaning in the English language, signifies a person who employs somebody else. But it is competent for the Legislature to enact that in a particular Act the word shall include the owner of a business, whether or no anybody is employed therein ; and this is the effect of the definition of 'employer' in S. 2 (5) of the Bombay Shops and Establishments Act, and, therefore, S. 5 of the Act applies to a one-man shop managed by the owner with no employees. (Beaumont C. J. and Sen J.) Emperor v. Mahamed Kassam Panwalla

A I R 1942 Bom 39=I L R (1942) Bom 107=14 R B 295=43 Bom L R 952=198 I C 226=43 Cr L J 321.

—S. 5.

——"Enactment", if includes statutory rules framed by Government.

The word "enactment" in S. 5, Bombay Shops and Establishments Act includes rules made under a statutory power vested in Government. (Beaumont C. J. and Sen J.) Babaji Shivram Hegiste v. Emperor

A I R 1942 Bom 220 = 44 Bom L R 446 = I L R (1942) Bom 614=15 R B 125=201 I C 774=43 Cr L J 780.

——Owner and manager.

The owner of a shop cannot be said to be a person occupying a position of management. He is the owner. One of the incidents of ownership is no doubt the right to manage, but one cannot say that an owner is a person occupying a position of management. (Beaumont C. J. and Sen J.) Emperor v. Mahamed Kassam Panwalla

A I R 1942 Bom 39=43 Bom L R 952=I L R (1942) Bom 107=14 R B 295=198 I C 226=43 Cr L J 321.

—S. 17.

——Rules under Act, R. 12 (4)—Employees employed on daily terms, if entitled to one day's holiday when they work for six days in week—Notice under R. 12 (4) not put up—Liability of employer.

The meaning of S. 17, Bombay Shops and Establishments Act is that all employees, whether employed by the week or more or by the day only, should be entitled to one day's holiday in every week in which they have worked for six days. The definition of "employer" in S. 2, cl. (5), makes no exception in favour of persons employing labourers on daily terms only. Nor does the definition of "person employed" in clause (13) of S. 2 exclude from the meaning of "person employed" those persons whose employment is on daily terms. There is no

BOMBAY SHOPS AND ESTABLISHMENTS ACT (XXIV of 1939), S. 17

exemption in S. 4 of persons employed from day to day. Consequently a person who employs people only on daily terms, is not exempted from complying with the requirements of sub-r. (4) of R. 12 of the Rules made under the Act, in his business premises. (N. J. Wadia and Wassoodew JJ.) Hassanali Gulamali Patanwalla v. Emperor

AIR 1942 Bom 79=44 Bom L R 50=14 R B 350=198 I C 710=43 Cr L J 422.

——S. 17—Rules under.

R. 12 (5) — Sub-rule (5) of R. 12 of the rules framed under the Act does not apply, if there are no employees. Sub-rule (10) of R. 12, however, applies even though the maintenance of a visit-book is not of much consequence in the case of a shop where no persons are employed. (Beaumont C. J. and Sen J.) Emperor v. Mahamed Kassam Panwala

AIR 1942 Bom 39 = 43 Bom L R 952 = I L R (1942) Bom 107=14 R B 295=198 I C 226=43 Cr L J 321.

BOMBAY SHOPS AND ESTABLISHMENTS ACT (LXXIX of 1948)

—S. 60.

——Sanction to prosecute by Chief Officer of Municipality —Validity.

A Chief officer is an executive officer of the Municipality. He is a different entity from the Municipality or the local authority, whose sanction is required under S. 60, it does not empower the Chief Officer to grant such sanction.

It is doubtful whether sanctioning a prosecution would fall within the expression "enforcing the provision of the Act" in S. 43. (Dixit and Chainani JJ.) Chimanlal Bechardas v. Surat Borough Municipality

AIR 1952 Bom 159=54 Bom L R 151=21 Bom Cr C 308=ILR (1952) Bom 782=1952 Cr L J 731.

BOMBAY SMOKE NUISANCES ACT (VII of 1912)

—S. 9.

——Ss. 9 (1) and 11—Rules under S. 11—Smoke Nuisance Rules, 26—Accused an owner of hotel, served with notice requiring him to raise height of his chimney to 83 feet—Non-compliance with notice—Contravention of R. 26 by emitting smoke at a height lower than 100 feet from firing-floor level — Accused held committed offence under S. 9 (1) read with R. 26 — Fact that accused was merely lessee of building and was precluded from making structural alterations under his contract with landlord was immaterial. (Rajadhyaksha and Chainani JJ.) Emperor v. Fakir Muhammad Currimji Lalji Sajan

AIR 1949 Bom 373=51 Bom L R 573=20 Bom Cr C 52=51 Cr L J 20.

—S. 11.

——Rules under — R. 26 — Contravention of—See ibid, S. 9 (1)

AIR 1949 Bom 373=51 Cr L J 20.

BOMBAY SPECIAL (EMERGENCY) POWERS ACT (XVI of 1932)

—S. 14.

——Ss. 14, 4—Offence under S. 14 — Valid order under S. 4—Necessity of.

In order that there should be an offence under S. 14, Bombay Special (Emergency) Powers Act, it is necessary that there should be a valid order under S. 4. (Baker and Broomfield JJ.) In re Krishnarao Ramchandra

AIR 1933 Bom 409=35 Bom L R 845=6 R B 170=57 Bom 690=1933 Cr C 1173=146 I C 688=35 Cr L J 230.

BOMBAY SPECIAL (EMERGENCY) POWERS ACT (XVI of 1932)

—S. 16.

——S. 4 (1)—District Magistrate, if can be invested with powers of Governor-in-Council—Delegation, if can extend throughout the Presidency.

Under S. 16, Bombay Special (Emergency) Powers Act, the Governor-in-Council may invest the District Magistrate with the powers of the Governor-in-Council under sub-s. (1) of S. 4 and the Governor-in-Council can delegate to the District Magistrate powers extending over the whole of the Presidency. (Beaumont C. J. and Sen J.) Viswasrao Balwant Davre v. Emperor

AIR 1934 Bom 464=36 Bom L R 968=7 R B 208=1934 Cr C 1341=153 I C 40=36 Cr L J 276.

—S. 29.

——Person living in foreign territory—Proceedings under the Act—S. 29, if bars application to High Court to quash proceedings.

Where proceedings are taken under the Bombay Special (Emergency) Powers Act, an Act which applies only to the Bombay Presidency, it is extremely doubtful whether it can be made to apply to a person who is not a resident in the Bombay Presidency, and not even in British India, but resides in foreign territory.

Section 29 of the Act is no bar to the High Court entertaining a petition for quashing proceedings taken under the Act. (Baker and Broomfield JJ.) In re Krishnarao Ramchandra

AIR 1933 Bom 409=35 Bom L R 845=6 R B 170=57 Bom 690=1933 Cr C 1173=146 IC 688=35 CrLJ 230.

BOMBAY SPECIAL TRIBUNAL (CONTINUANCE) ACT (XXI of 1946)

——Validity of — See Criminal Law Amendment Ordinance (29 of 1943), Ss. 3 and 5 and Sch. 1

AIR 1947 Bom 361=48 Cr L J 902.

BOMBAY TOLLS ON ROADS AND BRIDGES ACT (III of 1875)

——The right of the Government to levy tolls under the Act is neither a benefit arising out of nor an incident of the ownership of Government in the soil of the road. It is therefore not immovable property. (Macklin and Wassoodew JJ.) Bhagwant Gennji Girme v. Gangabisan Ram Gopal

AIR 1940 Bom 369=42 Bom L R 750=13 R B 202=ILR (1941) Bom 71=191 I C 806.

—S. 11.

——Motor driver evading toll by not stopping at toll though signalled by contractor — Obstruction of public servant in discharge of his duty, if committed.

Where a licensed driver of a bus drove his motor bus through a checking toll bar on six days without stopping to pay toll, although the toll Collector signalled to him to do so :

Held, that he prevented the toll contractor or his servant from collecting the dues under the provisions of the Tolls on Boards and Bridges Act, and thus obstructed him in the discharge of his duty. (Murphy and Sen JJ.) Emperor v. Suleman Abbu

AIR 1935 Bom 24=36 Bom L R 1124=7 R B 337=1935 Cr C 25 (2)=154 I C 556=36 Cr L J 516.

BOMBAY TOWN PLANNING ACT (I of 1915)

—S. 15.

——Building—Screen of corrugated iron sheets.

A screen of corrugated iron sheets is a wall and therefore, a building for purposes of S. 15. (N. J. Wadia and Weston JJ.) Emperor v. Budhabhai,

AIR 1944 Bom 290= 46 Bom L R 477 = ILR (1944) Bom 445=17 R B 152=217 I C 34=46 Cr L J 183.

BOMBAY (TOWN) TOBACCO DUTY ACT (IV of 1857)

—S. 11.

——(As amended by Act VI of 1938) — Rules under — Licence Form A — Words "rules framed thereunder" in Form A refer only to existing rules — Licence for particular year in form A — Government cannot alter conditions of that licence during currency of the year.

The words "and the rules framed thereunder" in Licence Form A, mean rules which have been framed, and the expression does not cover rules not at present in existence, but which may be framed at a future time. Hence, when the licence was granted for the year 1941 in Form A and was paid for, the Government is not entitled to alter the terms of that licence during the currency of the year 1941. Consequently, the alteration of the rules framed under the Act made by the Government on May 13, 1941, cannot affect the licence which was granted for the year 1941. (Beaumont C. J. and Sen J.) Babaji Shivram Hegiste v. Emperor,

AIR 1942 Bom 220 = 44 Bom L R 446=I L R (1942) Bom 614=15 R B 125=201 I C 774 = 43 Cr L J 780.

—S. 18.

——Confiscation of vehicle— Notice to owner is necessary —Duty of Court to be satisfied that owner consented or knew that vehicle was used for illegal purpose.

The discretion given to Court to confiscate the vehicle under S. 18 can only be properly used after hearing the owner, and ascertaining whether he had given his consent or knew the use to which the vehicle was put. The discretion has to be exercised upon discovery of the part which the owner has taken in the use of his conveyance; and the Court is given the option to mitigate the rigour of confiscation by commuting the same to fine. That is an additional reason why the owner should be heard. The order should not be passed without giving notice to the owner. From the fact that the servant has consented to the illegal use and has been convicted, it does not follow that notice can be dispensed with as the act of the servant might be outside his employment. (Broomfield and Wassoodew JJ.) In re Jafferbhai Hasam,

AIR 1937 Bom 10 = 38 Bom L R 961 = 9 R B 238 =166 I C 562=38 Cr L J 224.

BOMBAY TRAMWAYS ACT (I of 1874)

—S. 24.

——Ss. 24, 25, 26 — Bye-law No. 27 — Transfer Regulation, 10— Regulating the travelling — Magistrate, if can levy penalty.

Section 24 of the Bombay Tramways Act authorises the Tramway Company to make regulations for regulating the travelling in or upon any carriage belonging to them; S. 25 provides that any person offending against any bye-law made under the provisions of the next preceding section shall forfeit for every offence any sum not exceeding twenty-five rupees, to be imposed in such bye-laws as a penalty for such offence. Section 26 provides that all penalties under the Act or under any bye-law made in pursuance of the Act may be recovered and enforced before a Police Magistrate of Bombay by a summary proceeding, and then the section provides for the issue of a warrant by the Magistrate for recovery of the amount. Certain bye-laws are framed under the Act. Bye-law No. 27 provides that any person offending against or committing a breach of any of the bye-laws or regulations of the company shall be liable for every such offence or breach to a penalty not exceeding Rs. 25. Then certain transfer regulations are also framed. Transfer Regulation No. 10 provides that a passenger when changing cars at a transfer station shall not continue his journey from that station in a car going from such station over the same portion of line as the car from which he has transferred except when such a journey is scheduled in the section tables.

BOMBAY TRAMWAYS ACT (I of 1874), S. 24

The applicant took his seat in a tramcar belonging to Tramway Company and was directed by punch of his ticket to change at another station which the applicant did. It was, however, pointed out to him that he had taken a wrong car and was asked to change the car. The applicant refused to change the car and also pay for another ticket which was issued to him. Action was taken against him by the Company for breach of transfer Regulation No. 10 and the Magistrate was asked to impose such penalty he thought fit. He was convicted by the Magistrate of breach of bye-law No. 27 to pay a penalty of Rs. 10.

Held, that provisions that a passenger shall change at a particular point, and shall travel, or shall not travel, by a particular car are clearly regulations as to the travelling in or upon any carriage belonging to the company. Regulation No. 10 was, therefore, within the competence of the company.

It is for the bye-laws, and not for the Magistrate to impose the fine and the duty of the Magistrate is to recover the penalty so imposed. (Beaumont C. J. and Barlee J.) C. S. Modi v. Emperor,

AIR 1934 Bom 205=36 Bom L R 369= 1934 Cr Cas 656=7 R B 91= 151 I C 875=35 Cr L J 1439 (2).

——Ss. 24 and 25—Bye-laws — Sanction of Governor in-Council—Notice by the Company suspending a bye-law — Want of sanction—Effect of—Breach of bye-laws—Offence.

The Bombay Tramways Co., promulgated a bye law with the sanction of the Governor-in-Council forbidding any person from travelling on the platform of any tram car. The Company issued in 1917 a notice to the passengers, permitting three persons to travel on the rear platform of a tramcar. In 1919 the Company cancelled the first and issued another notice forbidding travelling on the rear platform of a tramcar. To none of these notices sanction of the Governor-in-Council was obtained. Held, that the two notices issued by the Company which involved within certain limits a modification of bye-law No. 6 and which were not confirmed by the Governor-in-Council had no effect in law and were to be taken as non-existent. A breach of the bye-law so altered is no offence. (Shah and Hayward JJ.) Sorab Merwanji v. Emperor,

AIR 1920 Bom 211=21 Bom L R 1103=54 I C 488= 21 Cr L J 88.

BOMBAY VILLAGE POLICE ACT (VIII of 1867)

—S. 3.

——S. 3—Pagis—District Magistrate can appoint pagis nominated by Talukdar — Recovery of share in salaries can be had from Jivaidar under Contract Act, S. 69.

Plaintiff as Talukdar owned half revenues while the defendants were entitled as Jivaidars to a half share of the revenues of a village. The District Magistrate called upon the defendants to appoint two pagis for the villages and as they failed, he appointed the pagis nominated by the plaintiff. The wages of the pagis were paid by the plaintiff alone.

Held, (1) that the pagis were validly appointed by the District Magistrate under S. 3; and (2) that the pay of the pagis was a charge on the revenues of the village and the plaintiff had a right of reimbursement under S. 69 of the Contract Act. (Pratt and Fawcett JJ.) Achal Singh Kesri Singh v. Dolat Singh Surajmalji.

AIR 1924 Bom 470=26 Bom L R 678=83 I C 30.

——Ss. 6 and 14—Judicial proceedings before Police patel —District Magistrate's power to stop proceedings.

BOMBAY VILLAGE POLICE ACT (VIII of 1867), S. 3

The duties which are enumerated in S. 6 are the executive duties of the Police Patel and are imposed upon him quite independently of the authority given to him under S. 14. The authority given to him by S. 14 is judicial. S. 6, therefore, does not authorise the District Magistrate to stop the judicial proceeding already in progress before the Police Patel. (Basil-Scott C. J. and Knight J.) In re Dayal Kanji.

10 Bom L R 630=8 Cr L J 141.

—S. 14.

——Ss. 14 and 15—Criminal proceedings.

The proceedings before a police Patel under Ss. 14 and 15 are criminal proceedings. (Shah and Hayward JJ.) Chiman Damodar v. Emperor.

AIR 1921 Bom 425=45 Bom 96=22 Bom L R 898=58 I C 147=21 Cr L J 723.

——Judicial proceedings before Police Patel — District Magistrate's power to stop proceedings — See Bombay Village Police Act (8 of 1867), Ss. 6, 14.

8 Cr L J 141.

—S. 15.

——Police Patel — Power to inflict fine for false complaint.

A Police Patel to whom a commission under S. 15 of the Bombay Village Police Act has been issued cannot inflict a fine on a complainant for making a false complaint. (Shah and Kemp JJ.) Mangal Lal Khemchand In re.

AIR 1918 Bom 151=20 Bom L R 600=46 I C 415=19 Cr L J 735.

——Police Patel — Verbal order by, sent through a messenger—Validity.

A verbal order sent through a messenger by a Police Patel, under S. 15 of the Act, asking a person to present himself before him to answer an accusation, is not a lawful order issued by the Police Patel personally within the meaning of S. 15. (Lawrence-Jenkins C. J. and Aston J.) Emperor v. Shivoo Gowri.

8 Bom L R 118=3 Cr L J 239.

——Fine—Default in payment — Village Police Patel — His powers—See Penal Code, S. 64.

1 Cr L J 327 (Bom).

—S. 17.

——Accused can engage Pleader but his presence cannot be dispensed with.

The words of S. 17, Bombay Village Police Act are mandatory. Even if the accused person does appear by a Pleader, the proceedings must be in his presence, therefore, the Police Patel has no discretion in the matter, and he cannot dispense with the presence of the accused, although the accused can engage a Pleader. (Beaumont C. J. and Sen J.) Warubai Kriparam v. Shivshankar Balmukund.

AIR 1942 Bom 205 (2) = 44 Bom L R 442=15 R B 148=201 I C 688=43 Cr L J 786.

BOMBAY WEIGHTS AND MEASURES ACT (XV of 1932)

—S. 16.

——Ss. 16 and 37 — 'Delivery' means delivery in pursuance of sale and not only actual physical delivery.

The word 'delivery' in S. 16 must not be taken to mean only the actual physical delivery. It qualifies the word 'sold' in the sense that what is meant is delivery in pursuance of sale.

Where a seller at Agra sends by railway unstamped weights to a customer at Larkana in Sind and the customer takes delivery of them on production of the railway receipt the sale is incomplete till the railway receipt is in possession of the customer. But having passed into the possession, the weights evidently are delivered within the meaning of S. 16. The delivery is made not by the carriers but by the seller, through the carriers, at Larkana. The Magistrate at Larkana has, therefore, jurisdiction to try the seller for an offence under S. 16 read with S. 37. (Davis C. J. and Thadani J.) Kundanlal Kishorilal v. Emperor.

AIR 1946 Sind 115=222 I C 610=47 Cr L J 335.

—S. 22.

——S. 22 or rules under Act do not empower manual assistant to inspect the weights and measures—Filling in and dating blank forms of notice already signed—Obstruction to such manual assistant, whether offence under S. 352 or S. 353, Penal Code (Act XLV of 1860).

Rules framed under Bombay Weights and Measures Act do not empower any one other than a properly appointed Inspector to inspect weights and measures.

A manual assistant is not an Inspector under the Act duly authorised to perform any of the acts referred to in the Weights and Measures Act. He has no right to stop a milkman on the road and to inspect his weights and measures or to take any action with reference to them contemplated by the Act. In stopping a milkman going on a bicycle and inspecting his measures and detaining him the manual assistant acts illegally. The fact that the manual assistant or any process-server or patewalla in Government service, is authorised to serve a notice on behalf of his official superior does not entitle such a person to fill in and date a blank form of notice already signed. [Obstruction caused to such assistant held neither an offence under S. 352 nor under S. 353, I. P. C.] (O'Sullivan J.) Gulabrai Santdas v. Emperor.

AIR 1944 Sind 89 = 16 R S 249 = 212 I C 163=45 Cr L J 550.

BONA FIDES

See Criminal P. C., Ss. 133, 139.

BOND

—Attestation—See Evidence Act, 1872, S. 69.
—Bail Bond—See Criminal P. C. (5 of 1898), S. 499.
—Bond for appearance—See Criminal P. C. (1898), Ss. 91, 92.
—Bond for appearance — Forfeiture — See Cr. P. C., S. 514.
—Bond for appearance of witnesses — See Cr. P. C., S. 217.
—Bond in the case of first offenders—See Criminal P. C. (5 of 1898), S. 562.
—Bond, Levy of amount due under — See Criminal P. C. (5 of 1898), S. 516.
—Deposit, instead of — See Criminal P. C. (5 of 1898), S. 513.
—Security bond—Cancellation of—See Criminal P. C., S. 125.

BONUS

See Payment of Wages Act, 1924, S. 2.

BOOKS

—Forfeiture of—See Criminal P. C. (5 of 1898), S. 99A.
—Presumption in connection with—See Evidence Act (1 of 1872), S. 87.

BOOKS OF ACCOUNT

See Evidence Act, S. 34.

BORSTAL INSTITUTION

See (1) Burma Prevention of Crime (Young offenders) Act (III of 1930).
(2) Criminal P. C., S. 399.
(3) Prisons Act, S. 3.

BORSTAL SCHOOLS

See Cr. P. C. (1898), S. 399.

BOUND BY LAW

—Belief as to—See Penal Code (45 of 1860), S. 76.

BOYCOTT

—Social—See Penal Code (1860), S. 503.

BREACH OF CONTRACT

See Workman's Breach of Contract Act (1859).

—Cognizance of, offence of — See Criminal P. C. (5 of 1898), S. 198.

—Of service—See Penal Code (45 of 1860), S. 490.

—To serve at distant place where servant conveyed at master's expense — See Penal Code (45 of 1860), S. 492.

—To supply wants of helpless person—See Penal Code (45 of 1860), S. 491.

BREACH OF THE PEACE

See Cr. P. Code, Ss. 106, 107 to 117, 123, 144, 145.

—Dispute as to immovable property — See Criminal P. C., Ss. 107, 133 and 145.

—Prevention of—See Criminal P. C., S. 147.

—Security for keeping peace and good behaviour — See Criminal P. C., (1898), Ss. 107 to 110.

BREACH OF TRUST

See (1) Criminal P. C., S. 182.
(2) Penal Code, Ss. 403, 405, 406, 409.

BRIBE

See Penal Code, S. 161, etc.

BRIBERY

See Penal Code, S. 161.

BRITISH MERCHANT SHIPPING ACT (1894)

—S. 220.

——Applicability to crew of Norwegian ship not registered in British India — See Merchant Shipping Act, S. 103,

A I R 1949 Cal 319=50 Cr L J 567.

BUILDING

—Neglect in repairing — See Penal Code (45 of 1860), S. 288.

BURDEN OF PROOF

See (1) Criminal P. C., Ss. 256, 290 and 367.
(2) Evidence Act (1872), Ss. 24, 101 to 114.

—As to ownership. See Evidence Act (1 of 1872), S. 110.

—As to particular fact. See Evidence Act (1 of 1872), S. 102.

—As to relationship of partners, landlord and tenant, principal and agent, See Evidence Act (1 of 1872), S. 109.

—Of good faith in transactions. See Evidence Act (1 of 1872), S. 111.

—Of legitimate son. See Evidence Act (1 of 1872), S. 112.

—Death of person known to have been alive within 30 years. See Evidence Act (1 of 1872), S. 107.

BURDEN OF PROOF

—Fact especially within knowledge. See Evidence Act (1 of 1872), S. 106.

—Fact to be proved to make evidence admissible. See Evidence Act (1 of 1872), S. 104.

—That case of accused comes within exceptions. See Evidence Act (1 of 1872), S. 105.

—That person is alive, who has not been heard of for 7 years. See Evidence Act (1 of 1872) S. 108.

—On accused. See Excise Act (12 of 1896), Ss. 3, 51.

BURIAL GROUND.

—See Criminal P. C. (1898), S. 133.

—Trespass on. See Penal Code (45 of 1860), S. 297.

BURMA ANTI BOYCOTT ACT (V OF 1922).

—S. 3.

——Ss. 3 and 9—Sanction before prosecution is necessary —Nature of sanction.

Before launching a prosecution under the Burma Boycott Act, S. 9 requires the sanction of the Government as under S. 196, Criminal P. C. All the facts need not be stated in the sanction order.

Quaere : whether it is not enough to state that the accused had committed an offence under a certain section ?

The boycotting of a person by failing to invite him to a social function if due to political differences is an offence under the Act. (May Oung J.) Nga Aung Hman v. Emperor,

A I R 1924 Rang 145 = 1 Rang 694 = 79 I C 755=2 Bur L J 169.

—S. 4.

——Essentials.

Hanging out notice boards that certain non-members of Thanga Thama Gyi Society are not recognised is an offence under S. 4 (a) (Brown J.) U. Nandiya alias U. P. O. Gan and U Thumana v. Emperor,

AIR 1924 Rang 379 = 3 Bur L J 186=84 I C 450= 26 Cr L J 306.

——S. 4 (a) — Joint Trial — Promoting commission of offence justifies joint trial Actual instructions need not be proved—Acquittal of principal accused does not necessitate acquittal of all.

Promoting by A and B of the commission of offence, viz., the boycotting of the headman in pursuance of C's resolution at a meeting justifies joint trial. Even if the proposal by A was not proved, but the promotion of the boycott of which he was the alleged proposer, was proved against A and B the fact that all the three were tried together would not render the trial illegal or be a valid reason for acquitting A and B against whom a charge under S. 4 (c) was brought home. (Pratt J.) Emperor v. Nga Aung Gyaw,

AIR 1924 Rang 98=1 Rang 604=2 Bur L J 224=76 I C 830=25 Cr L J 270.

—S. 6.

——S. 6 (a)—Ex-communication—Spurious ceremony not conducted in Thein—Ex-communication for partly political purpose is not exempted under S. 7 (a).

Where a village headman used abusive language towards certain monks who were preaching on Home Rule and kindred matters and had thereby run the risk of being ex-communicated and the first petitioner, who was among the abused, proposed a boycott of the headman and called a meeting of monks and laymen together and purported to perform the rite of ex-communication.

Held, (1) The ex-communication was a spurious ceremony and not having been proclaimed in a Sima or Thein by a properly convened chapter and the procedure laid down in the Vinaya not having been strictly followed

BURMA ANTI-BYCOTT ACT (V of 1922), S. 6

the benefit of S. 7 (a) could not be claimed. (2) It was necessary to prove that the boycott was proposed for bona fide religious purposes ; where a motive other than religious is present, the burden of establishing good faith lies heavily on the proposer. (3) The mere fact that the second petitioner allowed the use of his compound does not amount to abetment but having become cognizant of the proposal to boycott on the first day, and having continued to lend his house for the ceremony on the second day, he facilitated the commission of the offence and had intentionally aided the boycott under S. 107, Expl. 2, I. P. C. (4) That the sentence was rightly reduced from one year to three months by the Sessions Judge, as the complainant was shown to have been a tactless, irreverent and foul-mouthed individual but no further reduction of sentence was granted in view of the fact that the petitioner had tried to give effect to his proposal by a spurious ceremony. (May Oung J.), U Tiloka v. Ba Sein.

AIR 1924 Rang 169=1 Rang 629=2 Bur L J 221=76 I C 719=25 Cr L J 255.

—S. 9.

——Sanction—Facts incorrectly set out in the sanction—Sanction is not invalid—Criminal P. C., Ss. 195 and 196.

The provisions in the Anti-Boycott Act requiring the authority of the Government for a prosecution under the Act correspond to those in S. 196, Code of Criminal Procedure, which is less stringent than S. 195. Strictly the "order" or "authority" required by S. 196 is not the same as the "sanction" referred to in S. 195 and the classes of the offences dealt with by the two sections are quite distinct. Moreover, in the latter section there is no provisions corresponding to sub-section (4) of the earlier section. The intention of the legislature was to ensure that no prosecution for an offence falling within S. 196 or under the Anti-Boycott Act should be launched except on a complaint authorised by the Government and where this intention is given effect to it is immaterial whether or not all the facts on which the complaint was to be based were stated in the "authority" with meticulous precision. Indeed, it is doubtful if it is even necessary to set out any fact other than the alleged fact that the accused had committed an offence under a certain section of the Act. (May Oung J.) Nga Aung Hmau v. Emperor,

AIR 1924 Rang 65=2 Bur L J 196=76 I C 561 = 25 Cr L J 193.

BURMA BOUNDARIES ACT (V OF 1880)

—S. 11.

——Ss. 11 and 17—Boundary Officer's decision—Effect.

The Boundary Officer confirmed the Demarcation Officer's marks, which showed the proper limit of the petitioner's land, and declared the extension of the house beyond that limit to be an encroachment. No appeal was taken against this decision; subsequently the Municipality served a notice under S. 94 (2) of the Municipal Act to remove an encroachment. Petitioner's answer was that the decision of the Boundary Officer was not binding on him, because the special notice, under S. 11 of the Boundaris Act, was not served on him and because he had obtained a title to the property encroached upon, by adverse possession before the Boundary Officer's decision. Held that the objections could have been taken in an appeal against the decision of the Boundary Officer and in the absence of such appeal his decision was conclusive, (Fox J.) Kya Neyun v. Rangoon Municipality,

4 L B R 153=7 Cr L J 462.

—S. 17.

——Boundary Officer's decision — Effect — See Burma Boundaries Act (5 of 1880), Ss. 11, 17.

7 Cr L J 462 (LB).

BURMA CONSTITUTION ACT

—S. 13.

——Ss. 13, 228—Applicability—Trial by Special Tribunal under Burma Special Crimes (Tribunal) Act, 1947, concluded before 4th January 1948, the date of operation of Constitution Act — Trial cannot be invalidated ex post facto on alleged ground that setting up of Tribunal amounted to discrimination and prohibited by the Constitution. (Ba U C. J. (Union of Burma). E. Maung J. and U Thein Maung C. J. (HC).) U Saw v. The Union of Burma

1948 Bur L R 249 (SC).

—S. 25.

——Remedy under—Special leave for appeal under S. 491, Criminal P. C. will not be granted — See Burma Union Judiciary Act, S. 6

1948 Bur L R 214 (SC).

——Provision is only an adaptation of English Common Law practice in the matter of issuing direction in nature of Habeas Corpus — (1928) A. C. 459, Ref. (Ba U C. J. (Union of Burma), E Maung and Kyan Myint JJ.) Ma Mar Mar v. P. S. O., Ahlone

1948 Bur L R 214 (SC).

—S. 228.

——Ss. 13, 228—Applicability—Trial by Special Tribunal under Burma Special Crimes (Tribunal) Act, 1947, concluded before commencement of Constitution — Trial cannot be invalidated ex post facto on alleged ground that setting up of Tribunal amounted to discrimination and prohibited by the Constitution—See ibid, S. 13

1948 Bur L R 249 (SC).

—Art. 25.

——Proceedings under—Power of Supreme Court to consider legality of action taken by Commissioner of Police under Burma Public Order (Preservation) Act, 1947—See Burma Public Order (Preservation) Act, 1947), S. 9

1948 Bur L R 372.

(BURMA) COURT (EMERGENCY PROVISIONS) ACT, 1943

—S. 14.

——S. 14 (b) does not purport to amend S. 413, Criminal P. C. So long as S. 14 (b) is in force i. e., so long as the emergency continues, S. 413 is to have the same effect regardless of any amendment or amendments that may be made in its wording by any general Amendment Act. In other words, the special enactment for the emergency must override any general enactment and the latter can have full play only after the special enactment has expired —See Interpretation of Statutes — Special and general provisions

1946 Rang L R 209.

BURMA COURTS ACT (XI of 1922)

—S. 27.

——Revision from orders of Rangoon Magistrate—Jurisdiction of Sessions Judge of Hanthawaddy—Judicial Notification No. 39 of 1931.

Though under S. 27, Burma Courts Act, appeals from sentences and orders of Magistrates exercising their jurisdictional powers in Rangoon, lie to the Rangoon High Court, under Notification No. 39 of February 2, of the Burma Government and S. 435 of the Criminal P. C., prima facie the Sessions Judge of Hanthawaddy, Rangoon, is invested with revisional jurisdiction in connection with applications for revision from the Courts of Magistrates in Rangoon. (Page C. J.) Maung Chit Sein v. Emperor

A I R 1932 Rang. 192 (2) = 1932 Cr Cas 934 = Ind Rul (1933) Rang. 21 = 10 Rang. 488=141 I C 259=34 Cr L J 189.

BURMA COURTS MANUAL

—Para. 102.

——The instruction in para. 102 is based on the provisions of S. 17 (1), Criminal P. C. It no doubt applies to pending as well as to completed proceedings; but the discretion which has to be exercised is the discretion of the District Magistrate, unfettered by influences and pressure which may weigh with the Deputy Commissioner. (Dunkley J.) The King v. Maung Po Thaing

A I R 1941 Rang. 114 = 1941 Rang. L R 82 =13 R Rang. 306=194 I C 370=42 Cr L J 573.

—Para. 664-A.

——Paragraph 664-A, Burma Courts Manual, relating to the deposit of witness expenses relates to orders under Ss. 244 and 245, Criminal P. C., which relate to the trial of summons case and does not apply to a cognizable warrant case. It is only from the defence, that the Magistrate can under certain circumstances require the deposit of witness expenses : vide S. 257 (2), Criminal P. C. (Parker J.) Chin Home On v. C. Sh. Foo

A I R 1937 Rang. 35.

—Para. 791.

——Evidence only of year of birth—Magistrate, if can fix date other than January 1 of that year.

Under para. 791, Burma Courts Manual, if there is evidence only of the year of birth, the birthday may be fixed as January 1. It is, therefore, at the option of the Court to fix a date other than January 1. (Mosely J.) The King v. Unoose

A I R 1938 Rang. 228 = 11 R Rang. 36 = 176 I C 217=39 Cr L J 697.

BURMA CRIMINAL LAW AMENDMENT (CONDITIONALLY RELEASED PRISONERS) ACT (III of 1928)

—S. 2.

——Sentence—Legality of — Penal Code, S. 227—Magistrate sentencing person, convicted under S. 227, Penal Code, and S. 2, Burma Act, for period in excess of his powers—Such sentence is illegal.

There is nothing in either S. 227, Penal Code or S. 2, Burma Act to empower any Magistrate to pass a sentence in excess of that which he is empowered under the Criminal P. C., to pass. Thus if a Magistrate sentences a person, convicted under S. 227 of the Code, and under S. 2, Burma Act, for a period which is in excess of his power, the sentence is illegal. (Carr J.) Nga Mya v. Emperor

A I R 1929 Rang. 279=7 Rang. 358 = 120 I C 693= 1929 Cr C 464=31 Cr L J 175.

——Interpretation—Penal provision has no retrospective effect—Interpretation of statutes.

Section 2 has no retrospective effect. On the ordinary principles of penal legislation a penal provision does not have retrospective effect. (Carr J.) Nga Po Ngwe v. Emperor

A I R 1929 Rang 278=7 Rang. 355=120 I C 692= 1929 Cr C 446=31 Cr L J 174.

BURMA EXCISE ACT (BUR. ACT V of 1917)

——Conviction—Conviction of accused caught in the same sampan where were found 9 bundles containing four bottles each of liquor was held bad.

The accused were all caught in one sampan, and in the sampan were found thirty-six quarts of kazaw-ye in nine bundles of four bottles each. Conviction of them all, on the ground that they were in joint possession of thirty-six quarts was held bad : 8 L. B. R. 464, Disting. (Baguley J.) Appaya v. Emperor

A I R 1925 Rang. 135=84 I C 551=3 Bur L J 255= 2 Rang. 657=26 Cr L J 327.

BURMA EXCISE ACT (BUR. ACT V of 1917)

—S. 12.

——Ss. 12 (c) and 30 (d)—Yeast balls—Possession of, is an offence.

Yeast balls are not excisable articles but as they are materials for the manufacture of an excisable article, namely, liquor, the possession of them is prohibited by S. 12 (c) and made punishable under S. 30 (d) of the Act. (Maung Kin J.) Nan Mamya v. Emperor

A I R 1921 L B 81 = 66 I C 665=11 L B R 136=23 Cr L J 313.

——Manufacture of Vinegar—Possession or export.

Vinegar is an alcoholic liquor only for the purposes of S. 12 of Burma Excise Act. Export, import or possession of vinegar in any quantity is not an offence. (Twomey C. J.) Yee Wan v. Emperor

A I R 1919 L B 120=11 Bur L T 268=50 I C 657=9 L B R 277=20 Cr L J 321.

—S. 16.

——Finance Department Notification No. 77—Possession of excisable articles — Limits for — Different kinds of articles seized together — More than one punishment, if can be inflicted.

Finance Department Notification No. 77, as subsequently amended, prescribes the limits for possession of excisable articles under S. 16, Burma Excise Act. In considering the limit, each kind of excisable article should be considered separately and there is nothing to prevent the possession of each kind of article up to the limit prescribed, though the total of all the articles possessed may exceed the limit prescribed for each of them. When different kinds of liquor are seized together, it is undesirable that more than one punishment should be inflicted. (Brown J.) Emperor v. Nga Sein Po.

A I R 1932 Rang 184=10 Rang 396=Ind Rul (1932) Rang 225 = 1932 Cr Cas 819 = 140 I C 302=34 Cr L J 8 (1).

—S. 30.

——In prosecutions under S. 30 (a) it is necessary to prove possession of a larger quantity of an excisable article and there is no room or need for any presumption. (Mosely J.) The King v. Mi Nge Soe.

A I R 1940 Rang 109 = 1940 Rang L R 219 = 12 R Rang 363=188 I C 72=41 Cr L J 541.

——S. 30 (a) — "Country liquor." — "Country liquor" explained—Particular kind must be specified.

"Country liquor" is a generic term which can be equally applied to tari, country spirit, and country alcoholic liquor other than spirit, i. e., country fermented liquor. In excise cases, it is always necessary to distinguish between these different kinds of country liquor and specify which particular kind is involved in the case, as the quantities of each of these different kinds of alcoholic liquor which may be possessed without a licence differ. (Heald J.) Emperor v. Nga Po Seik.

A I R 1929 Rang 256 = 7 Rang 316 = 119 I C 223= 1929 Cr C 451=30 Cr L J 990.

——Ss. 30 (a) and 37 — Procedure—Alteration of offence under S. 30 (a) to one under S. 37 — Cr. P. Code, S. 227.

An illegal conviction under S. 30 (a) cannot be altered to a conviction under S. 37 if the accused is not called upon to answer a charge under the latter section. (Heald J.) Emperor v. Nga Po Seik.

A I R 1929 Rang 256 = 7 Rang 316 = 119 I C 223= 1929 Cr C 451=30 Cr L J 990.

——S. 30 (a)—Conviction—Person cannot be convicted for possession of less than one quart of country spirit or country alcoholic liquor other than spirit.

A person cannot be convicted under S. 30 (a) for mere possession of less than one quart of country spirit or

BURMA EXCISE ACT (BUR. ACT V of 1917), S. 30

country alcoholic liquor other than spirit, the quantity being within the limits for possession prescribed for either of the kinds of liquor in the Excise Department Notification No. 61 of 14th June, 1928. (Heald J.) Emperor v. Nga Po Seik.

A I R 1929 Rang 256=7 Rang 316 = 119 I C 223 = 1929 Cr C 451=30 Cr L J 990.

——Ss. 30 and 5—Proof—To prove an offence under the Act it is necessary to show that the place of possession or sale of tari is within five miles of licensed tari shop. (Carr J.) Emperor v. Aung Shan.

A I R 1929 Rang 120=7 Rang 3 = 117 I C 254 = 30 Cr L J 752.

——Ss. 30 (a) and 16 (3) — Offence under — Bona fide private consumption proved — Accused are not liable for any offence.

Applicant was manager of a Chinese store ; the firm employed 25 or 30 men ; and the 3 cases of Chinese wine were sent quite openly as such from Rangoon, just before the New Year. Kin Woon, one of the proprietors of the firm, Was a Roman Catholic and observed the New Year and the anniversary of the election of Dr. Sun Yet Sen as President.

Held, in these circumstances the liquor, 48 quarts which does not seem excessive, was intended for the bona fide private consumption of the firm and its employees at the New Year.

Held, further, the evidence ought to have been recorded in manner provided for summary trials with appealable sentence. (MacGregor J.) Choo Khin v. Emperor.

A I R 1923 Rang 41=1 Bur L J 105 = 93 I C 522 = 26 Cr L J 42.

——S. 30 (b)—Sale of—Excisable article.

It is no offence for a restaurant keeper to procure liquor from a licensed shop on the order of customer and supply it to him at the cost price without a license. (Pratt J.) Ah Kway v. Emperor.

A I R 1919 L B 117=12 Bur L T 54 = 51 I C 769 = 20 Cr L J 529.

—S. 37.

——In prosecutions for possession of an excisable article under this section it is necessary either to prove that the accused knew or had reason to believe that the excisable article was unlawfully manufactured or to set up circumstances for which a presumption of such knowledge or belief may be presumed. (Mosely J.) The King v. Mi Nge Soe.

A I R 1940 Rang 109 = 1940 Rang L R 219 = 12 R Rang 363=188 I C 72=41 Cr L J 541.

——Proof of offence under — Guilty knowledge must be proved.

In order to establish an offence under S. 37, it is necessary that the guilty knowledge or belief which is an essential ingredient of the offence should be included in the particulars of the offence stated to the accused and proved at the trial. (Heald J.) Emperor v. Nga Po Seik.

A I R 1929 Rang 256=7 Rang 316 = 119 I C 223 = 1929 Cr C 451=30 Cr L J 990.

——Excisable article — Possession of small quantity — Onus of proving that it is not illicit is on possessor.

Section 37 of the Burma Excise Act is directed against the illicit manufacture, importation etc., of any quantity of excisable article and it is in the nature of things necessary to provide for a presumption against a person in possession of an excisable article and throw on him the onus of proving that his possession is not illicit, as the matter would naturally be within his special knowledge. Possession of an excisable article even within the limit

BURMA EXCISE ACT (BUR. ACT V of 1917), S. 37

allowed is an offence unless such possession is accounted for. (Maung Kin J.) Nga Han Kyi v. Emperor.

A I R 1921 L B 94=66 I C 514 = 11 L B R 134=23 Cr L J 290.

——Tari—Possession of—When an offence.

Where the tree tax system is not in force the manufacture and possession of Tari is not an offence under S. 37 of the Burma Excise Act. (Sounders J. C.) Emperor v. Nga Po Kyan.

A I R 1918 U B 23=(1918) 3 U B R 86 = 47 I C 870 19 Cr L J 970.

—S. 41.

——Ss. 41 (c) and 63 (1) (a)—Sanction for prosecution by Collector, form of.

A mere order by the Collector sanctioning the prosecution of a person under S. 41 (c) of the Burma Excise Act on the report of the district superintendent of police is not a sufficient compliance with the provisions of S. 63 (1) (a) of the Act. The Collector must authorise some particular excise officer to make the report or complaint. (Pratt J. C.) Maung Ki v. Emperor.

A I R 1920 U B 46=56 I C 436=(1919) 3 U B R 197 =21 Cr L J 452.

—S. 44.

——Ss. 44, 30 (a) — Applicability of S. 44 to case under S. 30 (a).

Section 44, Burma Excise Act, has no application to the common case under S. 30 (a) where the charge is one of possession of a larger quantity of an excisable article than is allowed under the Act. In prosecution under S. 30 (a), it is necessary to prove such possession, and there is no room or need for any presumption. In prosecution for possession of an excisable article under S. 37 it is necessary either to prove that the accused person knew or had reason to believe that the excisable article was unlawfully manufactured, or to set up circumstances from which a presumption of such knowledge or belief may be presumed, such as the simultaneous finding of a part of still in the possession of the accused person or the impossibility of obtaining the article from a licit source. Such a presumption could ordinarily be drawn under the general provisions of S. 114, Evidence Act, but S. 44, Excise Act, may be of useful application and allow the presumption to be drawn in rarer cases such as where the still was not seized at the same time as the liquor, or had not been used for some time, or was found at some little distance from the premises where the liquor was found. (Mosely, J.) The King v. Mi Nge Soe,

A I R 1940 Rang 109 = 1940 Rang L R 219 = 12 R Rang 363=188 I C 72=41 Cr L J 541.

—S. 53.

——Ss. 53, 54, 55 and 56 — Admission—Excise officer is not police-officer and admission to him is admissible — Evidence Act, S. 25.

Although under Burma Excise Act (V of 1917) an Excise Officer has power of arrest, search and granting bail he is not a police-officer and an admission made to him is admissible in evidence. (1907-9) U B R 1, Held no longer good law. (Baguley, J.) Maung San Myin v. Emperor,

A I R 1930 Rang 49 = 7 Rang 771 = 121 I C 715= 31 Cr L J 303.

—S. 63.

——Ss. 63 (1) (b) and 33 (a) — Accused prosecuted by Police under S. 304-A, I. P. C. — Reference in Police report that accused though unlicensed medical practitioner used hypodermic syringe—Magistrate finding on inquiry that no offence under S. 304-A, I. P. C., but charging accused under S. 33 (a), Excise Act.

BURMA EXCISE ACT (BUR. ACT V of 1917), S. 63

The applicant was originally prosecuted by the Police under S. 304-A, I. P. C. The charge-sheet set out that the applicant, an unregistered medical practitioner gave an intravenous injection to the deceased prior to his death, and that death followed this injection. The Magistrate found on inquiry that there was not sufficient evidence to charge applicant under S. 304-A, I. P. C., but charged him under S. 33 (a), Excise Act:

Held, that the Police report, in effect, clearly contained a reference as to the use of an hypodermic syringe, by an unlicensed practitioner and this was a sufficient compliance with the provisions of S. 63 (1) (b), Excise Act and the Magistrate in charging appellant under S. 33 of the Act was acting on a Police report. (Mackney J.) A Nandi v. Emperor,

A I R 1935 Rang 198=1935 Cr Cas 686.

—S. 64.

——Applicability—Burma Habitual Offenders' Restriction Act (Burma Act II of 1919)—Applicability.

The Habitual Offenders' Restriction Act should not be applied to persons against whom action is taken under S. 64-A of the Excise Act. A I R 1926 Rang 182, Foll. (Heald, J.) Nga Pa v. King-Emperor,

A I R 1927 Rang 98 = 4 Rang 455 = 99 I C 349=28 Cr L J 141.

BURMA EXPULSION OF OFFENDERS ACT (I of 1926)

—S. 2.

——S. 2, cl. (a), S. 4, sub-s. (4) — Non-Burman—'Domicile', meaning and significance of — Intention of residing permanently coupled with actual residence, necessity of—Domicile of choice.

Domicile connotes the place in which a man has voluntarily fixed the habitation of himself and his family, not for a special or temporary purpose, but with the intention of making a permanent home until some unexpected event shall occur to induce him to adopt some other permanent home. Every person at birth acquires a domicile of origin. A person may change his domicile by choice. The domicile of origin is retained until one of choice is acquired by a combination of residence and intention. Two things are essential to constitute a domicile of choice in a new country, viz., residence in that country without any animus revertendi to the country of origin and the intention of making a permanent home in a new country. Domicile of choice is, in fact, a mixed question of intention and act. There must be an intention of residing permanently in a particular country, coupled with actual residence. Where the intention is acquired the length of residence is immaterial, but where there is no direct evidence of intention, length of residence is material as showing what the intention was. (Dunkley J.) Emperor v. Man Mohan,

A I R 1933 Rang 193 = 1933 Cr Cas 813=6 R Rang 77=146 I C 193=34 Cr L J 1184.

—S. 2B.

——S. 2-B, (3) and (4)—Scope—Under S. 2-B, (3) and (4), person may become offender not by reason of conviction of offence.

Under S. 2-B, (3) and (4) a person may become an offender not by reason of conviction of an offence, for it is well recognised law that orders under S. 118, Cr. P. Code, or under S. 7, Burma Habitual Offenders' Restriction Act are not convictions of offences. (Carr, J.) Emperor v. Nga Po Sein Gyi,

A I R 1929 Rang 254 = 7 Rang 266 = 119 I C 213= 1929 Cr C 450=30 Cr L J 990.

BURMA EXPULSION OF OFFENDERS ACT (I of 1926)

—S. 3.

——Ss. 3, 2 (A), (B) — Accused brought by parents to Burma from India when very young — No intention to acquire domicile—No intention of not returning to India.

The accused was brought to Burma from India by his parents when he was a few years old. There were no circumstances showing that he acquired a domicile in Burma or that he did not intend to return to India:

Held, that the accused was a non-Burman within the meaning of S. 2 (A) of Burma Expulsion of Offenders Act and an offender within the meaning of S. 2 (B) and consequently liable to expulsion under S. 3. (Mya Bu J.) Emperor v. Rangaswamy,

A I R 1937 Rang 54 = 9 R Rang 324=167 I C 589= 38 Cr L J 432 (2).

—S. 4.

——S. 4 (1)—Applicability—Wording of S. 4 (1) restricts its application to offenders under S. 2-B (1) and (2).

Wording of S. 4 (1) restricts the application of the section to persons who are offenders under S. 2-B (1) and (2) and the section can have no application to a person who is an offender under S. 2-B (3) and (4). (Carr, J.) Emperor v. Nga Po Sein Gyi,

A I R 1929 Rang 254 = 7 Rang 266 = 119 I C 213= 1929 Cr C 450=30 Cr L J 990.

——Jurisdiction — Neither District Magistrate nor High Court has jurisdiction to deal with person against whom order of restriction is passed under Burma Habitual Offenders' Restriction Act, S. 7.

Although a person against whom an order of restriction is passed under S. 7 is an offender and is liable under S. 3 to be expelled, the Act provides no machinery for the enforcement of the liability and so neither the District Magistrate nor the High Court has any jurisdiction to deal with the matter under S. 4. (Carr J.) Emperor v. Nga Po Sein Gyi

AIR 1929 Rang 254 = 7 Rang 266 = 119 I C 213 = 1929 Cr C 450=30 Cr L J 990.

BURMA FERRIES ACT (II of 1898)

—S. 12.

——R. 4A, framed under S. 12 is ultra vires.

Rule 4A of the rules framed under S. 12, Burma Ferries Act, is ultra vires. (Baguley and Mosely JJ.) Shwe Phone v. Chairman, District Council, Mergui

AIR 1938 Rang 384 = 1938 Rang L R 573 = 11 R Rang 237=178 I C 445=40 Cr L J 77.

——Ss. 12, 15 — Rules framed under S. 12, R. 4A—"Plying for hire," meaning of—Person waiting on bank or in stream regularly for hire by public.

A person is said to ply for hire a ferry when he waits or attends on the bank or in the stream regularly (that is to say, not uninterruptedly, for, it might be done periodically, but regularly in the sense of repeatedly making a business of it), for hire by the public or by anybody who chooses to employ him to cross the river or convey goods across the river. (Baguley and Mosely JJ.) Shwe Phone v. Chairman, District Council, Mergui

AIR 1938 Rang 384 = 1938 Rang L R 573 = 11 R Rang 237=178 I C 445=40 Cr L J 77.

——Rules under, R. 4 — 'Plying for hire', meaning of—Person crossing river with parcel once each way—Whether 'plying for hire.'

It is necessary, before a person can be said to be plying that he waits or attends at a certain place for hire by anybody who chooses to employ him or requires his services. To cross the river with parcels once each way on the arrival and departure of the trains at and from a

BURMA FERRIES ACT (II of 1898), S. 12

place cannot be properly described as "plying for hire." (Spargo J.) Lim Twa Kee v. M. Ismail

AIR 1937 Rang 275=10 R Rang 68=170 I C 235 = 38 Cr L J 872.

—S. 15.

——Launch halting in stream for setting down or picking up passengers—Whether 'point' within S. 15.

When a launch halts in the stream for the purpose of setting down or picking up passengers, it becomes to all intents and purposes such "an island," and is without doubt "a point" for the purpose of S. 15, Ferries Act. (Dunkley J.) Ali Bhai v. Emperor

AIR 1935 Rang 464=13 Rang 619=8 R Rang 274= 1935 Cr C 1270=159 I C 472=37 Cr L J 146.

——(As substituted by Amendment Act, II of 1916)—Offence under—Both points must be within limits for an offence under S. 25 or S. 27.

Accused conveyed paddy from Taungmint-byaung, a point outside the ferry limits, to Kamyawgin, a point within the ferry limits :

Held, that on a proper construction of S. 15, if one of the two points, either departure or arrival, is outside two miles from the limits of a ferry, there can be no offence either under S. 25 or S. 27. In other words, both these points must be within the two miles limit. (Duckworth J.) Maung Tha Gyan v. Emperor

A I R 1923 Rang 161=1 Rang 313 = 76 I C 646 = 2 Bur L J 125=25 Cr L J 214.

—S. 25.

——Ss. 25 and 26 (b)—Offences under.

The evidence, at most, showed that the first three accused employed the other three for hire to carry their betel leaves from one place to another within the limits of a ferry.

Held, that the sampans of the other three accused, would not thereby become "ferry boats," i. e., plying for hire between two fixed points for all comers indiscriminately, no offence therefore was disclosed under S. 25. None of the accused had been shown to have fraudulently or forcibly crossed the public ferry or used the landing place without paying the ferry toll. There was no evidence therefore of an offence under S. 26 (b). (Ormond J.) Po U v. King-Emperor

14 Bur L R 22=7 Cr L J 311.

—S. 26.

——S. 26 (b)—Accused not shown to have fraudulently or forcibly crossed public ferry without paying ferry toll. See Burma Ferries Act, Ss. 25, 26 (b)

7 Cr L J 311 (LB).

—S. 27.

——Ss. 27, 15—Conveying passengers without sanction—No exemption under S. 15.

The accused had never obtained the sanction of the District Council or of the lessee of the ferry, to his conveying passengers for hire between the landing stage and the launches waiting in midstream. Nor had the Local Government issued any notification under S. 15 of the Ferries Act, exempting any person or classes of persons from the operation of the section :

Held, that the accused by so conveying persons between the launches and the landing stage, had committed an offence under S. 27 of the Act. (Dunkley J.) Ali Bhai v. Emperor

AIR 1935 Rang 464=13 Rang 619=8 R Rang 274= 1935 Cr C 1270=159 I C 472=37 Cr L J 146.

BURMA FISHERIES ACT (III of 1905)

——Preamble — Lessee of fishery rights, whether buys fish — Putting dams to fishery — Members of public, if can fish.

BURMA FISHERIES ACT (III of 1905), Preamble

Under the Preamble to the Burma Fisheries Act, 1905, the Government merely claims to dispose of the right to fish. When a person takes the lease of a fishery, he does not thereby buy the fish to be found therein from Government : nor does Government transfer the property in the fish to him. The fish come into his possession only when he catches them. It matters not that for his own convenience of catching them he dams up the pond so that the fish cannot escape out of it. This operation is merely preliminary to catching the fish. Even after that has been done any member of the public may come to the fishery and, provided that he uses not more than four rods and lines, may catch fish therefrom and he does not thereby commit any offence of criminal trespass or theft. (Mackney J.) Mohammad Cassim v. The King

AIR 1938 Rang 220=11 R Rang 31 (2)=176 I C 150 39 Cr L J 692.

—S. 3.

——Under S. 3 (2), Burma Fisheries Act, a fishery means any collection of water which is of itself of a permanent nature or is or has recently been connected with any waters of a permanent nature, in which fish may be found. A tank ordinarily is a collection of water which is of itself of a permanent nature. The fact that a tank dries up during a certain period of the year does not mean that it is not a fishery. (Mya Bu J.) Abdul Rahman v. Emperor

AIR 1933 Rang 311=1933 Cr C 1138=6 R Rang 311 =146 I C 644=35 Cr L J 120.

—S. 21.

——S. 21 (a) — Fishing in fishery by using engine for baling out water without permission.

Where a person fishes in a fishery by using an engine for pumping up and baling out water, the use of such engine must be deemed, in all cases, to be an offence except where the person against whom proof is given of having used such an engine is able to show the express permission which is indicated by the proviso to R. 45 framed under the Act. (Roberts C. J.) Mon Bin Maung v. The King

AIR 1938 Rang 104=10 R Rang 444=174 I C 931= 39 Cr L J 499.

——S. 21—Rules under—R. 45—Meaning of.

The meaning of R. 45 of Rules framed under Burma Fisheries Act, is quite clear that baling is not allowed. The ban placed by the Rule upon baling may be lifted at any moment by the Deputy Commissioner with the Commissioner's sanction and baling thereafter, so long as it has been continuously permitted, can be practised without infringement of the law until the Deputy Commissioner again prohibits it. (Roberts C. J.) Mon Bin Maung v. The King

A I R 1938 Rang 104=10 R Rang 444 = 174 I C 931 =39 Cr L J 499.

——S. 21 (b)—The fact that a collection of water happens to be on private land does not take it out of the purview of fisheries governed by the provisions of the Act and the rules. In the case of fisheries constituted by collections of water on land in private occupation, the owner or occupier or a person authorized by such owner or occupier is in a position to get permission to fish in such collection of water free of charge, but subject to restrictions as regards the use of certain fishing implements. The use of a yin or a bamboo screen fixed as an obstruction to the passage of fish without permission of the authorities concerned falls within the mischief of S. 21 (b). (Mya Bu J.) Abdul Rahman v. Emperor

A I R 1933 Rang 311=1933 Cr Cas 1138=6 R Rang 311=146 I C 644=35 Cr L J 120.

BURMA FISHERIES ACT (III of 1905), S. 21

——S. 21 (b) — Where A leased a tank to B for fishing and B was convicted under S. 21 (b), Burma Fisheries Act and A for abetment on the ground of his having leased the tank:

Held, that in the absence of proof of any instigation, conspiracy or aid by A in B's use of the unauthorized fishing implement, the charge of abetment against A must fail. (Mya Bu J.) Abdul Rahman v. Emperor

A I R 1933 Rang 311=1933 Cr Cas 1138=6 R Rang 311=146 I C 644=35 Cr L J 120.

BURMA FORESTS ACT (IV of 1902)

—S. 3.

——S. 3 (7)—"Land at the disposal of the Government."

The only law under which a permanent and transferable right of use and occupancy can be acquired in Lower Burma is the Lower Burma Land and Revenue Act. If a cultivator has not acquired the status of a land owner in respect of land he cannot have acquired a permanent, heritable and transferable right in respect of the land. It is not correct to say that land for which a man has received no grant or lease, but which he is allowed to cultivate and pay land revenue has ceased to be at the disposal of Government. (Fox J.) Emperor v. Nya Pyu Ba

11 Bur L R 296=2 Cr L J 824.

—S. 25.

——Selling timber — Selling a house built with timber is not selling timber and is not an offence.

The accused had some timber made over to him by one P. He also had some round logs of unreserved kinds, made over to him and in 1920, he got a saw pit license to enable him to cut up these logs. With the timber so obtained he built a house in 1920. In 1922 he sold that house to one T, whereupon the Forest authorities came down upon him, and after he had refused to pay the fine asked for by them, he was prosecuted and convicted.

Held, that no offence was committed. (MacGregor, J.) Nga Po Myit v. King Emperor

A I R 1923 Rang 143 = 2 Bur L J 12=81 I C 75=25 Cr L J 587.

—S. 33.

——Ss. 33 and 77—Licensee—Illegal acts.

A licensee of timber is responsible for illegal acts done by himself or his servant, under cover of license (Saunders, J. C.) Nga Shwe Baw v. Emperor

A I R 1919 U B 28=(1918) 3 U B R 114= 50 I C 668 =20 Cr L J 332.

—S. 55.

——Ss. 55 (d), 58 (a) — Offences under Ss. 55 (d) and 58 (a)—Nature of—Master and servant—Criminal liability.

The appellant obtained from Government a grant of 500 acres of land (which was taken out of a forest reserve) for the ostensible purpose of cultivation of kapok. He paid the royalty due for the teak standing on the land and was allowed to fell trees on certain conditions. He was also allowed the use of a property hammer for this purpose. He entrusted the hammer to his servant who supervised the felling of the trees. The servant was subsequently convicted and sentenced on three separate charges namely, (1) unlawfully felling teak trees in a reserved forest, under S. 55 (d) of the Forest Act, (2) unlawfully felling teak trees on public forest land, under S. 58 (a), and (3) impressing a property hammer mark on green teak timber and on timber which had been unlawfully felled under R. 87 (b) (vi) read with R. 98. The appellant was subsequently convicted under R. 87 (b) (vi) and R. 98 of the Rules made under the Forest Act. His defence was that the offences were committed by the servant without his knowledge or connivance and that he was not liable:

BURMA FORESTS ACT (IV of 1902), S. 55

Held, that although a master would not be criminally liable for every act of his servant amounting to an offence under the Forest Act, yet it was plain from the language, scope and object of the Forest Act, that the Legislature intended to fix criminal responsibility upon the master, who in accordance with a licence, contract, or other agreement issued under Rules framed under the Act, is permitted to extract forest produce, for acts in contravention of such Rules, or the terms of the licence or agreement, done by his servant in the course of his employment and under cover of the licence or agreement, although such acts were not authorised by and were done without the knowledge of the master. The Forest Act provides inter alia that no right shall be acquired in or over a reserved forest except under a grant or contract made by or with the Government and that no person shall fell or mark any reserved trees growing on public forest land except under an agreement with or licence issued by Government. The duty is an absolute duty cast upon the lessee or licensee or person permitted to fell or mark timber, namely to do so only in accordance with the terms under which his licence or agreement was issued —but such a person would not ordinarily fell or mark the timber himself; in ordinary circumstances these acts would be performed by his servants. The object of the Forest Act, would therefore, manifestly be defeated if a lessee or licensee, when charged with an infringement of the conditions of his agreement or licence, were allowed to plead in defence that the infringement was committed by his servants without his knowledge or connivance. (Dunkley J.) Maung Ba Cho v. Emperor

A I R 1934 Rang 245=1934 Cr Cas 1077 = 12 Rang 300=7 R Rang 248=154 I C 57=36 Cr L J 450.

—S. 64.

——S. 64 (1)—Applicability.

Section 64 only applies to cases in which any person is convicted of a forest offence. (Baguley, J.) Maung Po Maung v. Emperor

A I R 1925 Rang 100=84 I C 546=3 Bur L J 257 = 26 Cr L J 322.

——Rules under — Rr. 22, 98 — Offence under R. 22 — Liability of master for acts of servant—Test of.

If a particular intent or state of mind is not of the essence of an offence punishable under the law, the master is criminally liable for the act of his servant if that act is committed by the servant in the course of his employment even without his master's knowledge or consent but for his master's benefit.

Under R. 22 of the Rules framed under the Burma Forest Act prohibiting the cutting or felling of the trees mentioned therein except under special agreement with or a licence from Government the particular intent or state of mind of the servant is not of the essence of the offence and if the offence is found to be committed by the servant in the course of his employment for his master's benefit even without his master's knowledge or consent, the master would be criminally liable. (Ba U J.) Emperor v. Mangalchand

A I R 1934 Rang 182 = 1934 Cr Cas 817=7 R Rang 113=151 I D 676=35 Cr L J 1404.

——R. 65—Contravention.

A contractor who removes fire-wood without paying royalty to the licensee commits an offence under R. 65, notwithstanding the fact that there is a dispute about the amount of royalty. (Heald, J.) U Tha v. Mg. Tun Pru

A I R 1924 Rang 382 = 3 Bur L J 198=84 I C 352= 26 Cr L J 288.

——R. 88 (2) (iii)—Liability of master — Use of hammer mark by servant of licensee in contravention of rule 88 creates liability of master for conviction.

BURMA FORESTS ACT (IV of 1902), R. 88

Any use of the marking hammer by a licensee or by his servant in contravention of any rule under the Forest Act, renders the licensee liable to punishment either under the terms of the old license form No. 20 or new form No. 26, between which there is no difference in this respect. Impressing the property mark on timber other than in accordance with the rules and the license and any illegitimate use of the hammer mark is punishable. Licensee can be held criminally liable for his servant's breaches of the forest rules though it is not established that he had in some way authorised those breaches. (9 L B R 112, Foll.) (Heald J.) Mg. Twa Bwa v. Emperor.

AIR 1924 Rang 171=2 Bur L J 214=76 I C 867=25 Cr L J 275.

BURMA (FRONTIER DISTRICTS) REGULATION (I of 1925)

——Schedule Modification No. 11, Proviso 3.

Proviso 3 to Modification No. 11 in the schedule to the regulation does not take away the power of High Court to transfer cases under S. 526, Criminal P. C. (Ba U and Spargo JJ.) Maung Ba Ku v. The King.

AIR 1941 Rang 31 = 1939 Rang L R 614 = 13 R Rang 175=192 I C 250=42 Cr L J 261.

BURMA GAMBLING ACT (I of 1899)

—S. 3.

——S. 3 (3)—Money except coins actually used for gaming is not included in the definition of "instruments of gaming" in S. 3 (3) of the Act. (Mosley J.) Po Nyun v. Emperor.

AIR 1934 Rang 240=1924 Cr Cas 1041 = 7 R Rang 146=152 I C 242=36 Cr L J 72.

——S. 3 (1)—Gaming-house—A house where instruments of gaming are kept for the profit of the owner of that house, is a common gaming-house. (Otter J.) Nga Ngwe Kyi v. Emperor.

5 Bur L J 230=101 I C 659=8 A I Cr R 142=28 Cr L J 483.

——Ss. 3 (2), 11 and 12 — "Gonnyin"—"Gonnyin" is a game of pure skill. The fact that the ground was somewhat sloping cannot appreciably alter the nature of the game. (Brown J.) Mg. Paw Kyan Zan Mg. Yin and Su Kin v. Emperor.

AIR 1924 Rang 378=3 Bur L J 166=86 I C 961=26 Cr L J 897.

——S. 3, sub-s. (2) — Machauk — Machauk, game of, is excepted under S. 3 (2).

The game of 'Machauk' or 'Sparrow' is one of those excepted under sub-s. (2) of S. 3. (May Oung J.) Ah Shein v. King-Emperor.

AIR 1923 Rang 214 = 1 Rang 303 = 76 I C 396=25 Cr L J 172.

——Ss. 3, 10, 11 and 12—Cock-fighting — Gaming house — Instruments of gaming.

Cock-fight even together with wagering in a private place does not make it a gaming house. Fighting cocks are not instruments of gaming. (Pratt J.) Emperor v. Po Kywe.

AIR 1919 L B 153=9 L B R 219=11 Bur L T 266=50 I C 671=20 Cr L J 335.

——Ss. 3, 10 and 11—Instruments of gaming — Meaning —Enclosure—Cock-fight.

Fighting birds are not instruments of gaming. A private enclosure for betting and cock-fighting is not a common gaming house. (Twomey J.) Emperor v. Maunga Ka.

AIR 1919 L B 153=9 L B R 185=11 Bur L T 265=50 I C 666=20 Cr L J 330.

BURMA GAMBLING ACT (I of 1899), S. 3

——Ss. 3, 6 and 7 — Instruments of gaming—Meaning of —Presumption of common gaming house.

White beans, cigarettes and cups are not instruments of gaming. Coins found on the persons of gamblers are not necessarily instruments of gambling and are not liable to seizure and forfeiture unless proved to have been intended for gaming. Unless articles found in a house are proved to be instruments of gaming, the house cannot be presumed to be a gaming house. (Pratt J.) Ah Ngwe v. Emperor.

AIR 1919 L B 125=9 L B R 205=11 Bur L T 263=50 I C 659=20 Cr L J 323.

——Common gaming house.

The term 'common gaming house' applies to private and public houses. (Parlett J.) Emperor v. Po Yin.

4 Bur L T 11=9 I C 450=12 Cr L J 80.

——Instruments of gaming — Setting animals to fight in public place — Animals, if instruments of gaming — See Burma Gambling Act (1 of 1899), Ss. 10, 11 & 12.

2 Cr L J 471 (U B).

——Ss. 3 (3) (a), 5, 10 — Power of village-headman to arrest—Coins if instruments of gaming.

A village headman not being a police officer is not empowered to arrest people whom he finds gambling in a public place, and it is illegal for the police to take cognizance of the offence on the headman's report. Coins are not necessarily instruments of gaming, but may be so in certain conditions. Coins found in the possession of a person arrested under S. 5 of the Act are not liable to seizure and forfeiture unless there is evidence to show that they were used or intended for the purpose of gaming. The fact that the arrest is illegal does not invalidate a trial. (Tiskall White C. J., Fox and Briks JJ.) King-Emperor v. Nga Thu Daw.

2 L B R 60 (F B).

—S. 4.

——"Ket"—Game of.

The Burmese game of "ket", is not a game of mere human skill within S. 4 of the Burma Gambling Act. (Twomey J.) Po On v. Emperor.

AIR 1917 L B 57=8 L B R 529 = 41 I C 132=18 Cr L J 756.

——Game of skill.

In the game of "thonbonpe" or dominoes, as played in Burma, the element of chance is so subordinated to the element of skill that the game must be looked upon as a game of the kind contemplated by S. 4 of the Burma Gambling Act. (Lowis J.) Emperor v. Tun Zun.

8 I C 451=3 Bur L T 66=11 Cr L J 653.

——Game of Billiard-Skittle.

Held that the game of billiard-skittle was a game of mere human skill within the meaning of S. 4. (Herbert Thirkell White C. J. and Fox J.) Emperor v. Nga Po Kin.

11 Bur L R 132=2 Cr L J 319 (F B).

—S. 5.

See also ibid, S. 3.

——Money seized from the spectators at cock-fight — Legality of — Money if "instrument of gaming" within the meaning of S. 3 (3).

The Police have no power under S. 5 of the Act to seize, or the Magistrate to confiscate the money seized on the spectators of the cock-fight or even on a person alleged to have taken an active part. The only provision for this is in the case of a common gambling house entered in accordance with the provisions of S. 6 of the Act. (Mosley J.) Po Nynu v. Emperor.

AIR 1934 Rang 240=7 R Rang 146 = 1934 Cr Cas 1041=152 I C 242=36 Cr L J 72.

BURMA GAMBLING ACT (I of 1899), S. 5

——Ss. 5 and 10 — Licensed toddy-shop—Not a public place.

A licensed toddy-shop is not a place to which the public have access within the meaning of Ss. 5 and 10 of the Burma Gambling Act, 1899. (Herbert Thirkell White C.J. Fox and Birks JJ.) Ah Kon v. King Emperor,

2 L B R 195=1 Cr L J 461.

——Mere fact that arrest under S. 5 is illegal does not vitiate trial. (White C. J., Fox and Birks JJ.) King-Emperor v. Nga Thu Daw,

2 L B R 60 (FB).

—S. 6.

——Ss. 6 (1), 7—Presumption under S. 7—Provisions of S. 6 (1) must be strictly carried out — Warrant issued after recording information that gambling is going on at certain place—Presumption under S. 7, if can be made.

The provisions of sub-s. (1), S. 6, Burma Gambling Act, are all important and unless those provisions are strictly carried out, a house or place cannot be said to have been entered under the provisions of that section and consequently the presumption specified in S. 7 cannot be made. A mere record made of the information that illegal gambling is going on at a certain place and leaving no stamp of credibility in issuing the warrant is not sufficient to meet the requirements of the law. Consequently, the result of the raid or the search made under that warrant does not constitute a legal basis of the presumption under S. 7. (Mya Bu J.) Ah Sein v. The King,

AIR 1939 Rang 120=11 R Rang 452=1939 Rang L R 447=181 I C 112=40 Cr L J 529.

——Money found in longyi of Burma gambler—Presumption that it was intended to be used for gambling.

Held, that as it is the usual way for Burmans of the class to which the accused belonged to carry their money wrapped up in their longyis, no presumption could be safely drawn that money found in the longyi of the accused was intended to be used for the purpose of gaming. (Spargo J.) Maung Tha Zan v. Emperor,

AIR 1937 Rang 317= 10 R Rang 108=170 I C 818= 38 Cr L J 976.

——The only provision where, Police have power to seize money or where Magistrates have power to confiscate the money seized is under S. 6. (Mosley J.) Po Nyun v. Emperor,

AIR 1934 Rang 240=1934 Cr Cas 1041=7 R Rang 146=152 I C 242=36 Cr L J 72.

——Ss. 6 and 7—Cr. P. Code, Ss. 79 and 101—Endorsement of warrant—Irregular search.

A Police Officer to whom a warrant under S. 6 of the Act has been directed has no power to endorse the warrant to any other Officer. S. 101 of the Cr. P. Code does not apply to warrants under the Burma Gambling Act. If a place is searched under a warrant wrongly endorsed by the Police Officer, the search is irregular and the presumption under S. 7 of the Act does not arise as the search was not a search under S. 6 of the Act. (Parlett J.) Po Thwai v. Emperor,

AIR 1920 L B 49=12 Bur L T 165 = 54 I C 57=21 Cr L J 9.

——Ss. 6 and 7—Common gaming house.

Where it is not proved that the gambling in the Club was confined to its members the place might be called a common gaming house though the profits of the game are devoted to feasting and the general purpose of the Club. (Twomey J.) Taung v. Emperor,

AIR 1914 L B 258=7 Bur L T 163=7 L B R 275= 24 I C 835=15 Cr L J 523.

——Ss. 6 and 7—Presumption under S. 7—Magistrate to sift information before acting under S. 6.

BURMA GAMBLING ACT (I of 1899), S. 6

The presumption under S. 7 of the Gambling Act is not optional for the Magistrate to make. He is bound to presume that the house was a common gaming house until the contrary is proved. The house of the first respondent, Sit Nyein, in an outlying part of the Wakema Municipality, was entered by two Magistrates, who found a gambling ring of about twenty persons. The ring broke up and the gamblers fled, but the Magistrates and their companions managed to arrest nine of them. Three packs of cards and Rs. 25 in cash were found in the gambling ring. Held, that the presumption described in S. 7 of the Gambling Act arose in the case, and unless the accused proved that the house was not a common gaming house the Magistrate was bound to convict.

The provisions of Ss. 6 and 7 of the Burma Gambling Act may cause great hardship, if the Magistrate, who issues the warrant, himself makes a raid and does so without good reason for believing that house to be entered is a common gaming house. It behoves Magistrates to sift information most carefully before acting under S. 6 the effect of which is to throw on the accused the burden of proving that the house which is raided is not a common gaming house. (Twomey J.) Emperor v. Sit Nyein,

8 I C 988=11 Cr L J 746.

——Ss. 6, 11, 12 and 15—Seizure of moneys in common gaming house — There is no provision in the Act, empowering any person to seize moneys found in a common gaming house which is not entered under the provisions of S. 6, nor authorising the Magistrate to order that moneys so seized be forfeited. In such a case, both the seizure of moneys and the order directing it to be forfeited are illegal, (Irwin J.) Po Hla v. King-Kmperor,

4 L B R 227=7 Cr L J 488.

——Ss. 6 and 7 — Respectable inhabitants of locality—Headman of wards.

(Per Majority-Irwin J. Contra). — The persons called to witness a search by a police officer or a person holding a search warrant must be respectable inhabitants of the locality in which the place to be searched is situate who do not hold offices to which they have been appointed by a Government Officer, the duties of which include taking part in the prevention or discovery of offences or in bringing offenders to justice. As the duties of ward headmen include such duties they are not such persons as the Legislature contemplated should be called as witnesses to a search under a search warrant. As the house, entered in the present case, was not entered under the provisions of S. 6 the presumption under S. 7 could not be drawn. (Fox C. J., Irwin, Hartnoll JJ.) King-Emperor v. Kwe Han,

14 Bur L R 81=4 L B R 213=7 Cr L J 479 (FB).

——Ss. 6 and 7—Presumption from discovery of instruments for gaming.

The accused had been convicted under the Gambling Act, some under S. 11 for being present in a common gambling house for the purpose of gaming, and others under S. 12 for keeping a common gaming house. A list was made upon three separate sheets of paper, the first of which was signed by the witnesses, while the rest were not signed. The first sheet did not contain any instruments of gaming. There was nothing to show that the signatures were intended to refer to anything stated outside that one sheet. Held that the search being thus illegal, the presumption under S. 7 did not arise and the convictions must be set aside. (Ormond J.) Ana Dewa Singh v. King-Emperor,

4 L B R 134=7 Cr L J 411.

——Ss. 6, 7—Search not in accordance with S. 6 — Presumption under S. 7 cannot be drawn. (C. E. Fox Offg. C. J.) Ah Shee v. King-Emperor,

(1905-06) 3 L B R 229=4 Cri L J 390 (LB).

BURMA GAMBLING ACT (I of 1899), S. 6

——Ss. 6, 14—"Report"—Meaning of.

The expression "report or information" in S. 14 of the Gambling Act has a very wide significance, and any report of a police officer is included in the term "report," as used in that section. There is no reason to restrict the meaning to the report required by S. 6 (4) where the proceedings under S. 6 are taken. (Herbert Thirkell White, C. J.) Paung Nga v. King-Emperor,

2 L B R 212=10 Bur L R 227=1 Cr L J 480.

——Ss. 6 (3) & (4) 7 and 14 — Search under S. 6 (1) — Non-compliance of S. 6 (4)—Presumption under S. 7 cannot be raised.

A District Superintendent of Police making a search on his own initiative, under s. 6 (1) of the Act, should comply with the provisions of s. 6 (4), in the same way as if he were making the search under a warrant. He has no authority to release the accused on bail. The presumption under s. 7 does not arise if the provisions of s. 6 (3) as to the manner of search are not complied with. (Irwin J.) King-Emperor v. Maung Cho,

2 L B R 43.

—S. 7.

——Warrant issued after recording information that gambling is going on at certain place—Presumption under S. 7 cannot be made. (Mya Bu J.) Ah Sein v. The King,

AIR 1939 Rang 120=11 R Rang 452=1939 Rang L R 447=181 I C 112=40 Cr L J 529.

——Ss. 7, 11, 12, 13 (c)—Presumption arising under S. 7 —Conviction cannot be under S. 13 (c) but under S. 11 or S. 12—Persons found around table, writing.

The presumption arising under S. 7, Burma Gambling Act, is that the place entered is used as a common gaming house and the persons found therein were present for the purpose of gaming. Consequently on this presumption the only offences of which the persons found in the place can be convicted are offences under S. 11 or S. 12 of the Act, and not under S. 13 (c).

Where the persons were found seated round a table inside a Chinese temple which was raided and all that they were doing was writing :

Held, that any presumption which might arise under S. 7, Burma Gambling Act, was rebutted. (Dunkley J.) Kyu Wah v. Emperor

A I R 1935 Rang 298=1935 Cr Cas 994=8 Rang 144 =158 I C 87=36 Cr L J 1295

——Presumption under — Cr. P. Code, S. 103 — Witness helping actively in making search — Search is legal and presumption arises under S. 7.

The object of the section is to ensure that searches are conducted fairly and squarely and that there is no "planting" of articles by the police. Therefore, where, before entering, the witnesses are given an opportunity of satisfying themselves that the police had nothing on their persons, the mere fact that the witnesses actually helped the police in making the search will not make the search one in contravention of S. 103 so as to destroy the presumption under S. 7, Gambling Act. Obiter dictum in 8 L B R 38, Diss. (Maung Ba J.) Emperor v. Wun Na,

AIR 1927 Rang 241=103 I C 557=5 Rang 291=8 A I Cr R 391=28 Cr L J 701

——Presumption against person found in gaming house—Rebuttal

When it is presumed that the house was a common gaming house it should be opposed by argument that the persons were inmates and they pursued their lawful business. (Maung Kin J.) Ba Gyi v. Emperor

13 Bur L T 103.

——Presumption—Instruments of gaming.

When instruments of gaming are found in a place, there arises a presumption that the place is a common gaming house. It is unsafe to base a conviction on the bare presumption unless there is some evidence that the place was a common resort of outside gamblers. The presumption may be rebutted by showing that the players were all inmates of the house. (Twomey C. J.) Emperor v. Sein Kee

AIR 1920 L B 38 (1)=12 Bur L T 163=54 I C 52= 21 Cr L J 4.

——Presumption, when arises.

Where a house is entered and searched under S. 6 the presumption mentioned in S. 7 arises though there is no proof of payment of commission by the players to the keeper (Parlett J.) Emperor v. Po Yin

4 Bur L T 11=9 I C 450=12 Cr L J 80.

——Search witnesses being ward headman—Presumption under S. 7—See Burma Gambling Act (1 of 1899). Ss. 6, 7

7 Cr L J 479 (L B).

——Presumption under, when can arise—Non-compliance with S. 6—See Burma Gambling Act (1 of 1899) Ss. 6, 7.

7 Cr L J 411 (L B).

——Search not in accordance with S. 6 — Presumption under S. 7 cannot be drawn—See ibid, S. 6.

4 Cr L J 390 (L B).

——Ss. 6, (3) (4), 7 and 14—Non-compliance of S. 6 (4)— Presumption under S. 7 cannot be raised — See ibid S. 6.

2 L B R 43.

—S. 8.

——Ss. 8 and 9—Evidence of accused.

The evidence given by an accused person under S. 8 of the above Act might be true and favourable to all or some of the accused but it is not defence evidence and does not justify the examination of the accused except on the requisition of the trying Magistrate. (Saunders J. C.) Ngee Gyaw v. Emperor,

AIR 1919 U B 31=(1918) 3 U B R 115 = 50 I C 821 20 Cr L J 341.

—S. 10.

——S. 10 (c) — Presence at cock-fight, if aiding and abetting.

Mere presence at a cock-fight without aiding and abetting it by gestures, words or other form of active encouragement of the fight is not punishable under S. 10 (c), Burma Gambling Act. (Mosley J.) Po Nyun v. Emperor,

A I R 1934 Rang 240=1934 Cr Cas 1041=7 R Rang 146=152 I C 242=36 Cr L J 72.

——Witness assaulted on way home after bull-fight—Whether leads to inference that he encouraged fight.

The mere fact that a person assaulted another on way home after a bull-fight, accusing him of being a spy does not lead to the inference that he had taken an active part in encouraging the fight. (Mosely J.) Maung Aung Mye v. Emperor,

AIR 1934 Rang 222=7 R Rang 78=1934 Cr Cas 950 (1)=12 Rang 453=151 I C 418=35 Cr L J 1321.

——Mere spectators of bull-fight in public place.

Mere spectators of a bull-fight taking place in a paddy field after reaping of the crops, a place to which the public have access, are not guilty of any offence under S. 10, Burma Gambling Act. (Mosely J.) Maung Aung Mye v. Emperor,

AIR 1934 Rang 222=1934 Cr Cas 950 (1)=7 R Rang 78=12 Rang 453=151 IC 418=35 Cr L J 1321.

——Unoccupied hut—Place.

A hut which the owner has left after completion of the field work is not a place to which the public have access and the word 'place' in S. 10 of the Act means a place ejusdem generis with street and thoroughfare to which

the public can resort as of right. (Maung Kin J.) Nga Hlwa v. Emperor,

AIR 1920 L B 14 (1)=12 Bur L T 164=54 I C 50=21 Cr L J 2.

——Public place.

The place which the public have access must be a place akin or similar to a street or thoroughfare. A fenced garden which is private property does not come under that category, (Fox, C. J.) Lu Gale v. Emperor,

4 Bur L T 71=10 I C 775=12 Cr L J 245.

——"Place," meaning of — First offence — Sentence— S. 10 of the Gambling Act is not applicable to a man who merely runs away from a gambling 'waing'. It must be shown that he actually played. On a privately owned piece of land on which fruit trees were growing and on which land revenue was paid the alleged gambling was said to have taken place. But this land was unenclosed, and people could pass freely through to and fro. Held, that such a place was of the same genus as a street or a thoroughfare within the meaning of S. 10.

A sentence of one month's imprisonment for a first offence was considered excessive and altered to one of Rs. 30. (Twomey J.) On Ban v. Emperor

8 I C 949 = 11 Cr L J 737 (LB).

——Ss. 10, 11 and 12—Gambling in a public place— Conviction.

The persons who played cards for money in a common gaming house ought to be convicted under S. 11 of the Act and not under S. 10. If the place is one to which the public have access, the 'daings' should be convicted under S. 10. (Irwin J.) King-Emperor v. Po Wa

4 L B R 47 = 6 Cr L J 285

——Ss. 10, 11 and 12—Card-gambling and cock-fighting under a tree near a village — Offence committed by organizer of gaming.

The accused carried on card-gambling and cock-fighting under a tree near a village. Some of them were convicted of gambling and setting animals to fight in a public place, under S. 10 of the Act. The others were convicted on the same facts, with the additional fact that they acted as 'daings' under S. 12. Held, that even if the possession of cards could convert the space under the tree into a common gaming-house, the possession of cocks could not, because birds and animals are not mentioned in S. 3 (3). The Legislature did not intend that the person, who organises offences, under cl. (a) of S. 10 for his own profit should be punishable under S. 12, while a person, who organises offences under the other clauses of S. 10, is not so punishable. Ss. 11 and 12 relate to offences committed in a common gaming-house, and S. 10 to offences committed in a public place. The primary object of the Legislature was not to make the conductor of gambling in a public place punishable under S. 12. (The conviction under S. 12 was altered to one under S. 10). (A. M. B. Irwin Esquire C. S. I.) King-Emperor v. Nga Net

U. B. R. 1905, Gambling 1 = 2 Cr L J 471

——Gambling in public place — Proof — Instruments of gaming.

Ordinarily, a zayat is a place to which the public have access. A police officer acts illegally if he arrests any person at such place without actually seeing him playing for money with any instrument of gaming.

In order to support a conviction under S. 10, Burma Gambling Act it has to be proved that the particular accused had been playing for money with instruments of gaming.

Currency notes and coins can only be held to be instruments of gaming when they are actually used as such.

Mere possession by a player of currency notes or coins does not make such notes and coins instruments of gaming (Fox J.) Shwe Thaw v. King-Emperor

10 Bur L R 120 = 1 Cr L J 662

——Licensed toddy shop — Not a public place

See ibid, S. 9

1 Cr L J 457 (Cal)

—S. 11.

——Persons found seated round a table inside a Chinese temple— All that they were doing was writing — Persons can be convicted for offences under S. 11 or S. 12 of the Act and not under S. 13. (Dunkley J.) Kyu Wah v. Emperor

AIR 1935 Rang 298 = 1935 Cr Cas 994 = 8 R Rang 144 = 158 I C 87 = 36 Cr L J 1295

——Ss. 11, 12—Offences under Ss. 11 and 12 — Whether cognizable offences — Order asking accused to pay process fee—Legality of.

Cases under Ss. 11 and 12, Burma Gambling Act, are not cognizable offences, and hence an order by a Magistrate asking for the payment of process fees to summon witnesses is correct. (Baguley and Ba U JJ.) Htwan Htim v. Emperor.

AIR 1935 Rang 181 = 13 Rang 130 = 1935 Cr Cas 623 = 8 R Rang 40 = 156 I C 719 = 36 Cr L J 998.

——Ss. 11 and 12 — Sentence—Daing should be punished much more heavily than ordinary gambler.

A comparison of the maximum fines and the maximum sentences of imprisonment under Ss. 11 and 12 clearly shows that the daing under ordinary circumstances should be punished very much more heavily than the ordinary gambler. It is the daing who makes opportunities for other people to commit offences under S. 11 and not 'vice versa.' (Baguley J.) Emperor v. Jan Maistry

AIR 1929 Rang 30 = 6 Rang 655 = 117 I C 60 = 30 Cr L J 709.

——House not entered under provisions of S. 6 — Conviction under S. 11 — See Burma Gambling Act (1 of 1899), Ss. 6, 11, 12, 15

7 Cr L J 488 (LB).

——Double conviction — Sentence—See Penal Code, S. 71.

7 Cr L J 76 (FB) (LB)

——Persons found in gambling house—Place one to which public had access — Conviction of persons who gambled under S. 11 and Daing (person who conducted it) under S. 12 — See ibid, S. 10

6 Cr L J 285 (L B).

——Ss. 10, 11, 12—Card-gambling and cock-fighting under tree — Offence by organizer—See Burma Gambling Act (1 of 1899), S. 10

2 Cr L J 471 (UB).

—S. 12.

——Conviction — Receipt of money from a winner on a single occasion is not enough for conviction.

The mere receipt of a sum of money from one of the players or from the winner on a single occasion would not be sufficient to prove an offence under S. 12 without evidence of other incriminating circumstances. (Lentaigne J.) Nga San Dun v. King-Emperor.

AIR 1923 Rang 144 = 2 Bur L J 8 = 75 I C 357 = 24 Cr L J 933.

——Gaming house — Knowingly permitting house to be used as common gaming house—Evidence of knowledge is necessary.

In order to justify a conviction under S. 12, there must be actual evidence of knowledge on the part of the accused and this knowledge cannot be presumed from the mere fact that the place had been kept as a common gaming

BURMA GAMBLING ACT (I of 1899), S. 12

house for a month. (May Oung J.) Ah Lin v. King Emperor.

AIR 1923 Rang 141 = 2 Bur L J 5 = 75 I C 71= 24 Cr L J 871

——House not entered under provisions of S. 6—Conviction under S. 12—See Burma Gambling Act (1 of 1899), Ss. 6, 11, 12, 15.

7 Cr L J 488 (L B).

——Double conviction—Sentence—See Penal Code, S. 71

7 Cr L J 76 (F B) (L B).

——Persons found in gambling house—Place one to which public had access — Conviction of persons who gambled under S. 11 and Daing (person who conducted it) under S. 12—See ibid, S. 10.

6 Cr L J 285 (L B).

——Ss. 10, 11 and 12 — Offence committed by organizer of offence under S. 10 (a) and under other clauses of S. 10 —See Burma Gambling Act (1 of 1899), S. 10.

2 Cr L J 471 (U B).

—S. 13.

——Ss. 13 and 3 (1) (b)—Raffle, whether offence.

A raffle is a game or pretended game covered by S. 3 (1) (b) and a person conducting or promulgating a raffle is punishable under S. 13 of the Act. (U. B. R. 1892—1896) I, 112, Foll. (Saunders J.) T. K. Keshavier v. Emperor

A I R 1917 U B 2 (1)=(1916) 11 U B R 137=10 Bur L T 268=39 I C 329=18 Cr L J 489.

—S. 14.

——Report—Meaning of—See ibid, S. 6.

1 Cr L J 488 (L B).

——Ss. 6 (3) (4), 7 and 14—Non-compliance of S. 6 (4)—Presumption under S. 7 cannot be raised—Powers under S. 14—See ibid, S. 6.

2 L B R 43.

—S. 15.

——House not entered under the provisions of S. 6—Seizure of money—See Burma Gambling Act (1 of 1899), S. 6, 11, 12, 15.

7 Cr L J 488 (L B).

—S. 16.

——Applicability—Burma Habitual Offenders' Restriction Act, S. 3 (1).

Section 3 (1) of the Habitual Offenders' Restriction Act does not apply to a case arising under S. 17 of the Burma Gambling Act : A. I. R. 1926 Rang. 182, Rel. on. (Otter J.) Nga Pan E v. King-Emperor

A I R 1927 Rang 122=5 Bur L J 228=101 I C 666= 8 A I Cr R 138=28 Cr L J 490.

—S. 17.

—— Scope—Burma Habitual Offenders' Restriction Act, S. 18 (1).

The Habitual Offenders' Restriction Act does not apply to persons proceeded against under S. 17, Gambling Act : A. I. R. 1926 Rang. 182 and A. I. R. 1927 Rang. 98, Rel. on. (Baguley J.) Emperor v. Maung Po Sein

A I R 1929 Rang 147=7 Rang 1=117 I C 255=1929 Cr C 60=30 Cr L J 755.

——Order requiring security—Appeal, maintainability of —Criminal Procedure Code, 1898, Ss. 110, 118 and 406—Under S. 17 of the Gambling Act a competent Magistrate, who receives information that any person in his jurisdiction earns his livelihood, wholly or in part, by unlawful gambling, is empowered to deal with that person as nearly as may be as if the information were of the description mentioned in S. 110 of the Criminal P. C. and to pass an order under S. 118, Criminal P. C. Therefore, inasmuch as an order under S. 17 of the Act, requiring

BURMA GAMBLING ACT (I of 1899), S. 17

security from a person, is an order passed under S. 118, Criminal P. C., an appeal lies against that order under S. 406, Criminal P. C. (Herbert Thirkell White C. J.) Tet Pya v. King-Emperor

3 L B R 21=2 Cr L J 378.

——Order under—Appeal.

Where an order is passed with reference to S. 17 of the Burma Gambling Act, an appeal lies under S. 406 of the Criminal P. C. The order under S. 17 is to be passed actually under S. 118, Criminal P. C. and not merely on the analogy of that section and hence there is an appeal against the order under S. 406, Criminal P. C. (Herbert Thirkell White C. J.) Nga Tet Pya v. Emperor

11 Bur L R 120=2 Cr L J 317.

BURMA GENERAL CLAUSES ACT (I of 1898)

—S. 2.

——S. 2 (44)—Authority to arrest without warrant cannot be invested in Public Property Protection Committee —Committee is not officer who can arrest — See Burma Public Property Protection Act (1947), S. 7 (2).

1948 Bur L R 199.

—S. 5.

——S. 5 (c) and (e)—Restriction order under S. 18, Burma Habitual Offenders' Restriction Act, 1919, passed against offender in 1933 for three years — Offender so repeatedly violating order that period not expiring on May 19, 1939 —Act repealed in 1936 — On May 1939, offender again violating order and convicted under S. 18 of the Act—Conviction, held legal by reason of S. 5 (c) and (e), General Clauses Act (Burma) (X of 1897). (Dunkley and Blagden JJ.) The King v. Basu Meah

A I R 1941 Rang 206 = 1941 Rang L R 239 = 14 R Rang 47=195 I C 437=42 Cr L J 739.

—S. 24.

——Ordinance, if enactment.

An ordinance is not an enactment ; supposing an ordinance is an enactment, it cannot be said that an ordinance which has expired is an enactment which is repealed. (Roberts C. J.) S. K. Roy Chowdhury v. The King

A I R 1941 Rang 1=1941 Rang L R 26=13 R Rang 235=192 I C 770=42 Cr L J 335.

——Section 142, Cl. (r), Burma Municipal Act was deleted by S. 10 of Act I of 1931 but S. 124 (a), Burma Municipal Act which was inserted in the Burma Municipal Act by S. 9 of Act I of 1931, contains identical provisions. By S. 24, General Clauses Act (Burma), bye-laws framed under the repealed section continue in force unless and until superseded by bye-laws made under the new section. (Page C. J. and Mya Bu J.) Emperor v. Karapan

A I R 1934 Rang 12 =11 Rang 532 = 6 R Rang 241 =148 I C 616=35 Cr L J 735.

BURMA GHEE ADULTERATION ACT (VI of 1927)

—S. 10.

——S. 10 (5) — Adulteration — Whether ghee is to be deemed adulterated or not is question of law — Chemical Examiner is simply to submit result of his analysis and Court is to draw inference therefrom.

Whether the ghee is to be deemed adulterated or not is question of law and it is not a matter on which the chemical examiner should be required to express an opinion. What he has to do is to state the results of his analysis and leave the Court to determine whether on those results the offence charged is proved or not. (Carr J.) Narinjan Das v. Emperor

A I R 1930 Rang 51=Ind Rul 1930 Rang 311 = 126 I C 535=1930 Cr C 243=31 Cr L J 1065.

BURMA GHEE ADULTERATION ACT (VI of 1927)

—S. 11.

——Procedure — Criminal P. C., S. 190 — Complaint charging two people in alternative cannot be accepted—Sanction to prosecute such people is wrong.

It is wrong that any Court should accept a complaint which charges two people in the alternative and it is also wrong that an order sanctioning such a prosecution in the alternative should be passed. (Carr J.) Narinjan Das v. Emperor

A I R 1930 Rang 51 = Ind Rul 1930 Rang 311=126 I C 535=1930 Cr C 243=31 Cr L J 1065.

BURMA HABITUAL OFFENDERS' RESTRICTION ACT (BUR. ACT II of 1919)

——Applicability—Burma Excise Act (V of 1917), S. 64-A.

The Habitual Offenders' Restriction Act should not be applied to persons against whom action is taken under S. 64-A of the Excise Act : A. I. R. 1926 Rang. 182, Foll. (Heald J.) Nga Pa v. King-Emperor

A I R 1927 Rang 98=4 Rang 455 = 99 I C 349 = 28 Cr L J 141.

——The Act does not justify the restriction of the accused to a particular local area for the purpose of preventing him from going to his place of residence and business where he worries some of the residents of that place.

Where the accused does not go out of the local area in which he lives for the purpose of committing breaches of the peace in other local areas, but merely he worries certain people in the local area in which he lives, because he is a bully and where the only possible object in the order restricting the accused to a particular area seems to be to deport him from a certain other place which is his place of residence and business because he has made himself objectionable to certain residents of that place, and where no useful public purpose would be served by an order expressly prohibiting him from moving into other areas where he would not be likely to do any harm, or by such operation of such an order in presumably curtailing his means of livelihood it is open to question whether this is the class of cases to which the Burma Habitual Offenders' Restriction Act, 1919, is intended to apply. (Lentaigne J.) Parsodan v. Emperor

A I R 1925 Rang 69=85 I C 33 = 2 Rang 524 = 26 Cr L J 417.

——Procedure—Usual rules of procedure and evidence apply except with modifications suggested by Criminal P. C., S. 117 (4).

The idea that in cases under this Act the ordinary rules of Criminal Procedure and of evidence are abrogated, is entirely erroneous. In proceedings under the Act it is not everything that may be proved by evidence of general repute. The ordinary rules of evidence apply with such modification only as is made in S. 117 (4) of the Code of Criminal Procedure which is made applicable to the Habitual Offenders' Restriction Act by S. 4 of that Act. (Carr J.) San Dun v. Emperor,

A I R 1925 Rang 112 = 84 I C 939=2 Rang 641=26 Cr L J 395.

—S. 3.

——S. 3 (1)—Applicability—Burma Gambling Act (Burma Act XVII of 1899), S. 17.

Section 3 (1) of the Habitual Offenders' Restriction Act does not apply to a case arising under S. 17 of the Burma Gambling Act. A. I. R. 1926 Rang 182, Rel. on. (Otter J.) Nga Pan E v. Emperor,

A I R 1927 Rang 122=5 Bur L J 228=101 I C 666=8 A I Cr R 138=28 Cr L J 490.

——Ss. 3, 7 and 18 — Restriction — Order of restriction under — When may be passed.

BURMA HABITUAL OFFENDERS' RESTRICTION ACT (Bur. Act II of 1919), S. 3

The Act makes no provision for taking a bond and for demanding sureties. It merely provides for an order of restriction. The order cannot be passed except in those cases in which the Magistrate could have acted under S. 110 of the Criminal P. C., and unless the person restricted has adequate means of earning his livelihood in that area. Violation of such an order is punishable under S. 18 of the Act. (Robinson J.) Emperor v. Po Mya,

13 Bur L T 155 = 10 L B R 274 = 61 I C 1005 = 22 Cr L J 477.

—S. 4.

——S. 4, Proviso (a) — Restriction—Term during which the proposed restriction is intended to last must be stated in the preliminary order required under S. 112 of the Criminal P. C.

Proviso (a) to S. 4 makes it essential that the preliminary order required under S. 112 of the Criminal P. C., set forth the substance of the information received and shall state the term during which the order of restriction shall be in force. If the additional requirement as to the term during which a proposed restriction is intended to be in force, is not specified in such preliminary order, no order under S. 7 of the Act should be passed. (Lentaigne J.) Parsodan v. Emperor,

A I R 1925 Rang 69 = 85 I C 33 = 2 Rang 524=26 Cr L J 417.

—S. 7.

——Jurisdiction — Burma Expulsion of Offenders Act, S. 4 — Neither District Magistrate nor High Court has jurisdiction to deal with person against whom order of restriction is passed under S. 7.

Although a person against whom an order of restriction is passed under S. 7 is an offender and is liable under S. 3 to be expelled, the Act provides no machinery for the enforcement of the liability and so neither the District Magistrate nor the High Court has any jurisdiction to deal with the matter under S. 4. (Carr J.) Emperor v. Nga Po Sein Gyi,

A I R 1929 Rang 254 = 7 Rang 266 = 119 I C 213=1929 Cr C 450=30 Cr L J 990.

——Restriction — Burma Opium Law Amendment Act (Burma Act, VII of 1909), S. 3 — Person placed on security under cannot be proceeded against under S. 110, Criminal P. C.

A person who earns his living in whole or in part by unlawful sale of opium, can be placed on security under S. 3, but an order of restriction cannot be passed under S. 7 on those grounds. 2 Rang 61, Dissented from. (Carr and Duckworth JJ.) Emperor v. Nga Kyan Hla,

A I R 1926 Rang 182 = 4 Rang 123 = 98 I C 714=5 Bur L J 78=27 Cr L J 1402.

——Irregularity—Omission to state the period of restriction in the preliminary order as required by S. 4 Proviso (a)—Omission is an irregularity curable by S. 537, Criminal P. C.

Omission to state the period of restriction in the preliminary order does not render the whole proceeding void. [2 R. 524, Dist.]. It is only an irregularity curable by Upper Burma Criminal Justice Reg., Chap. XV. (Carr J.) Maung Thwe v. Emperor,

A I R 1925 Rang 214 = 89 I C 527 = 3 Rang 74=26 Cr L J 1391.

——Procedure — Procedure laid down in Criminal P. C., S. 117, with necessary modifications and additions must be followed in taking preventive action.

The same procedure as is laid down in the Criminal P. C., S. 117, with necessary modifications and additions, must be followed where it is intended to take preventive action under S. 7 of the Burma Habitual Offenders'

BURMA HABITUAL OFFENDERS' RESTRICTION ACT (Bur. Act II of 1919), S. 7

Restriction Act (1919). (Lentaigne J.) Parsodan v. Emperor,

A I R 1925 Rang 69 = 2 Rang 524 = 85 I C 33=26 Cr L J 417.

——Evidence——General repute—Evidence of policemen and headmen is not insufficient — Criminal P. C., S. 110.

The rule, that in order to satisfy himself that an accused's general repute is that of an habitual offender of one of the types mentioned a Magistrate should require more evidence than that of policemen and village authorities, is not a rule of law and a Magistrate must, in each case, weigh the evidence and decide as to its sufficiency. 2 L. B. R. 166, Ref. and Expl. (May Oung J.) Nga Pan Yin v. Emperor,

A I R 1924 Rang 22=1 Rang 447=2 Bur L J 153=76 I C 709=25 Cr L J 245.

——S. 7 (a)—Illegality — Surety bond under S. 118, Criminal P. C.—Double order under both Act is illegal.

Where a bond has been executed by an offender, with sureties under S. 118, Criminal P. C. it is illegal to pass an order against him under the Habitual Offenders' Restriction Act. (MacGregor J.) Pan Zyan v. King-Emperor,

A I R 1923 Rang 134=1 Bur L J 257=73 I C 975 = 24 Cr L J 735.

——No power to call for security bond or to order person to make two reports to Police and to village headman exists.

There is no provision for ordering execution of a security bond under the Act. Where such offender is restricted to another village than his own, it must be proved that he will be able to earn his livelihood at that village. A double report both to the Headman and the Police is not called for under the Act. 10 L. B. R. 274, Foll. (Duckworth J.) King-Emperor v. Nga Kala,

A I R 1923 Rang 68=1 Bur L J 36 = 73 I C 157=24 Cr L J 541.

—S. 9.

——Illegality—Addition of term to sentence under S. 18 is not authorised.

Section 9 does not authorize the addition of a term of restriction to the sentence in the case of a conviction under S. 18. (Carr J.) Nga Tha Bay v. Emperor,

A I R 1925 Rang 279 = 89 I C 399=3 Rang 167=26 Cr L J 1359.

——Conviction — To be old offender is not a sufficient ground for conviction.

The mere fact that accused is "an old offender" is not a ground on which a restriction order can be passed under S. 9. (Carr J.) Nga Po Than v. Emperor,

A I R 1925 Rang 277 = 89 I C 320=3 Rang 156=26 Cr L J 1344.

—S. 10.

——Ss. 10 and 2—Illegality — Police Department Notification No. 280, dated 17th November 1919, Rr. 3, 5 and 6 — Order confining person to his own house at night is illegal—Accused must be able to earn his livelihood within area of restriction.

An order confining a man to the four corners of his own house at night is not a proper order under the provisions of the Act. The narrowest limits of restriction should be the village of the man concerned or the limits of the village to which he is restricted, as the case may be. If in order to obtain leave from the Police Station Office the person would have to leave his village tract, and thereby offend against the order this is contrary to the spirit of R. 5 of the Notification. The Magistrate must satisfy himself that the accused is able to earn his livelihood within the area of restriction. (Duckworth J.) Nga Ba Sein v. King-Emperor,

A I R 1923 Rang 102=11 L B R 383=73 I C 175=1 Bur L J 177=24 Cr L J 559.

BURMA HABITUAL OFFENDERS' RESTRICTION ACT (Bur. Act II of 1919), S. 10

——Order for bond — Legality of — Report to headman and to the police.

The Burma Habitual Offenders Restriction Act contains no provision for ordering an offender to execute a security bond. If the offender is confined to another village than his own, it must be proved that he would be able to earn his livelihood at that village. Under the Act a double report both to the headman and the police is unnecessary. (Duckworth J.) Emperor v. Nga Kala,

A I R 1923 Rang 68 (2)=1 Bur L J 36=73 I C 157=24 Cr L J 541.

—S. 12.

——Ss. 12, 18 — Restriction order under S. 18 passed against offender in 1933 for three years — Offender so repeatedly violating order that period not expiring on May 19, 1939—Act repealed in 1936 — On May 19, 1939 offender again violating order and convicted under S. 18—Conviction held legal by reason of S. 5 (c) and (e), General Clauses Act (Burma) (X of 1897)— Offenders' right under S. 12 held also survived repeal.

An order was passed in 1933 against an offender under the Burma Habitual Offenders' Restriction Act, 1919, restricting him to a certain place for three years but he so repeatedly violated the restriction order that by S. 18 (2), the period of three years had not expired on May 19, 1939. In fact, however, the Habitual Offenders' Restriction Act was wholly repealed by Burma Act I of 1936 as from midnight of April 24/25, 1936. The last mentioned Act contained no saving or explanatory clause. On May 19, 1939, the offender again absented himself from the restricted place without a pass as a result of which on August 5, 1940, he was charged with an offence under S. 18 and convicted :

Held, that the conviction was legal by reason of S. 5 (c) and (e), Burma General Clauses Act.

Held further that as restriction was an "obligation" which survived the repeal, so did the "right" of the restricted person to invite the District Magistrate to exercise his powers under S. 12 and the case was fit one for the exercise of powers under S. 12. (Dunkley and Blagden JJ.) The King v. Basu Meah,

A I R 1941 Rang 206 = 1941 Rang L R 239 = 14 R Rang 47=195 I C 437=42 Cr L J 739.

—S. 13.

——Illegality—Section cannot be relied on as justifying a Sub-Divisional Magistrate in not complying with the provisions of S. 4, Prov. (a) of the Act, when taking preventive action against a person under S. 7 of the Act.

Where a Sub-Divisional Magistrate takes preventive action against a person under S. 7 of the Act without complying with the provisions of S. 4, Prov. (a), S. 12 of the Act, 1919, cannot be relied on as justifying the special procedure of the case, because the District Magistrate is the only Magistrate empowered under that section and even the District Magistrate cannot intervene in a case unless there has been a proper preliminary order and unless the Sub-Divisional Magistrate has also previously passed his order under S. 118 of the Cr. P. Code. In such a case, it would be the duty of the District Magistrate to have some good reason for the change over to the Burma Habitual Offenders' Restriction Act, 1919; and Rule 12 of the Rules framed under that Act indicates the class of reasons which would justify such a change. (Lentaigne J.) Parsodan v. Emperor,

AIR 1925 Rang 69 = 85 I C 33=2 Rang 524=26 Cr L J 417.

BURMA HABITUAL OFFENDERS' RESTRICTION ACT (Bur. Act II of 1919)

—S. 18.

——S. 18 (1)—Applicability.

The Habitual Offenders' Restriction Act does not apply to persons proceeded against under S. 17, Gambling Act. A.I.R. 1926 Rang. 182 and A.I.R. 1927 Rang. 98, Rel. on. (Baguley J.) Emperor v. Maung Po Sein,

AIR 1929 Rang 147= 7 Rang 1=117 I C 255 = 1929 Cr C 60=30 Cr L J 755.

——S. 18 (2)—Interpretation — Accused absent from the tract—Exclusion of that period is not allowed.

Section 18 (2) provides only that a period of imprisonment under S. 18 (1) is to be excluded in computing the period for which the order of restriction shall remain in force. It does not allow of the exclusion of any period during which the accused has been absent from his tract in contravention of the order or of any period during which he has been under trial. (Carr J.) Nga Tha Bay v. Emperor,

AIR 1925 Rang 279=89 I C 399 = 3 Rang 167 = 26 Cr L J 1359.

BURMA LAND AND REVENUE ACT (II of 1876)

—S. 8.

——Rules under — R. 52 — "Occupying" available land, whether same as "entering" upon available land—Persons so entering—Land made subject of grant — Notice under R. 52 (1)—Failure to comply with.

It is not persons who enter upon available land who are subject to eviction, but persons who are actually occupying available land. Rule 52 of rules framed under S. 8 of Burma (Lower) Land and Revenue Act, applies to a person to whom a grant had been made but whose grant had been cancelled and who remains in occupation even after such cancellation. Such a person is a person who entered upon land which was not available. The rule refers to present occupation and the present status of the land.

Certain persons entered upon land which was available. Subsequently such land was made the subject of a grant and a notice under R. 52 (1) was issued but the persons failed to comply with it :

Held, that the persons could not be deemed to have occupied available land and, therefore, could not be proceeded against under R. 52 (2). (Mackney J.) Ma Ngwe Yon v. The King,

AIR 1937 Rang 452=10 R Rang 247= 172 I C 413= 39 Cr L J 140.

—S. 44.

——Ss. 44, 45—Recovery of tax—Issue of process.

Before process can issue for the recovery of a tax it must have become an arrear. Section 44 describes the procedure to be followed in order to the creation of an arrear. The tax must have fallen due and a written notice of demand must have been served on any one of the persons liable for it, or published and ten days must have elapsed from the service or publication of such notice without such sum having been paid, before the tax can be deemed to be an arrear. (Hartnoll J.) King Emperor v. Ramara,

4 L B R 103=7 Cr L J 74.

—S. 45.

——Recovery of tax— Issue of process—See Burma Land and Revenue Act (1876), Ss. 44, 45.

7 Cr L J 74 (L B).

—R. 69.

— Procedure—Use of grazing ground for purposes other than grazing — Proof as to the ground demarcated and marked with boundary posts must be strict — Procedure indicated.

BURMA LAND REVENUE ACT (II of 1876) R. 69

It is essential in all prosecutions under R. 69 that there should be evidence not only that the grazing ground has been allotted but also that it has been finally demarcated; that is that the boundaries have been clearly marked with permanent posts or visible marks of some kind, so that there is no room for mistake as to the limits of the grazing ground.

The proper procedure in such cases is for the Land Records Officer to file in each case along with his complaint or report a map showing the relevant boundaries of the grazing ground with the demarcation marks and the area alleged to be occupied by the accused within the grazing ground, and for the Court to take evidence that the grazing ground has been allotted and demarcated and that the alleged trespass has been committed. The evidence of the Land Records Officer on all these points is of course important, as would be also that of the village headman. (Heald J.) Maung Tha E v. King-Emperor,

AIR 1927 Rang 59=5 Bur L J 177 = 99 I C 595 = 7 A I Cr R 264=28 Cr L J 163.

——Illegality —Planting of rubber trees on waste land — Subsequent notification as grazing ground — Order for removal of trees and conviction under rule 69 are illegal.

The petitioner planted rubber trees on State waste land pending his application for a grant in anticipation and paid assessment thereon. The grant was refused and the land notified as a grazing ground whereupon petitioner applied for refund of the revenue paid by him. The Deputy Commissioner passed an order that the petitioner do vacate the land and remove the rubber trees and the revenue paid would be refunded when petitioner vacated. Petitioner failed to remove the trees and was prosecuted under R. 69 and fined for occupying a finally demarcated grazing ground and convicted on his admission that the rubber trees planted by him were still on the land.

Held, that R. 69 did not empower the revenue authorities to order petitioner to remove the trees he had planted and the mere fact that the trees remained on the ground did not constitute occupation of the grazing ground, and that the Magistrate's order that the rubber trees must be cut down, root and branch, within a month was without jurisdiction and must be set aside. (Heald J.) Maung Pe v. Emperor,

AIR 1924 Rang 289=3 Bur L J 73=82 I C 272 = 25 Cr L J 1264.

—R. 107.

——R. 107-G—Liability —Brick-making — Digging clay without license — Owner of land — Supply of labour — Liability for.

The accused contracted to dig clay and supply labour to another person for the purpose of making bricks without a license. Bricks were actually made without a license. Held, that the owner of the field who engaged the contractors was liable, but that the accused were not guilty under R. 107-G of the Lower Burma Land and Revenue Act. (Heald J.) Kabudin v. Emperor,

3 Bur L J 145 = 84 I C 329 (1) = 26 Cr L J 265 (Rang).

BURMA LEGISLATIVE COUNCIL RULES

—R. 8.

——When a member of the Council asks a question under R. 8 he is entitled to the absolute privilege in respect thereof in the sense that no proceedings can be taken against him in respect of any statement made in the question. (Roberts C. J., Baguley and Leach JJ.) C. P. Khin Maung v. Au Eu Wa

AIR 1936 Rang 425=9 R Rang 145=14 Rang 420= 1936 Cr C 840=164 I C 960=37 Cr L J 1013 (FB).

BURMA (LOWER) COURTS ACT (IMPERIAL ACT VI of 1900)

——Jurisdiction — Burma Military Police Act, S. 6 (b)—Offence under in Rangoon is triable only by Chief Court and not by adjutant.

A sepoy of the Rangoon Military Police Battalion was tried for assaulting a senior officer with a "Kukri" before the Adjutant of that Battalion and convicted and sentenced to two years under S. 6 (b) of Burma Military Police Act :

Held, that under the provisions of the Lower Burma Courts Act of 1900 such offences would be triable by the Chief Court. Therefore the Adjutant in trying the case to the finish did so without jurisdiction and his proceedings were void. (Maung Kin J.) Emperor v. Rambahadur Rai

AIR 1923 Rang 139 = 2 Bur L J 21 = 81 I C 111 = 25 Cr L J 623.

BURMA (LOWER) VILLAGE ACT (IMPERIAL ACT III of 1889)

——Police officer — Evidence Act (1 of 1872), S. 25—Village headman is not a "police officer" though invested with power of arrest.

The mere bestowal on a village headman of some powers of arrest as are given to a police officer does not make him a police officer any more than it makes a Magistrate a police officer. A confession, therefore, made to him is not inadmissible in evidence, but the weight to be attached to such confession will depend on the circumstances of the case and the part he has taken in the elucidation of the crime : 1 L B R 65, Affirmed. (Young Offg. C. J., Heald and May Oung JJ.) Nga Myin v. King-Emperor

AIR 1924 Rang 245=2 Rang 31=81 I C 540=3 Bur L J 11=25 Cr L J 924 (FB).

BURMA MILITARY POLICE ACT (IMPERIAL ACT XV of 1887)

—S. 6.

——S. 6 (b)—Jurisdiction — Offence under, in Rangoon is triable only by Chief Court and not by Adjutant—Lower Burma Courts Act (1900).

A sepoy of the Rangoon Military Police Battalion was tried for assaulting a senior officer with a "Kukri" before the Adjutant of that Battalion and convicted and sentenced to two years under S. 6 (b) of Burma Military Police Act.

Held, that under the provisions of the Lower Burma Courts Act of 1900 such offences would be triable by the Chief Court. Therefore, the Adjutant in trying the case to the finish did so without jurisdiction and his proceedings were void. (Maung King J.) King-Emperor v. Rambahadur Rai

AIR 1923 Rang 139 = 2 Bur L J 21 = 81 I C 111 = 25 Cr L J 623.

BURMA MOTOR VEHICLES RULES

—R. 16.

——Negligence—To pass tram-car on right hand side is prima facie negligent.

Except for reasonable cause a tram-car must be passed on the left side : the proviso in R. 16 merely allows a special exception to the general rule. To pass it, therefore, on the right side is prima facie negligent since the sudden appearance of a vehicle from behind a tram-car on the unexpected side is a fruitful source of accidents. (Doyle J.) Ahmed v. King-Emperor

A I R 1927 Rang 149=6 Bur L J 76=101 I C 660=28 Cr L J 484.

—R. 26.

——R. 26 (3) — Negligence—Motor Vehicles Act (VIII of 1914), S. 16.

BURMA MOTOR VEHICLES RULES, R. 26

Owner of a motor-car is not criminally liable for negligence of the driver in driving the car without properly illuminated rear light, if the owner has made provision for such illumination : 36 C 415 and 45 C 430, Dist. (May Oung J.) Mahomed Surty v. King-Emperor

AIR 1924 Rang 63=1 Rang 600=76 I C 564=2 Bur L J 201=25 Cr L J 196.

BURMA MUNICIPAL ACT (III of 1898)

—S. 2.

——Ss.2 (6) and 142 (d)—Lodging house what is.

A lodging house need not be let in lodging. It is enough if it is occupied in common by members of more than one family. Persons living in the lodging houses are lodgers whether they pay rent or not and the owner of the lodging house receives them when he allows them to occupy the building. (Saunders J. C.) Amanath Mistry v. Emperor

A I R 1918 U B 7=3 U B R (1917) 52=44 I C 674=19 Cr L J 370.

—S. 92.

——Ss. 92 (4) and 180—Notice under—Whether wall is a "building" depends upon mischief aimed at by the Act.

There is no definition of the word "building" in the Act or the bye-laws thereunder and the question must therefore be decided with reference to the mischief aimed at by the Act. The erection of a mere fence or boundary wall is not an offence under the Burma Municipal Act. But where such a wall is built so as to enable the occupier of the main house to use the enclosed area as part of his habitation and not merely as a boundary or fence it comes within the definition of a "building" and disobedience to an order or direction to dismantle the same is an offence under the Act. (Maung Kin J.) Kaloo Khan v. M. A. Rahim

AIR 1923 Rang 65 = 1 Bur L J 102 = 73 I C 972 = 24 Cr L J 732.

——Ss. 92 (3), (4), 180 — Act of building without permission not punishable — Absence of any notice to accused regarding his breach of law or bye-law—Appeal.

Section 180 makes punishable the disobedience of a bye-law or any lawful direction given by the Committee by public notice under the powers conferred upon it by Chap. VI, or any notice in writing lawfully issued by it under the powers so conferred, or failure to comply with the conditions subject to which any permission is given by the Committee under those powers. An erection in contravention of plans is not in itself or by itself alone punishable, as there is no bye-law rendering punishable the mere erection of a building in contravention of a plan.

Plans for erecting a zayat put in by Maung Po Tok were approved of by the Municipal Committee, Bassein. Maung Po then erected the zayat in contravention of the plans, for he proceeded to erect a portico. Complaint was made and he was ordered by written notice to stop going on with the erection of the portico. After that Maung Po asked that the portico be allowed to stand, but the President of the Committee rejected the request and ordered Maung Po's prosecution for building contrary to the plan. The Magistrate found that he did not stop when ordered to do so and that no notice appeared to have been issued requiring him to pull down or dismantle the extension. He found that Maung Po had departed from the sanctioned plan without permission and that he had erected, or began to erect, in contravention of the bye-laws, the portico. He found him guilty of a breach, in contravention of S. 92 (3) (4) of the Burma Municipal Act and bye-laws framed under the Act, and directed that he pay a fine of Rs. 50, and in case of a continuing breach a fur-

ther fine of Rs. 5 a day for every day in which the erection continued to exist after seven days from the 25th May. Maung Po Tok then applied for revision of this order to the Sessions Judge who referred the case to the Chief Court :

Held, that, although at first sight the order of the Magistrate might seem to be more than an order of fine of Rs. 50 only and, therefore, appealable, yet looking at the facts, there was no continuing breach of any notice issued by the Municipality, as no notice was proved to have been issued under S. 92 (3) or (4) requiring the portico to be altered or demolished; that, therefore, that portion of the order seemed to be meaningless and inoperative and appeared to be only for Rs. 50 and was thus not appealable. (Hartnoll J.) Emperor v. Maung Po Tok

8 I C 983=11 Cr L J 745 (LB).

——Notice under S. 92 (2) purporting to be under S. 121 —Disobedience — Prosecution — Acquittal — Subsequent notice under S. 92 (2) — Acquittal — Third notice under S. 92 (3) — Disobedience — Prosecution, if banned under S. 403, Cr. P. C.—See Criminal P. C., S. 403

9 Cr L J 578 (LB).

——Ss. 180 and 92 (3) — Jurisdiction of Courts, to question reasonability of notice.

S. 180 only requires that the directions issued by the Municipality should be lawful one. Where the notice issued under S. 92 (3) is lawful, the Court has no jurisdiction to question the order, whether it is reasonable or not (Irwin J.) Oborno Charan Chowdhry v. King Emperor

5 L B R 12=2 I C 357=9 Cr L J 578.

—S. 94.

——S. 94 (2)—Notice under—Effect—See Burma Boundaries Act (5 of 1880), Ss. 11 and 17

7 Cr L J 462 (L B).

—S. 99.

——Ss. 99 and 100 — Exposure of flesh for sale not slaughtered in prescribed manner.

The accused was convicted of having exposed for sale the flesh of animals not slaughtered in the manner prescribed by S. 99 or 100, Burma Municipal Act. There was nothing to show that the pork exposed for sale was the flesh of pigs slaughtered in contravention of the provisions of bye-law No. 9 framed under S. 102.

Held, that the conviction was wrong. (Herbert Thirkell White C. J.) Soon Nah v. Rangoon Municipality

10 Bur L R 163=1 Cr L J 882.

——Ss. 99, 100, 102 (e) and (f) — Bye-laws 9, 10 and 11 framed under S. 102—Construction of.

Bye-law No. 9 framed under S. 102 (e) Burma Municipal Act is in general terms and applies to the flesh of all animals.

The fact that Bye laws 10 and 11 framed under S. 102 (f) expressly exclude pork from their operation does not affect the generality of the application of Bye-law No. 9. The words 'flesh of animals' in bye-law No. 9 does not refer only to uncooked flesh

What bye-law No. 9 prohibits is the sale of flesh under certain conditions and not the mere exposure for sale of the flesh of animals not slaughtered in the manner prescribed by or at a place licensed or fixed under S. 99 or 100 of the Burma Municipal Act. (Herbert Thirkell White C. J.) Moung Sa Mi v. Rangoon Municipality

10 Bur L R 160=1 Cr L J 880.

——Ss. 99, 100, 154—Slaughtering an animal in an unlicensed place—Proof.

In a prosecution under S. 154, Burma Municipal Act, for slaughtering an animal within the limits of a Municipality in a place not licensed for that purpose in contravention of Ss. 99 and 100 it is necessary for the prosecution

to prove not only that the animal was slaughtered in such a place, but that it was slaughtered for sale of its flesh. (H. Adamson Esq. C. S. I.) Ally Hossain v. King Emperor

U B R 1904 2nd Qr. Municipal =1 Cr L J 871.

—S. 100.

——Exposure of animal flesh not slaughtered in prescribed manner for sale. See ibid, S. 99

1 Cr L J 882 (L B).

——Ss. 99, 100, 102—Bye-laws under S. 102—Bye-laws 9, 10 and 11—Construction of. See ibid, S. 99

1 Cr L J 880 (L B).

——Slaughtering an animal in an unlicensed place—Proof. See Burma Municipal Act, S. 99

1 Cr L J 871 (U B).

—S. 102.

——Section 102 (e) and (f)—Bye-laws under—Bye laws 9, 10 & 11—Construction of. See ibid, S. 99

1 Cr L J 880 (L B).

—S. 114.

——S. 114 (1) — Applicability — New private markets—Necessity of licence.

The provisions of S. 114 (1) of the Burma Municipal Act as amended in 1931 do not prohibit the newly establishing of a private market which was not in existence at the commencement of the Act, i. e., July 1, 1898, without a licence from the Municipal Committee within whose area the market is established. The prohibition is only in respect of such private markets as were 'lawfully in existence at the commencement of the Act.'

[Bad drafting of the section pointed out.] (Page C. J., Baguley and Ba U JJ.) Ba Thin Maung v. U Pannawuntha

A I R 1933 Rang 1=10 Rang 505=1932 Cr Cas 942 =Ind Rul (1933) Rang 16=141 I C 81=34 Cr L J 158 (FB).

—S. 121.

——Committee is empowered to have reasonable access to the lands for its servants for scavenging purposes.

Section 121 empowers the Committee to require an owner to allow the servants of the Committee reasonable access to or passage over his land for scavenging purposes, whether these purposes concern the land in question or other land. 1 U. B. R. 230, Foll.; Cr. R. No. 1333 of 1909, Diss. from. (Heald J.) King-Emperor v. Ma Nu

A I R 1927 Rang 60=4 Rang 423=99 I C 339=28 Cr L J 131.

—S. 124.

——Ss. 124 (a), 142 (r)—Burma Municipal (Public Health) Amendment Act (I of 1931), Ss. 9, 10—Repeal of S. 142 (r)—Bye-laws made under S. 142 (r) — Whether operate until bye-laws are made under S. 124 (a)—General Clauses Act (I of 1898), S. 2.

Section 142, cl. (r), Burma Municipal Act, was deleted by S. 10 of Act I of 1931, but S. 124 (a), Burma Municipal Act which was inserted in the Burma Municipal Act by S. 9 of Act I of 1931 contains identical provisions.

Where fresh bye-laws have not been made under S. 124 (a), a conviction for an offence made punishable by a bye-law made under S. 142 (r), is maintainable. (Page C. J. and Mya Bu J.) Emperor v. Karapan

A I R 1934 Rang 12=11 Rang 532=1934 Cr Cas 78 =6 R Rang 241=148 I C 616=35 Cr L J 735.

—S. 130.

——Premises whether fit for habitation — The accused was required by the Municipal Committee under S. 130 to refrain from using the building as it was unfit for human habitation in consequence of its insanitary condition, until the Committee should be satisfied that the said premises had been rendered fit for such use.

Held, that the portion of the Committee's order prohibiting the use of the house "until such time as the said Committee is satisfied & c.," was ultra vires. S. 130 did not make the Committee the judge of the question whether the house had been made fit for habitation. It was a question of fact to be decided by the Magistrate if the Committee saw fit to prosecute. (Irwin J.) Bretto J. F. v. Rangoon Municipal Committee

4 L B R 144=14 Bur L R 125=7 Cr L J 441.

—S. 133.

——Ss. 133 (1) and 160 — "Wood." meaning of — S. 133 (1) of the Act prohibits the storage for trade purposes of wood in an inflammable condition, and it is immaterial whether it is in a manufactured or unmanufactured shape. Where the accused used a house as a depot for the storage of deal wood boxes without license it was held that he was rightly convicted under S. 160. (Thirkell White C. J.) Nagore Meera v. Rangoon Municipality

2 L B R 70.

—S. 142.

——Ss. 142 (e), 148 (as amended by Act I of 1931)— Punishment for breach of bye-law made under S. 142 (e) —Whether provided by S. 148—Necessity of amendment of Act.

Section 148, Burma Municipal Act, specifically provides for the punishment of offences relating to breaches of "any of the sections, sub-sections or clauses of the Act mentioned in col. 1 of the following table of any rule or bye-law made thereunder", and the omission of S. 142 from col. 1 of the following table shows that a breach of a bye-law duly passed under S. 142 (e) is not an offence punishable under S. 148.

This is a casus omissus, and in the public interest the matter should be set right by the legislature. (Page C. J. and Mya Bu J.) C. T. Mudaliar v. Maymyo Municipal Committee

A I R 1933 Rang 68=11 Rang 182=Ind Rul (1933) Rang 84=1933 Cr Cas 486=144 I C 159=34 Cr L J 700.

——Bye-law No. 5—S. 2 (6)—Construction — To attract the application of the bye-law, some part of the building must be used in common.

If a building is divided into separate and independent dwellings or tenements and those dwellings or tenements are such that the occupants of them do not to any extent use or occupy the building as a whole in common then even if separate tenements or some of them are actually used as lodging house, the building as a whole does not thereby become a lodging house and only those separate and independent tenements which are used as lodging houses need to be registered and licensed. Note to S. 2 says that the buildings commonly called "tenements lodging houses" should be brought within the operation of the lodging house rules if they have kitchens, privies or other conveniences, in common, that is, if the building as a whole is occupied to any extent in common by the tenants of the separate tenement, but that they do not come within the operation of the lodging house rules if each tenement is entirely independent and provided with its own kitchen and privy, that is, if the building as a whole is not occupied to any extent in common by the tenants of the separate tenements. If a building as a whole is let in lodgings or otherwise occupied to any extent in common by members of more than one family, then it is a lodging house and is subject to the bye-laws. If there is no such common occupation of the building as a whole but there is such common occupation of a particular part of it, then that particular part is a lodging house but the building as a whole is not a lodging house. If

neither the building as a whole nor any part of it separately is occupied to any extent in common by members of more than one family, neither the building nor any part of it is a lodging house. (Heald J.) Emperor v. P. D. Seth.

AIR 1924 Rang 109 = 2 Bur L J 298 = 81 I C 960= 25 Cr L J 1136.

——S. 142 (d) — Bye-laws for lodging houses are not ultra vires.

A bye-law of a Municipality requiring lodging house keepers to pay a license fee reckoned on the maximum number of lodgers authorised is neither illegal nor ultra vires. (Robinson J.) S. Pillai v. Moulmein Municipality.

13 Bur L T 107=59 I C 545=22 Cr L J 113.

——Bye-law — Condition restricting rate of interest on pawnbrokers—Validity of license.

Section 142 empowers a Municipal Committee to make bye-laws for rendering license necessary for pawnbrokers and determining the conditions subject to which they shall be granted. A condition in a pawnbroker's license issued under S. 142 limiting the rate of interest chargeable by pawnbrokers does modify and restrict the law which allows the freedom of contract but it is not on that account 'ultra vires'. (Parlett J.) S. C. Paul v. Emperor.

AIR 1918 L B 110=11 Bur L T 208=42 I C 756=18 Cr L J 1012.

——S. 142 (r)—Bye-law—'Keep,' meaning of.

The word 'keep' in the bye-law made by the Rangoon Municipal Committee under S. 142 (r) of the Act means the keeping for some long period of time. Therefore, tying a goat meant for sacrifice in the temple awaiting the sacrifice ceremony for about two hours does not amount to a breach of the bye-law. (Fox C. J.) Boyhenj Chandra v. Rangoon Municipality.

AIR 1917 L B 148=10 Bur L T 24 = 8 L B R 328= 35 I C 518=17 Cr L J 342.

——S. 142 (d)—Bye-law 19 (c)—'ultra vires'—Notice.

Bye-law 19 (c) framed by the Rangoon Municipality is not 'ultra vires' as the framing of such a clause is authorised by S. 142 (d) of the Act. A notice, to be valid, must be reasonable and possible to comply with. (Parlett J.) Partial Maistry v. Emperor.

6 Bur L T 138=20 I C 740=14 Cr L J 484.

——Bye-law (2) under S. 142 (e), S. 180—Pawn-broker— Indian Contract Act, Ch. IX.

Taking of goods as security for money lent would not alone make the lender a pawn-broker. To show him to be a pawn-broker it must be proved that he carries on the business of money-lending on pledge of goods to him, and that he holds himself out to lend money on such security and is in the habit of doing so. The accused belonged to the Chetty community, who carry on the business of money-lenders and hold themselves out as such. He had not obtained a license from the municipality for doing business as pawn-broker. In connection with a transaction he stated that it was not his habit to take a receipt for money lent where the sum was below Rs. 20 and property was left with him as security.

Held, that the accused was a pawn-broker, and, as such, was guilty of an offence punishable under S. 180 of the Burma Municipal Act, in not having obtained a license from the Municipal authorities. (Hartnoll J.) King-Emperor v. Kannappa Chetty.

4 L B R 8=13 Bur L R 269=6 Cr L J 118.

—S. 147.

——Defence to prosecution.

The words "no such order shall be liable to be called in question otherwise than by such appeal" in S. 147 do not

BURMA MUNICIPAL ACT (III of 1898), S. 147

include a challenge made by way of defence to a criminal prosecution on the ground that the order is 'ultra vires.' (Irwin J.) J. F. Bretto v. Rangoon Municipal Committee.

4 L B R 144=14 Bur L R 125=7 Cr L J 441.

—S. 148.

——Pawn-broker—Who is—Isolated transaction does not make person pawn-broker.

A "pawn-broker" is a person who "carries on the business of pawn-broking." It implies one who systematically lends money upon the security of pawns, and "carrying on business" implies, "a series or repetition of acts." It is a question of fact in each case whether a "business" is being carried on, and each case must be determined by its own special circumstances unless there can be found some systematic course of lending upon pawns or such repetition as to amount to a reasonable inference that it forms part of the particular Chettyar's money-lending business to lend on pawns. His status as pawn-broker within the Burma Municipal Act, 1898, and the rules thereunder cannot be held to be established.

A Chettyar whose business is to lend money on promissory notes and upon security of land cannot be said to be a pawn-broker where he advances an isolated loan to another on security of a chattel. (Braund J.) V. A. S. M. Chettiar Firm v. Emperor.

AIR 1935 Rang 104=13 Rang 32 = 1935 Cr Cas 313 =7 R Rang 354=155 I C 889=36 Cr L J 853.

——A breach of a bye-law duly passed under S. 142 (e) is not an offence punishable under S. 148. (Page C. J. and Mya Bu J.) C. T. Mudaliar v. Maymyo Municipal Committee.

AIR 1933 Rang 68 = 11 Rang 182=Ind Rul (1933) Rang 84 = 1933 Cr Cas 486 = 144 I C 159 = 34 Cr L J 700.

—S. 154.

——Slaughtering an animal in an unlicensed place—Proof —See Burma Municipal Act, S. 99.

1 Cr L J 871 (U B).

—S. 160.

——Ss. 133 (1) and 160 — Wood, meaning of — See ibid, S. 133.

2 L B R 70.

—S. 162B.

——Bicycle—Vehicle.

A bicycle driven by human energy comes under the section; "vehicle driving" includes the application of human energy, to the pedals of bicycle. A man riding a bicycle may be said to drive a vehicle under S. 162 and he commits the offence of driving a vehicle after dark without lamps, if found riding his bicycle without light after dark. (Twomey J.) Emperor v. Nga Tha Zan

12 I C 837=4 Bur L T 134=12 Cr L J 573.

—S. 180.

——S. 180 (1)—Disposal of surface water — Order—Disobedience.

Under Chap. VI of the Burma Municipal Act a Town Committee cannot pass general orders or directions regarding the disposal of surface water. The neglect to comply with such an order therefore is not an offence under S. 180 (1) of the Act. (Pratt J. C.) Sohan Singh v. Emperor

A I R 1920 U B 29=54 I C 494=3 U B R 188=21 Cr L J 94.

——Act of building without permission not punishable—Absence of any notice to accused regarding his breach of law or bye-law—Appeal—See ibid, S. 92 (3) & (4)

11 Cr L J 745 (LB).

——Reasonability of notice under S. 92 (3) if can be questioned—See Burma Municipal Act (3 of 1898), S. 92

9 Cr L J 578 (LB).

BURMA MUNICIPAL ACT (III of 1898), S. 180

——Ss. 180 and 195—Magistrate's power to extend time given by Municipality to vacate—Order imposing fine for every day beyond extended period if there was default—Legality of order.

The accused not having vacated his house within the time granted by the Municipality was convicted under S. 180 (1). While convicting him the Magistrate ordered that he should vacate the house in five days failing which he was to pay a fine of five rupees for every day of default.

Held (i) the Magistrate had no power to extend the time given by the Municipality to vacate;

(ii) his order imposing fine in the event of default was without authority. There could only be a prosecution if there was default and if convicted then the Magistrate could impose a fine of Rs. 5 for every day of disobedience. But he could not impose any fine anticipating that there would be disobedience. (Irwin C. S. I.) King-Emperor v. Po Nau

4 L B R 44=6 Cr L J 281.

—S. 195.

——Taking cognizance — See Criminal P. C., S. 190 (1) (a) (c)

8 Cr L J 505 (FB) (LB).

——Magistrate's power to extend time granted by Municipality to vacate — Order imposing fine for every day beyond extended period if there was default—Legality of order—See ibid, S. 180

6 Cr L J 281 (LB).

——Complaint by unauthorised person — No Court can take cognizance of any offence punishable under the Act except on the complaint of a person authorised by the Committee. (Fox J.) King-Emperor v. Abdul Mawzit

2 L B R 124.

BURMA OPIUM LAW (AMENDMENT) ACT (BURMA ACT VII of 1909)

—S. 3.

——Procedure—Person placed on security under, cannot be proceeded against under S. 110, Criminal P. C. — Burma Habitual Offenders' Restriction Act (Burma Act II of 1919), S. 7.

A person who earns his living in whole or in part by unlawful sale of opium can be placed on security under S. 3, but an order of restriction cannot be passed under S. 7 on those grounds : 2 Rang. 61, Diss. from. (Carr and Duckworth JJ.) Emperor v. Nga Kyaw Hla

A I R 1926 Rang. 182=4 Rang 123=5 Bur L J 78= 98 I C 714=27 Cr L J 1402.

——S. 3 — Information — Procedure — Criminal P. C. (1898), S. 110—Appeal.

Information received under S. 3 of Burma Opium Act should be treated in the same manner as under S. 110, Criminal P. C. i. e., the Magistrate must record an order under S. 112 and proceed in accordance with the subsequent sections of the Code. Against an order made by a Magistrate under S. 3 of the Act an appeal lies to the District Magistrate under S. 406, Criminal P. C. (Saunders J. C.) Law Kaw v. Emperor

A I R 1919 U B 27 (1)=(1918) 3 U B R 117=50 I C 657=20 Cr L J 321.

——Interpretation—Criminal P. C., S. 110.

The effect of S. 3, Burma Opium Law Amendment Act, is to introduce an additional ground on which S. 110 of the Code can be applied. (May Oung J.) King-Emperor v. Nga Kyaung

A I R 1924 Rang. 244 = 2 Rang. 61=81 I C 546=3 Bur L J 17=25 Cr L J 930.

BURMA OPIUM RULES (1910)

—R. 11.

——Beinchi—Possession by non-Burman.

The possession of Beinchi up to three tolas by a non-Burman is not illegal if he obtained it from a licensed vendor. Beinchi otherwise called 'defined opium' is included in the definition of opium. (Shaw J.) Emperor v. Ah Pain Shok

A I R 1914 U B 15 (1) = 1914 U B R II 1 = 24 I C 844=15 Cr L J 532.

(BURMA) PENAL CODE (AMENDMENT) ACT (XXXIII of 1947)

——Retrospective effect — Act cannot apply to offences committed prior to the Act—See Penal Code (45 of 1860), S. 302 (1) (b)

1948 Bur L R 217.

BURMA PREVENTION OF CRIME (YOUNG OFFENDERS) ACT (III of 1930)

See also Penal Code, S. 366A

—S. 2.

——S. 2 (d)—Junior School.

The Local Government has no authority under the Act to recognize as a Junior School any place which is not a "training school" within the definition in cl. (d), S. 2 of the Act. The Act does not anywhere recognize the issue of a "custody order" committing a young person to the custody of a Home or similar institution; it only recognizes order committing them to the custody of some individual or other. (Dunkley J.) Emperor v. Khin Maung

A I R 1933 Rang. 275 = 1933 Cr Cas 1019 = 6 R Rang. 191=147 I C 1152=35 Cr L J 599.

—S. 10.

——Under S. 10 of the Burma Prevention of Crime (Young Offenders) Act, a Court of Session on appeal has jurisdiction to order detention in a Borstal School for any period which is legal under the provisions of subs. (25), irrespective of the length of the sentence of imprisonment which has been passed by the Magistrate from whose judgment the appeal is brought; and in ordering such detention there can be no question of an enhancement of sentence having been made. (Dunkley J.) Emperor v. Ah Htwe

A I R 1936 Rang. 227 = 14 Rang. 119 = 8 R Rang. 609=1936 Cr Cas 527=163 I C 74=37 Cr L J 790.

—S. 13.

——Interpretation of—Right of appeal under—Nature of.

Section 13, Burma Prevention of Crime (Young Offenders) Act, should not be construed as saying firstly that the accused shall have all the rights of appeal provided by the Criminal P. C., and then secondly that no appeal shall lie from the decision of a Magistrate empowered under this Part II merely because the proceedings have been forwarded to him with his opinion by another Magistrate. The section must mean that in addition to the right of appeal against an order amounting to a sentence under the Criminal P. C., the accused shall have the right of appeal against any order affecting him except non-final orders as to age, or directing the submission of the case to a Magistrate empowered. (Mosely J.) Nga Aung Thin v. Emperor

A I R 1937 Rang. 80 = 14 Rang. 78 = 9 R Rang. 331=167 I C 892=38 Cr L J 483.

—S. 14.

——Ss. 14, 15 — Finding of trial Court as to age of accused — High Court, if can consider it for purposes of S. 15.

According to S. 14, Burma Prevention of Crime (Young Offenders) Act, it is not open to the High Court to reconsider the finding arrived at by the trial Court which is a Court of Session as to the age of the appellant so far as the question as to the applicability of S. 15 is concerned. (Mya Bu and Mackney JJ.) Nga Saw Htun v. Emperor

A I R 1937 Rang. 121=10 R Rang. 131=171 I C 125 =38 Cr L J 1022.

—S. 15.

——While for the purpose of S. 15, the age must be ascertained with reference to the time when the sentence is to be passed, the age with reference to the general question as to the capacity to exercise reason and self-control must be with reference to the time of the commission of the offence. (Mya Bu and Mackney JJ.) Nga Saw Htun v. Emperor

A I R 1937 Rang 121=10 R Rang 131 = 171 I C 125 =38 Cr L J 1022.

——Consideration for purposes of sentence.

For the purpose of considering whether the provisions of S. 15 of the Act can be extended to the accused or not, there is nothing to fetter the discretion of the High Court in considering whether he has been really proved to have completed sixteen years of age or not for the purpose of determining the general question as to what is the appropriate sentence to be passed on him. (Mya Bu and Mackney JJ.) Nga Saw Htun v. Emperor

A I R 1937 Rang 121=10 R Rang 131 = 171 I C 125 =38 Cr L J 1022.

—S. 16.

——S. 16 (e) — Crime by juvenile an isolated one due to his losing self-control under certain circumstances — Accused not subjected in his normal life to undesirable influences.

Where it appears that the crime which the juvenile has committed is an isolated one due to his losing self-control in a set of special circumstances, and where the juvenile is not shown to be subjected in his normal life to undesirable influences, it is not necessary that he should be detained in a Borstal School. These schools are introduced for the training and care of young persons who are by their circumstances, likely to enter upon a life of crime. (Mackney J.) Tin Hlaing Maung v. The King

A I R 1939 Rang 383=12 R Rang 147 = 184 I C 464 =41 Cr L J 22.

——S. 16 (e) — Offender between age of 15 and 16 years — If can be ordered to be detained in Training School for 4 years.

Where an offender, ordered to be detained in the Training School under S. 16 (e), Burma Prevention of Crime (Young Offenders) Act, for a period of 4 years, is of age between 15 and 16 years, the order is illegal, since he will have passed his 19th birthday by the time the 4 years' period of detention expires. In such cases the proper order is to detain him in the Training School till he attains his 19th birthday. (Mosely J.) The King v. Unoose

A I R 1938 Rang 228=11 R Rang 36=176 I C 217= 39 Cr L J 697.

——S. 16 (d)—Order under — No appeal filed—Revision, if lies.

A boy of ten years was convicted of an attempt to commit rape and an order was passed under S. 16 (d), Burma Prevention of Crime (Young Offenders) Act, committing the boy to the custody of his father on his father executing a bond to be responsible for the good behaviour of the boy. This order was an appealable order, and the boy did not file any appeal:

Held, that the High Court should not interfere in revision. (Dunkley J.) Emperor v. Nga Nyun

A I R 1935 Rang 393=1935 Cr Cas 1116=8 R Rang 267=159 I C 450=37 Cr L J 94.

BURMA PREVENTION OF CRIME (YOUNG OFFENDERS) ACT (III of 1930)

—S. 17.

——The section must be taken as having been modified by Burma Act XVIII of 1939, and can no longer affect the punishment to be awarded for offences by juveniles under 16 years against S. 112, Railways Act. (Mosely J.) The King v. Maung Tin Shwe

A I R 1941 Rang 181 = 1941 Rang L R 234 = 14 R Rang 19=195 I C 4=42 Cr L J 641.

—S. 20.

——The Burma Act does not make any distinction between an order committing to suitable custody a young person who has not been convicted of an offence and an order committing a youthful offender to such custody, and in both cases the young person, whether convicted or not, is committed to the care of a custodian under a "custody order", and if, in the case of S. 20 no bond were to be attached to the "custody order", there would be no conditions whatever attached to that order. (Dunkley J.) Emperor v. Khin Maung

A I R 1933 Rang 275=1933 Cr Cas 1019=6 R Rang 191=147 I C 1152=35 Cr L J 599.

——S. 20 (3)—Nature of custody order.

Under the provisions of S. 20, sub-s. (3), Burma Prevention of Crime (Young Offenders) Act, the only order which a Magistrate is entitled to pass is either an order sending the offenders to a Junior School or a custody order for the offenders to be detained in custody, for any period up to the age of 16. Where, however, a Junior School under the Act has not been established, the only course which a Magistrate, acting under S. 20, sub-s. (3), can adopt is to "make a custody order for him to be detained in custody for any period up to the age of 16." (Dunkley J.) Emperor v. Khin Maung

A I R 1933 Rang 275=1933 Cr Cas 1019=6 R Rang 191=147 I C 1152=35 Cr L J 599.

—S. 24.

——"Beyond age of 18" meaning of — Accused person between 15 and 16—Order of detention — Nature of order to be passed.

The expression "beyond the age of 18" in Burma Prevention of Crime (Young Offenders) Act must mean and include the period up to the 19th birthday of the person concerned. The duty of the Magistrate in such a case is to fix the age of the accused person as nearly as he can from the evidence. Where the accused is between 15 and 16 years of age and the Magistrate directs him to be detained in a Senior Training School for four years, the proper course is to fix his 15th birthday as a particular date and direct him to be detained till his 19th birthday. The order should be accompanied by a reference to the date upon which the 19th birthday occurs in order that the School Authorities may with certitude carry out the duties entrusted to them. (Roberts C. J., Leach and Dunkley JJ.) Emperor v. Nga Pyu

A I R 1936 Rang 485 = 9 R Rang 215=1936 Cr Cas 976=14 Rang 625=165 I C 575=38 Cr L J 33 (F B).

——S. 24, cl. (b) — "Beyond age of 18" includes period upto 19th birthday — Order of detention must fix exact age of accused.

The expression "beyond the age of 18" must mean and include the period up to the nineteenth birthday of the person, under cl. (b), S. 24, Prevention of Crime (Young Offenders) Act. A person ordered to be detained at a Senior Training School cannot be detained there beyond the age of 18. The Magistrate passing the order under the Act must fix the exact age of the accused. Consequently a person who is just under 16 years of age at the time of passing of the order can be ordered to be detained for a

BURMA PREVENTION OF CRIME (YOUNG OFFENDERS) ACT (III of 1930), S. 24

period of three years under S. 24 (b). (Dunkley J.) Emperor v. Nga Bala

A I R 1936 Rang 297=14 Rang 327=9 R Rang 55=163 I C 1008=37 Cr L J 869.

—S. 25.

——Order under S. 25—Nature of.

Per Ba U J. — (In order of reference) the order passed under S. 25, Prevention of Crime (Young Offenders) Act, has not the same legal effect as an order passed under S. 562, Criminal P. C., as it affects the offender directly on his person and deprives him of his liberty unlike an order under S. 562, Criminal P. C. It is, therefore, a punishment within the meaning of S. 3, Whipping Act, and S. 53, I. P. C. (Roberts C. J. and Dunkley J.) The King v. Kyaw Aye

A I R 1940 Rang 81 = 1939 Rang L R 744 = 12 R Rang 332=187 I C 405=41 Cr L J 455.

——S. 25 (1)—When under the provisions of S. 25 (1) the accused have been directed to be detained in Borstal School for a period of 5 years by the Second Additional Special Power Magistrate their appeal lies to the Court of Session of the district. (Dunkley J.) Nga Tha E v. Emperor

A I R 1936 Rang 229=14 Rang 143 = 8 R Rang 611 =1936 Cr Cas 513=163 I C 144=37 Cr L J 793.

——S. 25 (1)—Accused 16 years of age found guilty under Ss. 302 and 307, Penal Code, whether can be sent to Borstal School.

Section 25 (1), Burma Prevention of Crime (Young Offenders) Act, only allows an order directing the accused to be sent to Borstal School in a trial against a person between 16 and 19 where a sentence of imprisonment would ordinarily be passed and since an offence under S. 302, I. P. C., is not punishable with imprisonment, but with death or transportation for life, an order directing the accused aged 16 found guilty under Ss. 302, 337, I. P. C., to be sent to a Borstal School for seven years till he reaches the age of 23, is illegal. (Mosely and Ba U JJ.) Emperor v. Nga U

AIR 1936 Rang 234 = 8 R Rang 610 = 1936 Cr Cas 518 = 163 I C 118 = 37 Cr L J 791.

——S. 25 (1) — Order of detention in Borstal School for any period under Act—Whether amounts to enhancement of sentence within Criminal Procedure Code (Act V of 1898), S. 423 (1), cl. (b) (3).

An order for detention in a Borstal School for any period permitted by the provisions of the Burma Prevention of Crime (Young Offenders) Act, can never amount to an enhancement of sentence within cl. (b) (3), S. 423 (1), Criminal P. C. It is clear from S. 25, Burma Prevention of Crime (Young Offenders) Act, that an order of detention in a Borstal School is not a sentence of imprisonment ; in fact, it is something which is substituted for a sentence of imprisonment. It is also plain, from the scheme of the Act and the rules which have been made thereunder, that the period of detention ordered under this section on a juvenile accused bears no relation whatever to the sentence of imprisonment which would be passed on an adult accused for a similar offence. In considering the proper period of detention in a Borstal School entirely different and, in fact, almost opposite considerations arise to those which arise in considering the sentence of imprisonment to be passed on an adult (Dunkley J.) Emperor v. Ah Htwe

AIR 1936 Rang 227=14 Rang 119= 8 R Rang 609= 1936 Cr Cas 527 = 163 I C 74 = 37 Cr L J 790.

——Accused convicted of offences under Ss. 324 and 326, I. P. C. — Sentence of detention in Borstal School and whipping for these separate offences :

BURMA PREVENTION OF CRIME (YOUNG OFFENDERS) ACT (III of 1930), S. 25

Held, that the infliction of these separate punishments was legal, just and sensible. (Page C. J. and Das J.) Emperor v. Nga Ohn Shwe

AIR 1934 Rang 125 = 1934 Cr Cas 718 = 12 Rang 344 = 6 R Rang 286 = 149 I C 107 = 35 Cr L J 959.

——S. 25 (1) — Where the accused was convicted for an offence under S. 366-A, I. P. C., and sentenced both to detention at the Borstal School and also to receive 20 lashes :

Held, that the sentence of whipping in addition to punishment to which he was liable, not under the I. P. C. but under S. 25 (1), Burma Prevention of Crime (Young Offenders) Act, 1930, was illegal. (Page C. J. and Das J.) Emperor v. Shwe Bein

AIR 1934 Rang 123 = 6 R Rang 291 = 12 Rang 349 =149 I C 139 (1) = 35 Cr L J 903.

—S. 29.

——Injury on head causing substance of brain to protrude from head — Accused pleading that he did not intend injury to be fatal — Circumstances justified not only awarding of lesser sentence of transportation for life but recommendations of the case as first one to be dealt with under S. 29. (Roberts C. J. and Dunkley J.) Nga Khwat v. The King

AIR 1941 Rang 319 = 14 R Rang 166 =197 I C 786. 43 Cr L J 266.

BURMA PROCESS FEES ACT (I of 1910).

——Procedure — Criminal Procedure Code, Ss. 252 and 257—Non-cognizable warrant case— Process-fees not paid —Court is not bound to summon witnesses.

In a non-cognizable warrant case the Court is not bound to summon witnesses for the prosecution or the defence under Ss. 252 and 257 if the party at whose instance or in whose interest the process is issued does not pay process fees as required by Rr. 17 and 18 of the Process Fees Rules made under the Burma Process Fees Act, 1910. Ss. 252, 256 and 257 of the Code must be read as subject to the rules made under the Burma Process Fees Act, 1910. 16 Mad 234, Dist.; A. I. R. 1926 Rang. 13, Overruled. (Rutledge, C. J., Carr and Chari, JJ.) Emperor v. Tha Shwe

AIR 1926 Rang 164 = 4 Rang 146 = 98 I C 708 = 5 Bur L J 90 = 27 Cr L J 1396 (FB).

(BURMA) PUBLIC ORDER (PRESERVATION) ACT (XVI of 1947)

——Use of, for Penal Code offence.

The Act cannot be used for offences under the Penal Code. Where the allegation against a person is that he acted as an informer in connection with a dacoity, the Act cannot be resorted to. The Police authorities should prepare a charge-sheet and send him up for regular trial. (Ba U C. J., E Maung and Kyaw Myint JJ.) U Kyu v. Commissioner of Police, Rangoon

1949 Bur L R 18 (S C).

—S. 5.

——S. 5 (1)—Membership of Communist party and carrying on its propaganda.

Under the Constitution of the Union of Burma, to be a Communist and to propagate Communism by distributing literature on the subject would be acts within the lawful rights assured to a citizen, so long as he thereby does nothing to commit an unlawful act or cause a breach of the peace or public disorder. (Ba U C. J., E Maung and Kyaw Myint JJ.) Ma Khin Than v. Commissioner of Police, Rangoon

1949 Bur L R 13 (SC).

——Action by Police Commissioner — He should proceed in certain manner in accordance with law — Order must

(BURMA) PUBLIC ORDER (PRESERVATION) ACT (XVI of 1947), S. 5

be in writing—Procedure not in accordance with law— No order in writing at outset — Detention is illegal, even though Police Commissioner might have good and sufficient grounds for what he did. (Ba U C. J. (Union of Burma), E Maung and Kyaw Myint JJ.) Bo San Lin v. Commissioner of Police

1948 Bur L R 372 (S C)

——S. 5 (a) — Police Commissioner must be satisfied of certain circumstances — Ex post facto detention is illegal —Single order in respect of 71 persons arrested at different places on different dates — Order deprecated. (Ba U C. J. (Union of Burma) E Maung and Kyaw Myint JJ.) Bo San Lin v. The Commissioner of Police.

1948 Bur L R 372 (S C).

—S. 5-A.

——To justify detention under S. 5-A, a written order is necessary — Retrospective order is illegal. (Ba U C. J., Maung and Kyaw Myint JJ.) Daw Aye Nyunt v. Commissioner of Police, Rangoon

1949 Bur L R 5 (S C).

——To strike and induce others to strike.

To strike or to induce others to strike, provided no unlawful means are used, to carry messages relating to the strike between one group and another, are in themselves within the legitimate rights of a citizen of the Burma Union and is not a valid ground for detention. (Ba U C. J., E. Maung and Kyaw Myint JJ.) Daw Aye Nyunt v. Commissioner of Police, Rangoon.

1949 Bur L R 5 (S C).

——S. 5-A (1) (b) — Detention for offence under Act not permitted where offence is provided for in Criminal P. C. (Ba U C. J., E Maung and Kyaw Myint JJ.) Ma Kyin Hnin v. The Commissioner of Police, Rangoon

1948 Bur L R 777 (S C).

——Arrest and detention on suspicion not valid — Detention for same offence of which detenu acquitted by Court illegal —Detention under verbal order not legal — Subsequent order in writing does not validate — Jurisdiction of authority confined to specified area— Detenu neither resident nor engaged in unlawful acts within jurisdiction brought under arrest—Authority does not get jurisdiction. (Ba U C. J., E Maung and Kyaw Myint JJ.) Ma Kye Kyi v. Commissioner of Police, Rangoon

1948 Bur L R 772 (S C).

——Detention under — Habeas corpus — Criminal P. C., S. 491.

It cannot be required of the police when acting under S. 5A of the Burma Public Order (Preservation) Act to act on such materials only as would be sufficient for conviction at a criminal trial.

On the other hand, the power to detain a person under the Act is not absolute but is always subject to the jurisdiction of the Supreme Court which has power to enquire into the legality or the sufficiency of any decision of a judicial or quasi-judicial body. (1942) 2 K B 14, Rel. on.

The Supreme Court while making enquiry in proceedings in the nature of habeas corpus does not exercise its appellate jurisdiction.

The Supreme Court has the power and is under a duty to direct the release of the prisoner in spite of the legality of the original arrest and detention in its inception if by the time the return is made, either because of lapse of time or because of events supervening, the continued detention becomes illegal. (Ba U C. J., E Maung and Kya Myint JJ.) Maung Hla Gyaw v. The Commissioner of Police, Rangoon

1948 Bur L R 764 (S C).

——S. 5A (1) (b) — Arrest under verbal order illegal — Subsequent order in writing cannot validate detention. (Ba U C. J., E Maung and Kyaw Myint JJ.) Ah Nywe v.

(BURMA) PUBLIC ORDER (PRESERVATION) ACT (XVI of 1947), S. 5-A

Commissioner of Police, Rangoon,

1948 Bur L R 737.

——S. 5A (1) (b) — Detention under — Order of detention made in good faith—High Court will not interfere.

Where there is nothing except the bare suggestion of the applicant that the authority in passing the order of detention was not acting bona fide the High Court will not interfere to hold that, that he should not have arrived at that finding. (Sir Ba U C. J., E Maung and Kyaw Myint JJ.) Tinsa Maw Naing v. Commissioner of Police, Rangoon,

1948 Bur L R 571 (Supreme Court).

—S. 9.

——Proceedings under Art. 25, Burma Constitution Act —Supreme Court can consider whether action taken by Commissioner of Police under Burma Public Order (Preservation) Act, 1947, is legal or not—If orders under S. 5 (a) and (b) of Act of 1947 are invalid and not in accordance with requirements of Act orders are not in exercise of powers conferred by Act (Ba U C. J.) (Union of Burma), E Maung and Kyaw Myint JJ.) Bo San Lin v. Commissioner of Police,

1948 Bur L R 372 (Supreme Court).

——Rights conferred by Art. 25 of Burma Constitution on citizen are indefeasible — Provisions of S. 9, if they purport to exclude jurisdiction of Supreme Court, they are void—Supreme Court can consider whether action of Police Commissioner under Act is legal or not. (Ba U C. J. (Union of Burma), E Maung and Kyaw Myint JJ.) Bo San Lin v. Commissioner of Police,

1948 Bur L R 372 (Supreme Court).

—S. 54.

——S. 54 (1) — Publication of report in newspapar likely to excite disaffection towards Government.

Merely because a person was responsible for publication of a false and misleading report in a newspaper, which was likely to excite disaffection towards the Government of the day, is not sufficient to entertain a reasonable apprehension of threatened prejudice to public safety or the maintenance of public order. (Ba U C. J., E Maung and Kyaw Myint JJ.) Ma Than Sint v. Commissioner of Police Rangoon,

1949 Bur L R 1 (S C).

(BURMA) PUBLIC PROPERTY PROTECTION ACT (1947)

—S. 2.

——Ss. 2 (ii) (b) and 7 (2) — "Prejudicial Act" explained —Officer arresting should act bona fide — Irrationality alone not sufficient to disprove bona fide.

The issue of licences ex post facto and procuring the issue of such licences by illegal means would clearly be an act which directly or indirectly abets or incites or facilitates the contravention of any rule and order made under the Control of Imports and Exports (Temporary) Act, 1947 and such act would be a "prejudicial act" within the meaning of S. 2 (ii) (b) of the Protection Act and may also fall within the definition of the term in sub-cl. (a) of the same section.

Section 7 (2) empowers the officer to arrest without warrant a person whom he suspects of having committed a prejudicial act or committing one at the moment. He has the right to act under the section if his suspicion is bona fide i.e., honest. That he suspected irrationally by itself would not be sufficient to hold that his suspicion lacked bona fides.

Therefore where the affidavit of the officer stated that he suspected the detenu of being concerned in receiving licences to import and export goods by illegal means contrary to the rules made by the Government in that behalf and also of having caused loss of revenue payable by way of customs duty it was held that the obvious reference in these statements was to the practice admitted by the applicant of importers, before obtaining licences, to ship goods into the ports in Burma Union and obtaining licences only after the goods have arrived at the ports which was a prejudicial act and therefore the officer was within his right to have acted as he did. (Sir Ba U C. J., E Maung and Kyaw Mynit JJ.) Daw Khin Tee v. U Chan Tha,

1948 Bur L R 562 (Supreme Court)

—S. 7.

——S. 7 (2)—Arrest under— Nature of suspicion in commitment order under S. 7 (3) not required to be stated — Reference to nature in order does not vitiate order.

A person making the arrest under S. 7 (2) has to make up his mind that there are grounds for suspecting that the person to be arrested had either committed a prejudicial act or was committing such an act or had committed one such act and was further in the course of committing another such act. But it is not necessary to set out in the order of commitment under S. 7 (3) the nature of suspicion entertained by the officer. Therefore, a redundant reference to the nature of suspicion which by omission was not scored out from the order cannot affect validity of the order or become conclusive evidence of the nature of the suspicion which led to the arrest. (Sir Ba U C. J., E Maung and Kyaw Myint JJ.) Daw Khin Tee v. U Chan Tha

1948 Bur L R 562 (Sup. Court).

—— S. 7 (2) — Arrest under — Officer unable to decide whether prejudicial act either had been committed or was being committed—Arrest can be made without decision.

The dividing line between a completed prejudicial act in the course of commission is a thin one. From one point of view the prejudicial act may have been completed and from another it may still be in the course of commission. The act and consequences flowing therefrom are sometimes so entangled that it would be well-nigh impossible to dissociate one from the other. In such a case the officer in spite of his not being able to make up his mind whether the person to be arrested had completed a prejudicial act or was still in the course of committing that act, has the right to act under S. 7 (2). (Sir Ba U C. J., E Maung and Kyaw Myint JJ.) Daw Khin Tee v. U Chan Tha,

1948 Bur L R 562 (Sup. Court).

——S. 7 (2)—Authority under, cannot be invested in Public Property Protection Committee to arrest without warrant—Committee is not officer who can arrest — Committee has to entertain suspicion as preliminary to arrest —Entertainment of suspicion cannot be delegated to one member by the rest—Committee cannot delegate power of arrest to one member thereof — There is no provision in S. 7 (2) as in Ss. 56 and 65, Criminal P. C. as to delegation of power of arrest—Question of administrative inconvenience in requiring high official to arrest personally cannot outweigh liberty of subject—Detention under preliminary order is invalid. (Ba U C. J., (Union of Burma), E Maung and Kyaw Myint JJ.) G. N. Banerji v. The Superintendent, Insein Jail, Annexe, Insein,

1948 Bur L R 199 (Sup. Court).

——S. 7 (5)—Exercise of powers under, by President of Union—Receipt of report from officer arresting is condition precedent — In absence of report, further order of detention is invalid. (Ba U C. J., (Union of Burma) E Maung and Kyaw Myint JJ.) G. N. Banerji v. The Superintendent, Insein Jail, Annexe, Insein,

1948 Bur L R 199 (Sup. Court).

(BURMA) PUBLIC PROPERTY PROTECTION ACT (1947), S. 7

——S. 7 (5)—Law requires the satisfaction of President of Union. (Ba U C. J., (Union of Burma), E Maung and Kyaw Myint JJ.) G. N. Banerji v. The Superintendent, Insein Jail, Annexe, Insein,

1948 Bur L R 199 (Sup Court).

BURMA RURAL SELF-GOVERNMENT ACT (IV of 1921).

—S. 12.

——Bye-laws—Abetment of breach of bye-laws is not offence under Penal Code, S. 109.

The abetment of a breach of the bye-laws framed by a District Council under the authority of the Burma Rural Self-Government Act is not punishable under S. 109, I. P. C., as it is not an abetment of an offence within the meaning of that section. 23 P. R. 1894 Cr., Rel. on. (Mya Bu J.) Ma Khwet Kyi v. Emperor,

AIR 1929 Rang 75=6 Rang 791=115 I C 664=12 A I Cr R 307=30 Cr L J 509.

—S. 77.

——Clerk of Circle Board letting out his house to Board —No permission of Commissioner taken — Offence under S. 77 read with S. 168, Penal Code (Act XLV of 1860), is committed.

Section 77, Burma Rural Self-Government Act, does not limit contracts intended to be covered by its penal provision only to such contracts as may be related to the matters mentioned in Ss. 48, 50 and 56 of the Act.

Where a Clerk of a Circle Board rents his house to the Board for using it as an office, without the permission from the Commissioner in writing as required by S. 77, Burma Rural Self-Government Act, he commits an offence under S. 168, Penal Code, read with S. 77, Burma Rural Self-Government Act, as he is interested in the contract made by the Board. (Shaw J.) King v. Maung Saw Han,

AIR 1939 Rang 69=11 R Rang 343=179 I C 716=40 Cr L J 248.

—S. 79.

——Rules under, R. 55—Decision of District Judge under —Appeal or revision to High Court, if lies.

In performing the functions laid upon him by the rules made under the Rural Self-Government Act the District Judge does not act as a Court and his proceedings are not subject to appeal or to revision by the High Court because he acts as a persona designata. (Mackney J.) U Aung Myin U v. District and Sessions Judge, Henzada,

AIR 1940 Rang 148=13 R Rang 19=188 I C 795=41 Cr L J 687.

—Sch. II.

——O. 1, Cl. 1, sub-cl. (1) (b) — 'Have been assessed', meaning of—Person's name should actually appear in assessment roll as assessee — Proof of—Extract from assessment rolls.

The words "have been assessed" in Sch. II, O. 1, cl. 1 sub-cl. (1) (b), Burma Rural Self-Government Act, do not merely mean "have paid" land revenue but that the person's name actually appears in the assessment rolls as assessee. To prove that an elector had been assessed to land revenue on not less than ten acres of land for a continuous period of not less than 6 years preceding the financial year, etc., the only method is to produce extracts from relevant assessment rolls. (Mackney J.) Tun Gaung Maung Kaung v. Emperor,

AIR 1937 Kang 318=10 R Rang 128=171 I C 86=38 Cr L J 1015.

BURMA SALT ACT (II of 1917)

—S. 9.

——Ss. 9 (c) and 14—Rules under Rr. 41 and 42—Scope.

Rules 41 and 42 under the Salt Act by implication make the removal of salt without a pass illegal. (Chari J.) Nga Yok O v. King-Emperor,

AIR 1927 Rang 120=5 Bur L J 220=101 I C 496=28 Cr L J 464.

BURMA SALT ACT (II of 1917), S. 9

BURMA SPECIAL CRIMES (TRIBUNAL) ACT (LIII of 1947).

——Right of trial by jury given by Criminal P. C. can be validly taken away by Act of Burma Legislature or Act of Governor made under S. 139, Government of Burma Act (1935), (Ba U. C. J. (Union of Burma) E Maung, J. and U Thein Maung C. J.) (H C) U Saw v. The Union of Burma,

1948 Bur L R 249 (Supreme Court).

——Act is not ultra vires the powers of Government of Burma—By establishment of new Court, Governor did not assume to himself powers rested in High Court—He was entitled to establish Special Tribunal as Legislative Assembly of Burma could establish new or collateral Court—Fact that High Court was holding criminal session was immaterial—Effect of Government of Burma (Temporary) Provisions Act (1945), Notification No. 94 dated 24th July 1945, and Government of Burma Act (1935), S. 139 (3), considered. (U On Pe, U San Maung and U Bo Gyi JJ.) U Saw v. The Union of Burma,

1948 Bur L R 217.

BURMA SPECIAL JUDGES ACT (X of 1943).

——The Act is valid. Section 84, Government of Burma Act, is subject to any Act of the Legislature. In virtue of the Proclamation dated 10-12-1942 issued by the Governor of Burma under the emergency powers conferred by S. 139, Government of Burma Act, whereby he assumed to himself the powers of the Legislature under the Government of Burma Act he could validly alter the pre-existing jurisdiction of and the law administered in the High Court as described in S. 84, Government of Burma Act, at least to the extent to which he has done in the Special Judges Act which in truth is an Act of the Legislature within S. 84, Government of Burma Act. The infringement by the Special Judges Act of the subject's right as regards the mode of trial and the right of appeal was justifiable in law as a war-time emergency or temporary measure. It is a fallacy to say that by establishing the Court of Special Judge with its own jurisdiction under the Special Judges Act the Governor was assuming to himself the powers vested in the High Court or altering the jurisdiction of the High Court so as to constitute an infringement of the proviso to S. 139 (1), Government of Burma Act. (Lord Wright, Porter, Simonds, Uthwatt and Sir John Beaumont) Chittambaram v. Emperor,

AIR 1947 P C 85=51 C W N 529=1947 M W N 334=49 Bom L R 564=1947 Mad W N Cri 74 (PC).

BURMA SUPPRESSION OF BROTHELS ACT (II of 1921).

—S. 11.

——S. 11 (a)—Offence under—Proper sentence.

The proper penalty for the offence of managing a brothel under S. 11 (a), Burma Suppression of Brothels Act, is that the offender should be sent to prison, and a sentence of fine and in default imprisonment is entirely inadequate for such an offence. The offences of this kind will only be stamped out when a sentence of imprisonment is passed. (Roberts C. J.) M. Ulla v. The King,

AIR 1938 Rang 107=10 R Rang 439=174 I C 885=39 Cr L J 494.

BURMA TOWNS ACT (III of 1907).

—S. 7.

——Headman—To provide coolies to take out a Deputy Commissioner's letters from his headquarters does not form a part of the ordinary duty of a ward headman. (Heald A. J. C.) Emperor v. Nga Po Sin,

(1920) 3 U B R 234=60 I C 63=22 Cr L J 207.

—S. 9.

——S. 9 (2) — Headman — Refusal to convey letters not illegal—Ordinary duties of headman.

If a person residing within a ward is requested by the headman to convey letters to the Deputy Commissioner's camp and he fails, he is not guilty under S. 9 (2) as to provide coolies to convey such letters is not a part of the ordinary duty of the headman. (Heald, A. J. C.) Emperor v. Nga Po Sin,

(1920) 3 U B R 234=60 I C 63=22 Cr L J 207.

BURMA UNION JUDICIARY ACT

—S. 6.

——Special leave in criminal matters for appeal to Supreme Court — Rules followed by Privy Council will be followed—Principles indicated.

The Supreme Court of Burma is one constituted as a Court of final appeal and its powers in criminal matters are regulated by sections 5 (a) and 6 of the Union Judiciary Act.

Though the jurisdiction of Supreme Court and that of the Privy Council in criminal matters flow from two different sources and this difference in the origin of the jurisdiction of the two Courts is a matter which must not be lost sight of, yet it is clear that many of the rules laid down by the Privy Council in England in the various cases coming before it on application for special leave to appeal in criminal matters, are rules of wisdom and should receive from the Supreme Court a respectful attention and should ordinarily act as guidance in the discharge of its functions under S. 6 of the Union Judiciary Act.

Circumstances vary with cases and the variations may be so diverse that it would be futile to make an exhaustive definition to the limits within which only this Court, in its discretion, would grant special leave to appeal in criminal matters.

If the application for special leave raises questions of great and general importance which are likely to occur often and which questions, if not rightly answered, would interrupt the due and orderly administration of justice or divert the administration of justice into a new and erroneous course, creating a wrong precedent for the future, the Supreme Court would interfere by way of an appeal by special leave in criminal matters. (Ba U C. J. (Union of Burma), E Maung J. and U Thein Maung C. J.) (H C), U Saw v. The Union of Burma,

1948 Bur L R 249 (Supreme Court)

——Is a residuary provision—Remedy provided in S. 25, Burma Constitution Act for issue of directions in nature of habeas corpus — Special leave under S. 6 for appeal against orders of High Court under S. 491, Criminal P. C., will not be granted.

Section 6 of the Burma Union Judiciary Act clearly provides for cases which do not come within the purview of S. 5. It is what is called a residuary provision of law enacted with the sole intention that no subject of the Union shall go without redress by this Court if he has a genuine and a well-founded grievance either against another subject of the Union or against the State itself. Being a residuary provision, it can be made use of only when there is no other remedy open to an allegedly aggrieved subject of the Union. Where there is an effective remedy provided for the applicant in S. 25 of the Constitution, for the issue of directions, in the nature of habeas corpus, the Supreme Court will not grant a special

BURMA UNION JUDICIARY ACT, S. 6

leave under S. 6 of the Union Judiciary Act, to appeal from an order of the High Court under S. 491, Criminal P. C. (Ba U C. J. (Union of Burma), E Maung and Kyaw Myint JJ.) Ma Mar Mar v. P. S. O., Ahlone,

1948 Bur L R 214 (Supreme Court)

BURMA (UPPER) CRIMINAL JUSTICE REGULATION (V of 1892)

—S. 15.

——Interference by the Judicial Commissioner.

Under S. 15, the Judicial Commissioner will not interfere with the order of a District Magistrate though procedure is irregular unless it has caused failure of justice. (Heald, A. J. C.) Nga San Dun v. Emperor,

60 I C 997=(1920) 3 U B R 270=22 Cr L J 309.

BURMA (UPPER) RUBY REGULATION (XII of 1887)

—S. 8.

——Application of.

When an offence under S. 6 has been committed, S. 8 should be applied even though the purchaser of the stone might have acted bona fide. (Duckworth, J.) Maung Po Lon v. Emperor,

A I R 1925 Rang 12=84 I C 433 = 3 Bur L J 168 = 2 Rang 321=26 Cr L J 289.

BURMA VACCINATION LAW (AMENDMENT) ACT (I of 1909)

—S. 4.

——S. 4 and S. 13—Vaccination—Child above six months—Parent refusing to allow child to be vaccinated—Conviction under S. 13 is unsustainable — Procedure must be followed as laid down in Vaccination Act (XIII of 1880), Ss. 17, 18 and 22.

In Burma Act, I of 1909, S. 4 is the only provision under which vaccination of a child can be ordered and that section applies only if the child is under six months of age and had been exposed to infection. There is nothing in Burma Act I of 1909 to authorise any officer to require the parent of a child over six months of age to have it vaccinated. In such cases S. 9, Vaccination Act (XIII of 1880), would apply and then the procedure prescribed in Ss. 17, 18 and 22 must be followed. Conviction of a person under S. 13 (1), Burma Vaccination Act, for refusing to allow his child to be vaccinated cannot be sustained. (Carr, J.) Emperor v. Maung Ba Win,

A I R 1929 Rang 150 = 7 Rang 14 = 117 I C 246 = 1929 Cr C 58=30 Cr L J 750.

——Scope of.

Section 4 of the Act applies only when the child to be vaccinated is under six months and has been exposed to certain possibilities of infection. If the section is to be used, the second paragraph must be complied with and no summary procedure is possible. (Saunders, J. C.) Emperor v. Nga Po Kan,

(1913) U B R I 162=20 I C 404=14 Cr L J 420.

—S. 7.

——Applicability of.

Section 7 of the Act refers to inmates of lodging houses and persons living under other special conditions. (Saunders, J. C.) Emperor v. Nga Po Kan,

(1913) U B R I 162=20 I C 404=14 Cr L J 420.

BURMA VILLAGE ACT (BURMA ACT III of 1889)

—S. 12.

——Disobedience of Thugy's order to reap is an offence—Reaping is public duty.

The reaping and measuring of paddy for the purpose of revenue assessment, is a public duty within the meaning

BURMA VILLAGE ACT (BURMA ACT III of 1889), S. 12

of S. 12, and it is an offence under the Act for a villager to refuse to comply with a requisition of the Headman to assist him in such work. (Duckworth, J.) Pan Bu v. Emperor,

A I R 1923 Rang 81=1 Bur L J 150=11 L B R 412=77 I C 419=25 Cr L J 371.

BURMA VILLAGE ACT (VI of 1907)

——Police officer—Evidence Act, S. 25—Village headman is not a police officer though invested with power of arrest.

The mere bestowal on a village headman of some powers of arrest as are given to a police officer, does not make him a police officer any more than it makes a Magistrate a police officer. A confession therefore made to him is not inadmissible in evidence but the weight to be attached to such confession will depend on the circumstances of the case and the part he has taken in the elucidation of the crime. 1 L B R 65, Affirmed. (Young, Offg. C. J., Heald and May Oung, JJ.) Nga Myin v. Emperor,

A I R 1924 Rang 245 = 2 Rang 31 = 81 I C 540 = 3 Bur L J 11=25 Cr L J 924 (FB).

—S. 8.

——Ss. 8, 11 (d), 12 (ii)—Headman, duties of — Refusal of villager to help headman to carry injured person to hospital — Whether offence under S. 12 (ii) — Fact of injured person being Government Officer—Whether makes any difference.

The public duties of a headman are enumerated in S. 8, Burma Village Act, and it is not the public duty of a headman to despatch an injured person to hospital. Consequently, refusal of a villager to help the headman to carry an injured person to the hospital does not constitute an offence within the meaning of S. 12 (ii) read with S. 11 (d) even if the injured person is a Government Officer, which fact does not impose any duty on villagers not prescribed by the Burma Village Act itself. (Mosely J.) Emperor v. Maung Tha Tin,

A I R 1936 Rang 120 = 1936 Cr Cas 195=8 R Rang 496=161 I C 604=37 Cr L J 468 (1).

—S. 10.

——Ss. 10, 28 — Complaint against headman—Act complained, punishable departmentally—Previous sanction of Deputy Commissioner, necessity of.

Where the act of which the person is complaining is also punishable departmentally by the Deputy Commissioner under S. 10 of the Burma Village Act, then the sanction of the Deputy Commissioner to the prosecution is necessary. (Dunkley J.) Ba Shin Maung v. Emperor,

A I R 1936 Rang 11 = 8 R Rang 386=1936 Cr Cas 4 =160 I C 477=37 Cr L J 295.

——"Abuse of power" meaning of.

An abuse of a power means that when a person has power to do a certain thing, he exercises that power in a manner in which authority is not given to him to exercise it. (Dunkley J.) Maung Ba Shin v. Emperor,

A I R 1936 Rang 11=1936 Cr Cas 4=8 R Rang 386 =160 I C 477=37 Cr L J 295.

——Ss. 10, 28—Meaning and effect of—Complaint, when can be entertained—Institution of prosecution with sanction of Deputy Commissioner—Necessity of.

The meaning and effect of Ss. 10 and 28, Burma Village Act, is that no Court can entertain a complaint against a headman in respect of any act or omission punishable under S. 10, unless the prosecution has been instituted with the sanction of the Deputy Commissioner, notwithstanding that the complaint may also disclose offences punishable under some other law. (Page C. J. and Mya Bu J.) Sein Tha U v. Maung Kyaw Khine,

A I R 1935 Rang 137 = 1935 Cr Cas 540=7 R Rang 378=13 Rang 336=156 I C 149=36 Cr L J 875.

BURMA VILLAGE ACT (VI of 1907)

—S. 12.

——Person who did not pay thathameda tax directed by village headman to appear at Township Office—Failure to appear.

The payment of thathameda tax is not a public duty imposed upon a villager by the Village Act, nor is it any part of his public duties to betake himself to any spot which the headman chooses to order him to visit. If therefore a person who has not paid his thathameda tax is directed by his headman to appear at a Township Office but fails to do so, he does not commit any offence punishable under S. 12 of the Village Act. (Mackney J.) The King v. Maung Kan Tun.

A I R 1938 Rang 180 = 1938 Rang L R 119 = 10 R Rang 505 (1)=175 I C 512=39 Cr L J 626.

——Refusal of a villager to help headman to carry injured person to hospital does not constitute an offence within the meaning of S. 12 (ii) read with S. 11 (d) even if the injured person is a Government Officer. (Mosely J.) Emperor v. Maung Tha Din.

A I R 1936 Rang 120=8 R Rang 496 = 1936 Cr Cas 195=161 I C 604=37 Cr L J 468 (1).

——Disobedience—Disobedience of Thugy's order to reap for revenue purposes is an offence.

The reaping and measuring of paddy, for the purpose of revenue assessment, is a public duty within the meaning of S. 12, and it is an offence under the Act for a villager to refuse to comply with a requisition of the headman to assist him in such work. (Duckworth J.) Pan Bu v. Emperor.

A I R 1923 Rang 81=11 L B R 412 = 77 I C 419 = 1 Bur L J 150=25 Cr L J 371.

—S. 19.

——Disobedience — Disobedience of order to remove to another site is no offence.

Refusing to obey an order given to the accused by the headman to remove to another site, which had been provided for them, is not an offence under S. 19. (MacColl A. J. C.) Emperor v. Nga Sein.

A I R 1923 Rang 132=4 U B R 127 = 76 I C 1039= 25 Cr L J 319.

——S. 19 (1)—Conviction—When sustainable.

To justify a conviction under S. 19 (1), the accused should be shown to have built his house without the permission of the Deputy Commissioner and later than 1908. (Saunders A. J. C.) Emperor v. Nga Nyo.

A I R 1914 U B 5 (1)=(1913) U B R 180=23 I C 202 =15 Cr L J 250.

—S. 20A.

——Receiving in pawn—Rules under—Receiving an article in pawn without a licence is not offence.

Section 20-A and the rules under it do not create any such offence as that of receiving an article in pawn without a licence. What they do make punishable is the carrying on of the business of a pawn-broker. (Carr J.) Emperor v. Mutu Alagi.

A I R 1928 Rang 158=6 Rang 108=10 A I Cr R 400 =110 I C 102=29 Cr L J 646.

—S. 21.

——S. 21 (1) (a)—Offence under.

The word "Pwe" as used in the Burma Village Act means only "anyein pwes" performed for profit, or by travelling troupes who tour for the purpose of performing such pwes, and does not include the other performances to which the term is loosely applied in the Burmese language. (Meung Kin J.) Emperor v. Ma Le.

13 Bur L T 243=63 I C 865=22 Cr L J 705.

BURMA VILLAGE ACT (VI of 1907), S. 21

——S. 21 (3)—Anyein is not pwe.

The object of the Act is not to control all the amusements of the villagers. An ordinary anyein cannot be considered to be a pwe within S. 21 (3), unless it is performed for profit or by travelling troupes. (Maung Kin J.) Emperor v. Male.

13 Bur L T 243=63 I C 865=22 Cr L J 705.

—S. 21A.

——Pwe—Pwe included performance for public entertainment—Entertainment at an Ahlu comes within the section and holding Ahlu without permit is an offence.

Pwe ordinarily includes a theatrical or dramatic performance held for public entertainment whether on public or private property. The object of requiring a permit is to ensure that the authorities get timely notice to arrange for precautionary measures. Where performance was for public entertainment at an ahlu and the authorities had not been given any notice and a robbery took place.

Held, that though the troupe was composed of local amateurs the offence was committed under the section. (Maung Ba J.) Emperor v. Nga Than Gyaung.

A I R 1925 Rang 375=92 I C 854 = 4 Bur L J 145= 3 Rang 514=27 Cr L J 342.

—S. 23.

——Revision — Deputy Commissioner as such cannot revise order of conviction for an offence under the Act or rules thereunder.

The conviction and sentence of a person for an offence made punishable by the Act or rules made under it is not "an order made under this Act." Nor is a Magistrate, when exercising his jurisdiction as such, "an authority subordinate to the Deputy Commissioner" and therefore an order of conviction for such an offence cannot be revised by the Deputy Commissioner as such. (Carr J.) Emperor v. Mutu Alagi.

A I R 1928 Rang 158=6 Rang 108=10 A I Cr R 400 110 I C 102=29 Cr L J 646.

——Order of Deputy Commissioner, if wrong, can be set aside by High Court (Obiter).

It is the duty of the High Court, and within its powers, on the matter being brought to its notice, to declare that an order of the Deputy Commissioner even though he is not a criminal Court, is of no effect if it is wrong. (Carr J.) Emperor v. Mutu Alagi.

A I R 1928 Rang 158=6 Rang 103=10 A I Cr R 400 =110 I C 102=29 Cr L J 646.

—S. 28.

——Section 28, Burma Village Act, refers to a complaint of an act which constitutes an offence under the I. P. C. or any other law if such act is also punishable departmentally under S. 10 of the Act. (Dunkley J.) Ba Shin Maung v. Emperor.

A I R 1936 Rang 11=1936 Cr Cas 4=8 R Rang 336 =160 I C 477=37 Cr L J 295.

——Complaint against headman without sanction—Duty of Magistrate is to reject it and inform the complainant to apply for Deputy Commissioner's sanction. (Carr J.) Po Thit Maung v. Maung Pyu.

A I R 1931 Rang 87 = Ind Rul (1931) Rang 188 = 8 Rang 654=1931 Cr Cas 375=132 I C 556=32 Cr L J 938.

——In granting sanction the Deputy Commissioner should not prejudge the case by limiting his sanction to a particular offence. (Carr J.) Maung Po Thit v. Maung Pyu.

A I R 1931 Rang 87=8 Rang 654 = Ind Rul (1931) Rang 188=1931 Cr Cas 375=132 I C 556=32 Cr L J 938.

——Scope — Does not apply where Magistrate takes cognizance of offence of his own motion under Cr. P. Code, S. 190 (1) (c).

BURMA VILLAGE ACT (VI of 1907), S. 28

The terms of S. 28, Burma Village Act, must be strictly construed. The section applies only to the entertainment of a complaint and does not impose any restriction upon the prosecution of a headman if the prosecution is instituted otherwise than on complaint. It does not, therefore, apply to a case in which a Magistrate of his own motion takes cognizance of an offence under the provisions of S. 190 (1) (c), Cr. P. Code. (Carr J.) Emperor v. Nga Po Win.

A I R 1930 Rang 253 = 8 Rang 246 = 125 I C 360= 1930 Cr C 906=31 Cr L J 867.

——Procedure—Offence within the Act must be prosecuted under the authority of Deputy Commissioner but not other offences.

A Village headman is protected by S. 28 of the Village Act to this extent that he cannot be prosecuted for an act or omission punishable under S. 10 of the Act or for an abuse of his power similarly punishable, even though such act or omission or such abuse of power is punishable under the Indian Penal Code or some other law unless the prosecution is instituted by order of or under authority from, the Deputy Commissioner. The village headman has no power to cause hurt to or insult another person and there appears to be no reason why a Magistrate should not enquire into the charges brought against the headman under Ss. 323 and 504 of the Indian Penal Code. 1 L B R 336, Foll. (Saunders J. C.) Nga Tun Lin v. King-Emperor.

A I R 1923 Rang 27=4 U B R 101 = 73 I C 325 = 1 Bur L J 245=24 Cr L J 581.

BURMESE BUDDHIST LAW

——Maintenance—Husband taking lesser wife—Right of chief wife to demand separate residence — *See* Cr. P. C., S. 488.

9 Cr L J 25 (L B).

——Marriage—Validity—*See* Criminal P. C., S. 488.

BYE-LAW

—Laxity in enforcement.

See Calcutta Municipal Act (3 of 1899), Sch. 15, R. 4.

CALCUTTA COTTON CLOTH AND YARN EMERGENCY SEARCH ORDER (1945)

——Notice to dealer not necessary before his premises are sealed.

The Calcutta Cotton Cloth and Yarn Emergency Search Order which falls within the powers conferred by R. 81 (2) (f) of the Defence of India Rules does not require notice to be given before the premises are searched or sealed. Therefore, the action taken by the Police Officers acting under this Order, in sealing certain premises of a dealer cannot be questioned on the ground of absence of notice. (Derbyshire C. J. and Gentle J.) Khetsidas Girdharilal v. v. Pratapmull Rameswar

AIR 1946 Cal 197=49 C W N 595=1945 F L J 205 =ILR (1947) 2 Cal 95.

(CALCUTTA) HIGH COURT APPELLATE SIDE RULES

—R. 4.

——R. 4 (a) — Revision against order of Small Cause Court—Practice.

The established practice of the Calcutta High Court is that applications for revision of orders by the Calcutta Small Cause Court are heard by a single Judge on the Original side of the High Court. Rule 4 (a) of the Appellate Side Rules confirms the practice, and under it jurisdiction for revision of orders by the Small Cause Court is

(CALCUTTA) HIGH COURT APPELLATE SIDE RULES—R. 4

vested in a single Judge on the Original Side. (Pugh J.) Ramadhin Bania v. Sewbalak Singh

37 C 714=14 C W N 806=6 I C 473=11 Cr L J 357.

—R. 9.

——Part 1, Chap. II, R. 9, Proviso — Forfeiture of property — Meaning — Order under Ss. 431 and 432, Bengal Municipal Act, 1932—Nature of — (Bengal Municipal Act (15 of 1932), Ss. 431, 432) — (Words and Phrases — Forfeiture).

According to the dictionary meaning of the word 'forfeiture' the loss or the deprivation of goods has got to be in consequence of a crime, offence or breach of engagement or has to be by way of penalty of transgression or a punishment for an offence. Unless the loss or deprivation of the goods is by way of a penalty or punishment for a crime, offence or breach of engagement it would not come within the definition of forfeiture.

The orders mentioned in the proviso to R. 9 of the Rules of the High Court are purely orders by way of penalty or punishment for the commission of crimes of offences and the forfeiture of property mentioned there is no other than the one which is entailed as a consequence of the commission of a crime or offence.

An order of a Magistrate under Ss. 432 and 432, Bengal Municipal Act, 1932, is not a punishment for a crime but is a measure to ensure that the condemned food or drug is not used as human food or medicine. It is, therefore, not an order for forfeiture of property within the meaning of the Proviso to R. 9 as would bar the jurisdiction of the single Judge to entertain and decide a reference relating to it. (Mahajan and Bhagwati JJ.) The Chairman of the Bankura Municipality, Bankura, v. Lalji Raja and Sons

AIR 1953 S C 248=1953 S C A 298=1953 S C J 320 =1953 S C R 767=1953 Cr L J 1101.

CALCUTTA HIGH COURT GENERAL RULES AND ORDERS (CIVIL)

—R. 953.

——Rr. 953, 951—Provisions as to fine, if ultra vires.

Per S. K. Ghose J. — The imposition of a fine cannot be administrative and the fine prescribed by R. 953 cannot be realised as a fine imposed by the Court in a judicial proceeding. By that rule it was apparently intended that the fine would be imposed by the Court acting administratively, and further that it should provide an alternative to the more rigorous penalty of suspension or dismissal. There is, however, no process by which the fine can be realised, except as a voluntary payment. But an alternative to suspension and dismissal by way of penalty is not provided for in the Act (Legal Practitioners Act) and would not be consistent with its provisions. In fact R. 953, as it stands, speaks of the fine as a liability in addition to the liability to suspension or dismissal. Both liabilities would have to be enforced by the same authority, viz., by the Court in a judicial proceeding. Since the fine cannot be imposed as a judicial fine, the provision relating to it is ultra vires. (Mukerji Ag. C. J., Williams and S. K. Ghose JJ.) In re Ramesh Chandra Sen Gupta, Pleader, Patuakali

AIR 1936 Cal 205=40 C W N 377=8 R C 605=63 C L J 127=1936 Cr C 350=63 Cal 855=162 I C 517= 37 Cr L J 590 (SB).

—R. 978.

——R. 978 (2), (3)—Legal Practitioners Act, S. 13 (f).

Under R. 978 (2), (3) the statement made on the application undertaking not to employ an unregistered clerk means that he undertakes not to employ an unregistered clerk to do the business of a registered clerk that is to say, that he undertakes not to employ any clerk who will require for the performance of his work access to the Court or to the ministerial officers. (Jack and S. K. Ghose JJ.) Emperor v. Satyendra Nath Bose

AIR 1937 Cal 408 = 10 R C 124 = 41 C W N 929= 170 I C 251.

CALCUTTA HIGH COURT RULES AND CIRCULAR ORDERS

—Chap. 1.

——Chap. 1, p. 31, R. 93—Nature of rule.

R. 93, p. 31, Chap. 1 of the Calcutta High Court's General Rules and Circular Orders, as amended, has the force of law. (C. C. Ghose and Jack JJ.) Emperor v. Ahmed Sheikh

AIR 1928 Cal 815 = 56 Cal 460 = 113 I C 572 = 12 A I Cr R 58=48 C L J 288=33 C W N 174=30 Cr L J 199.

——Removal of property — C. P. Code, O. 21, R. 43— Removal of property is illegal.

Removal by attaching officer of property attached is illegal. (C. C. Ghose and Jack JJ.) Emperor v. Ahmed Sheikh

AIR 1928 Cal 815 = 48 C L J 288 = 113 I C 572 = 33 C W N 174 = 56 Cal 460 = 12 A I Cr R 58 = 30 Cr L J 199.

—Chap. 2.

—— Vakil in criminal appeal — Criminal appeal from original side — Question whether a vakil can act is not concluded by Cr. P. Code, but by the rules of the High Court—Cr. P. Code, Ss. 340 and 449.

The question whether a vakil can act for a party in a criminal appeal from the Original Side of a High Court depends upon the rules of that Court and is not concluded by anything in the Cr. P. Code. (Rankin C. J. and Chotzner J.) Satya Narain v. Emperor

AIR 1928 Cal 675=55 Cal 858=32 C W N 319=112 I C 350=29 Cr L J 1022.

——Criminal appeal from Original Side—A vakil cannot act unless a question of Hindu or Mahomedan law is involved.

A vakil cannot act in an appeal from a trial held on the Original Side before a Judge and a jury at the High Court Sessions, unless in such appeal a question of Hindu or Mahomedan law or usage should arise. (Rankin C. J. Chotzner J.) Satya Narain Mahto v. Emperor

AIR 1928 Cal 675 = 55 Cal 858 = 32 C W N 319 = 112 I C 350=29 Cr L J 1022.

CALCUTTA HIGH COURT RULES (CRIMINAL)

—Vol. I, Chap. 1, R. 74.

——The proper way to question the jury for the purpose of finding out under which part of S. 304, Penal Code the prisoner was guilty is to put to them the elements enumerated in R. 74 (b), either one by one or as a whole and to get their special verdict thereon. (Mukherji, Bartley and Roy JJ.) Sadak Mandal v. Emperor

AIR 1934 Cal 173 = 6 R C 374 = 38 C W N 254 = 1934 Cr C 295=61 Cal 256=147 I C 860=35 Cr L J 496 (FB).

CALCUTTA HIGH COURT RULES (ORIGINAL SIDE)

——Costs—Taxation—Fees of junior Counsel—Scale.

It is a most undesirable practice for the Taxing Officer to assess the fees allowed to junior Counsel on the basis of the market value of such Counsel. It is much safer that some sort of recognised scale should be adopted and the most practical rule is the one prevalent in English and Irish Courts, namely to fix the fees of the junior Counsel

CALCUTTA HIGH COURT RULES (ORIGINAL SIDE)

according to the two-thirds of that allowed to senior. (Lort-Williams J.) In re Gopal Chandra Singh

AIR 1931 Cal 523=58 Cal 505=Ind Rul (1931) Cal 700=1931 Cr C 675=133 I C 572.

—Chap. XX, R. 4.

——Procedure—Notice of motion for contempt.

Notice of motion that application will be made for order for committal to prison for contempt for breach of undertaking — Alleged act of contempt not specified — Motion will not be dismissed if there is compliance with O. 20, R. 4—It is, however, desirable to give particulars of the contempt — Procedure to be followed in such cases indicated. (Chakravartti C. J. and S. R. Das Gupta J.) Hem Bala Dassi v. Sunder Shaw

AIR 1953 Cal 627=57 C W N 179=1953 Cr L J 1414.

CALCUTTA HOUSE RENT CONTROL ORDER (1943)

—S. 11A.

——Disobedience of notice under—S. 26 of Calcutta Rent Ordinance cannot be brought into aid—See Calcutta Rent Ordinance (V of 1946), S. 21

AIR 1949 Cal 251=50 Cr L J 482.

CALCUTTA IMPROVEMENT ACT (V of 1911)

—S. 35.

——Although the Chairman is empowered under S. 35 to delegate certain of his powers, the functions vested in the chairman under S. 154 cannot be delegated. (Bartley and Khundkar JJ.) Amarendra Nath v. Satya Prokash.

AIR 1938 Cal 692 = 42 C W N 894 = 11 R C 288 = I L R (1938) 2 Cal 546=177 I C 885=39 Cr L J 962.

—S. 154.

——Ss. 154, 160 (e) — Powers of Chairman — Delegation of, under S. 154, whether barred by S. 35—Delegation, if can be condoned under S. 160 (e).

Under S. 154, Calcutta Improvement Act, the right to set the law in motion is vested in the Chairman subject to the control of the Board. Although the Chairman is empowered under S. 35 of the Act to delegate certain of his powers, the functions vested in the Chairman under S. 154 cannot be delegated. If he delegates his authority under S. 154, to institute legal proceedings, such a defect cannot be condoned under S. 160 (e) as direct contravention of the provisions of the Act itself cannot be treated as a mere omission, defect or irregularity. (Bartley and Khundkar JJ.) Amarendra Nath v. Satya Prokash.

AIR 1938 Cal 692 = 42 C W N 894 = 11 R C 288 = I L R (1938) 2 Cal 546=177 I C 885=39 Cr L J 962

—S. 171.

——"Re-erect," meaning of.

Had the intention of the legislature been to give any special meaning to the word "re-erect," it would have been mentioned amongst the definitions in S. 2, Calcutta Improvement Act. So that in the absence of any definition, the word should be interpreted in its ordinary meaning. (Jack J.) Aditendra Nath Mitter v. Bhupati Bhusan Sen Gupta.

AIR 1936 Cal 373=40 C W N 799=1936 Cr Cas 646 = 63 C L J 582 = 9 R C 531 = 166 I C 457 = 38 Cr L J 219.

——Where more than one person join in erecting building.

Under S. 171, any person who erects a building without sanction is liable to a fine of Rs. 500. So that where more than one person join in erecting a building, they are each liable to a fine extending to Rs. 500 and there is, therefore, nothing illegal if the fine imposed on all amounts in all to an amount exceeding Rs. 500. (Jack J.) Aditendra Nath Mitter v. Bhupati Bhusan Sen Gupta.

AIR 1936 Cal 373=40 C W N 799=9 R C 531=1936 Cr Cas 646=63 C L J 582=166 I C 457=38 Cr L J 219.

CALCUTTA INDUSTRIAL AREA RATIONING REGULATIONS (1943)

—Cl 10.

——Cl. 10 (2)—"Residing"—"Residential establishment" —Meaning—Establishment providing food—Person residing in it, whether can draw separate rations on his own ration card—Bengal Rationing Order, 1943, Cl. 3 (4) (iii).

The petitioner, who was the owner of a residential establishment providing food in the Industrial area, obtained rationed articles by use of ration card in his own name. He was prosecuted for contravening Cl. 10 (2) of the Industrial Area Rationing Regulations. The defence of the petitioner was that although he was the owner of the residential establishment, he did not take his meals as a member of that establishment but had his meals cooked separately :

Held (Per Chakravartty J.)—The word "residing" in clause 10 (2) cannot possibly mean mere residence, but means residence, together with taking of meals.

Hence, without finding that the petitioner as a member of the residential establishment took his meals in the establishment, his conviction for contravening cl. 10 (2) of the Calcutta Industrial Area Rationing Regulations, 1943, for drawing his rations on a ration card issued in his individual name, cannot stand.

Per Sinha J. — Regard being had to the object of the legislation, it would be reasonable to hold that only such Boarding Houses, Apartment Houses etc., are included in the definition of the expression "Residential establishments" in R. 3 (iii), Bengal Rationing Order, as cater for food and not those which have no such arrangement and in respect of which there can arise no possibility of duplication in the issue of rationed food stuff.

Where such an establishment does as a rule provide for food, it is not permissible for an individual to say that he does reside in it but has a special arrangement whereby he avails himself of the residential facilities only, leaving himself free to prepare his own meals. Once an establishment of the description mentioned in rule 3 (iii) of the Bengal Rationing Order, is found to cater for food, it comes within the mischief of clause 10 (2) of the Calcutta Industrial Area Rationing Regulations, 1943, and no individual residing in it can possess an individual ration card.

But the mere fact that an individual resided in a portion of the building, in which the Boarding house catering for food, was situated, does not necessarily establish that he resided in the boarding house. Nor is there anything to prevent a person from running a boarding house in a portion of a building and living separately in another portion. (Chakravartti and Sinha JJ.) Girish Chandra Nandy v. State.

AIR 1952 Cal 565=56 C W N 335=1952 Cr L J 1257.

CALCUTTA MUNICIPAL ACT (III of 1899)

——Scope — Imprisonment in default of fine — Power to impose.

There is no power under the Calcutta Municipal Act to impose imprisonment in default of payment of fine, at any rate for offences to which a daily penalty is assigned, in addition to the substantive fine. (Holmwood and Sharfuddin JJ.) Basanta Kumari Devi v. Corporation of Calcutta.

15 C W N 906=11 I C 143=12 Cr L J 375.

—S. 3.

——Ss. 3 (32) and 408 — Owner—Shebait — Liability for non-compliance with directions to improve bustee — Shebait not in turn.

In the case of shebait of a deity managing the debutter properties in turn one of them not in turn is not owner under S. 3 (32) of the Calcutta Municipal Act and is consequently not liable for non-compliance with a notice

under S. 408 for carrying out improvements in the bustee. (Imam and Chapman JJ.) Ratendra Lal Mitra v. Corporation of Calcutta.

41 Cal 104 = 17 C W N 1084 = 21 I C 169 = 14 Cr L J 569.

——S. 3 (46)—Street.

Street in S. 3 (46) of the Act includes a passage less than 20 feet wide. (Imam and Chapman JJ.) Corporation of Calcutta v. Mahamaya Debi.

17 C W N 1250=20 I C 991=14 Cr L J 511.

——Ss. 3 (30), 408, 575 and 622 (3)—Occupier.

"Occupier" in S. 622 of the Act does not mean only the person in actual occupation of the land, but would include also a lessee who had sub-leased the lands to others who are in actual occupation. (Imam and Chapman JJ.) Benode Lal Ghosh v. Corporation of Calcutta.

41 Cal 164=20 I C 746=14 Cr L J 490.

——S. 3, Cls. (39) (a) and 351—Re-erection—Building.

Where before the building line was laid down, a shed consisting of four posts and a tin roof stood on the same spot as they did subsequently and after the building line was laid down, the owner took the roof, and eventually put up a roof either of new tin or repaired. Held, that this was not a re-erection within S. 3 (39) (a), that the roof with four posts was not a building and that the replacing of the roof upon the same posts did not infringe S. 351 as no portion of any building or wall abutting on any street was constructed within the building line. (Holmwood and Chatterjee JJ.) Tripundeshar Mitter v. Corporation of Calcutta.

39 Cal 84=16 C W N 23=11 I C 997=12 Cr L J 461.

——S. 3, Cls. (35) and (37) and Sch. XVII, R. 2—Private street—Pathway made by owner — Height of building—There were four buildings owned by four different persons bearing four different assessment numbers. These buildings abutted on a passage which was not a public street :

Held, that it was a pathway made by the owner of a building on his own land to secure access to, or the convenient use of, such building, and that the provisions of R. 2 of Sch. XVII of the Calcutta Municipal Act did not apply. (Holmwood and Fletcher JJ.) Hari Mati Dasi v. Corporation of Calcutta

8 I C 891=13 C L J 219=11 Cr L J 728.

——S. 3, Cl. (29) and S. 632—Nuisance—Building wall to prevent neighbour from acquiring easement, if nuisance—Duty of Court in abating nuisance—Tort—Nuisance.

It is not a nuisance in itself under the Calcutta Municipal Act, to build a wall, however high on one's own property, for the purpose of preventing one's neighbour from acquiring rights of easement over his land. But although the height of the wall may not be a nuisance, yet the accumulation of filth and want of space to clear the drainage between it and the neighbour's house may cause it to be a nuisance. In such a case, the Court should instead of ordering pulling down of the wall to a lesser height, should consider whether the nuisance may not be abated by some means of clearing the space. (Holmwood and Fletcher JJ.) Khagendra Nath v. Bhupendra Narayan

8 I C 530=15 C W N 316=11 Cr L J 665 (2).

——S. 3, Cl. (29)—Nuisance — Erecting posts to prevent wheel-traffic passing through busti.

The owner of a busti blocked up an exit to wheeled traffic but the private road leading into the busti was kept open. Scavenging carts of the municipality had no difficulty in moving up and down all the private streets in the busti and the only inconvenience caused was that they had to get out of the busti by the same way by which they entered it instead of doing so as before the exit was blocked by the shortest way :

Held, that the owner had done all he was required by law to do and therefore his act of closing the original exit was not a nuisance even though it might cause inconvenience and additional expense to the Municipality. (Holmwood and Doss JJ.) Narendra Nath v. Chairman, Corporation of Calcutta

8 I C 17=15 C W N 100=11 Cr L J 556.

——Ss. 3 (25), 351, 352 and Sch. XVII, Part 3—Detached masonry wall.

A detached masonry wall does not fall within the definition of a masonry building as given by the Calcutta Municipal Act, 1899. Ss. 351, 252 and Sch. 17, Part 3 show that a wall standing by itself is not included in the term building. (Harington and Brett JJ.) In the matter of Corporation of Calcutta v. Jogeswar Laha

8 C W N 487=1 Cr L J 369.

——Ss. 3, 320, 574—Owner—Meaning of.

A Receiver appointed by a Court is not the owner of the premises within the definition of the term as contained in the Municipal Act. He receives the rent as an officer of the Court and as manager of the property on its behalf. He cannot be made a party to any suit or proceedings without the leave of the Court appointing him. (Rampini and Handley JJ.) Fink v. Corporation of Calcutta

30 Cal 721=7 C W N 706.

—S. 102.

——Validity of proceedings initiated by security.

The secretary of the Corporation was also the secretary of the general committee. He made a complaint, even though he had no authority to do so, complaining against a person for having erected a building without sanction and proceedings were then initiated :

Held, that the irregularity was covered by S. 102 (1) (c) of the Act. (Obiter dictum). (Carnduff and Richardson JJ.) Kishori Lal Jaini v. Corporation of Calcutta

6 I C 172=12 C L J 24=37 Cal 585=11 Cr L J 255.

—S. 198.

——Licence under, does not dispense with necessity for taking licence under S. 466.

The obtaining of licence under S. 198 does not do away with the necessity for obtaining a licence under S. 466 when it is necessary. Rules in the schedule applying to one do not apply to the other and the two licences have absolutely no connection. Failure to take out a licence under S. 466 where that is also necessary makes the accused liable to punishment under sub-s. (1) of that section and S. 574. (Stephen and Coxe JJ.) Bepin Behari Ghose v. The Corporation of Calcutta

11 C W N 885=6 C L J 183=34 Cal 913 = 6 Cr L J 148.

—S. 199.

——Trade licence under S. 198 does not do away with necessity for licence under S. 466 — Person not obtaining licence under latter section is liable to punishment under sub-s. (1) of that section and S. 574—See ibid, S. 198.

6 Cr L J 148 (Cal.).

—S. 270.

——Meaning of road or drain—Interference with private drain or road by municipality — See Calcutta Municipal Act (3 of 1899), S. 350.

3 Cr L J 450 (Cal.).

—S. 299.

——Ss. 299 and 575—Effect of delay.

Under S. 575 proceedings were instituted on the petitioner on 15-8-16 which were stayed at his request for negotiations between himself and the municipality. On an application to revive the proceedings made on 28-2-17,

the petitioner was ordered to pay daily fine of Rs. 30 from 16-5-16 :

Held, that delay vitiated the proceedings and so the conviction was invalid. (Sanderson C. J. and Walmsley J.) Nando Lal Guha v. Corporation of Calcutta

A I R 1920 Cal 345=24 C W N 467=31 C L J 342=56 I C 862=21 Cr L J 558.

——Ss. 299, 574—Drainage—"Place lawfully set apart," meaning of.

A place "lawfully set apart" for the use of the public by the Corporation within the meaning of S. 299 of the Act, must be a place over which the Corporation have acquired, by some procedure under the statute, a right to make use of private property as a public drain.

Where every hut in a busti had a surface drain connected with the private common drain of the landlord and this latter drain discharged into the Municipal sewer at a distance outside the statutory limits.

Held, that this private common drain of the landlord cannot be presumed to be a place lawfully set apart for the discharge of drainage within the meaning of S. 299, that a tenant of one of the huts in the busti cannot be called upon to alter his connecting drain to suit the convenience of the Corporation, and that he could not be fined for neglecting to do so. (Holmwood and Fletcher JJ.) Gobinda Chandra Addy v. Corporation of Calcutta

8 I C 706=13 C L J 327=15 C W N 412=11 Cr L J 701 (1).

—S. 320.

——"Owner"—Receiver appointed by Court—See Calcutta Municipal Act (3 of 1899), Ss. 3, 320, 574

30 Cal 721.

—S. 325.

——Ss. 325, 574 — Consolidation of cases — Liability of plumber to prosecution for defect in work.

Where two separate prosecutions were started by the corporation against a licensed plumber for defect in his works in connection with two different premises, and the Municipal Magistrate consolidated the two cases together : held, that such procedure was irregular. Where the work of a licensed plumber was found, on inspection after submission of the completion report, to be defective and in contravention of Rule 4 of Sch. XV of the Calcutta Municipal Act, held, that the plumber was liable to prosecution notwithstanding that the defects were subsequently remedied and the officers of the Corporation subsequently sanctioned the requisite connections. The negligence and dilatoriness of the officers of the Municipality can be no ground of non-liability for infringement of the rules and bye-laws. (Mitra and Holmwood JJ.) Manik Lal Mullick v. Corporation of Calcutta

4 C L J 411=4 Cr L J 394.

—S. 341.

——Fixtures.

Tin sheds attached to a shop by hinges at one end, supported at the other by props forming a verandah and hanging down straight when the props are taken away, are not fixtures within S. 341. (N. R. Chatterjee and Cuming JJ.) Narayan Kissen Sen v. Corporation of Calcutta

A I R 1921 Cal 385 (1)=48 Cal 602=33 C L J 377 = 63 I C 155=22 Cr L J 619.

——Fixture attached to a building—Removal.

A Magistrate directed the removal of a masonry platform extending in front of the petitioner's building and over a drain in the public street. There was no evidence as to when the platform was erected. Held, the words "when a fixture has been attached" mean that the building must be first in existence and the attachment of the fixture must be subsequent to the erection of the building. In the absence of proof that the platform in question was constructed after the erection of the building, the Magistrate's order must be set aside. To make the section applicable the prosecution must prove the facts showing that the section applies. (Chaudhuri and Newbould JJ.) Mohmoed Razuddin v. Corporation of Calcutta

A I R 1920 Cal 976=23 C W N 752=29 C L J 605 = 58 I C 352=21 Cr L J 768.

——Non-compliance with requisition under sub-s. (1) — Special remedy under S. 574 applied—Period of limitation under S. 631 will not apply to the order—See ibid S. 631

11 Cr L J 183 (Cal).

—S. 343.

——Ss. 343 and 442 —Notice for removal on the landlord —Dilapidated hut.

The definition of owner as given in S. 4 sub-s. (32) includes both the landlord and tenant. A notice under S. 343 for the removal of a hut belonging to the tenant can be served upon the person who is the owner of the land and such person is liable to comply with the terms thereof. S. 442 of the Act which contemplates a different set of circumstances, i. e., cases of urgency does not in any manner abridge the power conferred by S. 343. (Fletcher and Beachcroft, JJ.) The Corporation of Calcutta v. Manmatha Nath Sait

A I R 1915 Cal 728=19 C W N 391=21 C L J 497=28 I C 653=16 Cr L J 317.

—S. 350.

——Ss. 350 and 270—Bye-law No. 64 made under S. 350 — Meaning of drain or road — Interference with private drain or road by Municipality.

The road or drain referred to in cl. (2) of s. 270 of the Bengal Municipal Act is a road or drain belonging to the Municipality. If the bye-law No. 64, made under S. 350 of the Bengal Municipal Act, authorises the Municipality to interfere with private property, it is ultra vires. (Mookerjee J.) Mahesh Chandra Pandey v. Basanta Kumar Das

10 C W N 667=3 Cr L J 450.

—S. 351.

——Masonry building, does not include a detached masonry wall — See Calcutta Municipal Act (III of 1899), S. 3 (25)

1 Cr L J 369 (Cal).

—S. 352.

——Masonry building, does not include a detached masonry wall — See Calcutta Municipal Act (III of 1899), S. 3 (25)

1 Cr L J 369 (Cal).

—S. 372.

——Ss. 372, 383 and 449 (1)— Notice under S. 383, order for demolition—For an order under S. 449 (1), directing the demolition of a building erected without sanction in contravention of S. 372, to be passed notice under S. 383 is not necessary. (Rampini and Shartuddin JJ.) Srimatty Susarmoyee Debi v. Corporation of Calcutta

12 C W N 271=7 C L J 243=7 Cr L J 110.

—S. 383.

——Order under S. 449 — Notice under S. 383—See Calcutta Municipal Act (3 of 1899), Ss. 372, 383, 449

7 Cr L J 110 (Cal).

—S. 391.

——Sanction to alteration of plan — Power of District Surveyor.

A supplementary application proposing an addition to an already sanctioned plan of a contemplated building cannot be held to fall within the scope of S. 391 and need not be sanctioned by the General Committee.

Such an application may be lawfully sanctioned by the District Surveyor under powers delegated to him by the Chairman. (Carnduff and Richardson JJ.) Kishori Lal Jaini v. Corporation of Calcutta

6 I C 172=12 C L J 24=37 C 585=11 Cr L J 255.

—S. 406.

——Ss. 406, 408, 409—Powers of General Committee and sub-committee.

The law contemplates that all persons interested will be present before the Sub-Committee and will present not merely their own objections to the scheme but also any objections which they may have to any modification of the scheme on the objections raised by others.

Though the deflection of a road may not be an improvement on the original plan the Sub-Committee has power under the Act to sanction any amendment of the original plan.

Under the Act, the Sub-Committee has power to sanction any amendment of the original plan, even though the amendment be necessary for the purpose of avoiding expense, and not for the purpose of improving the bustee. The Act gives the General Committee full discretion to proceed either under S. 406 or under S. 409. (Brett and Ryves JJ.) Atarmani Dasi v. Corporation of Calcutta

12 C W N 1116=8 C L J 507=8 Cr L J 481.

——Ss. 406, 407, 408 and 574 — Failure to issue proper notice under S. 408—Conviction under S. 574— Legality.

The duty of the corporation in improving bustees is a most important one and they have been invested with the most ample power, but when certain penal sections enforced by the Criminal law are put in motion on the report of the servants of the Municipality, it is incumbent on the Magistrate and the authorities of the Corporation to see that the legal procedure which is a condition precedent to any conviction, is strictly and properly carried out. Where a letter was issued by the Deputy Chairman requiring the petitioners to do certain works, but no notice under S. 408 was issued directing them to specifically carry out the works. Held, the conviction of the petitioners under Ss. 574, 408 for neglecting to carry out the works, could not stand. When the Municipality directs one of several owners of a bustee to carry out certain improvement and issues a general notice under S. 408, it is the duty of the Municipality to serve him with a copy of the standard plan approved by the General Committee, under S. 407, and point out to him on that plan what work he is to do. (Holmwood, J.) Kanai Lal Jalan v. Corporation of Calcutta

11 C W N 508=5 Cr L J 293.

—S. 407.

——'Owner' meaning of—Necessity of notice to owners of huts before approving general plan.

The word "owner" in S. 407 of the Act does not include "owner of huts" also, so as to make it obligatory on the General Committee to hear the objections of "owners of huts" under S. 407 before the approval of the standard plan. (Holmwood and Doss JJ.) Corporation of Calcutta v. Muzaffar Hussain,

8 I C 53=11 Cr L J 558 (Cal)

——Ss. 406, 407, 408 and 574—Failure to issue notice — See bid, S. 406

5 Cr L J 293 (Cal).

—S. 408.

——Ss. 408, 409 and 622 — Municipal requisition—Non-compliance by owner — Occupier of a portion of the property rendering compliance impossible — Action under S. 409.

It is unreasonable to construe S. 622 cl. 3 of the Calcutta Municipal Act as meaning that an owner, who has

not complied with a requisition for effecting improvements to any extent, is discharged from liability, merely because the occupier of a portion of the land has rendered compliance impracticable only in part. Where though some of the tenants refused to afford facilities to the owner and thus rendered it impracticable for him to carry out completely all the improvements required by the Corporation, still the owner could have carried out some at least of the improvements, the owner is discharged from liability only to the extent that compliance is rendered impossible by the conduct of the occupier. Even though the general Committee of the Corportion decides to take recourse to S. 409 of the Calcutta Municipal Act the owner is not forthwith absolved from the liability he has already incurred by reason of his failure to comply with the requisition under S. 401. If the requisite improvements are carried out by the general committee under S. 409 the default on the part of the owner vanishes but till the work is completed the default remains and with it the liability for prosecution. (Mookerjee and Rankin JJ.) Corporation of Calcutta v. Bejoy Kumar Addy,

A I R 1924 Cal 334=27 C W N 787=77 I C 529=50 Cal 813=38 C L J 360.

——Ss. 408, 419, 574 and 598 — A petitioner was served with a notice under S. 408 on 3-1-16, to construct certain structures in 3 months. On 10th March the petitioner gave a notice under S. 419 to the Corporation intimating that he proposed to remove the land from the category of bustee and on the 20th March he took certain objections under S. 598 at the hearing of which, the period was extended to 6 months. The petitioner having done nothing the corporation applied for summons, but the Magistrate refused to take action upon it, as the period of the notice was stated by mistake to be 3 months. A second application was then made on 31st July and the petitioner was prosecuted and convicted.

Held, that the Magistrate's action on the previous application did not bar the prosecution; that the extended period of six months ran from 3-1-1916, not from 20th March when the objections were taken; and that the negotiations and arrangements about the requirements of notice between the petitioner and the Corporation that were going on after the notice did not render the requirements of notice unenforceable. (Teunon and Choudhury JJ.) Nibaran Chandra Khundu v. Chairman of Corporation of Calcutta,

A I R 1918 Cal 214=38 I C 960=18 Cr L J 400.

——Estate vested in Receiver — Notice to owner to improve—Position of Receiver—Procedure.

A receiver of an estate is neither an owner nor agent of trustee in respect of the same. Where notice under S. 408 of the Act is served on a person whose estate has already been vested in a receiver, it is the duty of the former to transmit the same to the Receiver requesting him to take the necessary directions from the Court. On the receiver's failing to comply with the same, the owner may apply to the Court making the Receiver a party to his application. (Caspersez and Sharfuddin JJ.) Corporation of Calcutta v. Cassimariff Bhau,

38 Cal 714=11 I C 129=15 C W N 1002=12 Cr L J 361.

——Nature of proceedings under.

The municipality does not proceed against anybody under the section. They issue notices in three different kinds of cases: Primarily if huts have to be removed which belong to the occupiers of those huts and nothing else has to be done a notice need only be issued to the owners of the huts. In the same way if the improvements are such as can be exclusively done by the owners of the

land the same rule applies to them also. But if the standard plan includes work which has to be done partly by owners of the huts and partly by the owner of the land notice may be issued to either or both of them. In all cases if the notice is disobeyed or after objection not carried out the party in default would be liable to be prosecuted under S. 574. (Holmwood and Doss JJ.) Corporation of Calcutta v. Muzaffar Hussain,

8 I C 53=11 Cr L J 558 (Cal).

——Powers of General Committee and Sub-Committee — See Calcutta Municipal Act (3 of 1899), Ss. 406, 408, 409,

8 C L J 507=8 Cr L J 481.

——Ss. 408, 419 and 575—Applicability after removal of bustee.

After huts have been removed from a bustee land, the land ceases to be a bustee land under S. 419 of the Calcutta Municipal Act and the provisions of S. 408, cease to have any operation on the owner, with the result that the owner cannot be convicted under S. 408 read with S. 575 of that Act. (Mitra and Fletcher JJ.) Abinash Chandra Ganguli v. Corporation of Caluctta,

12 C W N 72=6 Cr L J 380.

——Ss. 408, 419, 574 and 631 — Prosecution under Ss. 408 and 574 — Limitation — A prosecution started more than three months after the expiry of the notice under S. 408 is barred by limitation. The conviction and sentence of the accused under S. 574 in such a case is bad in law. A notice served under S. 419 subsequent to the commission of the offence under Ss. 408 and 574 cannot have the effect of enlarging the time by six months. (Mitra and Caspersez JJ.) Kumud Kumari Dassi v. Corporation of Calcutta

11 C W N 1097=34 Cal 909=6 Cr L J 317.

——Ss. 406 to 408 and 574 — Failure to issue proper notice — Conviction under S. 574 — Legality — See ibid, S. 406.

5 Cr L J 293 (Cal).

——Ss. 408, 574 — Notice to owners of property to carry out imprbvements—Property subject of litigation — Non-compliance with notice—Conviction— Legality—Where a notice under S. 408 is served upon the owners of property calling upon them to carry out improvements in the property which is under litigation and it is not possible for them, either individually or collectively, to carry out the improvements during its pendency, the conviction of the owners under S. 574 read with S. 408 for failure to comply is not sustainable. (Mookerjee J.) Purna Chand Bural v. Corporation of Calcutta

33 C 699=4 Cr L J 47.

—S. 409.

——Jurisdiction of General Committee after it cancels notice under S. 408.

The question whether the general committee can cause, all or any portion of the improvements which are not duly carried out, to be carried out under the section after cancellation of notice previously served under S. 408 depends upon the facts. If the whole of the work has to be done by the owners of the huts then the cancelling of the notice on the owner of the land does not oust the jurisdiction of the Municipality under S. 409. If on the other hand, the Municipality have cancelled the notice on the owner of the bustee land but still require him to carry out portion of the work, it must serve fresh notice on the owner of the bustee before they can become vested with any jurisdiction under S. 409. (Arnold White C. J.) Veyya Manikiayam v. Venkaiya

8 M L T 447=8 I C 3=11 Cr L J 560.

——Powers of General Committee and Sub-Committee — See Calcutta Municipal Act (3 of 1899), Ss. 406, 408, 409

8 C L J 507 = 8 Cr L J 481.

—S. 416.

——Ss. 416 (1), 419, 361 — Private street—Public way—Dedication—Consent of owner.

A roadway made originally as part of a bustee and in accordance with the plan approved by the Corporation, remains a private street until the General Committee of the Corporation and the owner otherwise agree or until the owner initiates a proceeding under S. 419 of the Act. To create a public right of way there must be a dedication by the owner. The effect of S. 416 (1) is that the owner cannot dedicate without the consent of the General Committee of the Corporation. (Imam and Chapman JJ.) Corporation of Calcutta v. Mahamaya Debi

17 C W N 1250=20 I C 991=14 Cr L J 511.

—S. 419.

——Applicability after removal of bustee — See Calcutta Municipal Act (III, B. C. of 1899), S. 408.

6 Cr L J 380 (Cal).

——Offence under Ss. 408 and 574 — Limitation for prosecution — Service of notice under S. 419 after commission of offence—Effect on period of limitation — See ibid, S. 408

6 Cr L J 317 (Cal).

—S. 444.

——House found unfit for human habitation — Joint penalty imposed on several accused using the House — Legality of — The act of the accused who had each one of them disobeyed an order prohibiting them from using a house found to be unfit for human occupation is a separate offence and there is no provision of law justifying the passing of a joint conviction and penalty of the accused under S. 444 read with S. 574 of the Act. (Harington and Teunon JJ.) Bhairab Chandra Kolay v. Corporation of Calcutta

14 C W N 911=6 I C 874=37 C 895=11 Cr L J 412.

—S. 449.

See also (1) ibid, S. 3.
(2) ibid, S. 632.

——Unauthorized erection — Order of demolition — Acceptance of rates in respect of erection pending negotiation for compromise, if acquiescence in disobedience.

An order of demolition was passed in respect of a house built by the accused in deviation of the sanctioned plan. Pending negotiations between the accused and the Corporation, the latter re-assessed the whole premises, including the portions objected to and received rates and taxes accordingly.

Held, that the Municipality had not acquiesced by mere acceptance of rates, pending the negotiations, in the continuous disobedience to the order for demolition. (Rampini and Gupta JJ.) Bholaram Chowdhry v. Corporation of Calcutta

8 I C 654 = 37 C 837 Note = 11 Cr L J 695.

——Acquiescence what amounts to.

The acceptance of rates during the pendency of negotiations carried on for the purpose of coming to terms with the Municipality and to induce it not to insist on obedience to the order under S. 449 does not amount to an acquiescence by the Municipality to the disobedience of its order to demolish. (Harington and Teunon JJ.) Lachmi Narain Mahto v. Corporation of Calcutta

6 I C 800=37 Cal 833=11 Cr L J 406.

——Ss. 449 (1), 451 and 574 — Rule No. 2 of Part II, Sch. 17 interpretation of—Height-limit of building facing street — Angle of 45 degrees—Where on the one side of a street was a bathing platform open to the sky and on the opposite side, a building was erected facing the street and the platform, in determining the height-limit of the building in accordance with Rule No. 2 of Part II,

CALCUTTA MUNICIPAL ACT (III of 1899), S. 449

Sch. 17 the angle of 45 degrees must be drawn from the street alignment on the side of the street and not from the side of the platform farthest from the street. (Brett and Ryves JJ.) Sheomall Goenka v. Corporation of Calcutta

13 C W N 74=1 I C 415=9 Cr L J 302.

——Order under — Notice under S. 383 — See Calcutta Municipal Act (3 of 1899), Ss. 372, 383, 449

7 Cr L J 110 (Cal).

——Ss. 449, 450, 452, 579—Discretion to order demolition of building which is danger to the public—Matters to be taken into account.

No doubt the passing of an order of demolition under S. 449 of the Calcutta Municipal Act is discretionary, but this discretion is to be exercised after receiving evidence and hearing the defence. The Municipal Magistrate should exercise the discretion vested in him under Ss. 449, 450 and 452 of the Calcutta Municipal Act with due regard to those rules which guide Courts of Equity in granting injunctions. But he has also to consider whether or not a building ought to be demolished on the ground of its being a danger or obstruction to the public. It is the duty of the Municipal Corporation to procure the demolition of a building which is a danger or obstruction to the public. In other respects, the Corporation stands, unless the law expressly directs, in practically the same position as a private individual wronged by tortious action. The Municipal Act does not prescribe any period of limitation for an action under S. 449 or 450 of the Act but the Court in directing demolition should consider how far the delay in the institution of the proceeding has affected the action. The fact that in respect of the same deviation from the sanctioned plan of a building, the Municipal Corporation instituted two different proceedings at different times, viz., for fine under S. 579 and demolition under S. 449 — cannot deprive the Magistrate of his discretion expressly conferred under S. 452 of the Act. This section applies even when the two proceedings are not simultaneous (Mitra and Holmwood JJ.) Chuni Lal Dutt v. Corporation of Calcutta,

34 C 341=11 C W N 30=4 Cr L J 408.

——S. 449, Sch. 17, R. 17 — Demolition of building — Deviation from sanctioned plan—Building existing for long time and not coming under the sanction. The magistrate is only empowered under S. 449 to direct the demolition of buildings erected in contravention of the plan submitted and sanctioned by the corporation. The section does not authorise him to direct demolition of building outside the sanctioned plan and existing for a long time (Mitra and Holmwood JJ.) Joseph Isaac Joseph Hyam v. Calcutta Corporation,

10 CWN 1004=33 C 646=3 CLJ 571=3 Cr L J 465.

——Ss. 449, 575—Sanction obtained by misrepresention and fraud—Order precluding the petitioner from building according to such plan—Legality—Where, in a prosecution under S. 449 of the Act, the Magistrate acquitted the accused under S. 579, but found that the sanction to the plan had been obtained by misrepresentation and fraud, and made an order prohibiting the petitioner from building the second storey on the basis of such plan and directing that the sanctioned plan filed by him be not returned to him :

Held that the order was not legal. (Woodroffe and Mookerjee JJ.) Nogendra Nath Sadkhan v. Corporation of Calcutta,

3 C L J 138=3 Cr L J 215.

——Demolition of building, order for — Discretion of Magistrate— Revision against Magistrate's order — Criminal P. C., 1898, S. 435 — The General Committee, if satisfied, of the existence of the circumstances

CALCUTTA MUNICIPAL ACT (III of 1899), S. 499

mentioned in S. 449 of the Act, may or may not make an application to the Magistrate for the demolition of a building or a portion of it, erected in violation of, or contrary to the plan sanctioned by the Municipality, but when such an application is made to the Magistrate, he also has a discretion either to make or refuse the order under S. 449 of the Act.

If a Magistrate has not properly exercised his discretion the order is not a proper order and the High Court has power to set it aside. (Woodroffe and Mookerjee, JJ.) Sheikh Abdool Samad v. Corporation of Calcutta,

3 C L J 90=33 C 287 =10 C W N 182=3 Cr L J 211.

——Demolition of building—Jurisdiction of Magistrate to order.

It is within the jurisdiction of a Magistrate to order demolition of a building erected in contravention of rules, irrespective of the value of such building. (Pratt and Handley JJ.) Sew Prosan Poddar v. Corporation of Calcutta,

9 C W N 18=2 Cr L J 1.

——Ss. 449 and 631 — Scope of — Nature of the proceedings under S. 449 — Criminal P. C. (1898) S. 432 — The limitation for the prosecution of offences, prescribed in S. 631 (1) has no application to proceedings taken under S. 449. By its terms, it only applies to complaints made before a Magistrate in order to the punishment of a person for an offence against the Act or any rule, or bye-laws, or regulation under the Act. S. 449 provides for applications to be made to a Magistrate by the General Committee in order to the issue of an order directing the demolition or alteration of work which has been unlawfully executed under certain circumstances. Proceedings under that section are not instituted on a "complaint" nor is the demolition of an unlawfully executed work a "punishment" within the meaning of S. 631, sub-s. 1 (Prinsep and Stevens JJ.) Corporation of Calcutta v. Keshub Chunder Sen,

8 C W N 142=1 Cr L J 69.

—S. 450.

See also ibid, S. 341.

——Special remedy under section applied to case of non-compliance with requisition under S. 341 (1)— Applicability of period of limitation in S. 631—See ibid, S. 631,

11 Cr L J 183 (Cal).

——Ss. 449, 450, 452 and 579—Discretion to order demolition of building which is danger to the public — Matters to be taken into account—See ibid, S. 449,

4 Cr L J 408 (Cal).

—S. 451.

——Erection of building on side of road — 45 degree angle rule—See Calcutta Municipal Act III of 1899, S. 449

9 Cr L J 302 (Cal).

—S. 452.

——Ss. 449, 450 452 and 579—Discretion to order demolition of building, which is danger to the public—Matters to be taken into account—See ibid, S. 449,

4 Cr L J 408 (Cal).

—S. 466.

——License—Carrier.

A carrier must obtain the trade license as well as those for keeping the animals and for the premises wherein he keeps them, under S. 466 of the Act. (Chaudhuri and Newbould, JJ.) Surendra Nath Banerjee v. Manager of W. Lewis and Co.,

AIR 1920 Cal 535 (2)= 24 C W N 744=58 I C 924= 47 Cal 809=21 Cr L J 844.

——Calcutta Municipal Act (III of 1899) — Storage of steel joists without licence—Conviction if valid.

CALCUTTA MUNICIPAL ACT (III of 1899), S. 466

The term "iron" as used in Sch. XVIII, cl. (8) includes "steel" and therefore the conviction of a person under S. 574 for storing steel joists without having obtained licence under S. 466 is right. (Mookerjee and Vincent JJ.) Ganga Narain Pal v. Corporation of Calcutta,

10 C L J 486=4 I C 438= 11 Cr L J 277.

——Trade licence under S. 198 does not do away with necessity for licence under S. 466 — Person not obtaining licence under latter section is liable to punishment under sub-s. (1) of that section and S. 574.—See ibid, S. 198,

6 Cr L J 148 (Cal).

—S. 495.

——S. 495 (a), Sub. Cl. 1—Bengal Ghee Adulteration Act (1 of 1917), S. 2 (2)—Standard of purity—Chemical tests —Value of.

There is no standard of purity of ghee fixed by Legislature; Courts of Law have, therefore, to decide the question of adulteration upon such evidence as is available in each case. As there is no statutory presumption, every case must depend on its own evidence. A statutory standard should be laid down as raising a presumption of adulteration and such cases should not be made to depend on evidence forthcoming in each case to test the value of the Corporation standard. The Court should determine whether the Corporation standard ought to be acted upon or not, but the Court ought not to fix a standard of its own. (Chaudhuri and Newbould JJ.) Grande Venkata Ratnam v. Corporation of Calcutta

A I R 1920 Cal 117=47 Cal 633=56 I C 586=24 C W N 388=21 Cr L J 490.

——Article of human food or drink—Tea dust.

Tea dust is an "article of human food or drink" within S. 495 of the Calcutta Municipal Act. "Food" includes any article which ordinarily enters into or is used in the composition or preparation of food and includes flavouring matters and condiments. (Walmsley and Huda JJ.) The Chairman of The Corporation of Calcutta v. Pagli

A I R 1920 Cal 567=47 Cal 53=23 C W N 911=52 I C 223=30 C L J 130=20 Cr L J 607.

——Ss. 495 and 574—Adulteration of ghee by servant—Master responsible.

S. 495 of the Act makes all persons liable who are responsible for the sale of adulterated articles so that a master is not exempt if the servant commits the offence, though the former is not guilty of any connivance. Non-connivance may be a ground for mitigation of the penalty. (Holmwood and Sharfudin JJ.) Sew Karan v. Corporation of Calcutta

39 Cal 682=16 C W N 455=14 I C 205=13 Cr L J 205.

—S. 495A.

——As amended by the Calcutta Municipal Act (1917), S. 495A—Adulteration—Proof.

In a prosecution for adulteration of ghee, it is not safe to rely on technical treatises alone without the aid of an expert to whom their alleged effect may be put. (Woodroffe, Chitty and Smither JJ.) Grande Venkata Ratnam v. Corporation of Calcutta

A I R 1919 Cal 862=22 C W N 745=46 I C 593=28 C L J 32=19 Cr L J 753 (FB).

—S. 499.

——Magistrate—The word "Magistrate" in S. 499 means any Magistrate having jurisdiction in Calcutta—The word includes a Municipal Magistrate. (Pratt and Handley JJ.) Sew Prosad Poddar v. Corporation of Calcutta

9 C W N 18=2 Cr L J 1.

—S. 547.

See ibid, S. 299.

CALCUTTA MUNICIPAL ACT (III of 1899)

—S. 559.

——Ss. 559 (52) and 561 — Bye-law 45 — Limitation of hours of theatrical performance.

Bye-law 45 framed by the General Committee of the Corporation of Calcutta regulating the hours of theatrical performance is not ultra vires. Statute 24 and 25 Vict. Chap. 67 gives ample authority to the Bengal Legislature to pass such an Act as the Calcutta Municipal Act and to empower the General Committee of the Municipality to frame bye-laws, and the General Committee has clear authority to make breaches of the bye-laws punishable. (Chaudhuri and Newbould JJ.) Probodh Chandra v. Corporation of Calcutta

A I R 1920 Cal 321=24 C W N 196=54 I C 781= 47 Cal 547=21 Cr L J 173.

——Ss. 559 (18), 561 (b)—Bye-law 1 framed under S. 559 —If creates continuing offence — Validity.

A bye-law must conform with the provisions of the enactment under which it purports to be made. Bye-law 1, framed under S. 559, Calcutta Municipal Act purports to create a continuous breach, which is outside of and fails to comply with the provision of S. 561, clause (b), under which alone it can claim validity. (Lawrence Jenkins C. J. and Woodroffe J.) Narain Chandra Chatterjee v. Corporation of Calcutta

37 Cal 545=10 C L J 623=14 C W N 614=4 I C 259 =10 Cr L J 522.

—S. 561.

——Bye-laws Nos. 83 and 85—Liability—Breach : 18 Cr L. J. 674 : A. I. R. 1918 Cal 645, Overruled.

Bye-law No. 85 under the Act is not ultra vires and each of the persons jointly committing a breach of bye-law 83 is liable to be fined to the extent of Rs. 20 and each of the persons who have jointly committed a breach of bye-law 85 is liable to be punished with the maximum amount of the prescribed fine : 18 Cr L J 674 : A. I. R. 1918 Cal 645, Overruled. (Sanderson C. J. Woodroffe, Fletcher and Richardson JJ.) Amrita Lal Bose v. Corporation of Calcutta

A I R 1917 Cal 348=44 Cal 1025=42 I C 305=21 C W N 1016=26 C L J 215=18 Cr L J 945 (FB).

——Bye-laws framed under Act—Nos. 83, 85 — Persons guilty of breach of bye-law are not separately punishable.

Per Curiam, (Teunon J. dissenting) — The breach of a bye law of the Calcutta Corporation by several persons acting in concert is punishable under the Calcutta Municipal Act as a single offence, the individual offenders not being punishable separately.

Per Teunon J.—Under S. 561, Calcutta Municipal Act, a breach of a bye-law framed by the Calcutta Corporation makes the persons jointly guilty of the breach separately liable to be punished with a fine of Rs. 20 each. (Chitty J., on difference between Teunon and Chaudhuri JJ.) Amrita Lal Bose v. Chairman of Corporation of Calcutta

A I R 1918 Cal 645=40 I C 322=26 C L J 29=21 C W N 1009=18 Cr L J 674.

[Overruled in A I R 1917 Cal 348=18 Cr L J 945.]

——Ss. 559 (18) and 561 (b) — Bye-law 1 under S. 559— Validity—See Calcutta Municipal Act III of 1899, S. 559

10 Cr L J 522 (Cal).

—S. 574.

See also (1) ibid, S. 325.
(2) ibid, S. 341.
(3) ibid, S. 407.
(4) ibid, S. 444.
(5) ibid, S. 466.
(6) ibid, S. 495.

——Disobedience of notice under S. 408—See ibid, S. 408.

11 Cr L J 558 (Cal).

——Joint conviction and penalty on several persons using house found unfit for human habitation, in defiance of order—Legality—See ibid, S. 444
11 Cr L J 412 (Cal.)

——Storage of steel joists — No Licence under S. 466 obtained—Conviction under S. 574—Validity — See ibid, S. 466
11 Cr L J 277 (Cal).

——Non-compliance with requisition under S. 341 (1)—Proper procedure to initiate proceedings if such non-compliance is an offence under the section—See ibid, S. 631
11 Cr L J 183 (Cal).

——Building by side of street—45 degrees angle rule—See Calcutta Municipal Act, III of 1899, S. 449
9 Cr L J 302 (Cal).

——Offence under Ss. 408 and 574—Limitation for prosecution—Service of notice under S. 419 after commission of offence—Effect on period of limitation—See ibid, S. 408
6 Cr L J 317 (Cal).

——Trade licence under S. 198 does not do away with necessity for licence under S. 466 — Person not obtaining licence under latter section is liable to punishment under sub-s. (1) of that section and S. 574—See ibid, S. 198
6 Cr L J 148 (Cal).

——Ss. 406 to 408 & 574—Failure to issue proper Notice under S. 408 — Conviction under S. 574 — Legality—See ibid, S. 406
5 Cr L J 293 (Cal).

——"Owner"—Receiver appointed by Court—See Calcutta Municipal Act (3 of 1899), Ss. 3, 320, 574
30 Cal 721.

—S. 575.

——Applicability after removal of bustee — See Calcutta Municipal Act (III B. C. of 1899), S. 40
6 Cr L J 380 (Cal).

——Bustee land—See Calcutta Municipal Act (3 of 1899), Ss. 408, 419, 575
12 C W N 72.

—S. 578.

——Ss. 578 and 631 — Pleader practising without license —Offence.

Where a pleader practised in a Court in 1917-1918 without taking a license, Held he was guilty of an offence under S. 578 of the Calcutta Municipal Act on the last date of 1917-1918, that is on the 31st March 1918 and a complaint lodged within three months of that date was not barred under S. 631 (1). Per Richardson J. — The offence under S. 578 of the Act lies in the person exercising a profession after the first of July in any year without having the prescribed license. If the profession is so exercised on subsequent days, whether a separate offence is committed on each day or whether it is all one continuing offence is doubtful. If the profession is exercised on one day only, the prosecution must be commenced within the following three months. If it is exercised on a number of days, whether the offence is a continuing one or not, the prosecution must be commenced within three months of the last of such days. Per Shamsul Huda J.:—For the purposes of carrying on a pleader's profession he need not daily conduct a case or attend or address the Court. The facts of keeping an office for the purpose of receiving his clients giving them advice or being generally open to engagement as a pleader will constitute the carrying on of a pleader's profession. (Richardson and Huda JJ.) The Chairman of the Howrah Municipality v. Barada Prasanna Pain
AIR 1920 Cal 929 = 24 C W N 415 = 55 I C 731 = 31 C L J 127 = 21 Cr L J 363.

—S. 579.

——Ss. 449, 450, 452 and 579—Discretion to order demolition of building which is danger to the public — Matters to be taken into account — Simultaneous proceedings under Ss. 449 and 579 — Effect — See ibid, S. 449
4 Cr L J 408 (Cal).

—S. 580.

——Unauhorized erection — Order of demolition — Payment of rates in respect of erection pending negotiations for compromise, if acquiescence in disobedience to order—See ibid, S. 449
11 Cr L J 695 (Cal).

—S. 589.

——Ss. 589, 341, 102 and 63 (3)—Notice on behalf of General Committee—Proceedings of committee— Legality of— Absence of Chairman's signature — Evidence Act, S. 78.

S. 589 of the Act is no bar to the Secretary of the Corporation, who is also the Secretary of the General Committee, signing notices under the Act, but unless a notice purports to have been signed by the Chairman, the special rule of evidence contained in S. 589 cannot apply and the proceedings of the General Committee can be proved only under the general law of evidence. Printed proceedings themselves would not be sufficient legal proof unless the provisions of S. 78 of the Evidence Act are complied with. The mere fact, that the Secretary had signed the notice under S. 589, instead of the Chairman, does not in any way affect the merits and is a mere irregularity within S. 102 of the Cal. Munl. Act. (Fletcher and Beachcroft JJ.) Corporation of Calcutta v. Promotho Nath Mullick
30 I C 643 = 16 Cr L J 659 (Cal).

—S. 622.

——Interpretation — Non-compliance with requisition for carrying out improvements—Obstruction by some tenants —Owner not completely absolved.

It would be unreasonable to construe S. 622 (3) in the sense that an owner, who has not complied with a requisition at all is discharged from liability, merely because the occupier of a portion of the land has rendered compliance impracticable only in part. Upon a fair interpretation of S. 622, it appears that the owner is discharged from liability only to the extent that compliance is rendered impossible by the conduct of the occupier. (Mookerjee and Rankin JJ.) The Corporation of Calcutta v. Bijoy Kumar
AIR 1924 Cal 334 = 50 Cal 813 = 77 I C 529 = 38 C L J 360 = 27 C W N 787.

—S. 631.

See also (1) ibid, S. 374
(2) ibid, S. 559

——Limitation — Limitation runs from the date of first commission of offence.

The period of Limitation under S. 631 begins to run from the date of the first commission of the offence, the date when the obstruction or projection was first placed over the street. (Chatterjea and Cuming JJ.) Narayan Kissen v. Corporation of Calcutta
AIR 1921 Cal 385 (1) = 48 Cal 602=33 C L J 377= 63 I C 155=22 Cr L J 619.

——Limitation.

The applicant was prosecuted on a complaint, dated 11-5-20 : the complaint alleged that the accused had about 5-9-19 committed an offence under Ss. 574 and 466 of the Calcutta Municipal Act by keeping and using an unlicensed workshop for manufacturing articles of iron for purposes of trade, Held, that the complaint was time-barred under S. 631. (Newbould and Suhrawardy JJ.) N. K. Sarkar v. Howrah Municipality
62 I C 575 = 22 Cr L J 559 (Cal).

CALCUTTA MUNICIPAL ACT (III of 1899), S. 631

——Applicability.

Section 574 may make non-compliance with a requisition under S. 341 (1) an offence, but if it does, the offence must be tried according to law in the regular way. Where that regular way is to file a complaint as is contemplated by S. 4, Criminal P. C. if without taking steps to that end the special remedy provided by S. 450 is applied, S. 631 will not apply to the order passed, there being no necessary connection between the special remedy and the punishment of an offence. (Stephen and Carnduff JJ.) Sarat chandra Mukerjee v. Corporation of Calcutta

14 C W N 591=37 C 384= 5 I C 644=11 Cr L J 183.

——Offence under Ss. 408 and 574 — Limitation for prosecution—Service of notice under S. 419 after commission of offence—Effect on period of limitation—See ibid, S. 408

6 Cr L J 317 (Cal).

——Scope of Ss. 449 and 631 — Nature of proceedings under S. 449—See ibid, S. 449

1 Cr L J 69 (Cal).

—S. 632.

See also ibid, S. 3.

——Erection of building with sanction of municipality—Sanction if can be pleaded in defence to proceeding under section.

The Municipal Magistrate is not precluded from interfering with a building under S. 632, at the instance of the person whose house has been deprived of light and air by it by the fact that the building having been erected contrary to the building regulations the Municipality could have proceeded under S. 449 but has not done so. When the building is a nuisance, the fact that the Corporation had sanctioned it is no defence to the proceedings under S. 632. So also a partition decree previously passed, which purported to specify the easements reserved to the portion which fell to the complainant, cannot be held to override the provisions of the Calcutta Municipal Act, which is directed to provide for public sanitation among other public considerations. [R., 15 C W N 316; Expl. 38 C 296 ; 11 Cr L J 665; 8 Ind Cas 530.]

(Coxe and Ryves JJ.) Bhagwan Das v. Rash Behari Mulick

14 C W N 637 = 6 I C 595 = 11 Cr L J 377.

—S. 645.

——Exercise of discretion under section — High Court's power of revision.

Under S. 645, the General Committee of the Calcutta Corporation has power, where there are gradations of owners or persons, to determine who may be regarded as owners, or where there is a doubt as to who is the owner bound to perform the duty, to determine which of such owners shall be deemed to be bound to carry out the improvements. That discretion having been by law vested in the General Committee, the High Court has no power, in the exercise of its Revisional Criminal Jurisdiction, to set aside or question the acts done in the exercise of that discretion, if these acts have otherwise been done in accordance with the provisions of laws. (Brett and Gupta JJ.) Shamul Dhone Dutt v. Corporation of Calcutta

34 Cal. 30=11 C W N 671=5 Cr L J 137.

—Sch. 17, R. 2.

See also ibid, S. 3.

——Sch. 17, Part II, R. 2 — Building by side of street—45 degrees angle rule — See Calcutta Municipal Act (III of 1899), S. 449

9 Cr L J 302 (Cal).

——Sch. 17, Part III — Masonry building, does not include a detached Masonry wall — See Calcutta Municipal Act (III of 1899), S. 3 (25)

1 Cr L J 369 (Cal).

CALCUTTA MUNICIPAL ACT (III of 1899)

—Sch. 17, R. 17.

——Demolition of buildings outside sanctioned plan and existing for a long time—See ibid, S. 449

3 C L J 571=33 Cal. 646 = 10 C W N 1004=3 Cr L 465.

—Sch. 18.

——Sch. 18, Cl. 8 — Storage of Steel joists — No licence under S. 466 obtained — Conviction under S. 574 — Validity—See ibid, S. 466

11 Cr L J 277 (Cal).

CALCUTTA MUNICIPAL ACT (III of 1923)

——Nature of proceedings — Proceedings by Municipal Magistrate are not criminal.

The Act has invested Municipal Magistrates with power to deal with certain proceedings under the Act which are not criminal proceedings. One of such powers is to order demolition of unauthorised structures. (Suhrawardy and Cammiade JJ.) Krishan Dayal v. Corporation of Calcutta

A I R 1927 Cal. 509=54 Cal. 532=31 C W N 506= 101 I C 183=45 C L J 469 = 8 A I Cr R 35=28 Cr L J 407.

—S. 1.

——Municipal Acts, infringement of.

Infringements of Municipal Act are not to be treated lightly. Municipal Acts are intended for the well-being and health of the community. (Derbyshire C. J. and Bartley J.) N. N. Bose v. Kedar Nath Jute Manufacturing Co., Ltd.

A I R 1941 Cal. 550 = 45 C W N 925=14 R C 268= 196 I C 559=43 Cr L J 33.

—S. 3.

——Ss. 3 (55), 425 (2) — Report of Analyst — Criminal P. C. (1898), S. 510.

An Analyst appointed by the Calcutta Corporation is a Public Analyst. His report is evidence without calling him to Court. (K. C. Chunder J.) Mohari Lall v. Corporation of Calcutta

A I R 1953 Cal. 561 = 57 C W N 248 = 1953 Cr L J 1347.

——Ss. 3 (48) and 527—Occupier—Meaning of.

A tenant is an occupier within the meaning of the Calcutta Municipal Act. A tenant whose tenancy has been terminated by a notice to quit will in any event be a person liable to pay damages or mesne profits and would therefore come within the meaning of the word "occupier". (P. B. Mukharji J.) Subala Devi v. Corporation of Calcutta

A I R 1953 Cal. 357=90 C L J 304=57 C W N 461= 1953 Cr L J 775.

——'New building'.

The test whether a building is new or not within the meaning of the Act has reference to the date of commencement of the Act. (Rankin and Duval JJ.) Satish Chandra v. Corporation of Calcutta

A I R 1926 Cal. 1138=53 Cal. 974=44 C L J 37=97 I C 666=27 Cr L J 1146.

—S. 175.

——Railway Company not liable under S. 175 to pay tax —Mere notification under S. 135, Railways Act (IX of 1890), cannot impose such liability — In absence of such Notification, Railway Company is relieved from paying tax imposed by taxing statute.

The tax under S. 175, Calcutta Municipal Act, is imposed not by the Railways Act, but by the Calcutta Municipal Act. If, therefore, a Railway Company is not liable to pay such a tax, a mere notification by the Governor-General under S. 135, Railways Act cannot possibly impose any such liability. The object of the notification is really exactly the opposite. In the absence

of such a notification the Railway Company will be relieved from paying a tax which is imposed by the taxing statute. (Henderson and Mohammad Akram JJ.) Corporation of Calcutta v. Bengal Dooars Railway Co., Ltd.

A I R 1940 Cal. 531 = I L R (1940) 1 Cal. 585 = 44 C W N 648=13 R C 225=191 I C 184=42 Cr L J 100.

——As extended to Howrah—"Trade", meaning of.

The words of S. 175, Calcutta Municipal Act should be taken in their ordinary meaning instead of putting an unusual construction on them in accordance with a special meaning given to the word "trade" in reference to income-tax charges on firms having international business. That word is used in the section in its ordinary meaning, i. e., to mean an exchange of goods for money or for goods with the object of making profits. (Jack J.) Burmah Shell Oil Storage & Distributing Co. of India, Ltd. v. Sudhansu Bhusan Chatterjee

A I R 1936 Cal. 477 = 40 C W N 766 =1936 Cr Cas 699 (2)=9 R C 513=63 Cal. 1203=166 I C 402=38 Cr L J 203.

——As extended to Howrah.

Company trading in oil—Store in Howrah—Orders negotiated in Calcutta—Oil distributed from Howrah :

Held, licence should be taken from both Municipalities. (Jack J.) Burmah Shell Oil Storage & Distributing Co. of India, Ltd. v. Sudhansu Bhusan Chatterjee

A I R 1936 Cal. 477 = 40 C W N 766= 1936 Cr Cas 699 (2)=9 R C 513=63 Cal. 1203 = 166 I C 402=38 Cr L J 203.

——Section 175 of the Act deals with a very different class of licence from that contemplated by S. 391. The object of the two sections and the nature of the licences required by them are different. Section 175 occurs in Chap. XII which deals with tax on professions whereas S. 391 occurs in Chap. XXVI, dealing with regulation and inspection of places of public resort. (Mitter J.) S. R. Verma v. Emperor

A I R 1933 Cal. 243 = 37 C W N 344=1933 Cr Cas 322= Ind Rul (1933) Cal. 525 = 60 Cal. 689 = 144 I C 198=34 Cr L J 693.

——Applicability — Rr. 12 to 14 need not be resorted to where application for cancellation of notice is not disposed of—Magistrate must decide whether licence is necessary—Mere issue of notice does not conclude the case.

Where the accused was informed that his representation for the cancellation of the notice was receiving attention :

Held, that the accused was under no obligation whatsoever to avail himself of the provisions of Rr. 13 and 14 of Sch. 6.

Held, further that the Magistrate, apart from the question of the accused's availing himself or not of the provisions of Rr. 13 and 14 of Sch. 6, was bound to find if it was necessary for him to take out a license. (C. C. Ghose and Duval JJ.) Umeshchandra v. Corporation of Calcutta

A I R 1926 Cal. 614=43 C L J 231=93 I C 1045=27 Cr L J 549.

—S. 179.

——Ss. 179, 180 (2), 492 (1) (c) and Sch. IX—Prosecution under S. 492 (1) (c).

It is the duty of the Corporation to determine the average quantity of offensive matter and rubbish removed daily from the market in question and without such determination the tax or the fee cannot be paid or the license issued or obtained and as under S. 180 (2) such license is to be taken out not later than the 1st day of June if the first half-year is the period concerned, it is imperative that the determination must be made by the Corporation before that date or, at any rate, before the

expiry of the relevant half-year. Where the Corporation neglects or fails to do its duty no prosecution under S. 492 (1) (c) is maintainable against a market-owner who fails to take out license. (P. N. Mookerjee J.) Corporation of Calcutta v. S. B. Trading Co.

A I R 1953 Cal. 506 = 57 C W N 197=1953 Cr L J 1182.

——Under S. 179(b), Corporation must determine average quantity of offensive matter and rubbish — Delegation of this power to District Engineer.

According to S. 179 (b), it is the Corporation which has to determine the average quantity of offensive matter and rubbish removed daily. The delegation of the power to the District Engineer to determine the same and even to decide disputes relating thereto is not in conformity with the provisions of S. 179 (b). (Sen J.) Jitendra Mullick v. Corporation of Calcutta

A I R 1941 Cal. 560 = I L R (1941) 1 Cal. 322 = 45 C W N 306=14 R C 261=196 I C 539=43 Cr L J 28.

—S. 180.

——S. 180 (2)—Prosecution under S. 492 (1) (c)—See ibid, S. 179

A I R 1953 Cal. 506=1953 Cr L J 1182.

—S. 271.

——'Premises', if means building or land.

The word 'premises' in S. 271, Calcutta Municipal Act, means the building and not the land. (Jack J.) Khairunnessa Bibi v. Corporation of Calcutta,

165 I C 130=40 C W N 797=9 R C 345=37 Cr L J 1087.

——Requisition under S. 271, on whom to be served—Service of requisition only on owner of land.

Where the owner of the land is not the owner of the structures standing thereon, the requisition under S. 271 should be served in the first instance upon the owner of the structures built upon the land and not upon the owner of the land. Hence when the requisition is served only on the owner of the land, he cannot be convicted for non-compliance with it. (Jack J.) Khairunnessa Bibi v. Corporation of Calcutta,

165 I C 130=40 C W N 797=9 R C 345 = 37 Cr L J 1087.

——Pendency of suit for ejectment—Pendency of suit for ejectment of tenant, or existence of injunction against owner of premises or mere application under S. 527 would not relieve owner from liability for conviction for non-compliance with notice under S. 271 but such proceedings cannot be ignored while considering what should be proper sentence for offence of non-compliance.

The pendency of a suit in ejectment against the tenant or the existence of an injunction against the owner of the premises restraining him from taking possession of the premises or even the mere filing of an application under S. 527 would not be sufficient to relieve the owner from a liability for a conviction for non-compliance with a notice under S. 271 requiring him to erect privies connected with the premises. One cannot entirely overlook, however, the existence of such proceedings in considering the gravity of the offence and in determining the proper sentence. (Mukerji J.) Juman Sadagar v. Corporation of Calcutta,

A I R 1929 Cal 490=119 I C 369=1929 Cr C 172=30 Cr L J 1026.

—S. 291.

——S. 291 (2) — Alleged disobedience of S. 291 (2) by alteration in water pipe by persons who were not licensed plumbers — Burden to show that persons employed were licensed plumbers was on accused—If he does not satisfy,

presumption will be that persons employed had no license. —See Evidence Act (1 of 1872) S. 106,
A I R 1948 Cal 58=48 Cr L J 999

——S. 291 (2)—Accused alleged to have disobeyed S. 291 (2) Calcutta Municipal Act—Burden of proof — Presumption.

Where the accused is alleged to have disobeyed the provisions of S. 291 (2) of the Calcutta Municipal Act by effecting alteration in the water pipe of his house by persons who were not plumbers licensed by the Municipality, it is for the accused to show that the persons employed by him were licensed plumbers, and if he does not disclose their names and gives no reasonable explanation for such non-disclosure, it can be reasonably presumed that he employed persons who did not possess a license. (Sen J.) B. N. Chatterjee v. Dinesh Chandra Guha,
AIR 1938 Cal 58=48 Cr L J 999.

—S. 299.

——Scope and interpretation——Inapplicability of corresponding provisions of the Act of 1899.

According to S. 299 of the Act a person may be served with notice for any alleged unlawful encroachment. The words "fixture attached to a building" should be construed as they stand and the structure complained of whether constructed either before or after the "building" is within the section. The corresponding provision of the Act of 1899 which required the building to be erected before the fixture does not govern the interpretation of the present Act. 23 C W N 752, Ref. (Pearson and Malik JJ.) Purna Chandra Dutt v. Corporation of Calcutta,
A I R 1929 Cal 440 = 122 I C 549=1929 Cr C 72=31 Cr L J 424.

—S. 300.

——(As applied to Howrah) — Managing agents of company — Notice served on them under S. 300 in respect of company's property.

The company which owns the property cannot evade responsibility for acts in relation to their fixed property by transferring their management to the managing agents. The managing agents cannot be said to be either the owners or the occupiers of the premises. The persons who own and occupy the premises are the company. Consequently a notice under S. 300, Calcutta Municipal Act in respect of the property of the company served on the managing agents cannot be said to be addressed to the proper persons (Derbyshire C. J. and Bartley J.) N. N. Bose v. Kedar Nath Jute Manufacturing Co. Ltd.
AIR 1941 Cal 550=45 C W N 925=14 R C 268=196 I C 559=43 Cr L J 33.

——Ss. 300, 534, 488 (as applied to Howrah) — Construction of wall by company obstructing public road — Notice to remove obstruction within fifteen days served on company—Obstruction not removed — Complaint by Municipality under Ss. 488 and 300—Proper way of dealing with complaint.

A company built a wall which the Municipality alleged, obstructed a public road. The Municipality sent a requisition for the removal of the wall to the company on August 9, 1939. Fifteen days were allowed in the notice to remove the obstruction. The company did not remove it either within 15 days or at all. The Municipality filed a complaint under Ss. 488 and 300, Calcutta Municipal Act :

Held, that the offence was one for not complying with the notice to remove the obstruction and not one for constructing the wall and period of three months under S. 534, therefore, began to run from August 24, 1939.

Held, further that the Magistrate in coming to the conclusion that the complaint was time-barred and, therefore, the question whether the road was a public road did not arise, was in error. The correct way for the Magistrate to deal with it was first to ascertain whether the road in question was a street within the Municipal limits. If it was not, no further questions arose and the complaint would stand dismissed. If, on the other hand, he came to the conclusion that the road in question was a public street within the meaning of S. 300, Calcutta Municipal Act, it was for him to determine whether an obstruction was caused which ought to have been removed and whether there was a failure to remove it. If so and proceedings were brought within a period of three months from the failure, then it was his duty to convict the accused of the offence which was alleged against him under Ss. 488/300 of the Act. (Derbyshire C. J. and Bartley J.) N. N. Bose v. Kedar Nath Jute Manufacturing Co., Ltd.
AIR 1941 Cal 550=45 C W N 925=14 R C 268=196 I C 559=43 Cr L J 33.

—S. 346.

——Refusal of notice — Corporation cannot refuse notice under S. 359 — Bustee owner prosecuted and fined under S. 346 is immaterial — Prosecution within six months of notice is not valid.

It is obligatory on the Corporation to accept notice given to them under S. 359 and it is not open to them under the section to refuse to accept such a notice and the owner of the bustee giving the notice is entitled to six months' time allowed by the section within which he is to effect the removal of all the huts standing on the land. It is immaterial whether the bustee owner had already been prosecuted and fined for neglect to carry out a requisition under S. 346; he is entitled to serve a notice under S. 359 on the Corporation and to get six months' time, allowed under that section for the removal of all the huts on the land, but it is open to the Corporation if, on the expiry of the six months from the date of the notice, the huts had not been removed to revive once more the former proceedings under S. 346. The Corporation are clearly not entitled to prosecute the bustee owner within six months from the date of notice (Cuming and Gregory, JJ.) Baradaprasad Roy v. Corporation of Calcutta.
AIR 1927 Cal 213=44 C L J 579=99 I C 933=7 A I Cr R 330=28 Cr L J 197.

—S. 363.

SYNOPSIS

1. Scope.
2. Nature of proceedings under the section.
3. Notice before order of demolition.
4. Order of demolition when to be passed.
5. Proviso to Sub-s. (1)—Ss. 363 and 493.
6. Sub-section (2).

1. Scope.

——Procedure under S. 363 cannot be applied to provisions of S. 449 of old Act.

It is quite impossible to carry out the provisions of S. 449 of the old Act, by means of the procedure set forth in S. 363 of the new Act. AIR 1925 Cal 1251, Dist. (Rankin and Duval, JJ.) Satish Chandra Bose v. Corporation of Calcutta
A I R 1926 Cal 1133=53 Cal 974=44 C L J 37 = 97 I C 666=27 Cr L J 1146.

2. Nature of proceedings under the section.

——Order under—(Criminal P. C. S. 439).

The Magistrate dealing with an application under S. 363 is an inferior criminal Court within the meaning of S. 439, Criminal P. C. (Das Gupta and Debabrata

CALCUTTA MUNICIPAL ACT (III of 1923), S. 363

—2. Nature of proceedings under the section

Mookerjee JJ.) Panchu Gopal Mondal v. Corporation of Calcutta

AIR 1953 Cal 410=1953 Cr L J 921.

——Applicability of S. 403, Criminal P. C. — Criminal P. C. (1898), S. 403.

The hearing of an application under S. 363 of the Calcutta Municipal Act does not amount to a trial for an offence within the meaning of Criminal P. C. Consequently, S. 403, Criminal P. C., can have no application to a case where a previous application under S. 363 of the Calcutta Municipal Act has been permitted to be withdrawn, and a fresh application lies under the same section with respect to the same structures. (K. C. Das Gupta and Lahiri JJ.) Bhadreswar Majhi v. Corporation of Calcutta.

AIR 1952 Cal 683=86 C W N 558=1952 Cr L J 1364.

——Proceedings withdrawn — Fresh proceedings are not barred — Withdrawal does not amount to acquittal—(Criminal P. C. (1898), Ss. 248, 403).

Though the erection of an unauthorised structure is an offence under S. 493 of the Calcutta Municipal Act, a proceeding under S. 363 cannot be treated as a criminal proceeding in regard to an offence and S. 248, Cr. P. C. can have no application. Section 403, Cr. P. C., which also speaks of conviction or acquittal of an offence has also no application to proceedings under S. 363, Calcutta Municipal Act. Hence withdrawal of proceedings under S. 363 does not amount to "acquittal" and fresh proceedings are not barred. (Chakravartti and Das Gupta JJ.) Dhanpati Devi v. Corporation of Calcutta.

AIR 1952 Cal 467=55 C W N 751=I L R (1952) 2 Cal 321=1952 Cr L J 975.

——Ss. 363, 534—Nature of proceedings under S. 363.

Quære.—Whether proceedings under S. 363 are such as are contemplated in S. 534. (Harries C. J. and Bose J.) Central Hardware Mart v. Corporation of Calcutta.

AIR 1952 Cal 39=1952 Cr L J 301.

——Ss. 363, 493 and 534 —Section 534 does not relate to proceedings under S. 363 but to proceedings under S. 493. Hence, in proceedings under S. 363, no fine can be inflicted under the provisions of S. 493, (Sen J.) Badridas Goenka v. The Corporation of Calcutta.

AIR 1950 Cal 140=51 Cr L J 645.

——Offence is committed when structure is raised without sanction or in deviation of order passed by Corporation (Obiter) (Per Mookerjee J.)

Obiter.—Per Mookerjee J.—Under the Calcutta Municipal Act, it is not always the case that an offence is not committed until there is a disobedience of an order of demolition passed by the Magistrate. The offence, on the other hand, may have been committed when the structure was raised without the necessary sanction or in deviation of an order passed by the Corporation. The jurisdiction of the Municipal Magistrate is invoked when an offence has in the opinion of the Corporation already been committed. What the Magistrate is required to consider is whether the offence has been so committed : AIR 1925 Cal 1251, Foll; AIR 1927 Cal 509, Dissent. (R. P. Mookerjee and Das Gupta JJ.) Abdoola Haroon & Co. v. Corporation of Calcutta.

AIR 1950 Cal 36=51 Cr L J 346.

——The demolition of unlawfully erected work is not a punishment within the meaning of S. 363 : 8 C W N 142, Foll. (Suhrawardy and Cammiade JJ.) Kishen Dayal v. Corporation of Calcutta.

AIR 1927 Cal 509=54 Cal 532=31 C W N 506=101 I C 183=45 C L J 469=8 A I Cr R 35=28 Cr L J 407.

——Party to proceeding under, is not exempted from administration of oath under Cr. P. Code, S. 342.

CALCUTTA MUNICIPAL ACT (III of 1923), S. 363

—2. Nature of proceedings under the section

A party to a proceeding under S. 363 of the Calcutta Municipal Act relating to demolition of an unauthorised structure is not an accused person and as such is not exempted from administration of oath under S. 342 of the Cr. P. Code. AIR 1925 Cal 1251, Expl. (Suhrawardy and Cammiade JJ.) Kishen Dayal v. Corporation of Calcutta.

AIR 1927 Cal 509=54 Cal 532=31 C W N 506=101 I C 183=45 C L J 469=8 A I Cr R 35=28 Cr L J 407.

3. Notice before order of demolition.

——Notice, necessity of.

It is now settled law that before an order of demolition is passed, the Magistrate must give the occupiers as well as the owners sufficient opportunity to show cause against the proposed order. (Das Gupta and Debabrata Mookerjee JJ.) Panchu Gopal Mondal v. Corporation of Calcutta.

AIR 1933 Cal 410=1953 Cr L J 921.

——Sub-tenant—Notice—Service.

A person who occupied and was a sub-tenant of the premises is entitled to notice of the proceedings and is entitled to an opportunity to be heard under S. 363. The notice should be served on persons interested of an application under S. 363 in much the same way as a summons is served. Affixing a notice on the premises would not be sufficient notice where the occupier could be served personally. Of course if personal service is impossible by reason of the conduct of the occupier, notice by affixation of the document on the premises would be sufficient. (Harries C. J. and Bose J.) Central Hardware Mart v. Corporation of Calcutta.

AIR 1952 Cal 39=1952 Cr L J 301.

——Applicability — Calcutta Municipal Act (III of 1899 B. C.), S. 449 — Bengal General Clauses Act (1 of 1899 B. C.), S. 8 — Effect of saving — Demolition order for building built without sanction before the new Calcutta Municipal Act, 1923—Sanction by General Committee to proceed under S. 449 of the old Municipal Act, reaffirmed by the new Corporation—Demolition order is not valid.

A prosecution had been sanctioned by the General Committee under S. 449 of the old Act (III B. C. of 1899) but the case was actually started under the new Act (III B. C. of 1923) by the new Corporation and notice upon the party was issued and an order of demolition was passed.

Held, that whether the proceedings were under S. 363 or 364 of Act III B. C. of 1923, they were irregular and the order of the Municipal Magistrate was not justified as the party had not been heard by the Corporation before sanction for prosecution was given.

Held, further that the proceedings under S. 449 of the Calcutta Municipal Act (III B. C. of 1899) could only be started by the General Committee and, therefore, in respect of unauthorized structures which existed before 1st April, 1924, when the Calcutta Municipal Act of 1923 came into force, there was, after the passing of the latter Act, nobody competent to take proceedings under S. 449 of the Act of 1899. (Sanderson, C. J. and Panton J.) Ram Gopal Goenka v. Corporation of Calcutta.

AIR 1925 Cal 1251=29 C W N 898=90 I C 317=52 Cal 962=26 Cr L J 1533.

4. Order of demolition when to be passed.

——Building constructed without sanction and in spite of prohibitory order—Magistrate ordering demolition—Principles of equity, whether should be applied.

Where, when ordering the demolition of a structure which was commenced without sanction and which was completed in disregard to a prohibitory order, the Magistrate had given elaborate reasons as to why he considered demolition necessary and he had expressly referred to the fact that if the constructions were allowed to stand they would seriously affect the sanitation of the place, and had

CALCUTTA MUNICIPAL ACT (III of 1923), S. 363 —4. Order of demolition when to be passed

also taken into consideration the heavy expense incurred in constructing the rooms and the staircase and had balanced against that expenditure and the loss likely to be caused to the petitioner to the detriment to the sanitation of the place and the probable effect of allowing structures, built in open defiance of the Corporation rules, to stand :

Held that the Magistrate exercised his discretion properly and that in doing so he acted on the priciples on which the Court of equity acts when issuing a mandatory injunction.

(Chakravartti J.—It is difficult to subscribe to the view that when a member of the public has violated some statutory rules relating to the erection of buildings and the local body, entrusted with the administration of the rules, seeks demolition of the unauthorised structures by way of a remedy specifically provided by law, the principle (of equity) which applies as between private individuals when one is seeking a mandatory injunction against the other must still be applied.) (Chakravartti and Das Gupta JJ.) Dhanpati Devi v. Corporation of Calcutta.

AIR 1952 Cal 467=55 C W N 751 = I L R (1952) 2 Cal 321=1952 Cr L J 975.

——Ss. 363, 493 — Scope of — Alternative remedies — Demolition of structure or order for damages—Discretion of Court.

The Calcutta Municipal Act gives two alternative remedies to the Corporation in case of violation of Building Rules. Section 493 provides for a fine for unlawfully commencing, carrying on or completing a building and under S. 363 the Corporation has a right to apply for an order of demolition. Under the provisions of S. 363 no application for an order of demolition will lie if the Corporation has instituted a proceeding under S. 493. The existence of two alternative remedies implies that the more drastic remedy of demolition should not be resorted to in every case of violation of building rules.

The mere fact, therefore, that a structure was built without sanction and that the construction was completed within five years of the institution of a proceeding under S. 363 does not justify an order of demolition of the structure under that section. The Court has further to consider whether the wrong is disproportionately small to the loss which the wrongdoer would suffer by an order of demolition which is in the nature of a mandatory injunction. If so, the Court need not pass a decree for injunction but may saddle the wrongdoer with a decree for damages. (Das Gupta and Lahiri JJ.) Fazl Elahi v. Corporation of Calcutta

AIR 1951 Cal 41=52 Cr L J 586.

——Building unauthorised or infringing building Rules—Magistrate can refuse demolition if it would be against equity and justice : 33 Cal 267; 34 Cal 341, Rel. on — High Court's power on revision are same as that of Magistrate : 34 Cal 341, Rel. on—Unauthorised building —Party allowed to be in possession for over 3 years with full knowledge by Corporation—No infringement of building bye-laws—Rights of neighbours not affected — Order for demolition refused. (Sen J.) Badridas Goenka v. Corporation of Calcutta

AIR 1950 Cal 140=51 Cr L J 645.

——S. 363, Sch. XVII, R. 65—Power of Corporation to revoke permission — Extent of — Discretion of Court in making order for demolition — Opportunity to be given to party before revoking sanction — Lapse of long period between revocation of sanction and confirmation of revocation—Order for demolition, if can be set aside.

Although under R. 65 of Sch. XVII, Calcutta Municipal Act, the power of the Corporation to cancel a permission on the ground of material alteration is absolute, it is so only in the sense that no other authority can revise the order of revocation or restore the permission so cancelled. In the Court which has to make the order of demolition there is a discretion which the word 'may' used in S. 363 of the Act in reference to this matter, plainly indicates. For a proper exercise of that discretion, it is absolutely necessary for the Court to go into the question as to what the exact circumstances were under which the revocation was made or the extent to which the misrepresentation or fraudulent statement, if any, could have affected the granting of the permission.

When a party has acquired a valuable right in the shape of a permission to build, that permission cannot be withdrawn behind his back on a charge that he has been guilty of fraud or misrepresentation and without an opportunity being allowed to him to say what he may have to say in his defence. To determine whether the discretion which the law vests in the Court should be exercised in favour of the Corporation one of the matters that must be taken into consideration is the length of time that has elapsed since the completion of the structures, which on account of the revocation must be deemed to be unauthorized.

Where although the sanction for erection of a building was revoked on February 27, 1928, but the revocation was not confirmed till August 6, 1930, the matter not being considered of sufficient importance for any decisive action being taken :

Held, that under such circumstances, it would be quite wrong to make an order for demolition. (Mukerji and Bartley JJ.) Basanta Kumar Das v. Corporation of Calcutta

AIR 1934 Cal 389=38 C W N 280=6 R C 733=1934 Cr C 530=61 Cal 356=149 I C 1193.

——Scope and discretion—Discretion should be exercised on equitable grounds.

Suhrawardy J.—S. 363 is not imperative inasmuch as it says that the Magistrate may make an order directing that such erection, etc., or so much thereof as has been executed unlawfully be demolished or altered. One of the grounds on which such an order can be passed is that the erection has not been commenced after obtaining the permission of the Corporation, but the section makes it discretionary with the Magistrate to make such an order and it has been interpreted by the Court that the discretion vested in the Magistrate under this section should be exercised on equitable ground : 33 Cal 287; 34 Cal 341, Foll. (Buckland J. on difference between Suhrawardy and Graham JJ.) Sham Lal v. Corporation of Calcutta

AIR 1929 Cal 781 = Ind Rul 1930 Cal 612=125 I C 740=1929 Cr C 525=33 C W N 777=31 Cr L J 912.

——Necessity for privacy—However necessary for privacy, it is breach of S. 363 to erect boundary walls 18 feet high without sanction—Magistrate's discretion ordering demolition held rightly exercised.

A person without sanction and in defiance of the Calcutta Municipal Act and rules of the Corporation erected a boundary wall 18 feet high though under law he was limited to a height of 10 feet and the Magistrate ordered demolition. It was admitted that the walls were necessary for securing privacy of the premises.

Held, (Per Buckland and Graham JJ.), that there was breach of S. 363 read with S. 3 (7) and the order of demolition by the Magistrate was valid and legal and the discretion was rightly exercised. (Per Suhrawardy J., contra). The Magistrate should not as a course of equity order demolition and that Magistrate did not exercise proper discretion when he took into account simply the fact that the structure was put up without the sanction of the Corporation. (Buckland J. On difference between Suhra-

CALCUTTA MUNICIPAL ACT (III of 1923), S. 363

—4. Order of demolition when to be passed.

wardy and Graham JJ.) Sham Lal v. Corporation of Calcutta

AIR 1929 Cal 781=1929 Cr C 525=33 C W N 777.

5. Proviso to Sub-S. (1)—Ss. 363 and 493.

——Ss. 363, 493—Conversion of proceeding under S. 363 into one under S. 493.

If proceedings have been commenced under S. 363 the Magistrate cannot convert the proceedings into proceedings under S. 493. He cannot avoid deciding the application under S. 363 by convicting under S. 493. (Harries C. J.) Corporation of Calcutta, Petitioner v. Surendra Das Gupta

ILR (1951) 1 Cal 191.

——Ss. 363 and 493—The Magistrate cannot convert the proceedings under S. 363 to one under S. 493 : Cri. Revn. No. 235 of 1948, Rel. on; AIR 1938 Cal 36, Expl. (Sen J.) Badridas Geonka v. The Corporation of Calcutta

AIR 1950 Cal 140=51 Cr L J 645.

6. Sub-Section (2)

——Ss. 363, 364—S. 363 (2), applicability of, cases under S. 364—'Proceedings,' meaning of—Highway—Proof of dedication—User by public, effect of—Cul de sac, whether public highway — Words and Phrases — 'Sadharaner,' meaning of.

Under the provisions of S. 363 of the Calcutta Municipal Act, the work is unlawful from the beginning, and proceedings must be taken within five years of erection. But under S. 364, the illegality begins only upon the expiry of the notices mentioned therein and proceedings must be taken within five years of such expiry. Section 363 (2), therefore, is applicable to S. 364, mutatis mutandis, namely, by substituting for "any work which has been done," the words "any non-compliance with a notice which expired."

The word 'proceedings' means proceedings before a Magistrate and does not contemplate proceedings before a Committee of the Corporation, which precede the application to the Magistrate.

'Sadharaner' means that which is common as a common property, and does not mean 'public' or anything approximating to it.

Before private land can become a public street or passage, it must be made so by Statute or be dedicated specifically by the owner to the use of the public or there must be circumstances from which such dedication can be presumed.

A public highway must prima facie lead from one public place to another. A cul de sac may be a public highway, but its dedication will not be presumed from mere public user without evidence of expenditure on the place in dispute for repairs, lighting or other matters by the public authority. (Williams and S. K. Ghose JJ.) Jitendra Nath Boral v. Corporation of Calcutta,

AIR 1931 Cal 433=58 Cal 1124=1931 Cr Cas 585=35 C W N 397=Ind. Rul. (1931) Cal 390=130 I C 870=32 Cr L J 590.

——Burden of proof — Onus of proving that work was done more than five years previously is on owner.

Under S. 363 (2), the question before the Magistrate is not whether the Corporation has shown the date of the work being done or that the date was within five years of the institution of the proceedings but whether the owner has established to his satisfaction that the work has been done more than five years previously. (Rankin C. J. and Patterson J.) Ram Gopal Goenka v. Corporation of Calcutta,

AIR 1930 Cal 222=50 C L J 527=Ind Rul 1930 Cal 440=124 I C 488=1930 Cr C 222=31 Cr L J 670.

CALCUTTA MUNICIPAL ACT (III of 1923)

—S. 364.

——Offence is committed when structure is raised without sanction or in deviation of order passed by Corporation (Obiter)—(Per Mookerjee J.)—See ibid, S. 363.

AIR 1950 Cal 36=51 Cr L J 346.

——An application under S. 364 (1) not being a suit, Art. 146-A, Limitation Act does not apply. (Bartley and Rau JJ.) Corporation of Calcutta v. Dulal Chandra Pramanick,

AIR 1939 Cal 470=184 I C 189 (1)=40 Cr L J 870.

——Applicability.

The applicability of S. 364, Calcutta Municipal Act, is not confined to cases of emergency where there is danger to the public. Under S. 364, the Magistrate has a discretion to make an order directing the removal of a structure or not. (Jack and M. C. Ghose JJ.) I. N. Silas v. Corporation of Calcutta,

AIR 1933 Cal 341=56 C L J 578=1933 Cr Cas 414=Ind. Rul. (1933) Cal 337=143 I C 122 (2) = 34 Cr L J 521.

—S. 365.

——S. 365 (1) — Order under S. 365 (1), when can be issued.

An order to stop the progress of work under S. 365 (1), Calcutta Municipal Act can only be issued in cases in which work is proceeding unlawfully in the manner indicated in S. 363 of the Act. (Edgley J.) Hrishikesh Dutt v. Municipal Commissioner, Howrah,

AIR 1940 Cal 292=13 R C 50=44 C W N 561=ILR (1940) 2 Cal 69=188 I C 865=41 Cr L J 689.

—S. 385.

——No continuance of offence — Conviction under S. 385 (1) read with S. 488 (1) — Continuing to work mill after conviction is not continuance of the offence—Second conviction is bad.

The accused set up a flour mill intending to work it by electricity without the previous written permission of the Corporation and was convicted under S. 385, Cl. (1) read with S. 488, Cl. (1), and was sentenced to pay a fine on 30th March 1927. After the said conviction, he worked the mill from 1st April onwards. For this he was prosecuted for having committed an offence under S. 385, Cl. (1) read with S. 488, Cl. (2), and was sentenced to pay a daily fine of Rs. 10.

Held, that once the mill has begun to work with electricity, etc., the thing passes beyond the range of intention and it cannot be said to be a continuance of the same offence, but must be regarded as a new offence altogether and the conviction is bad in law and must be set aside. (Mukerji J.) Murlidhar Ram v. Corporation of Calcutta,

AIR 1928 Cal 387=32 C W N 591=108 I C 241=10 A I Cr R 7=29 Cr L J 361.

—S. 386.

——S. 386/488—Nuisance contemplated by section detected—Maximum or substantial penalty should be imposed—Possession of a licence to sell milk is no answer to charge under S. 386.

Section 386 provides for merely a monetary penalty and the nuisance which it provides against is nuisance of a kind which is likely to make a locality filthy, unhealthy and generally obnoxious to decent civic life. If the section has to serve its purpose, then where a nuisance of this kind is detected, it is proper to impose the maximum or a substantial penalty. Possession of a license to carry on the profession of milk-seller cannot be an answer to a charge under S. 386 since the section contemplates quite a different evil and a different remedy and to require a license of quite a different kind. (Chakravartti and Sinha JJ.) Ram Dayal Tewari v. Corporation of Calcutta,

AIR 1953 Cal 76=56 C W N 339=1953 Cr L J 207.

CALCUTTA MUNICIPAL ACT (III of 1923), S. 386

——S. 386 (1) (c) — Mere keeping of a buffalo is not an offence under section — It must also be proyed that the animal was kept for sale or hire or for sale of the produce thereof. (K. C. Chunder J.) Sukdeo Singh v. Corporation of Calcutta,

AIR 1953 Cal 41=56 Cal W N 669=1953 Cr L J 196.

——S. 386 (1) (c)—Right to adduce evidence in defence—See Criminal P. C. (1898), S. 244.

AIR 1953 Cal 41=1953 Cr L J 196.

——Ss. 386 (1) (b) and 488—Prosecution under—Absence of opinion of Corporation—Effect.

Under S. 386 (1) (b) the opinion of the Corporation that the purpose of the business is likely to create a nuisance is necessary as a foundation for the requirement of a license. Under S. 501, a written document signed by the Secretary of the Corporation, serves as a sufficient evidence of the existence of such opinion. In the absence of such an opinion a person cannot be convicted of an offence under S. 386 (1) read with S. 488 on an order of a Chief Executive Officer of a superseded Corporation to the effect that certain business was creating a nuisance unless it complied with certain specified conditions. (Roxburgh J.) Peninsular Motor Corporation Ltd. v. State of West Bengal,

AIR 1952 Cal 220=1952 Cr L J 594.

——Crown if bound by section.

The Crown is not affected by the provisions contained in S. 421 of the Calcutta Municipal Act as it cannot be said that by necessary implication the Crown is bound by this section. Hence, where the storing and sale are by and on behalf of the Central Government, as the Crown is not expressly named in the Calcutta Municipal Act the Crown is not bound by the provisions of S. 386 : A I R 1947 P C 34, Foll. (R. P. Mookerjee and Das Gupta JJ.) Corporation of Calcutta v. Sub-Post Master, Dharmatola,

AIR 1950 Cal 417=84 C L J 188=54 C W N 429=51 Cr L J 1532.

——Heading to section—Interpretation of statutes.

Headings prefixed to a section or a set of sections in modern statutes are regarded as preambles to those sections. Section 386 will be attracted not with reference to storing in every premises, but only in those which are limited by the description given by the sub-heading, "Factories, trades and places of public resort." (R. P. Mookerjee and Das Gupta JJ.) Corporation of Calcutta v. Sub-Post Master, Dharmatola,

A I R 1950 Cal 417=84 C L J 188=54 C W N 429=51 Cr L J 1532.

——Statute providing for license for carrying on trade — Consideration whether person concerned earned profit irrelevant — Storing of grain in certain premises by Post and Telegraphs Department for benefit of employees without license—S. 386 attracted. (R. P. Mookerjee and Das Gupta JJ.) Corporation of Calcutta v. Sub-Post Master, Dharmatola,

A I R 1950 Cal 417=84 C L J 188=54 C W N 429=51 Cr L J 1532.

——S. 386 (1) (a) — Electroplating does not fall within item 8, Sch. XIX — No offence to carry on such business without license. (Harries C. J.) Badruddin & Sons v. Corporation of Calcutta,

A I R 1950 Cal 147=51 Cr L J 663.

——Accused letting out premises to A — A carrying on business of building bodies for omnibuses on premises without licence—No evidence that accused intended letting of premises for carrying on such business.

A person cannot be said to have allowed a thing to be done which is not in his power to prevent.

CALCUTTA MUNICIPAL ACT (III of 1923), S. 386

The accused who was the landlord of certain premises let them out to one A, who had for sometime been carrying on a business of building bodies for omnibuses. A had failed to obtain a licence for the said business. The corporation wrote to the accused informing him that the licence for the "bus body building workshop" at the premises had been refused and that unless he took steps for the removal thereof within one month he would be liable for prosecution under S. 386 (1) (b) of the Calcutta Municipal Act. In reply the accused wrote a letter protesting that the refusal of the licence was unwarranted urging that no licence was required and that no nuisance was created by the business and that, therefore, he did not feel himself called upon to comply with an illegal requisition. There was no suggestion and no evidence that he intended that the letting should be for the purpose of carrying on the business without a licence, if a licence was necessary and could not be obtained:

Held, that the accused was not liable under S. 386. As it was not shown as to how the accused landlord could prevent the business of building bodies for omnibuses being carried on he could not be said to have allowed or permitted the carrying on of the business within S. 386. (Roxburgh J.) Matilal Nag v. Corporation of Calcutta,

A I R 1943 Cal 39 = I L R (1942) 2 Cal 105 = 46 C W N 418=15 R C 519=204 I C 336=44 Cr L J 204.

——S. 386 (1) (b) — Charge under S. 386 (1) (b) — Essentials to be proved.

For the purpose of S. 386 (1) (b), Calcutta Municipal Act the Corporation means the Chief Executive Officer. The first thing, therefore, in a charge under S. 386 (1) (b), the prosecution has to prove, is that the Chief Executive Officer had formed the opinion that the use of the premises without a licence was dangerous to life, health or property or likely to create nuisance. It is not the duty of the prosecution to convince the Magistrate that the use of the premises was dangerous to health and a nuisance to the neighbours. (Henderson J.) Atul Chandra Bhandary v. Corporation of Calcutta,

A I R 1942 Cal 142=I L R (1941) 2 Cal 308=14 R C 534=199 I C 179=43 Cr L J 513.

——S. 386 (1) (b)—Offence under S. 386 (1) (b) is continuing within S. 534 (1).

The offence under S. 386 (1) (b) is a continuing offence but under the specific provision of S. 534 (2), Calcutta Municipal Act, the offence comes to an end on the expiry of the year for which the licence is required to be taken out. Therefore, under S. 534 (1) the complaint in respect of the offence under S. 386 (1) (b) must be made within 3 months of the date on which the existence of the offence is first brought to the notice of the Chief Executive Officer. (Henderson J.) Atul Chandra Bhandary v. Corporation of Calcutta,

A I R 1942 Cal 142=I L R (1941) 2 Cal 308=14 R C 534=199 I C 179=43 Cr L J 513.

——Ss. 386, 387, 488 — Publication of declaration prohibiting user of premises for certain purposes — Fact of user of premises for such purposes long before declaration —Liability for prosecution.

Where a declaration under S. 387, Calcutta Municipal Act, has been published, the corporation has the right to prohibit the use of premises irrespective of the fact that the premises were being used for such purposes long before the declaration by the Corporation was made.

When a person continues to so use such premises after publication of the notification, he is liable under S. 488. (Guha J.) Chuni Lal v. Corporation of Calcutta,

A I R 1933 Cal 732 = 37 C W N 737=60 Cal 892 = 6 R C 188 = 1933 Cr Cas 1300 = 146 I C 177 = 34 Cr L J 1228.

CALCUTTA MUNICIPAL ACT (III of 1923), S. 386

——Summons to answer charge under S. 386—Omission to mention place of occurrence—Validity of trial.

Where in a summons to answer a charge under S. 386 (1) (a) of the Calcutta Municipal Act, the place of occurrence is not mentioned, such omission in itself is a material irregularity which would seriously mislead the accused. (S. K. Ghose J.) Ganesh Chandra Khan & Sons v. Corporation of Calcutta,

A I R 1933 Cal 117=36 C W N 132=Ind Rul (1933) Cal 207 = 1933 Cr Cas 144 = 141 I C 864 = 34 Cr L J 250 (2).

——S. 386 (1) (a) — 'Grain', meaning of — Storing dal without licence, whether offence.

The expression 'grain' is confined to seeds of cereal plants such as barley, oats etc., and does not include dal; and storing dal without taking out a licence is not an offence under S. 386 (1) (a) of the Calcutta Municipal Act, 1923. (Mr. Justice Sir Arthur Herburt Cuming Kt.) Surendranath Datta v. Corporation of Calcutta,

A I R 1931 Cal 705=58 Cal 955=Ind Rul (1931) Cal 914=1931 Cr Cas 985=134 I C 914 (1)=32 Cr L J 1235.

——S. 386 (1) (c)—Lease of vacant land—Use of land by sub-tenants for purpose requiring licence, without taking out licence — Landlord's liability — 'Permitting' meaning of.

A let out certain vacant land within the Calcutta Municipality to B. B sublet a portion thereof to certain person who used the same for keeping horses and cattle without taking out a licence. A and B were convicted under S. 386 (1) (c) of the Calcutta Municipal Act for having permitted the premises to be used for such purposes without licence:

Held, that A could not be held under the circumstances to have permitted the premises to be used for the purposes alleged by the prosecution, and his conviction was illegal. (Cuming J.) Nand Lal Roy v. Corporation of Calcutta,

A I R 1931 Cal 5 = Ind Rul (1931) Cal 160 = 58 Cal 204=53 C L J 65 =34 C W N 930 = 129 I C 320=32 Cr L J 326.

—S. 388.

——Only the Magistrate who convicts can pass order restricting use of premises.

Under S. 388, Calcutta Municipal Act, the Magistrate who imposed the fine is alone authorized to pass an order directing that the premises be no longer used for the said purpose. No other Magistrate has jurisdiction to do so. (Lodge and Roxburgh JJ.) J. N. Sharma and Sons, Firm v. Corporation of Calcutta,

A I R 1942 Cal 529=I L R (1942) 1 Cal 527=15 R C 382=202 I C 592=43 Cr L J 870.

—S. 391.

——Power of Corporation to refuse licence — Interest of public order and morality — Discretion of Corporation, exercise of—Power to refuse licence.

Under the implications of S. 391 of the Calcutta Municipal Act it is open to the Corporation to refuse a licence if in their discretion they think it necessary to do so, but this discretion must be exercised in a judicial spirit and in a reasonable manner.

The question as to whether the refusal to issue a licence was in excess of the authority of the Corporation, may be raised by way of defence in a Criminal Court though it may be more appropriate to do so by a civil declaratory action or by a writ of mandamus. (Mitter J.) S. R. Verma v. Emperor,

AIR 1933 Cal 243=37 C W N 344=1933 Cr Cas 322 =Ind Rul (1933) Cal 525=60 Cal 689 = 144 I C 198 = 34 Cr L J 693.

CALCUTTA MUNICIPAL ACT (III of 1923), S. 391

——Ss. 391, 498 (2)—Lease of theatre— Lessee's liability to take out licence— Power of Corporation to charge fee— Sentence of imprisonment in default of fine, legality of — Bengal General Clauses Act (1 of 1899), S. 26.

Where a theatre has been leased by its owner, the lessee is the person who 'keeps it open' and who is, therefore, liable to take out a licence under S. 391, Calcutta Municipal Act.

Under S. 498 (2) of the said Act, the Corporation may charge a fee for such licence, though S. 391 is silent about fees.

Where a person is convicted under S. 391, it is open to the Court to impose a sentence of imprisoment in default of payment of fine under the provisions of S. 64, Penal Code, read with S. 26, Bengal General Clauses Act. (Cuming J.) U. K. Mitra v. Corporation of Calcutta,

AIR 1932 Cal 63 = 58 Cal 1293 = 35 C W N 865 = 1932 Cr Cas 11=Ind Rul (1932) Cal 193 = 136 I C 465 =33 Cr L J 303.

——A conviction under S. 391 cannot be upheld where the summons has not been properly served on the accused. (Cuming J.) Mon Mohan v. Corporation of Calcutta,

AIR 1932 Cal 62 = 35 C W N 868 = Ind Rul (1932) Cal 183=1932 Cr Cas 10=136 I C 135= 33 Cr L J 264.

—S. 406.

——"Seller."

Not only the person who is the actual proprietor or holder of the licence but any one selling on his behalf comes within the mischief of the section as the seller. (K. C. Chunder J.) Mohari Lall v. Corporation of Calcutta,

A I R 1953 Cal 561 = 57 C W N 248 = 1953 Cr L J 1347.

——Statute repealed and replaced by new Act— Proceedings do not lapse — See Bengal General Clauses Act (1 of 1899), S. 8, Cl. (d).

AIR 1953 Cal 401=1953 Cr L J 818.

——Accused having sweet-stall found frying luchis in ghee—Sample of ghee found grossly adulterated—Accused prosecuted with respect to luchis—No evidence that ghee was in luchis and luchis fried in that ghee would be inferior to those fried in unadulterated ghee— Conviction.

The accused had a sweet-stall. One of the accused who was in charge of the stall, was frying some luchis in ghee. The Sanitary Inspector took a sample of the ghee. The sample was found grossly adulterated and not containing any butter fat. The accused were prosecuted with respect to the luchis :

Held, that the conviction of the accused under S. 406 could not be sustained. It was not the prosecution case that the ghee formed one of the constituents of the luchis and since their case was that the luchis were fried in it, and the luchis were not seized or analysed, there was nothing to show that any of the ghee was in the luchis. Further the prosecution ought to have shown that the luchis fried in the adulterated ghee would be of an inferior quality to those fried in ghee which the public analyst would describe as unadulterated. (Henderson J.) Joykali Ganguli v. P. Banerjee, Sanitary Inspector,

AIR 1943 Cal 88=15 R C 391 = 202 I C 679 = 43 Cr L J 896.

——Ss. 406 and 407 cover case of person storing oil in transit as broker.

Even if the accused was storing the oil in transit as a broker, that would not take him out of the provisions of Ss. 406 and 407. Sub-section (1) of these two sections is wide enough to cover such a case. (S. K. Ghose J.) Rameswar Marwari v. Amar Nath Sinha,

AIR 1940 Cal 76=12 R C 594= 187 I C 425 = 41 Cr L J 460.

CALCUTTA MUNICIPAL ACT (III of 1923), S. 406

——Ss. 406, 488 — Sale by ignorant menial servant and not by proprietor— Whether an extenuating circumstance —Correction of section of Statute—When can be permitted.

In the case of a conviction under S. 406, Calcutta Municipal Act, read with S. 488, the fact that the sale was not by the proprietor who was ill and bedridden but by a menial servant who did not know what he was doing and what he was selling, is not an extenuating circumstance.

At the instance of the complainant praying that a case might be treated as one under a section different from that mentioned in the charge, the Magistrate can make the necessary correction if the accused will not in any way be prejudiced by reason of the correction being allowed. Correction over the signature of the Magistrate is sufficient. A seal is not required to give validity to the correction. (C. C. Ghose, Ag. C. J. and Mallick J.) Davis Hewlel & Co. v. Emperor,

AIR 1933 Cal 598=6 R C 51= 1933 Cr Cas 962=144 I C 877=34 Cr L J 836.

——Applicability — Accused found taking delivery of consignment of ghee discovered to be adulterated is not guilty of offence under S. 406.

An accused was found by a Food Inspector unloading a consignment at a railway station. One of the tins which the accused said, contained ghee, appeared to the Food Inspector to contain something else. He accordingly seized the consignment and took it to the Municipal Office. Thereafter he purchased for a sum of four annas a sample of one of the tins for analysis and the analysis, when made, disclosed the fact that the ghee was grossly adulterated. Upon these facts, the accused was convicted.

Held, that he could not be convicted of an offence under S. 406. (Chotzner and Lort Williams JJ.) Akhoy Kumar Ghose v. Corporation of Calcutta,

AIR 1928 Cal 320= 113 I C 139 (1) =32 C W N 842 =30 Cr L J 256.

——Compulsory sale is not sale within S. 406.

A compulsory sale made under the provisions of S. 424, Cl. (1) cannot make any person amenable to the punishment provided for under S. 488 of the Act. (Chotzner and Lort Williams JJ.) Akhoy Kumar Ghose v. Corporation of Calcutta,

AIR 1928 Cal 320=113 I C 139 (1) = 32 C W N 842 =30 Cr L J 256.

—S. 407.

——Ss. 407 and 422 — Notification No. 735 P. H. dated 20-3-1928 is 'ultra vires'.

Notification No. 735 P. H. dated 20-3-1928 cannot take away a person's right to manufacture or vend mustard oil which is derived exclusively from mustard seed (S. 407 (1) (v)), irrespective of the quality of the seed. The notification by prescribing a kind of mustard oil which has a particular saponification value as also a particular iodine value seeks to limit a person's right to sell mustard oil derived exclusively from mustard seed. That being so, the alleged declaration by Notification No. 735 P. H. offends against S. 407 of the Act. (Mitter and Sen J.) Jagdish Chandra v. Corporation of Calcutta,

AIR 1953 Cal 706=57 C W N 839=1953 Cr L J 1648.

——S. 407 (1) (e) and (v) — Mustard oil — Presumption under S. 422.

Section 407 does not prohibit manufacture or sale of mustard oil provided it is derived exclusively from mustard seed. That being so, unless Government declares the normal constituents of mustard oil and a certain deficiency is shown to exist in any such constituent, no presumption can arise that the oil is not genuine—See ibid, S. 422.

AIR 1953 Cal 706=1953 Cr L J 1648.

CALCUTTA MUNICIPAL ACT (III of 1923), S. 407

——Adulterated tea — Stem and stalk mixed with tea — They are not matters foreign to tea leaf—No offence.

Tea containing any foreign matter is hit by S. 407 (vi). Stem or stalk is not alien to tea leaf or tea bud. These are not matters foreign to tea. Tea mixed with these matters is not adulterated tea, though it may be a poor quality tea.

That the tea must contain some percentage of stem or stalk is recognized by the Legislature in S. 462 of the new Municipal Act which came into force on 14-2-1952.

Consequently storing, exposing and offering for sale tea which was found to contain a high percentage of stems or stalks, is not an offence under S. 407. (Harries C. J. and S. R. Das Gupta J.) Manibhai Patel v. The State,

A I R 1952 Cal 761 = 56 C W N 554 = 1952 Cr L J 1488.

——Proceedings against limited company.

In the case of a limited company, there can be no proprietor and it is the person in charge of the limited company that is, the secretary, who has to be proceeded against under S. 407. (Chunder J.) Anath Bandhu v. Corporation of Calcutta,

A I R 1952 Cal 759 = 56 C W N 594 = 1952-22 Com Cas 175=1952 Cr L J 1480.

——Limited Company can be proceeded against — Bengal General Clauses Act (1 of 1899), S. 3 (32).

If there is anything in the definition or context of a particular section in the Statute which will prevent the application of the section to a limited company certainly a limited company cannot be proceeded against. There are heaps of sections in which it will be physically impossible by a limited company to commit the offences. Then again a limited company cannot generally be tried when mens rea is essential. Again it cannot be tried where the only punishment for the offence is imprisonment because it is not possible to send a limited company to prison by way of a sentence.

Under the General Clauses Act, as also the Bengal General Clauses Act 'person' includes a limited liability company. To a case under S. 407, Calcutta Municipal Act, S. 3 (32), Bengal General Clauses Act applies. The question of sentence also need not generally stand in the way of a trial of this kind because except in the case where no other sentence than imprisonment or transportation or death is provided, there is nothing to prevent a Court from inflicting a suitable fine and a sentence of fine need not carry with it any direction of imprisonment in default. There may be fine alone and Ss. 386 and 388, Criminal P. C., will show how such fines can be realised and there is nothing to prevent the application of those sections to the case of a limited liability company in realising fines. It will be quite optional for the Magistrate, if he so likes, to proceed against the limited liability company itself instead of its officer and more so as a fine is the only sentence provided for in the case under S. 407. If the Magistrate so likes he may also proceed against the principal Officer of abetment. (Chunder J.) Anath Bandhu v. Corporation of Calcutta,

A I R 1952 Cal 759=56 C W N 594 = 1952-22 Com Cas 175=1952 Cr L J 1480.

——Applicability.

If mustard oil is adulterated with any other kind of oil which is not mustard oil then certainly whatever be the saponification test or other consideration there will be an offence committed of violation of S. 407. So long as this is not clear, namely, that the adulteration is with something other than mustard oil, whatever that other oil may be, S. 407, as far as mustard oil is concerned is not

violated. (Chunder J.) Anath Bandhu v. Corporation of Calcutta.

A I R 1952 Cal 759=56 C W N 594 = 1952-22 Com Cas 175=1952 Cr L J 1480.

——Person selling singara fried in ghee.

Where a person is found to have sold singara fried in ghee he cannot be said to have sold ghee and hence he cannot be convicted under S. 407. (Henderson and Mohamad Akram JJ.) Abala Kanta Ghose v. Corporation of Calcutta.

A I R 1940 Cal 577=13 R C 353 = 192 I C 777 = 42 Cr L J 322.

—S. 412.

——Mixture of argemone oil with mustard oil.

The mustard oil with which there is an admixture of argemone oil is unsound, unwholesome and unfit for consumption as human food, even if one per cent. of argemone, used for 20 days does not produce palpable bad results, according to some scientists still experimenting in the matter. (K. C. Chunder J.) Shree Shew Sakti Oil Mills Ltd. v. Corporation of Calcutta.

A I R 1953 Cal 384=57 C W N 120=1953 Cr L J 847.

—S. 418.

——Tea stalks and fluff, whether article of human food.

Tea or tea-dust, is an article of human food, but tea stalks and fluff, obviously is something very different. Merely because tea leaves yield an article of human food, it does not follow that every part of a tea shrub may be put to similar use. (Biswas J.) Gangadhar Nathmull v. Corporation of Calcutta,

A I R 1938 Cal 15 = 41 C W N 1344 = 10 R C 481= I L R (1938) 1 Cal 558=172 I C 954=39 Cr L J 259.

——Ss. 418, 412—S. 418, when can be invoked—Unwholesome food must be "food"—Presumption, from the mere fact of prosecution.

Before S. 418, Calcutta Municipal Act, can be invoked, it is necessary for the prosecution to prove that what was charged as unwholesome food was "food." Unless this is established, S. 412 cannot, in fact, be infringed at all. What this section prohibits is the sale of an article of human "food" and obviously in a prosecution for an offence under this section, the burden of proving that what was being sold is "food" intended for human consumption must rest on the prosecuting authority. Once it is shown that the article is an article of human food, it is then, if the party charged says it was not intended for human consumption, that the onus of proving this will be on him. Merely because the Corporation decide to commence a prosecution under S. 412, the law will not and cannot raise a presumption in their favour that it must necessarily be in respect of an article mentioned in the section. (Biswas J.) Gangadhar Nathmull v. Corporation of Calcutta,

A I R 1938 Cal 15=41 C W N 1344 = 10 R C 481 = I L R (1938) 1 Cal 558=172 I C 954=39 Cr L J 259.

——Interpretation — "Prosecution" includes proceedings under S. 421.

Graham J. — The word "prosecution" used in S. 418, sub-s. (2) does not necessarily connote prosecution for an offence, and where it is intended to be so used it is usual to state so in plain terms. Prosecution in its wider or more general sense means a proceeding by way of indictment, or information, and as used in S. 418 (2) it may include such proceedings as those taken under S. 421 of the Act. (Suhrawardy and Graham JJ.) Daulat Ram v. Corporation of Calcutta,

A I R 1929 Cal 283=121 I C 561 = 49 C L J 502=31 Cr L J 280.

—S. 420.

——Conditions precedent for attracting section stated — (Per Mookerjee J.).

Per Mookerjee J.—The conditions precedent for attracting S. 420 are (1) that article, whether perishable or not, is allowed or consented to by the owner to be immediately destroyed ; or (2) if the article be of a perishable nature the person named and authorized by the section may destroy the article even without the consent of the owner; (3) in either case the person taking action must be of opinion that immediate destruction is necessary in the interest of public health. (R. P. Mookerjee and Das Gupta JJ.) Abdoola Haroon & Co. v. Corporation of Calcutta,

A I R 1950 Cal 36=51 Cr L J 346.

—S. 421.

——Order under, for destruction — Persons affected by order if should be heard.

A Superintendent of Police purchased from different contractors certain quantities of mustard oil for purpose of sale in a ration shop. On analysis he found it to be adulterated and therefore he moved the municipal Magistrate for orders under S. 421 informing the contractors concerned of the proceedings. The contractors appeared before the Magistrate but he refused to hear them :

Held that in the peculiar circumstances of the case the Magistrate ought to have heard the contractors and allowed them to produce evidence regarding the quality of the oil before passing an order of destruction. (Roxburgh J.) Sarat Chandra v. The Corporation of Calcutta,

A I R 1950 Cal 423=54 C W N 480.

——Proceedings under section, if one before Criminal Court—*See* Criminal P. C. (1898), S. 435.

A I R 1950 Cal 421.

——Order against Crown — Crown — Statute binding.

Where it can be affirmed that, at the time when a Statute was passed and received the royal sanction it was apparent from its terms that its beneficent purpose must be wholly frustrated unless the Crown were bound, then it may be inferred that the Crown has agreed to be bound. Otherwise the Crown ordinarily may not be bound.

Held that the Crown is by necessary implication to be considered as bound by the provisions of the Act relating to the destruction of unwholesome foodstuff and the Municipal Magistrate has full jurisdiction to order the destruction of unwholesome barley seized from a Government Store. (K. C. Chunder and Guha JJ.) The Corporation of Calcutta v. Bhupal Chandra Sinha

A I R 1950 Cal 421=54 C W N 438=I L R (1951) 1 Cal 319.

——S. 421 (2)—Order passed by Magistrate under section —Order is judicial—High Court has jurisdiction to revise order under S. 435, Criminal P. C. (Per Mookerjee J. — Das Gupta J. contra).

Per Mookerjee J. — It will be improper to interpret S. 421 on an analogy of S. 420 upon the mere fact that as the persons named in the latter section are authorised to destroy the articles on the spot it must be presumed that orders passed under S. 421 must be of a similar nature. The emergency which exists and the extreme expedition with which action has to be taken in the case of perishable articles in a case under S. 420 are not present when the article is not of a perishable nature. The Legislature takes due note of the difference and provisions, fundamentally different, are promulgated. If the article is not destroyed under S. 420 the seizing officer is enjoined to take the articles to a Magistrate immediately after such seizure. All that can be said is

CALCUTTA MUNICIPAL ACT (III of 1923), S. 421

that the enquiry to be made by the Magistrate is of a summary nature and a detailed and long drawn out trial is not envisaged; but that is not by itself sufficient to make the order passed merely an executive one. Even if it be held that the procedure laid down and the orders to be passed under S. 420 were ministerial or executive in character that will be no ground for holding that the procedure before the Magistrate under S. 421 was of a similar nature. Further, under S. 421 (2) the Magistrate has to pass the final order only after using his discretion, which cannot but be a judicial discretion. From this point of view also, the order passed by the Magistrate under S. 421 (2) must be considered to be a judicial order.

Also, the expression "if it appears to the Magistrate" as the opening words of S. 421 (2) cannot be taken to vest such Magistrate with unlimited powers with a discretion not to hold a proper enquiry or to make the order passed an administrative or ministerial order only. Even though there is no direct provision that a formal notice is to be given to the party before any action is taken either under sub-s. (2) or sub-s. (3) of S. 421, the Magistrate is bound to give notice before he arrives at a decision.

Therefore, on a reading of the provisions contained in S. 421, and interpreting the section as a whole and the context in which it appears, there is no escape from the conclusion that the order passed by a Magistrate under S. 421 (2) is a judicial order and the High Court has jurisdiction to exercise revisionary powers under S. 435, Criminal P. C. in respect of such order : 33 Cal. 287; A. I. R. 1925 Cal. 1251 ; A. I. R. 1927 Cal. 509 ; (1899) 2 Q. B. 286 and (1893) 1 Q. B. 679, Disting. ; 42 C. W. N.731 and A. I. R. 1940 Cal. 213, Ref.

Per Das Gupta J. (contra) — The mere fact that a "Magistrate" acts under S. 421 of the Act, does not make his order amenable to the jurisdiction of the High Court. A Magistrate may have executive as well as judicial functions to perform, and whatever functions a Magistrate has to perform under a statute are not necessarily judicial. The Magistrate acting under S. 421 (2) is just an alternative to the several Corporation officers or a Councillor or an alderman acting under S. 420, and the law does not require the Magistrate to issue any notice, take any evidence, or hear any party before passing any order under S. 421 (2). Therefore the Magistrate acting under S. 421 (2) is an executive officer and not a Court, and his order for destruction is an administrative, and not a judicial order. The High Court has therefore no jurisdiction to revise the order passed by a Magistrate under S. 421 : (1899) 2 Q. B. 286 and (1893) 1 Q. B. 679, Rel. on ; A. I. R. 1940 Cal. 213; 42 C. W. N. 731 ; 7 C. W. N. 27 ; 33 Cal. 287 ; A. I. R. 1925 Cal. 1251 and A. I. R. 1927 Cal. 509, Disting. (R. P. Mookerjee and Das Gupta JJ.) Abdoola Haroon & Co. v. Corporation of Calcutta

A I R 1950 Cal 36 =51 Cr L J 346.

——S. 421 (2) — Order for destruction of article seized — Order is penal one (Per Mookerjee J.)

Per Mookerjee J. — A preventive step may, in its very nature, be a penal one. To prevent the owner of the article from exposing it for sale and thus to protect public health, the article may be seized or destroyed. Seizing it, pending further decision as to its disposal, is merely preventive but a direction for destruction, by whichever authority it may be, is penal. The order for destruction is a penal one and is in the nature of confiscation of the goods and it is actually so. (R. P. Mookerjee and Das Gupta JJ.) Abdoola Haroon & Co. v. Corporation of Calcutta

A I R 1950 Cal 36 = 51 Cr L J 346.

CALCUTTA MUNICIPAL ACT (III of 1923), S. 421

——S. 421 (2)—Magistrate need not examine each of tins seized — How many tins should be examined depends upon facts of each case.

It cannot be urged that the Magistrate must examine each and every particle of the foodstuffs or each and every one of the tins seized in order to condemn the whole lot. How many tins have to be examined in any particular case must depend upon the facts in each case : A. I. R. 1940 Cal. 213, Ref. (R. P. Mookerjee and Das Gupta JJ.) Abdoola Haroon & Co. v. Corporation of Calcutta

A I R 1950 Cal 36=51 Cr L J 346.

——S. 421 (2)—"If it appears"—Meaning of—Expression is used in its wider sense as signifying that which is made clear by evidence or is clear to comprehension — (Per Mookerjee J.)

Per Mookerjee J. — In one sense the word "appear" may refer to that which is seen by the eye, but it is also used in its broader sense as signifying that which is made clear by evidence or is clear to the comprehension when applied to matters of reasoning or opinion. Not only the section itself as a whole but the setting in which it appears in the particular statute, will determine the particular interpretation to be put on this phrase. What the intention of the Legislature is has to be ascertained from the case taken as a whole and also with an eye to reasonableness. As the expression 'if it appears' is used in the wider sense in other parts of the Act and is also used as an alternative to, "in the opinion" there is no escape from the conclusion that in S. 421 it has also been used in that wider sense. The more so, as there is no doubt so far as S. 421 (3) is concerned : (1899) 1 Q. B. 751, Disting. ; (1893) 3 Ch. 483, Ref. (R. P. Mookerjee and Das Gupta JJ.) Abdool Haroon & Co. v. Corporation of Calcutta

A I R 1950 Cal 36 = 51 Cr L J 346.

——Burden of proof — Article ordered to be destroyed — Onus is not on Corporation to prove that the article was intended for human consumption.

It cannot be contended that because S. 418, Cl. (2) puts the burden upon the accused to prove that the article is not intended for human consumption in a case of prosecution under the chapter, it indicates that in all other cases, e. g., in a case where the article is ordered to be destroyed under S. 421, the onus will be upon the Corporation to prove that it is intended for human consumption. (Suhrawardy and Graham JJ.) Daulat Ram v. Corporation of Calcutta

A I R 1929 Cal 283 = 121 I C 561 = 49 C L J 502 = 31 Cr L J 280.

—S. 422.

——Notification No. 735, D/- 20-3-1928 is ultra vires— See ibid, S. 407

AIR 1953 Cal 706 = 1953 Cr L J 1648.

——Power of Government to make orders.

Section 422 gives the power in general terms to the Government to declare the normal constituents of any article of food or drug, and there is nothing to show that this power is limited to such items in S. 407 as contain a provision for the prescribing conditions or constituents. In respect of such items, the Government may make special orders within the terms of the respective clauses of S. 407; but this does not affect the power of the Government to make orders under S. 422 in respect of any article of food or drug. (Mitter and Sen JJ.) Jagdish Chandra v. Corporation of Calcutta

AIR 1953 Cal 706 = 57 C W N 839 = 1953 Cr L J 1648.

CALCUTTA MUNICIPAL ACT (III of 1923), S. 422

——Notification No. 726 P. H. dated 20-3-1928 — Strict construction.

Both S. 422 and Rule 7 of Notification No. 736 P. H. dated 20-3-1928 provide for a presumption against the genuineness of mustard oil in case of a certain deficiency in any of its normal constituents. That being the case, the relative provisions should be strictly construed. (Mitter and Sen JJ.) Jagdish Chandra v. Corporation of Calcutta

AIR 1953 Cal 706 = 57 C W N 839 = 1953 Cr L J 1648.

——Ss. 422 and 407 (1) (e) and (v) — Mustard oil — Presumption under S. 422.

Under S. 422 it is a certain quantum of deficiency in any of the normal constituents of mustard oil that raises a presumption that the oil is not genuine. That being so, unless the constituents are declared or known, the question of a deficiency does not arise. But the Notification No. 735 P. H. dated 20-3-1928 does not declare the normal constituents of mustard oil by prescribing the limits of its saponification and iodine values. Section 407 does not prohibit the manufacture or sale of mustard oil provided it is derived exclusively from mustard seed. That being so, unless Government declares the normal constituents of mustard oil, and a certain deficiency is shown to exist in any such constituent, no presumption can arise that the oil is not genuine. (Mitter and Sen JJ.) Jagdish Chandra v. Corporation of Calcutta

AIR 1953 Cal 706 = 57 C W N 839 = 1953 Cr L J 1648.

—S. 424.

——Compulsory Sale—See Bengal Food Adulteration Act (6 of 1919), S. 10

AIR 1953 Cal 485 = 1953 Cr L J 1134.

——Ss. 424 and 488—Adulteration of drugs—Punishment.

In the dispensary of the accused who was a doctor was found a bottle of olive oil which was found on examination to be adulterated with ground-nut-oil. The doctor pleaded guilty and was willing to point out the source from which he got it. The doctor was not even asked a question, when the adulterated olive oil was found in his dispensary, as to where he got his supply from and nothing was done to stop the source of such adulteration :

Held that a heavy fine on the person who was himself duped by the dealer was certainly not the way to stop such adulteration of food and drugs. The conduct of public authorities connected with stopping such adulteration did not deserve praise from anybody. Rational and prompt action was necessary. (K. C. Chunder J.) Kedarnath Druka v. Corporation of Calcutta,

AIR 1952 Cal 570 = 56 C W N 165 = 1952 Cr L J 1260.

——Procedure not followed.

Where the procedure prescribed by S. 424 of the Act was not followed, conviction under S. 412 was set aside (Mukerji J.) Lalji Ram v. Corporation of Calcutta

AIR 1928 Cal 243.

—S. 425.

——S. 425 (2)—Analyst appointed by Calcutta Corporation is a public Analyst—His report is evidence without calling him—See ibid, S. 3 (55)

AIR 1953 Cal 561 = 1953 Cr L J 1347.

—S. 449.

——Applicability—Bengal General Clauses Act (I of 1899 B. C.), S. 8—Effect of saving—Demolition order for building built without sanction before the new Calcutta Municipal Act, 1923 — Sanction by General Committee to proceed under S. 449 of the old Municipal Act, re-affirmed by the new Corporation—Demolition order is not valid.

CALCUTTA MUNICIPAL ACT (III of 1923), S. 449

A prosecution had been sanctioned by the General Committee under S. 449 of the old Act (III B. C. of 1899), but the case was actually started under the new Act (III B. C. of 1923) by the new Corporation and notice upon the party was issued and an order of demolition was passed.

Held, that whether the proceedings were under S. 363 or 364 of Act III B. C. of 1923, they were irregular and the order of the Municipal Magistrate was not justified as the party had not been heard by the Corporation before sanction for prosecution was given.

Held, further that the proceedings under S. 449 of the Calcutta Municipal Act (III B. C. of 1889) could only be started by the General Committee and, therefore, in respect of unauthorized structures which existed before 1st April 1924, when the Calcutta Municipal Act of 1923 came into force, there was, after the passing of the latter Act, nobody competent to take proceedings under S. 449 of the Act of 1889. (Sanderson C. J. and Panton J.) Ram Gopal Goenka v. Corporation of Calcutta

AIR 1925 Cal 1251 = 52 Cal 962 = 90 I C 317 = 29 C W N 898 = 26 Cr L J 1533.

—S. 461.

——Statute repealed and replaced by new Act—Proceedings do not lapse—See Bengal General Clauses Act (1 of 1899), S. 8 Cl. (d).

AIR 1953 Cal 401 = 1953 Cr L J 818.

——S. 461, Proviso.

Onus with regard to, is on accused—See ibid, Evidence Act (1872), S. 105.

AIR 1953 Cal 401 = 1953 Cr L J 818.

—S. 478.

——S. 478 (17) — Applicability of bye-laws made under S. 559 (18) of old Act.

Bye-laws of the Corporation were made under the powers conferred by S. 559 (18) of Calcutta Municipal Act (III of 1899). That Act was then repealed and replaced by Act III of 1923. Section 478 (17) of the new Act corresponded to S. 559 (18) of the old Act. No bye-laws were made under the new Act of 1923 :

Held, that the bye-laws made under the old Act of 1899 were still in force. (Henderson J.) Bhupendra Nath v. Corporation of Calcutta

AIR 1945 Cal 103 = 218 I C 408 = 48 C W N 630 = 46 Cr L J 480.

——S. 478 (29) — Tenant allowing offensive matter to accumulate— Landlord, whether can be convicted under S. 478 (29), Bye-law (5) — "Allow', meaning of.

A person cannot be said to have allowed a thing to be done which it is not in his power to prevent. Therefore where land is let to a tenant and such tenant allows offensive matter to accumulate on the land, the landlord cannot be convicted under S. 478 (29) of the Calcutta Municipal Act. (Cuming J.) Nanda Lal Roy v. Corporation of Calcutta

AIR 1931 Cal 337 = Ind Rul (1931) Cal 448 = 34 C W N 931 = 58 Cal 204 = 53 C L J 65 = 1931 Cr Cas 401 (1) = 131 I C 272 = 32 Cr L J 680.

——S. 488.

——Sale prohibited by punishment under — See Bengal Food Adulteration Act (6 of 1919), S. 10

AIR 1953 Cal 485 = 1953 Cr L J 1134.

——Ss. 488 (2) and 534 — For persistence in offence to constitute a continuing offence under S. 488 (2) and give a fresh starting point of limitation there should have been a conviction for original offence — Prosecution launched 3 months after the original commission of offence is barred by limitation under S. 534 (1) (a). Section 534 (2) being a

limitation section cannot make what is not an offence. It bars the right to prosecute for what is already an offence under some other section of the law (K. C. Chunder J.) Corporation of Calcutta v. Sri Iswar Lakshmi Janardan Thakur Jew

A I R 1954 Cal 47 = 57 C W N 907 = 1953 Cr L J 1912.

——S. 488 (2)—Fine for offence not yet committed.

Where the accused has been punished under S. 488 of the Act it is no part of the Magistrate's business either to purport to impose daily fine for offences not yet committed or to make threats about what may happen in future. If the order is not complied with it is for the Corporation to apply for a separate summons in a separate case and the Magistrate may then if satisfied that the offence has been committed for any number of days impose a further fine appropriate to that number of days and so on 'ad infinitum' or until the party does comply with the order. (P. B. Mukharji J.) Subala Devi v. Corporation of Calcutta

A I R 1953 Cal 357 = 90 C L J 304 = 57 C W N 461 = 1953 Cr L J 775.

——S. 488 (2)—Fresh requisition—Necessity.

It is not correct to say that a further conviction under S. 488 (2), Calcutta Municipal Act can only be maintained on a fresh requisition under R. 4 (1) of Sch. 18 of the Act. If fresh requisitions are to be given, then it would no longer be a case of continuance of offence under S. 488 (2), Calcutta Municipal Act, in such case of non-compliance with the further requisition. In that event the offence will again be one under S. 488 (1) (c) of the Act. Because then the offence will be failure to comply with such fresh requisition lawfully made under the Rules as stated under S. 488 (1) (c). (P. B. Mukharji J.) Subala Devi v. Corporation of Calcutta

A I R 1953 Cal 357 = 90 C L J 304 = 57 C W N 461 = 1953 Cr L J 775.

——S. 488 (2) — "Continues to commit such offence"—Criminal P. C. (1898), S. 403.

The words "continues to commit such offence" used in sub-s. (2) of S. 488 mean that the particular offence for which the person has been previously convicted under S. 488 (1) is allowed to continue. What was a primary offence under S. 488 (1) (c) of the Act becomes the repetitive offence of continuance under this sub-s. (2). Though the requisition formed the cause of the first offence under S. 488 (1) (c), it did not spend its force in the sense that it still continues to provide the basis of the fresh offence of continuance contemplated under S. 488 (2) of the Act. Such an interpretation does not mean that the accused is being convicted twice for the same offence which certainly cannot be. Here the Statute provides that continuance of the offence will itself be another species of offence under this sub-s. (2) for which a different penalty is imposed so that not only the act of prime failure is an offence but also its continued failure, another offence. (P. B. Mukharji J.) Subala Devi v. Corporation of Calcutta

A I R 1953 Cal 357 = 90 C L J 304 = 57 C W N 461 = 1953 Cr L J 775.

——Ss. 488 and 527, Sch. 18, R. 4 (1) — Notice under R. 4 (1)—Procedure to be followed by landlord.

When the petitioner was served with the notice under R. 4 (1) of Sch. 18, Calcutta Municipal Act, she could have and should have proceeded under S. 527, Calcutta Municipal Act, if she felt that her proceedings in the ejectment of the tenant, in the Small Cause Court after service of legal notice of ejectment on the tenant would take a long time. At any rate she should have moved under S. 527, Calcutta Municipal Act after her first conviction under S. 488 (1) of the Act. If she had done so

then in that event the tenant's refusal to afford reasonable facilities for repair would have discharged her from all liability for conviction by reason of S. 527 (3), Calcutta Municipal Act (P. B. Mukharji J.) Subala Devi v. Corporation of Calcutta

A I R 1953 Cal 357 = 90 C L J 304 = 57 C W N 461 = 1953 Cr L J 775.

——Conviction under S. 488—Order purporting to impose daily fine for offences not then committed.

Where the accused has been punished under S. 488 of the Act, it is not part of the Magistrate's business either to purport to impose daily fine for offences not yet committed, or to make threats about what may happen in the future. If the order has not been complied with, it is for the Corporation to apply for a separate summons in a separate case and the Magistrate may then, if satisfied that the offence has been committed for any number of days, impose a further fine appropriate to that number of days and so on ad infinitum, or until the party does comply with the order. (Roxburgh J.) Phani Bhusan v. Corporation of Calcutta

A I R 1952 Cal 737 = 55 C W N 712 = 1952 Cr L J 1466.

——Ss. 424, 488—Adulteration of drugs—Punishment—See ibid, S. 424.

A I R 1952 Cal 570 = 1952 Cr L J 1260.

——Prosecution under—Absence of opinion of Corporation—Effect—See ibid, S. 386 (1) (b).

A I R 1952 Cal 220 = 1952 Cr L J 594,

——Trial for disobeying notice under R. 4 (2) of Sch. XVII—Question of dangerous condition of building and necessity to vacate cannot be agitated before Magistrate : 11 C. W. N. 671 ; 26 Cal. 811 and A. I. R. 1942 Cal. 142, Ref. (Sen J.) Budhu Mohan v. Corporation of Calcutta

A I R 1950 Cal 188 = 51 Cr L J 861.

——S. 488 (2)—Previous wrong conviction — Subsequent conviction under S. 488 (2) for continuing to do act for which he was wrongly convicted is illegal. (Harries C. J.) Badruddin & Sons v. Corporation of Calcutta

A I R 1950 Cal 147 = 51 Cr L J 663.

——Wall liable to be demolished under S. 300 — Magistrate can order its demolition and as well as inflict fine.

In the absence of any definition the Court should interpret the words "unlawful work" according to its ordinary literal meaning. A wall which is liable to be demolished under S. 300 is undoubtedly an unlawful wall and would constitute an unlawful work. Thus, it is within the power of the Magistrate in such a case to order its demolition under S. 536 and as well as inflict fine under S. 488. Section 488 does not in any way circumscribe the powers of the Magistrate regarding the various orders which he may make. It merely states the maximum limit of the fine which he may inflict but it does not lay down that the Magistrate may not inflict any other punishment except the levying of a fine. (Sen J.) Ramesh Chandra Patra v. Corporation of Calcutta

A I R 1949 Cal 88 = 50 Cr L J 146.

——Conviction cannot be based on alleged plea of guilty at previous trial.

The Magistrate is in error in referring to an alleged plea of guilty at the previous trial. A conviction cannot be based on such an alleged plea of guilty. (S. K. Ghose J.) Rameswar Marwari v. Amar Nath Sinha

A I R 1940 Cal 76 = 12 R C 594 = 187 I C 425 = 41 Cr L J 460.

——No continuing offence — Re-thatching of roof with leaves and allowing it to remain in contravention of the requirements of R. 7 is not a continuing offence.

CALCUTTA MUNICIPAL ACT (III of 1923), S. 488

Where the owner of a hut put new golpatta leaves upon the old framework of the roof of his hut and the charge against him on that occasion was that he had entirely re-thatched the roof of the hut with new golpatta, and thereafter another prosecution was instituted and it was contended on behalf of the Corporation that because the accused had not pulled down the golpatta roof or altered it in accordance with the requirements of R. 7, Sch. 17, he was guilty of a continuing offence :

Held, that he was not guilty of continuation of the offence within S. 488 (2), as allowing the roof to remain is not a continuation of the offence of making the roof. Marshall v. Smith, 8 C. P. 416, Cons. (Rankin C. J. and C. C. Ghose J.) Corporation of Calcutta v. Ananta Dhar

A I R 1928 Cal 336=56 Cal 126 = 114 I C 402 = 12 A I Cr R 147=32 C W N 696=30 Cr L J 296.

——Scope—So long as there is no disobedience by a party to the order of demolition of an unauthorised structure passed by the Magistrate, he commits no offence. (Suhrawardy and Cammiade JJ.) Kishen Dayal v. Corporation of Calcutta

A I R 1927 Cal 509 = 54 Cal 532 = 31 C W N 506= 101 I C 183=8 A I Cr R 35=45 C L J 469 = 28 Cr L J 407.

—S. 492.

——S. 492 (1) (c)—Prosecution under — See ibid, S. 179

A I R 1953 Cal 506=1953 Cr L J 1182.

——Person cannot be prosecuted under S. 492, unless corporation has determined scavenging-tax.

A person cannot be tried for an offence punishable under S. 492, Calcutta Municipal Act, unless there has been a determination of scavenging-tax by the corporation. If the corporation does not determine the fee, it cannot be permitted to prosecute any one for not taking out a licence. (Sen J.) Jitendra Mullick v. Corporation of Calcutta

A I R 1941 Cal 560=I L R (1941) 1 Cal 322=45 C W N 306=14 R C 261=196 I C 539=43 Cr L J 28.

——Ss. 492, 175, as extended to Howrah — Company trading in oil — Store in Howrah — Order negotiated in Calcutta—Oil distributed from Howrah — Held, licences should be taken from both Municipalities.

Where a company which is a trader in oil received oil from various places and stored it in their Howrah premises and distributed it to their customers from there, the transactions being negotiated in Calcutta, undoubtedly in the ordinary sense of the term, they must be said to be carrying on their trade both in Howrah and in Calcutta within the meaning of S. 175 and although their Headquarters are in Calcutta and although it is in Calcutta that the business is arranged, the evidence being that deliveries are made from Howrah on delivery orders which are sent from the Calcutta office. The trade being carried on partly within one and partly within another Municipality, they are liable to take a separate license in each, and on failure to do so, they are liable under S. 492, Calcutta Municipal Act. (Jack J.) Burmah Shell Oil Storage & Distributing Co. of India Ltd. v. Sudhansu Bhusan Chatterjee,

A I R 1936 Cal 477=40 C W N 766=1933 Cr Cas 699 (2)=9 R C 513=63 Cal 1203=166 I C 402=38 Cr L J 203.

—S. 493.

——Scope of—Alternative remedies—Discretion of Court —See ibid, S. 363

AIR 1951 Cal 41=52 Cr L J 586.

——Conversion of proceeding under S. 363 into one under S. 493—See Calcutta Municipal Act (3 of 1923), S. 363

I L R (1951) 1 Cal 191.

CALCUTTA MUNICIPAL ACT (III of 1923), S. 493

——Fine in proceedings under S. 363 — Power of Magistrate to convert proceedings into one under the section.

In proceedings under S. 363 no fine can be inflicted under S. 493. The Magistrate has no power to convert the proceedings initiated under S. 363 into one under S. 493. (Sen J.) Badridas Goenka v. Corporation of Calcutta,

A I R 1950 Cal 140=51 Cr L J 645.

—S. 498.

——S. 498 (3)—Cancellation of licence—Validity—Jurisdiction of Criminal Court to consider.

A criminal Court has jurisdiction to investigate the question whether the cancellation of a license by the corporation was made entirely without jurisdiction but not whether the Corporation should have refused the license on the merits : A. I. R. 1949 Mad 547 (FB), Approved; View expressed in 37 C. W. N. 344 held too wide.

An order cancelling a license merely because there was a serious local complaint is not one which under S. 498 (3) can justify the cancellation and is therefore one passed without jurisdiction (Roxburgh J.) Lalit Kumar Bose v. State,

54 C W N 909.

—S. 527.

——A tenant is an occupier—See ibid, S. 3 (48)

AIR 1953 Cal 357=1953 Cr L J 775.

——Notice under R. 4 (1) — Procedure to be followed by landlord—See ibid, S. 488

AIR 1953 Cal 357=1953 Cr L J 775.

——Scope of— An order passed by the Small Cause Court acting under S. 527, Calcutta Municipal Act is not of the nature of an order or decree for the recovery of possession contemplated by S. 12, W. B. Premises Rent Control Act. The two sections are not concurrent statutes invading the same field of operation. They contemplate different orders and different categories. S. 12, W. B. Premises Rent Control Act does not override S. 527, Calcutta Municipal Act—See West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950) S. 12,

A I R 1953 Cal 357=1953 Cr L J 775.

—S. 531.

——Notification that Municipal Magistrate might sit any time of day or night in any place in Calcutta is within the terms of the section.

Section 531 authorises the Local Government to prescribe the time and places at which the Magistrates shall sit for the despatch of business. If they are minded to prescribe all hours of the day and all places within Calcutta, as they well may under the wide terms of the section, it cannot be contended that a Notification that the Municipal Magistrates might at their discretion sit at any time of the day or night anywhere in Calcutta will not be appropriate for the purpose or will be contrary either to the letter or the spirit of the section. Consequently the trial of an accused by a mobile Court held in a motor van, in a place in Calcutta, not specifically mentioned by name in the Notification is not bad. (The purpose of the mobile Court indicated.) (Chakravartti and Sinha JJ.) Ram Dayal Tewari v. Corporation of Calcutta,

A I R 1953 Cal 76=56 C W N 339=1953 Cr L J 207.

——Mobile Court of Municipal Magistrate held in Motor van in accordance with Notification under S. 531—Accused told that if he wished to be defended by lawyers his case would be adjourned and sitting held in ordinary place of trial—Accused not availing of the opportunity and pleading guilty — It could not be said that the accused was denied his right to be defended by lawyer — (Criminal

CALCUTTA MUNICIPAL ACT (III of 1923), S. 531

P. C. (1898), S. 340.) (Chakravartti and Sinha JJ.) Ram Dayal Tewari v. Corporation of Calcutta,
A I R 1953 Cal 76=56 C W N 339=1953 Cr L J 207.

——Municipal Magistrate, Calcutta, is subordinate to High Court (Per Mookerjee J.) — Cr. P. C., S. 435.

Per Mookerjee J.—The Municipal Magistrate, Calcutta, if he is acting in a judicial capacity, is a Court subordinate to the High Court. (R. P. Mookerjee and Das Gupta JJ.) Abdoola Haroon and Co. v. Corporation of Calcutta,
AIR 1950 Cal 36=51 Cr L J 346.

——Magistrate appointed under, is criminal Court within S. 6, Criminal P. C. (Per Mookerjee J.)

Per Mookerjee J. — A Municipal Magistrate appointed under the provisions of S. 531 is a Criminal Court within the meaning of S. 6 of the Criminal P. C.: A. I. R. 1925 Cal 1251, Foll. (R. P. Mookerjee and Das Gupta JJ.) Abdoola Haroon and Co. v. Corporation of Calcutta,
AIR 1950 Cal 36=51 Cr L J 346.

——Revision of orders — Order of Magistrate appointed under S. 531 is revisable by High Court — Cr. P. C,, S. 6.

The Municipal Magistrate appointed under S. 531 is a Court of inferior criminal jurisdiction within the meaning of S. 6, Cr. P. Code, and orders for demolition passed by such a Magistrate are subject to revision by the High Court under Ss. 435 and 439, Cr. P. C. Further, an order for demolition is a judicial order and whether made in the exercise of the Magistrate's civil or criminal jurisdiction is open to revision by the High Court. A I R 1919 P C 31, Foll. (Sanderson C. J. and Panton J.) Ram Gopal Goenka v. Corporation of Calcutta,
AIR 1925 Cal 1251=29 C W N 898=90 I C 317=52 Cal 962=26 Cr L J 1533.

—S. 533.

——Accused absent at adjourned hearing—Conviction of.

Where an accused person failed to appear at an adjourned hearing the case is not covered by S. 533 and if the Magistrate proceeded in his absence and convicted him, the conviction is bad : A. I. R. 1949 Cal 589, Foll.; A. I. R. 1937 Cal 218 and A. I. R. 1945 Cal 103, Rel. on. (Harries C. J.) Badruddin & Sons v. Corporation of Calcutta,
A I R 1950 Cal 147=51 Cr L J 663.

——Absence at adjourned hearing.

Section 533 has been so drafted as to cover only the failure of an accused person to appear at the initial hearing, that is, at the hearing on the date and time and at the place fixed in the summons. On the plain words of the section it cannot apply where an accused person fails to appear at an adjourned hearing, because if he fails to appear at such hearing, it is not a failure to appear at the time and place fixed in the summons.

Hence where an accused person appeared to answer a charge of an offence under Sch. XVIII, R. 4 (1), Calcutta Municipal Act and the Magistrate at an adjourned hearing convicted the accused in his absence it was held that the conviction must be set aside as S. 533 had no application to the case. A. I. R. 1945 Cal. 103 and A. I. R. 1937 Cal. 218, Approved. (Harries C. J. and J. P. Mitter J.) Ashutosh Roy v. Corporation of Calcutta,
A I R 1949 Cal 589 = 53 C W N 847=51Cr L J 123.

—— Ss. 533, 478 (17)—Accused present but case adjourned — Whether case can be heard ex parte on adjourned date.

Where the accused has appeared in compliance with the summons but is absent on an adjourned date, the Magistrate cannot proceed ex parte against the accused.

CALCUTTA MUNICIPAL ACT (III of 1923), S. 533

(Henderson J.) Bhupendra Nath v. Corporation of Calcutta,
A I R 1945 Cal 103=48 C W N 630=218 I C 408=46 Cr L J 480.

——Scope—Adjournment of case though accused present —Failure of accused to appear on adjourned date—Magistrate if can hear case in absence of accused — Criminal Procedure Code, applicability.

The terms of S. 533, Calcutta Municipal Act, cannot be so extended as to entitle the Magistrate to hear the accused (who had appeared on date fixed in the summons) in their absence on the ground that they failed to appear on the date to which the case was adjourned. In the absence of any provison to the contrary in the Calcutta Municipal Act, the provisions of the Criminal P. C., will apply, and, therefore, the Magistrate is not entitled to hear and determine the case in their absence on the subsequent date. (Jack J.) Kusum Kumari Dabi v. Corporation of Calcutta,
A I R 1937 Cal 218=2 R C 872=168 I C 698=38 Cr L J 632.

——Duty of Magistrate — S. 533 must be taken to be subject to the provisions of S. 200 (b), Criminal P. C. — Criminal P. C., S. 200 (b).

Provisions of S. 533, Calcutta Municipal Act, must be taken to be subject to the provisions of S. 200 (b), Criminal P. C., and a Municipal Magistrate is bound to examine the complainant before recording conviction of a person under S. 291 (2), Calcutta Municipal Act. (C. C. Ghose and Gregory JJ.) Ambica Prosad Das v. Corporation of Calcutta,
A I R 1928 Cal 483=48 C L J 190=114 I C 82 = 32 C W N 1091=12 A I Cr R 204=30 Cr L J 231.

—S. 534.

——Scope—See ibid, S. 488 (2),
A I R 1954 Cal 47=1953 Cr L J 1912.

——Quære—Whether proceedings under S. 363 are such as are contemplated in S. 534—See ibid, S. 363,
A I R 1952 Cal 39=1952 Cr L J 301.

——Offence under S. 395 (2) — Prosecution cannot be had beyond three months after notice of offence by corporation or its Executive officer—Notice to agent of Corporation is notice to Corporation—In any case prosecution must establish that prosecution is launched within three months of notice.

Under S. 534 (2), prosecution must be launched against a person for an offence under S. 395 (2) within three months of the notice of the commission of the offence to the corporation or its executive officer. Where the date of the commission of the offence is not known, notice can be given to the corporation otherwise than through the executive officer. If an agent is authorised to receive a complaint, once that officer has received it the corporation has received it.

It is incumbent on the prosecution to show that the prosecution is launched within three months of the date upon which the Corporation first had notice. The prosecution will be bound to fail if the corporation fails to show that it had been brought within time. A I R 1936 Cal 20, Rel. on. (Harries C. J. and J. P. Mitter J.) Nagendra Nath Bhowmik v. The King,
AIR 1949 Cal 664=54CW N 160=51 Cr L J 1.

——Under S. 534 (1) the complaint in respect of the offence under S. 386 (1) (b) must be made within 3 months of the date on which the existence of the offence is first brought to the notice of the Chief Executive Officer. (Henderson J.) Atul Chandra Bhandary v. Corporation of Calcutta,
A I R 1942 Cal 142=I L R (1941) 2 Cal 308=14 R C 534=199 I C 179=43 Cr L J 513.

CALCUTTA MUNICIPAL ACT (III of 1923), S. 534

——Construction of wall by Company obstructing public road—Notice to remove obstruction within 15 days served on Company on 9th August 1939—Obstruction not removed—Complaint by Municipality under Ss. 488 and 300 :

Held that the offence was one for not complying with the notice and the period of three months under S. 534 began to run from 24th August 1939. (Derbyshire C. J. and Bartley J.) N. N. Bose v. Manager, Kedar Nath Jute Manufacturing Co. Ltd.,

A I R 1941 Cal 550 = 45 C W N 925=14 R C 268= 196 I C 559=43 Cr L J 33.

——Provisions of S. 534 indicate necessity of prompt action—Delay in starting proceedings—Corporation must establish that they are within prescribed period.

The provisions of S. 534 indicate the necessity for prompt action and delay in prosecuting an offence under the Act is as little to the interest of the corporation as to that of the rate payers.

Where therefore corporation seeks to prosecute certain persons under S. 488 of the Act and there is no evidence whatever on the record to show when the offence was first brought to its notice, it is the duty of the corporation to establish that the proceedings although began at a late stage are still within the period prescribed by the law. (Guha and Bartley JJ.) Corporation of Calcutta v. Ganesh Chandra Dhar,

A I R 1936 Cal 20=1936 Cr Cas 111.

—S. 535.

——S. 535, Sch. 18 (3) — Order of Court for removal of nuisance — Delay in carrying out orders — Contempt of Court—See Contempt of Courts Act (1926), S. 1,

A I R 1951 V P 14.

——Order under behind back of party.

An order awarding costs against the Corporation and directing it to pay compensation to the complainant must not be passed without giving the Corporation an opportunity of being heard. (Sen J.) The Corporation of Calcutta v. Krish Chandra Sil,

A I R 1950 Cal 314=54 C W N 220=51 Cr L J 1234.

——Complaint under, by Sanitary Inspector in his personal capacity—Magistrate, when can act on it.

A Magistrate is not entitled to act under S. 535 (2), Calcutta Municipal Act, upon a complaint filed by the Sanitary Inspector in his personal capacity in the absence of anything to show that he was authorised by the Chairman of the Municipality or was complaining on behalf of the Municipality or resided or owned property in Calcutta, (Lodge and Blagden JJ.) Keshabdeo Kedia v. P. Banerjee, Sanitary Inspector of Howrah Municipality,

A I R 1943 Cal 31 = 15 R C 393 = 202 I C 753 = 43 Cr L J 900.

——Application for costs — Order passed under S. 535 (2) (a) — Person in whose favour order was passed claiming costs by subsequent application — Magistrate can consider that question.

There is nothing in the terms of S. 535 or in any other section, which prevents the Magistrate from taking into his consideration on a date subsequent to the date of order under S. 535 (2) (a) the question of costs raised by an application by the person in whose favour that order was passed. (C. C. Ghose and Panton JJ.) Corporation of Calcutta v. T. H. E. Edwards,

A I R 1930 Cal 487=Ind Rul 1930 Cal 732 = 126 I C 412=1930 Cr C 799=57 Cal 497=31 Cr L J 1014.

— S. 536.

——Wall liable to be demolished—Power of Magistrate to order demolition and to inflict fine—See ibid, S. 488.

A I R 1949 Cal 88.

CALCUTTA MUNICIPAL ACT (III of 1923)

—S. 537.

——Calcutta Municipal Act, S. 554 — Criminal P. C., S. 200 — Conservancy Overseer of Calcutta Corporation is public servant—On written complaint by such officer it is not necessary to examine complainant before issuing process —Penal Code, S. 21.

A conservancy officer of the Calcutta Corporation is a public servant within the meaning of S. 21, I. P. C. and as such on the written complaint of such officer made in the discharge of his official duties it is not necessary to examine the complainant before issuing process. (Cuming J.) S. C. Nandi v. Corporation of Calcutta,

A I R 1930 Cal 665 (1)=34 C W N 449=128 I C 335 =Ind Rul 1931 Cal 95=1930 Cr C 1057=32 Cr L J 138.

——Scope—Provisions of S. 248, Criminal P. C., are not affected by S. 537 — Powers under S. 537 are to be exercised in accordance with Criminal P. C., S. 248.

The provisions of S. 248, Criminal P. C., have not been affected or abrogated in cases or proceedings by the Corporation by the provisions of S. 537 of the Calcutta Municipal Act. S. 537 of the Municipal Act is merely an enabling section and the powers given thereunder to do the various acts specified therein can only be exercised in accordance with the provisions of the Criminal P. C. (C. C. Ghose and Duval JJ.) Sishir Kumar v. Corporation of Calcutta,

A I R 1926 Cal 786 = 53 Cal 631 = 96 I C 648 = 43 C L J 369=30 C W N 598=27 Cr L J 984.

—S. 557.

——Effect and scope enunciated.

The effect of Cl. 4, S. 557A is this that between August 1926 and August 1927, in a proceeding for demolition of structure under S. 363 even although five years may have expired, a legal proceeding would have been competent because the clause was intended as an extension of limit in view of the fact that legal proceedings had not been possible effectively for some considerable period prior to the amending Act. The clause does not say and it does not mean that no legal proceeding under S. 557A is ever to be taken after the expiry of one year from August 1926. What it says is that if in the Act or any other law a legal proceeding between August 1926 and August 1927 would have been barred it is not to be barred until August 1927. Such a clause at no time was of any use to anyone except to the Corporation, and that in a case in which it was desired to get an extension of some restrictive period of limitation imposed by some other section of the Act or some other law. (Rankin C. J. and Patterson J.) Ram Gopal Goenka v. Corporation of Calcutta

AIR 1930 Cal 222 = Ind Rul 1930 Cal 440=124 I C 488=50 C L J 527=1930 Cr C 222=31 Cr L J 670.

——New procedure prescribed by Act V of 1926 is to be applied to proceedings in respect of contravention of the old Act as well as the new Act.

By Act V of 1926 provision has been made whereby proceedings relating to a contravention of the provisions of the Calcutta Municipal Act, 1899, are to be taken in the manner prescribed by the Act of 1923; in other words, the new procedure is to be applied to contravention of the old Act as well as to contravention of the new Act. (Rankin C. J. and Buckland J.) Ram Gopal v. Corporation of Calcutta

AIR 1928 Cal 207 = 55 Cal 964 = 47 C L J 208 = 32 C W N 454 = 10 A I Cr R 174 = 109 I C 237 = 29 Cr L J 509.

—S. 559.

——S. 559, Cl. 18—Bye-law.

Calcutta Municipal Act (1889), S. 559, Cl. 18—Bye-law 10 framed under cl. 18 is not superseded by R. 24 framed by Local Government under S. 11 (2), cls. (f) and (i) of

CALCUTTA MUNICIPAL ACT (III of 1923), S. 559

Motor Vehicles Act, 1914. (Mookerjee A. C. J. and Fletcher J.) Manager, Indian Motor Taxicab Co. v. Corporation of Calcutta

AIR 1921 Cal 107 (2)=61 I C 641=25 C W N 21=33 C L J 19=22 Cr L J 401.

—Sch. VI, R. 10.

——Corporation proving that person paid tax in preceding year—Presumption under R. 10, Sch. VI, if applies.

Where a corporation proves that the tax was paid by a certain person in the preceding year, the presumption under Sch. VI, R. 10, whatever its nature may be applies to the case of such a person. (Henderson and Mohammad Akram JJ.) Corporation of Calcutta v. Bengal Dooars Railway Co. Ltd.

AIR 1940 Cal 531=ILR (1940) 1 Cal 585=44 C W N 648=13 R C 225=191 I C 184=42 Cr L J 100.

—Sch. IX.

——Prosecution under S. 492 (1) (c)—See ibid, S. 179.

AIR 1953 Cal 506=1953 Cr L J 1182.

—Sch. XVI, R. 2.

——R. 2 (6)—Road not vested in Corporation — Competency of Corporation to demand encroachment fees.

Under Sch. XVI, R. 2 (6), Calcutta Municipal Act, the Corporation is not entitled to demand fees where a road has not vested in the Corporation. But where there is nothing unjust or unreasonable in the demand of the Corporation for the fees, if it is sought to take advantage of any technicality in endeavouring to avoid it, the Corporation is entitled to take any legal steps open to it to enforce payment. (Jack and M. C. Ghose JJ.) I. N. Silas v. Corporation of Calcutta

AIR 1933 Cal 341 = 56 C L J 578 = Ind Rul (1933) Cal 337—1933 Cr C 414=143 I C 122 (2)=34 Cr L J 521.

—Sch. XVII.

——Scope.

Rules 30 and 32 are intended to affect buildings and structures dealt with by the Act of 1899 and were never intended to apply to boundary walls which are included in the term "building" by the Act of 1923. (Buckland J. on difference between Suhrawardy and Graham JJ.) Sham Lal Khettry v. Corporation of Calcutta

AIR 1929 Cal 781=Ind Rul 1930 Cal 612 = 125 I C 740=1929 Cr C 525=33 C W N 777=31 Cr L J 912.

——Sch. XVII, R. 56—Rr. 56, 57—Object of—They are mandatory and must be strictly construed.

The obvious intention of the Legislature in enacting Rr. 56 and 57 was to ensure that all business connected with applications for the erection of new buildings should be transacted expeditiously and it is necessary that these rules should be strictly interpreted. In this view of the law, it could not have been intended, merely by holding an inspection before the expiry of the statutory period of fifteen working days without the issue of any requisition for further information, that the Commissioners should acquire a right to an extension of the time within which they must issue the prescribed written order under the latter part of R. 57 (1). The intention of the Legislature is that the Municipality should follow strictly the mandatory procedure laid down in Rr. 56 and 57. (Edgley J.) Hrishikesh Dutt v. Municipal Commissioner, Howrah

AIR 1940 Cal 292=44 C W N 561=I L R (1940) 2 Cal 69=13 R C 50=188 I C 865=41 Cr L J 689.

——Rr. 56 (1), 57, Ss. 365 (1), 368 — R. 56 (1) to be read ther sub-rules.

Sub-rule (1) of R. 56 is clearly intended to be read with the remaining sub-rules of R. 56 for the purpose of prescribing certain general conditions which must govern all requisitions and objections which it may be found necessary to make in connection with applications for the

CALCUTTA MUNICIPAL ACT (III of 1923), Sch. XVII

erection of new buildings. It cannot be read separately from the remaining sub-rules of R. 56 for the purpose of conferring upon the Commissioners general residuary power to issue requisitions at any time when they may require further information to enable them to reach a decision. (Edgley J.) Hrishikesh Dutt v. Municipal Commissioner, Howrah

AIR 1940 Cal 292=13 R C 50=44 C W N 561=ILR (1940) 2 Cal 69=188 I C 865=41 Cr L J 689.

——Rr. 56, 57 — Requisition to person to expose foundations—Nature—Whether relating to objection.

A requisition by Commissioners to the petitioner to expose his foundations sought to be erected by him, is a requisition for information with regard to the nature of the building and cannot be regarded as relating to an objection raised by the Commissioners with reference to the building application. (Edgley J.) Hrishikesh Dutt v. Municipal Commissioner, Howrah

AIR 1940 Cal 292=13 R C 50=44 C W N 561=ILR (1940) 2 Cal 69=188 I C 865=41 Cr L J 689.

——Sch. XVII, R. 57—'Fifteen days' in R. 57, meaning.

The period of fifteen days mentioned in R. 57 must be used as meaning "working days" in the same sense in which this expression has been used in R. 56. (Edgley J.) Hrishikesh Dutt v. Municipal Commissioner, Howrah

AIR 1940 Cal 292=44 C W N 561=I L R (1940) 2 Cal 69=13 R C 50=188 I C 865=41 Cr L J 689.

——Sch. XVII, R. 65 — Notice of revocation proceedings, necessity of.

Notice of revocation proceedings under R. 65, Sch. XVII, must be given to the applicant though the rule does not expressly mention it. (Mukerji and Bartley JJ.) Basanta Kumar Das v. Corporation of Calcutta

AIR 1934 Cal 389 = 6 R C 733 = 1934 Cr C 530 = 38 C W N 280=61 Cal 356=149 I C 1193.

—Sch. XVIII.

——Sch. 18, R. 4 (1) — Notice under — Procedure to be followed—See ibid, S. 488

AIR 1953 Cal 357=1953 Cr L J 775.

CALCUTTA MUNICIPAL ACT (XXXIII of 1951)

—S. 5.

——S. 5 (1) (c) (vi) and (viii)—Applicability.

Poori fried in ghee adulterated with foreign fat (not butter fat) sold as "poori fried in ghee'—Poori held to be "adulterated food" within S. 5 (1) (c), sub-cls. (vi) or (viii) —Fact that no standard has been prescribed for poori or poori fried in ghee as such, is no bar to applicability of the sub-clauses. (P. N. Mookerjee J.) Nishikanta Ghosh v. Corporation of Calcutta

AIR 1953 Cal 401=1953 Cr L J 818.

CALCUTTA MUNICIPAL (AMENDMENT) ACT (BENGAL ACT 1 of 1917)

—S. 2.

——S. 2 (2)—Standard of genuineness—Commercial ghee —Adulteration of.

The Bengal Ghee Adulteration Act lays down no standard of genuineness to detect adulteration; so each case must be decided on its own merits. Commercial ghee or buffalo ghee containing foreign fat was adulterated ghee within the meaning of S. 2 of the said Act. (Chaudhuri and Newbould JJ.) Grande Venkata Rathnam v. Corporation of Calcutta

AIR 1920 Cal 117 = 56 I C 586 = 24 C W N 388 = 47 Cal 633=21 Cr L J 490.

CALCUTTA PILOTS ACT (XII of 1859).

——Admiralty—Prosecution under Act 12 of 1859 should be launched after thorough enquiry.

CALCUTTA PILOTS ACT (XII of 1859)

Circumstances attending a collision should be thoroughly examined and great care should be exercised by authorities concerned before a prosecution in respect of it is launched against a pilot under Act 12 of 1859. (Page J.) In re "Rabenfels."

A I R 1930 Cal 97 = 56 Cal 763 = 121 I C 312 = 31 Cr L J 215.

CALCUTTA POLICE ACT (IV OF 1866).

——Deputy Commissioner in Calcutta has no power of detention for unlimited period.

There is no power of detention for an unlimited period in the Deputy Commissioner, Calcutta, by virtue of his being a Justice of Peace. (Mukerji J.) Emperor v. Panchi Kowri Dutt,

A I R 1925 Cal 587 = 52 Cal 67 = 86 I C 414 = 29 C W N 300=26 Cr L J 782-

—S. 3.

——Common gaming-house—"Kept or used for the profit or gain of the person" — Meaning of. A I R 1936 Cal 788=167 I C 771=38 Cr L J 449, Overruled.

The words "instruments . . . . kept or used for the profit or gain of the person . . . ." are not simply equivalent to "intruments . . . . kept or used for the purpose of gaming." The position of the person must be such that his prospects of profit or gain are not merely the same as those of the persons who visit the establishment : A I R 1922 All 61, Approved. The phrase 'kept or used for the profit or gain of the person' implies that the person running the premises hopes to make a profit or gain by keeping or using the instruments of gaming ; it does not mean that there must be proof that such a profit has been made or most inevitably be made. The phrase "whether by way of charge for the use of such house etc." also makes it clear that the profit or gain might accrue to the person either directly or indirectly. Hence, where the persons owning, occupying, using or keeping a house, room, tent, walled enclosure, space, vehicle or place in which instruments of gaming are kept or used for his profit or gain obtains his profit or gain or seeks to obtain them solely from the part he takes in the actual gaming, such house, room, tent, enclosure, space, vehicle or place is a common gaming house within the meaning of the definition in S. 3 : A I R 1936 Cal 788 = 167 I C 771 = 38 Cr L J 449, Overruled; Case law reviewed. (Lodge, Roxburgh and Chakravartti JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. D. E. Wilsone,

A I R 1947 Cal 429=51 C W N 804=I L R (1948) 1 Cal 395=82 C L J 248 (FB).

——"Common gaming.house"—Meaning of.

Betting for the purposes of the Act, is merely a form of gaming, and the words of the definition of 'common gaming-house' must apply equally to a house where betting is carried on as to a house where other forms of gaming flourish e. g., a casino where there is gambling on roulette or other games of chance, or a house where machines such as fruit machines are kept. (Lodge, Roxburgh and Chakravartti J.J.) Superintendent and Remembrancer of Legal Affairs, Bengal v. D. E. Wilsone,

AIR 1947 Cal 429=51 C W N 804=ILR (1948) 1 Cal 395=82 C L J 248 (FB).

——Slips used for facilitating betting, if instruments of gaming.

As gaming includes wagering or betting. the slips if they are used for the express purpose of facilitating betting operations, would certainly come within the mischief of the definition of 'instrument of gaming' under S. 3, Calcutta Police Act, (B. K. Mukherjea J.) Abdul Latif v. Emperor,

AIR 1938 Cal 237=10 R C 741= 67 C L J 82=I L R (1938) 1 Cal 672=174 I C 974=39 Cr L J 500.

——'Common gaming house,' what is.

Premises occupied and kept by a person are not strictly "common gaming house" within the meaning of the language of the Calcutta Police Act, unless some fixed charge or profit accrues regularly to the person who is occupying or keeping the premises quite apart from any fluctuating profit which may occur from time to time between the gamblers themselves as a result of the gambling (Cunliffe and Henderson JJ.), J. B. Beattie v. Emperor,

A I R 1937 Cal 84 = 9 R C 895 = 169 I C 87 = 38 Cr L J 706.

——Necessary requisites.

Common gaming house is defined in S. 3, Calcutta Police Act. To make a house, room, place, etc., a common gaming bouse, two things are necessary, namely : (i) instruments of gaming must be kept or used there, and (ii) such instruments must be kept or used for the purpose of gain of the person owning, occupying, using or keeping such house, room, place, etc. Slips of paper used for the purpose of facilitating betting operations, e.g., papers on which bets had been recorded are to be instruments of gaming. To satisfy the second element the intended gain must result to the person owning, occupying, using or keeping the place otherwise than as a result of betting by him. The chance of profit of or the actual profit made by the successful gambler, is not such gain as the section contemplates. An entrance fee charged by a person owning, occupying or using the place would be gain within the meaning of the section. A commission charged by such a person from persons winning wagers as a result of betting in that place is such gain. A person running a proprietary club where he allows gaming or betting would be the keeper of a common gaming house, whether he himself takes part in betting or not. Such a person makes profit or intends to make profit from his establishment which profit is not the direct result of betting in which he himself may have taken part. The chance of winning wagers is not the gain which the section contemplates. (Henderson and R. C.. Mitter JJ.) Ranga Lal Sen v. Emperor

A I R 1936 Cal 788 = 41 C W N 123 = 1936 Cr Cas 1124=9 R C 759=ILR (1937) 1 Cal 610=167 I C 771= 38 Cr L J 449.

——Betting.

Accused can be held guilty under S. 3 of the Police Act only when they are found in a common gambling house for the pnrpose of betting (R. E. Jack J.) K. Torcato v. Emperor

66 C L J 165=41 C W N 1346.

——"Common gaming house"— Held on facts that the place was not common gaming house and the mere acceptance of marked currency note was not enough to find accused guilty under S. 45.

A common gaming house as defined in S. 3, Calcutta Police Act, is a house in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying or using such house.

Where an accused who is proved to have accepted a marked five rupee note, is found with two others and no incriminating articles except a racing book is discovered, the evidence is totally insufficient to show that the accused are found gaming in a common gaming house or present during any gaming or playing therein or are found present in the gaming house for the purpose of

CALCUTTA POLICE ACT (IV of 1866), S. 3

gaming within the meaning of S. 3, Calcutta Police Act. (Jack J.) Hari charan Banerjee v. Emperor,

AIR 1936 Cal 355=8 R C 697 (2)=1936 Cr Cas 582=163 I C 152=37 Cr L J 851.

——Interpretation.

"Profit or gain" is the cardinal constituent of the definition of a "common gaming house." (Mukerji, J.) Puran Mull v. Emperor,

A I R 1929 Cal 644=122 I C 218=33 C W N 668=1929 Cr C 325=31 Cr L J 376.

—S. 13.

——Detention of suspended police officer—Legality.

The Commissioner of Police has no authority in law to order the detention of a police officer on suspension, as he ceases to be a police officer thereafter. The police Circular Order No. 1159 empowering him to do so, is illegal (Chaudhuri and Newbould JJ.) Pramatha Nath Barat v. P. C. Lahiri,

A I R 1920 Cal 45=46 Cal 581 = 54 I C 63 = 21 Cr L J 15.

—S. 39.

——Licence—Grant of.

Section 39 empowers the Government to sanction the conditions upon which a licence is granted. Nevertheless, the Government cannot give effective sanction to a condition which conflicts with the provisions contained in S. 40 requiring a conviction to be obtained before the question of forfeiture of a licence can arise. (Gentle and Das JJ.) Commr. of Police, Calcutta v. Rolla Ram,

51 C W N 833=ILR (1946) 2 Cal 399.

—S. 44.

——Ss. 44, 47 — Search of room alleged to be used as gaming house — Accused not present at search—S. 47, if applies to him — No evidence that he was owner of room or that he took commission for allowing it to be used as gaming house—Only betting material found in room — If sufficient for conviction.

Where a person is charged for keeping a common gaming house and also for permitting his room to be used as a common gaming house and he is not present in the room at the time of the search, the provisions of S. 47 of the Calcutta Police Act, do not apply to him personally and when there is no evidence at all to show that the person is the owner or occupier of the room or that he realizes commission for allowing other persons to use the room for the purpose of carrying on the business of betting, the mere fact that some betting slips and racing literature were found in the room is not sufficient to convict the person under S. 44. (Henderson J.) Ranjit Singha Roy v. Emperor

A I R 1938 Cal 273=10 R C 731=174 I C 845=39 Cr L J 493.

——The mere acceptance of the marked currency note is not sufficient to find the accused guilty under S. 45 of the Act. (Jack J.) Hari Charan Banerjee v. Emperor

A I R 1936 Cal 355 = 8 R C 697 (2) = 1936 Cr Cas 582=163 I C 152=37 Cr L J 851.

——Ss. 44, 45 — Place, when can be 'common gaming house.'

The essence of the definition of a "common gaming house," is a place in which instruments of gaming are kept or used. No place can be a common gaming house unless instruments of gaming are kept or used in it, and kept or used for the profit or gain of the person or persons owning or occupying the place. (Costello and M. C. Ghose JJ.) M. A. Adams v. Emperor

A I R 1935 Cal 466 = 1935 Cr Cas 858 = 39 C W N 1114 = 8 R C 249 = 62 Cal 1093=158 I C 1095=36 Cr L J 1513.

CALCUTTA POLICE ACT (IV of 1866), S. 44

——Ss. 44, 45 — Slips of paper found—Inner rooms used for facilitating betting.

Where slips of paper found in entrance hall and in the inner rooms are used for purpose of facilitating betting operations, they are as such instruments of gaming. (Costello and M. C. Ghose JJ.) M. A. Adams v. Emperor

A I R 1935 Cal 466 = 1935 Cr Cas 858 = 39 C W N 1114=8 R C 249 = 62 Cal 1093 = 158 I C 1095=36 Cr L J 1513.

——Dart game — Staking money on thrower's hitting a certain mark—Whether constitutes betting — Staking on some future contingency.

In the game of throwing of darts, no question of skill of any kind is involved so far as the person staking money is concerned. But where a person stakes money or something valuable on some future contingency or the happening of a certain event, he is said to "bet" and where certain persons by purchasing their tickets stake their money on the happening of a certain event, viz, the thrower hitting not his own number but their number on the board, there is betting and S. 44, Calcutta Police Act applies. (Mallik J.) S. R. Varma v. Emperor

A I R 1934 Cal 271 = 1934 Cr Cas 407 = 38 C W N 82=6 R C 633 (2)=149 I C 827=35 Cr L J 1021.

——Ss. 44, 50-A — Game of mere skill, what constitutes — Conviction under S. 44 — Essential conditions — Dart game, if a game of skill.

In order to escape conviction under S. 44, Calcutta Police Act, it must be shown by the defence that to all intents and purposes on a broad and reasonable view of the matter the game was one of skill and nothing else. The question whether or not the game is one of mere skill for the purpose of invoking the protection of S. 50-A is a question of fact.

A reasonable construction should be given to the words 'mere skill' and the qualifying adjective 'mere' should not be interpreted as meaning 'pure' in the sense in which that word might be used in a scientific experiment.

A game of "mere" skill should be taken to mean one in which a person playing it, as far as possible, in any human affairs, has complete control over the result which he sets out to attain, provided he is sufficiently expert in performance.

(The dart game as played by the accused was held to be a game of skill). (Costello, J.) Saligram Khetry v. Emperor

A I R 1933 Cal 8=37 C W N 24=Ind Rul (1933) Cal 140=1933 Cr Cas 28=141 I C 593=34 Cr L J 168.

——Applicability—Members of Association alleged to carry on business for purchase and sale of jute for future delivery—No delivery intended—Accused are guilty under S. 44.

Certain persons were members of an association called the Bengal Jute Association which carried on business at particular premises in respect of transactions for purchase and sale of jute for future delivery. It was found that there was no intention between the parties either to take or give delivery.

Held, that the accused were guilty under S. 44, their intention being to gamble and not to deal in jute. (Rankin, C. J.) Thakurdas Mundra v. Emperor

A I R 1930 Cal 637=Ind Rul 1931 Cal 90=34 C W N 522=1930 Cr C 973=128 I C 330=32 Cr L J 134.

——Conviction under S. 44 requires sufficient evidence of gain.

For conviction under S. 44 it is necessary to have sufficient evidence of the element of "profit or gain." (Mukerji, J.) Puran Mull v. Emperor

A I R 1929 Cal 644=122 I C 218 = 33 C W N 668=1929 Cr C 325=31 Cr L J 376.

CALCUTTA POLICE ACT (IV of 1866), S. 44

——Betting.

Mere betting which cannot be gaming i.e., loss or gain on pure chance or mixed skill and chance, is not penal and no offence in such a case is committed under S. 44. (Holmwood and Imam JJ.) Ram Pratap Nemani v. Emperor

39 Cal 968=16 C W N 858 = 16 C L J 250=16 I C 171=13 Cr L J 603.

—S. 45.

——Onus to prove that house in which accused was found was common gaming house is on prosecution.

In the case under S. 45, Calcutta Police Act, the onus lies upon the prosecution to show that the house in which the accused was found was a common gaming house as defined in S. 3 of the Act. In order to satisfy the requirements of this section, it would be for the prosecution to show that instruments of gaming were kept or used in that house for the profit or gain of the person owning, occupying, using or keeping such house. (Edgley J.) Sudhir Kumar Roy v. Emperor

A I R 1939 Cal 326=12 R C 123 (2) = 182 I C 986= 40 Cr L J 724.

——Presumption is inapplicable where search in consequence of which find takes place is of place other than that ordered to be searched.

Under S. 47, Police Act, if gaming instruments are found in a house, the presumption is that it is a common gaming house, provided the finding of the instrument is in conformity with S. 46. The search in consequence of which the find takes place must, therefore, be of a place of which a search warrant is issued and no such presumption can be drawn from search resulting in find of a place which is not ordered to be searched. (Mukerji, J.) Ah Yung v. Emperor

A I R 1930 Cal 369 = 57 Cal 457 = 34 C W N 197= Ind Rul 1930 Cal 810=127 I C 58 = 1930 Cr C 567=31 Cr L J 1152.

——Scope—S. 45 must be read with definition of gaming in S. 2 of Bengal Act IV of 1919.

Section 45, Calcutta Police Act, must be read having regard to definition of gaming in S. 2 of Bengal Act IV of 1913. A petition began with the statement that "at No. 160, Harrison Road, cotton figure gambling has been carried on;" it went on with the statement that "all that happens is that a person who wants to take money will go to a stall-keeper as Modi; a number of them infest the place; every one of them has a book in which entries are made of the stake made by gamblers."

Held, that on these statements it is not possible to say that that does not disclose an offence under S. 45. (Sanderson, C. J. and Richardson, J.) Bajrang Lal v. Emperor,

A I R 1921 Cal 719=33 C L J 287=25 C W N 428= 62 I C 871=22 Cr L J 599.

—S. 46.

——Warrant issued after strict compliance with S. 46 — Effect.

In all cases, in which a warrant has been issued after strict compliance with the provisions of S. 46 and 'cards . . . . or other instruments of gaming' have been found on the premises, the presumption may be made under S. 47 of the Act, that the cards etc., were kept or used for the profit or gain of the person owning or occupying the premises, and it will then be for the accused to prove that he did not hope for or expect such profits. (Lodge, Roxburgh and Chakravartti JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. D. E. Wilsone,

A I R 1947 Cal 429=51 C W N 804=I L R (1948) 1 Cal 395=82 C L J 248 (F B).

CALCUTTA POLICE ACT (IV of 1866), S. 46

——Defect in warrant—Warrant under S. 46 defective — Presumption under S. 47 should not be raised.

Where a search warrant purported to have been issued under S. 46 of the Act was defective;

Held, that no presumption under S. 47 that the house in question was a common gaming house should be raised. A I R 1926 Cal 966, Appl. (Suhrawardy and Cammiade, JJ.) Gour Mohan v. Emperor,

A I R 1927 Cal 801=46 C L J 186=9 A I Cr R 25 = 104 I C 711=28 Cr L J 871.

——Interpretation — "Reason to believe" is not same as "cause to suspect" — Officer issuing warrant must judicially have reason to believe.

The expression "reason to believe" is entirely different from the expression "cause to suspect." The police may have cause to suspect that a certain house or place is used as a common gaming house, but the officer who issues the warrant has to bring his judicial mind to bear upon the question and he can only issue the warrant contemplated under S. 46 of the Act, if in his opinion there is reason to believe that a certain house or place is used as a common gaming house. (C. C. Ghose and Chotzner, JJ.) Walvekar v. Emperor,

A I R 1926 Cal 966 = 53 Cal 718 = 30 C W N 713= 96 I C 264=27 Cr L J 920.

——Proof of contents—Warrant issued under S. 46 is not public record — Its contents must be proved in a regular way—Evidence Act, S. 57 (7).

A warrant issued under the provisions of S. 46 of the Calcutta Police Act is not a public record and there is no presumption of any kind attaching to it; therefore the contents thereof must be proved in the popular way and, therefore, it is incumbent upon the prosecution to prove that a warrant of this description was in strict compliance with the provisions of S. 46 of the Act and that it was issued after information upon oath had been brought before the issuing officer and after such enquiry as he thought it necessary to make had been made. (C. C. Ghose and Chotzner, JJ.) Walvekar v. Emperor,

A I R 1926 Cal 966 = 53 Cal 718=30 C W N 713= 96 I C 264=27 Cr L J 920.

——Regularity of warrants — Warrants — Presumption under S. 114, Evidence Act, does not apply — Essential preliminaries must be proved to have been observed.

Section 114, Ill. (e) of the Indian Evidence Act cannot be relied upon in order to presume the irregularity of warrants under S. 46, Calcutta Police Act, and unless the law expressly says that proof shall be required, evidence ought to be required in every case of this description that the essential preliminaries precedent to the issue of such a warrant have been complied with. (C. C. Ghose and Chotzner, JJ.) Walvekar v. Emperor,

A I R 1926 Cal 966 = 53 Cal 718 = 30 C W N 713= 96 I C 264=27 Cr L J 920.

——Presumption under.

The presumption raised in S. 46 does not arise in a case where the arrest is not made on a warrant. (Geidt and Mookerjee JJ.) Abdool Karim v. Emperor,

4 C L J 92=4 Cr L J 71.

—S. 47.

——Presumption—Significance of absence of words 'shall presume' or 'may presume' in S. 47.

Though the words "until the contrary is made to appear" are rather appropriate to a presumption in the technical sense of the word, the absence of any words like "may presume" or "shall presume" in the section is very much significant, and the discovery of the instruments of gaming in the place on a proper search which is contemplated by the Act, would be an evidence not only to prove

the existence of these instruments in that place, as an element to constitute a common gaming house, but it would be an evidence on the other point also, as regards the making of profit or gain by the owner or occupier, etc., of the place, although according to the ordinary law, it cannot be treated as an evidence of the other fact. When the prosecution relies upon S. 47, Calcutta Police Act, the accused can certainly explain away the whole circumstances and "show the contrary" as the section lays down. If the explanation is sufficient, the evidence practically loses its force; if, on the other hand, no explanation or evidence to the contrary is coming from the side of the accused, a duty is cast upon the Court to weigh and appraise the evidence in the best manner possible, and he may, if he thinks proper, convict the accused on this evidence, though he is not bound to do so. (B. K. Mukherjea, J.) Abdul Latif v. Emperor,

A I R 1938 Cal 237=10 R C 741=67 C L J 82=ILR (1938) Cal 672=174 I C 974=39 Cr L J 500.

——Slips, written record of illegal betting and used for facilitating betting in room where they were seized — Slips, whether evidence under S. 47 to show that room was used as common gaming room — Slips, whether instruments of betting.

Where slips of paper were seized at a time when betting operations were not going on, but it was clear from these documents that they were written records of illegal betting and it did not appear that these documents were written for facilitating betting operations in any place other than the room where they were seized:

Held, that they were evidence under S. 47 of the Calcutta Police Act, to show that the room in question was being used as a common gaming house and that the slips were the instruments of betting. (Nasim Ali J.) Phani Bhusan Kumar v. Emperor,

A I R 1937 Cal 637=I L R (1937) 1 Cal 471=10 R C 347=172 I C 146=39 Cr L J 89.

——Ss. 47, 44—Search under S. 47—Effect—Court cannot presume guilt.

The result of a search under S. 47, Calcutta Police Act, is that there is evidence before the Magistrate which would entitle him as a Court of fact to find that these premises were in fact a common gaming house; but it would not entitle him, to presume anything whatsoever with regard to the guilt of a person charged with a specific offence under S. 44. (Cunliffe and Henderson JJ.) J. B. Beattie v. Emperor,

AIR 1937 Cal 84=9 R C 895=169 I C 87=38 Cr L J 706.

——Applicability of S. 47 — Necessity of warrant under S. 46—"It shall be evidence, until contrary is made to appear" in S. 47, meaning of.

The words "it shall be evidence, until the contrary is made to appear" in S. 47, Calcutta Police Act, does not create a presumption in the technical sense in which that term is used in the Evidence Act. In that case the Magistrate would be bound to convict unless the defence gives rebutting evidence of a negative character. But in nearly every case it would be difficult if not impossible for them to do so. The natural meaning of the words is that the finding of certain things shall be evidence that the place is a common gaming house. Packs of cards may be found in hundreds of places which are not common gaming houses and it would be transparently absurd to say that the finding of a pack of cards in a house would be evidence that that house is a common gaming house. The section was intended to create a special rule of evidence, because, in view of the preliminary provisions there is not this absurdity in a case when there had been a proper search under S. 46. The section only raises a presumption of

fact, and so a rebuttable presumption. If a search warrant is issued under S. 46 and if on a search made on the basis of the said warrant instruments of gaming are found at the place or on the person of men found there at the time of the search, the fact that such instruments of gaming are found would be evidence of the further fact that the place is a common gaming house. The effect of such evidence may be nullified by other evidence on the record. (Henderson and R. C. Mitter JJ.) Ranga Lal Sen v. Emperor,

AIR 1936 Cal 788=41 C W N 123=1936 Cr Cas 1124=9 R C 759=ILR (1937) 1 Cal 610=167 I C 771=38 Cr L J 449.

——Search warrant under S. 47, proper in form—Presumption under S. 114, Evidence Act, whether arises—S. 47, whether creates special rule of evidence.

Where a warrant under S. 47 issued by a competent authority recites the fact that an information on oath had been received and that an enquiry had been made, and then states that that authority had reason to believe that the place sought to be searched is a common gaming house the presumption attaching to the regularity of official acts would be attracted and it would not be incumbent on the Crown to lead evidence on the point indicated above. (Henderson and R. C. Mitter JJ.) Ranga Lal Sen v. Emperor,

AIR 1936 Cal 788=41 C W N 123=1936 Cr Cas 1124=9 R C 759=ILR (1937) 1 Cal 610=167 I C 771=38 Cr L J 449.

——Ss. 47, 46—For application of S. 47 there should be proper warrant under S. 46—Section to be strictly interpreted and complied with.

Per Henderson J.—In order to determine whether S. 47 of the Calcutta Police Act applies, it is necessary to see whether there was a proper search within the provisions of S. 46. Unless the provisions of these sections are strictly interpreted and complied with, there can be no doubt that persons will be improperly convicted. (Henderson and R. C. Mitter JJ.) Ranga Lal Sen v. Emperor,

AIR 1936 Cal 738=41 C W N 123=1936 Cr Cas 1124=9 R C 759=ILR (1937) 1 Cal 610=167 I C 771=38 Cr L J 449.

—S. 48.

——Money found on person arrested in common gaming house—Confiscation of.

Section 48, Calcutta Police Act, provides that on conviction under S. 44 or S. 45, all the instruments of gaming found in the house shall be destroyed by order of the Magistrate, who may also order all or any of the securities for money and other articles seized, not being instruments of gaming to be sold and converted into money, and the proceeds thereof, with all money seized therein, to be forfeited or in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled. But it does not in terms, at any rate, provide for the forfeiture of the money found upon the persons in a common gaming house. (Costello and M. C. Ghose JJ.) M. A. Adams v. Emperor,

AIR 1935 Cal 466=1935 Cr Cas 858=39 C W N 1114=8 R C 249=62 Cal 1093=158 I C 1095=36 Cr L J 1513.

—S. 50-A.

——The question whether or not the game is one of mere skill for the purpose of invoking the protection of S. 50-A is a question of fact. (Costello J.) Saligram Khetry v. Emperor,

AIR 1933 Cal 8=37 C W N 24=Ind. Rul. (1933) Cal 140=1933 Cr Cas 28=141 I C 593=34 Cr L J 168.

—S. 54.

——Scope—Interpretation—To uphold conviction actual physical and not potential possession of the 'thing' in some shape or form is necessary — Meaning of the terms 'possession' and 'thing' explained.

Per Mukerji J.—The word 'possession' should be understood in a sense ejusdem generis with the words 'conveys' and 'offers and etc.' and in the sense of actual physical possession. The word 'thing' appears in the section, in sub-s. (1) as "anything" and in sub-s. (2) as "the thing" and must necessarily mean tangible moveable property having a corporeal existence and capable of being handled. It is the suspected thing itself in some shape or form that can form the subject-matter of a case under S. 54. If a man was in possession of stolen gold ornaments and had got it melted or converted into gold, the gold is still the thing itself in a different shape or form. If instead of having the gold in his hand he keeps it in his house or with a friend or goldsmith, the gold is still in his possession. To such a case the section will apply. If a man deposits money in a bank, or purchases a cash certificate with it, the money loses all its identity and it cannot be said that he is still in actual physical possession of the money as a tangible piece of moveable property. The cash certificate or the fixed deposit receipt may represent the money for certain purposes but it is not the money itself as a 'thing' in another shape or form of such thing. (Graham J. contra.) (Buckland J. on difference between Mukerji and Graham JJ.) Radha Krishna Gupta v. Jamunadas Fatehpuria,

AIR 1929 Cal 401=33 C W N 477=49 C L J 506=120 I C 250=1929 Cr C 31=31 Cr L J 59.

——S. 54 (a) — For offence under S. 54 property in accused's possession must be believed to be stolen before considering whether accused has been able to account for his possession of that property.

The preliminary condition which must be fulfilled before effect can be given to S. 54 (a) is that there must be reason to believe that the property found in the accused's possession is stolen property.

The Court has first to find on sufficient materials that there is reason for such belief, and it is not until it has come to such a finding that it can consider the question whether the accused has been able to account for possession of the property. (Newbould and Huda JJ.) Sukhu Kalwar v. Emperor,

AIR 1918 Cal 687(1)=22 C W N 936=23 C L J 262=47 I C 657=19 Cr L J 933.

—S. 62.

——Ss. 62, 62-A, 62-B — Calcutta and Suburban Police Amending Act (III of 1910), S. 16—Order by Police Commissioner prohibiting all processions until further order—Powers of Commissioner to license or permit meetings.

The Calcutta Police Act contemplates that an order prohibiting a procession or assembly may be made by the Commissioner of Police which will subsist for seven days, and that at or before the end of the seven days the Governor-General may by his action extend the period, if necessary, until further order. But the mere fact that action by the Governor-in-Council was taken contemporaneously with the making of the order would not make that order bad.

The phrase "the Commissioner of Police may by order in writing prohibit any procession or public assembly" in S. 62-A, Calcutta Police Act, 1866, has reference to some particular procession or processions upon a particular occasion or having a particular character or object which is necessary to prohibit for the preservation of the public peace or public safety. The Commissioner has no power

under that section to issue an order in writing holding good for seven days prohibiting all public processions in the city and suburb of Calcutta.

Sub-section (4) of S. 62-A, Calcutta Police Act, cannot be construed as giving powers to the Commissioner of Police to license or permit processions or public assemblies. (Rankin C. J. and Mallick J.) Lachmi Devi v. Emperor,

AIR 1931 Cal 122=35 C W N 257=Ind. Rul. (1931) Cal 369=53 C L J 461=58 Cal 971=1931 Cr Cas 154=130 I C 241=32 Cr L J 511.

—S. 62-A.

——Ss. 62-A (1)—Penal Code (Act XLV of 1860), S. 109—Public meeting — Member of audience sounding bugle—Order by Police to stop—Disobedience—Omission by President to order stopping of bugle — No evidence of conspiracy—Charge of abetment against President — Maintainability — Illegal omission — Order under S. 62-A (1) — Previous sanction of Commissioner of Police, whether necessary.

A Police Officer issuing an order under S. 62-A (1) of the Calcutta Police Act need not be armed with a previous sanction of the Commissioner of Police. The words "subject to the orders of the Commissioner of Police" used in the section only mean that if the Commissioner of Police so chooses he may by his direction supersede or alter the order issued by the Police Officer.

The words "illegal omission" in connection with the definition of abetment have reference to an intention of "aiding the doing of a thing."

At a public meeting, amongst the audience there were some "volunteers" and one of them from time to time sounded a bugle. A Police Officer requested the bugler not to sound the bugle, but he did not listen. The President of the meeting took no steps to stop the sounding of the bugle, though the direction was given by the Police Officer within his hearing and he refused to give the name and the address of the bugler. He was, therefore, charged with abetment of an offence under S. 62-A (1) (e), Calcutta Police Act. The accused was elected President just before the proceedings of the meeting began; and he had no knowledge that in the course of the meeting a bugle was going to be blown in that way :

Held, that in a case of this nature to prove abetment something more should be established than the mere fact that the Chairman of the meeting took no steps to prevent an objectionable or unlawful action on the part of some person at the meeting and as no guilty knowledge or conspiracy was proved against the accused the charge of abetting was not substantiated. (Costello J.) Jagdish Narain Tewary v. Emperor,

AIR 1933 Cal 36=36 C W N 722=56 C L J 241=Ind. Rul. (1933) Cal 8=1933 Cr Cas 71=140 I C 550=34 Cr L J 36.

——S. 62-A (4) — Whether a particular order under S. 62-A (4) prohibiting in the town any procession or assembly on a particular day within a particular place is or is not necessary is a matter entirely for the Commissioner of Police to decide. (Williams and S. K. Ghose JJ.) Ramendra Chandra Roy v. Emperor.

AIR 1931 Cal 410 = 35 C W N 716=Ind Rul (1931) Cal 558=1931 Cr Cas 506=58 Cal 1303=132 I C 174 = 32 Cr L J 844.

——Carrying kirpans, exceeding nine inches in legth, in the town of Calcutta is illegal — Notification of Commissioner of Police dated 21st October, 1922.

The carrying of a sword by calling it a kirpan, exceeding nine inches in length, in the town of Calcutta, is an offence under S. 62-A read with notification of Commissioner of

CALCUTTA POLICE ACT (IV of 1866), S. 62A

Police dated 21st October 1922. (Ghose and Cuming JJ.) Kripal Singh v. Emperor.

AIR 1924 Cal 231 = 81 I C 940=50 Cal 912 = 25 Cr L J 1116.

——Ss. 62-A (4) and 102-A (Amended)—Procession not prohibited — Order prohibiting a person to take part in it if illegal—Public notice.

Section 62-A (4) of the Act only enables the Commissioner of Police to prohibit a procession but not to prohibit a person from taking part in such procession and therefore, when the procession is itself not prohibited, it would be illegal to prohibit a person from taking part in it. Section 62-A (4) does not require that a public notice should be given of the order passed thereunder and S. 102-A does not lay down anything to the contrary. (Sharfuddin and Richardson JJ.) Leakat Hussain v. Emperor.

40 Cal 470 = 18 I C 685 = 17 C W N 505 = 14 Cr L J 125.

—S. 66.

——S. 66 (4) (a) — Calcutta Municipal Act (III B. C. of 1899), S. 559 (18)—Bye-laws under.

The petitioner had a license under by-law 2 of the laws framed under S. 559 (18) of the Act authorizing him to make an enclosure on a portion of a public street for depositing mortar, brick, etc, and to fence it off. He was charged with having omitted to fence and thereby caused obstruction in the footpath for about six hours. The petitioner not only committed a breach of the license but also committed an offence under S. 66 (4) (a) of the Police Act. (Quaere.) Whether Sub-s. (4) (a) introduced in S. 66 of the Calcutta Police Act overrides or repeals the provisions regarding the regulations of obstructions to be found in the Calcutta Municipal Act. (Teunon and Richardson JJ.) Charles Henry Brooke v. Emperor.

AIR 1918 Cal 201=41 I C 129=26 C L J 610 = 22 C W N 455=18 Cr L J 753.

—S. 68.

——Applicability and effect — Cr. P. Code, S. 403 (3)—Conviction under Calcutta Police Act, S. 68—Trial under Merchants Shipping Act, S. 103 (4) on the same facts is barred.

Where the accused, an officer of a steamship, was convicted under S. 68 of the Calcutta Police Act on a charge of drinking and disorderly conduct creating a disturbance by assaulting the Captain of the vessel and sentenced to pay a fine, and the Captain subsequently filed a complaint on the same facts under S. 103 (4) of the Merchants Shipping Act charging the accused with having assaulted him and he was convicted under the said section and sentenced.

Held, that the substantial charge under the Police Act being "assault" Cr. P. C., S. 403 (1), 2nd part is a bar to a second conviction upon the same facts under a different enactment, namely, the Merchants Shipping Act. (Rankin and Chotzner JJ.) Alfred Laird v. Emperor.

AIR 1927 Cal 224=99 I C 1033=31 C W N 195 = 7 A I Cr R 386=28 Cr L J 233.

—S. 72.

——Arrest without warrant.

In order to justify the police in arresting the accused without warrant, it must be shown that the house in which they were found is a common gaming house. (Geidt and Mookerjee JJ.) Abdool Karim v. Emperor.

4 C L J 92=4 Cr L J 71.

—S. 76.

——Period of detention—Deputy Commissioner of Police cannot detain arrested person longer than is necessary to bring him before Magistrate—He cannot order his detention till completion of police investigation : 27 Cr L J 1185 : 44 C L J 134, Overruled.

CALCUTTA POLICE ACT (IV of 1866), S. 76

A Deputy Commissioner of Police by virtue of his powers as a Justice of the Peace or otherwise, cannot lawfully order the detention in police custody of a person arrested without warrant, for any longer time than is necessary to enable such person to be brought before a Presidency Magistrate, nor can he lawfully order that the detention of any such person as aforesaid at a police station or in police custody shall continue until the police investigation shall have been (a) further advanced; or (b) completed, notwithstanding that the time within which such person might have been brought before a Presidency Magistrate has elapsed : 27 Cr L J 1185 : 44 C L J 134, Overruled. (Chatterjee, Greaves, Rankin, Panton and Mukerji JJ.) Muhammad Suleman v. Emperor.

AIR 1926 Cal 1121 = 54 Cal 218 = 44 C L J 138=30 C W N 985 = 7 A I Cr R 298=97 I C 961 = 27 Cr L J 1201 (FB).

——Arrest under orders of Deputy Commissioner of Police — Persons arrested can be detained in Police custody till investigation is over, but if they cannot be released on bail they should be produced before a Magistrate without unreasonable delay.

It is not the duty of the Deputy Commissioner of Police, a Justice of the Peace, to place an offender forthwith before a Magistrate, for, in the first instance, there is no period mentioned in the Calcutta Police Act within which this must be done, and in the second place as a Justice of the Peace, the Deputy Commissioner is entitled to take such steps as may be necessary to complete an investigation before placing the matter before a Magistrate : A I R 1925 Cal 587, Rel. on. It is also proper that if the officer does not see his way to release the petitioners on bail, he should produce them before a Magistrate with as little delay as possible, so that the Magistrate may determine whether in the circumstances of the case the persons arrested are entitled to be enlarged on bail, and if there is any improper exercise of such power, that can be corrected by the High Court under suitable provisions of the law, such as S. 491, Cr. P. Code. (Suhrawardy and Duval JJ.) Srilal Agarwalla v. Emperor.

44 C L J 134=97 I C 945=27 Cr L J 1185.

[Overruled in A I R 1926 Cal 1121=27 Cr L J 1201 (FB).]

——Quaere.—Has a Deputy Commissioner of Police as a Justice of the Peace in Calcutta, power under the Calcutta Police Act to order detention for an unlimited period. (Walmsley and Mukerji JJ.) Subodh Chandra Roy Choudhuri v. Emperor.

AIR 1925 Cal 218 (1)=85 I C 913 = 40 C L R 489= 29 C W N 98=52 Cal 319=26 Cr L J 625.

—S. 78-A.

——Criminal Procedure Code, whether applicable—Notice under S. 78-A after issue of chalan—Notice, if valid.

Provisions of Criminal Procedure Code regarding investigation by the Bengal Police, do not apply to investigations by Calcutta Police. The Calcutta Police Act itself does not contain any rules of procedure regarding the conduct of investigations by the Calcutta Police. Hence where after the commencement of trial of some accused, notice under S. 78-A, Calcutta Police Act, is issued, the notice is not 'ultra vires' because the investigation cannot be supposed to have come to an end the moment a 'chalan' is put up. (Patterson J.) Dwarika Nath v. Emperor.

AIR 1938 Cal 545=11 R C 212 = 177 I C 171=39 Cr L J 842.

——Statements made by complainant under S. 78-A must be allowed to be used in evidence.

CALCUTTA POLICE ACT (IV of 1866), S. 78A

A statement by the complainant during investigation to a Police Inspector reduced into writing and entered in a diary must be produced before the Court and allowed to be proved by the defence. (Suhrawardy J.) Panchanan Mukherjee v. Emperor,

A I R 1929 Cal. 257=33 C W N 203=116 I C 160=12 A I Cr R 448=30 Cr L J 577.

——Powers of Police—A statement obtained in contravention of S. 78-A, sub-s. (3), is not admissible — Police have no general inherent power in matters of investigation apart from the powers conferred on them by Acts and Circulars.

There are no powers inherent in the Police which are not expressly set out in the four corners of the Calcutta Police Act. All investigations by the Police must be controlled, in the mofussil, by the Criminal P. C. and in Calcutta by the Police Act itself or by any circular Orders issued. Taking of statements generally by the Police apart from the provisions of any Act and then putting the statements so taken in evidence against the person by whom they were made is not permissible. (Greaves and C. C. Ghose JJ.) Satya Charan Mitter v. Emperor,

A I R 1926 Cal. 586 = 53 Cal. 650=30 C W N 427=45 C L J 15=94 I C 266=27 Cr L J 602.

CALCUTTA PORT ACT (III of 1890)

—S. 83.

——Effect—Section prohibits structures on private land and thus interferes with private rights.

Section 83 does expressly deprive owners of property of their rights. It prohibits the erection of certain structures on private land, i. e., land below high water-mark which is clearly an interference with the rights of the owners. If it were assumed that all land below high water-mark is the property of the Crown to which no other person had any rights, the provisions under the Act would have been superfluous since it would not be necessary to provide a special statute for the removal of structures erected by trespassers. (Newbould and B. B. Ghose JJ.) Radha Kissen Chamria v. Emperor

A I R 1925 Cal. 404 = 51 Cal. 1030= 84 I C 941=26 Cr L J 397.

——Adding bandh to Hoogly river — Addition is an erection.

If a person adds a platform or bandh to the existing bed of Hoogly river, within the limits of the Port of Calcutta it is an erection within S. 83. (Teunon and Suhrawardy JJ.) Benode Behari Bageehi v. Hook

62 I C 328=22 Cr L J 504 (Cal).

—S. 84.

——Original wall itself erection—Addition to it.

Where the original wall itself is an illegal erection, the making of additions or re-erecting part of it brings the case within S. 84, Calcutta Port Act. (Henderson and R. C. Mitter JJ.) Gangeya Narotham Shastri v. Emperor

A I R 1937 Cal. 45=9 R C 887=I L R (1937) 1 Cal. 603=168 I C 972=38 Cr L J 666.

——Proceedings for contravention of S. 83 cannot be stopped by an injunction by a Civil Court.

The Commissioners for the Port of Calcutta cannot be restrained by injunction by a civil Court from proceeding with a certain criminal prosecution instituted by them against certain persons under S. 84, Calcutta Port Act, for contravention by the said persons of the provisions of S. 83 of the Act. (C. C. Ghose and Chotzner JJ.) Commissioners for the Port of Calcutta v. Suraj Mull Julan

A I R 1928 Cal. 464 = 55 Cal. 978=112 I C 712=32 C W N 576.

CALCUTTA PORT ACT (III of 1890), S. 84

——Conviction under—Commissioners themselves should remove obstructions.

Where a person is convicted under S. 84, he should not be directed to remove the obstruction. The Port Commissioners should themselves remove the obstruction under S. 84 (1). (Teunon and Suhrawardy JJ.) Benode Behari Bageehi v. Hook

62 I C 328=22 Cr L J 504 (Cal).

CALCUTTA RENT ACT (III of 1920)

——Alteration of order — Order fixing standard rent is judgment in rem and cannot be altered on application by subsequent tenant.

An order passed by the Rent Controller fixing the standard rent is an order which affects the house and it is therefore one which operates as a judgment in rem and the question cannot be re-opened on the application of a subsequent tenant. No doubt the standard rent can be altered or varied under certain circumstances, for instance, when there has been any alteration in the premises or an additional burden has been cast upon the landlord or similar circumstances, but that does not show that the judgment fixing the standard rent is not a judgment in rem and that it can be re-opened at any subsequent time. (Suhrawardy and Graham JJ.) Ahamuddin v. Banku Behari

A I R 1927 Cal. 305=31 C W N 308=100 I C 781.

CALCUTTA RENT ORDINANCE (V of 1946)

—S. 9.

——Prosecution for taking pugree or Salami—Legality—See West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 40

A I R 1953 Cal. 599=1953 Cr L J 1406.

—S. 18.

——It is only when a notice under S. 18 (1) or (3) of the Ordinance, is issued and is disobeyed that an action under S. 21, of the said Ordinance can be taken—See ibid, S. 21

A I R 1949 Cal. 254=50 Cr L J 482.

—S. 21.

——Disobedience of notice under S. 11A of Calcutta House Rent Control Order, 1943 — S. 26 of Ordinance cannot be brought into aid.

It is only when a notice under S. 18 (1) or (3) of the Calcutta Rent Ordinance, 1946, is issued and is disobeyed, that an action under S. 21 of the said Ordinance can be taken. This action cannot be taken for disobeying the notice issued under S. 11A of the Calcutta House Rent Control Order, 1943. When proceedings under the Order had terminated, S. 26 of the Ordinance of 1946 cannot be used in this respect (Sen J.) M/s Tilok Chand Punamchand v. Kanhayalal Agarwalla,

AIR 1949 Cal 251=50 Cr L J 482.

CALCUTTA SUBURBAN POLICE ACT (II of 1866)

—S. 7.

——S. 7 (2)— Police constable under suspension, ordered by Deputy Commissioner of Police to report to Police Training School—Order falls under term "discipline" and must be obeyed—What he is relieved of during suspension are duties as police officer vis a vis the public and not duty to obey for purposes of internal discipline — Suspension due to criminal prosecution— Constable under bail — Court's permission is not necessary for sending him to Training School. (Roxburgh and Ormond JJ.) Supdt. and Remembrancer of Legal Affairs, Bengal v. Sayed Ishaq Ali,

A I R 1949 Cal 255 = I L R (1945) 2 Cal 9 = 50 Cr L J 508.

CALCUTTA SUBURBAN POLICE ACT (II of 1866)

—S. 8B.

——Police constable under suspension ordered to report to Police Training School — Disobedience of order — Charge under S. 8B—See ibid, S. 7 (2).

AIR 1949 Cal 255=50 Cr L J 508.

—S. 18.

——Ss. 18 and 51—Place of public resort.

A stall on which soda-water is sold, not for the sake of consumption on the premises, is not a place of public resort within S. 18. (Newbould and Suhrawardy JJ.) Hemanta Kumar Sen v. Emperor,

AIR 1923 Cal 135 (1)= 34 C L J 198= 26 C W N 56 =49 Cal 451=62 I C 577 (1)=22 Cr L J 561.

—S. 33-A.

——Offence under — Possession of stolen property not proved—No finding that property was stolen — Explanation of accused unsatisfactory — Conviction not justified.

In a prosecution for an offence under S. 33-A, the prosecution must, first of all satisfy the Magistrate that there is reason to believe that the property has been stolen. If the prosecution establish this, the accused must account for his possession of the property to the satisfaction of the Court. Where the prosecution evidence has failed to establish the fact of possession of stolen property and there is no finding of the Court that there was reason to believe that the property was stolen the fact that the explanation given by the accused is unsatisfactory will not justify the conviction of the accused. (Henderson J.) Gaziram Bania v. Emperor,

AIR 1947 Cal 40= I L R (1944) 2 Cal 603 = 228 I C 323=48 Cr L J 197.

—S. 47A.

——Police diary—If privileged—Cr. P. C., Ss. 162, 172.

In areas covered by the Calcutta Suburban Police Act, a police officer investigating a case maintains a diary under S. 47A of the Calcutta Subarban Police Act and hence no privilege attaches to it. (C. C. Ghose and Cuming JJ.) Suresh Chandra Ghose v. Emperor,

AIR 1924 Cal 542=74 I C 261=24 Cr L J 757.

—S. 93-A.

——Whether a particular order under S. 93-A prohibiting in the Suburbs of Calcutta any procession or assembly on a particular day within a particular place is or is not necessary is a matter entirely for the Commissioner of Police to decide. (Williams and S. K. Ghose JJ.) Ramendra Chandra Roy v. Emperor,

AIR 1931 Cal 410=35 C W N 716 = Ind Rul (1931) Cal 558=1931 Cr Cas 506=58 Cal 1303= 132 I C 174= 32 Cr L J 844.

CALCUTTA SUPPRESSION OF IMMORAL TRAFFIC ACT (XIII of 1923)

—S. 3.

——Girl over sixteen—Police have no jurisdiction.

If a girl has attained the age of 16, the police have no further jurisdiction to exercise under the Act of 1923. (Suhrawardy and Panton, JJ.) Maharani Dasi v. Emperor,

AIR 1926 Cal 339= 30 C W N 72 = 91 I C 895 = 27 Cr L J 159.

—S. 4.

——Applicability — Act applies to females under 16, whether married or not—Bengal Children Act (II of 1922).

Acts apply whether the female in question is unmarried or married and the whole matter turns not on the status of the female from the point of view of marriage or no marriage but on the question of age. If the word "girl" were limited to mean a young unmarried female, it would be easy for a person who desired to live on the immoral earning of young girls to marry them solely for the purpose of enabling him to put himself outside the provisions of the statutes and to set the whole law at defiance. (Costello and Lort-Williams JJ.) Panchu Gopal v. Emperor,

CALCUTTA SUPPRESSION OF IMMORAL TRAFFIC ACT (XIII of 1923), S. 4

AIR 1929 Cal 99=48 C L J 589=33 C W N 198=115 I C 266=56 Cal 750=12 A I Cr R 304=30 Cr L J 410.

——Temporary residence is enough.

A residence in a brothel for about four days before rescue comes within the meaning of the words "lives in." The whole purpose of the Act would be frustrated if a girl has to be an ordinary resident before the section can come into operation. (C. C. Ghose and Duval JJ.) Hemangini Dasi v. Emperor,

AIR 1926 Cal 944=30 C W N 768=97 I C 42=27 Cr L J 1066.

—S. 6.

——Penal Code (Act XLV of 1860), S. 109 — Living by earnings of prostitution—Abetment — Female, if may be convicted of abetment — Owner of house occupied by prostitute supporting a male person by prostitution.

Although a female is incapable by statute of committing an offence under S. 6 (1), Calcutta Suppression of Immoral Traffic Act, still there is nothing to bar her conviction for aiding and abetting that offence, if the facts justify it.

Abetment is not constituted by the mere fact that a woman is the owner of an undivided half share of a house in which another woman leads a prostitute's life and supports a male person by the earnings of her profession. (Panckridge and M. C. Ghose JJ.) Padmamoni Dassi v. Emperor,

A I R 1932 Cal 457=36 C W N 650=55 C L J 435= Ind Rul (1932) Cal 490=59 Cal 1260=1932 Cr Cas 438 =138 I C 661=33 Cr L J 681.

——Lessee sub-letting premises to prostitutes, collecting rent daily by sitting outside and actively associating with the business of the brothel—Conviction under S. 6 is proper.

The accused took on lease certain houses for the purpose of making a living out of them and sub-let the houses to prostitutes and made a fine profit out of them. He was not content with simply collecting his rents once a week or once a month but he attended there daily and had full control over them. He was also daily sitting outside the houses collecting his rents, at times interviewing visitors, and having men there to assist him.

Held (per Graham and Duval, JJ.) — That it was not a case of simply having let out the houses to some women who used them for immoral purposes, but was also a case where the lessee took the houses so as to make a profit out of prostitution and that his conviction under S. 6 was proper.

Per Cammiade, J., contra. — Letting rooms to prostitutes and sitting at the gate of the premises to collect daily rent does not amount to the offence punishable under S. 6. (Duval, Graham and Cammiade, JJ.) Kambho Bera v. Emperor,

A I R 1928 Cal 331 = 32 C W N 195=111 I C 725= 29 Cr L J 917 (FB).

Per Graham, Cammiade and Duval, JJ. — Mere letting of rooms to prostitutes or collecting rents from them is not an offence. (Duval, Graham and Cammiade, JJ.) Kambho Bera v. Emperor,

A I R 1928 Cal 331=32 C W N 195=111 I C 725=11 A I Cr R 68=29 Cr L J 917 (FB).

—S. 8.

——Scope of—Applicability to any person either stranger or relative of woman brought for immoral purposes—Carrying on profession of singer or dancer.

CALCUTTA SUPPRESSION OF IMMORAL TRAFFIC ACT (XIII of 1923), S. 8

The language of S. 8, Calcutta Suppression of Immoral Traffic Act, is fairly wide and would apply to any person either a stranger or a relative of a woman, provided the alleged offender had brought a woman or girl to Calcutta with a view to her doing the things mentioned in the section. The question of the woman or girl is not material. This section is not like other sections of this Act or those of the Penal Code which are framed for the protection of minor girls but is wide enough to include any case of bringing or causing to be brought any woman to Calcutta for immoral purposes.

It is carrying the matter a little too far to suggest that the carrying on of the profession of a singer or dancer by a woman does necessarily and of course connote the business of prostitution. (Costello and M. C. Ghose JJ.) Parbati Dasi v. Emperor,

AIR 1934 Cal 198=6 R C 472=1934 Cr Cas 297=58 C L J 1=148 I C 597=35 Cr L J 722.

CALCUTTA SURVEY ACT (I of 1887)

——By S. 223-A, Bengal Municipal Act, the Calcutta Survey Act had been extended to all the Municipalities in Bihar Province. (Madan J.) Rai Brindaban Prasad v. Gaya Municipality,

AIR 1937 Pat 640=10 R P 331=4 B R 154=172 I C 215=39 Cr L J 136.

(CANADA) LIMITATION OF HOURS OF WORK ACT (1935)

——The Act is ultra vires of the Parliament of Canada. (Lords Atkin, Thankerton, Macmillan and Wright (Master of the Rolls) and Sir Sidney Rowlatt.) Attorney-General of Canada v. Attorney-General of Ontario,

AIR 1937 P C 82=9 R P C 239=168 I C 117 (PC).

(CANADA) WEEKLY REST IN INDUSTRIAL UNDERTAKINGS ACT (1935)

——The Weekly Rest in Industrial Undertakings Act, the Minimum Wages Act and the Limitation of Hours of Work Act of the Statutes of Canada, 1935 — Whether ultra vires of the Parliament of Canada.

The Weekly Rest in Industrial Undertakings Act, the Minimum Wages Act and the Limitation of Hours of Work Act of the Statutes of Canada, 1935 are ultra vires of the Parliament of Canada. (Lords Atkin, Thankerton, Macmillan and Wright (Master of the Rolls) and Sir Sidney Rowlatt.) Attorney-General of Canada v. Attorney-General of Ontario,

AIR 1937 P C 82=9 R P C 239=168 I C 117 (PC).

CANADIAN STATUTE (23 & 24 Geo. V, C. 53, AMENDING CRIMINAL CODE).

—S. 17.

——S. 17, validity — Petition from judgment of King's Bench Court (Appeal Side) of Province of Quebec, whether prohibited.

Held, that S. 17 of the Canadian Statute amending the Criminal Code was valid. Consequently, petition to the King in Council from the judgment of the King's Bench Court (Appeal Side) of the province of Quebec in criminal Cases is prohibited. (Lord Chancellor (Viscount Sankey) and Lords Atkin, Taulin Macmillan and Wright) British Coal Corporation v. King,

A I R 1935 P C 158=8 R P C 38=157 I C 571=1935 A C 500 (P C).

CANCELLATION

—Of security bond —: See Criminal Procedure Code (5 of 1898), S. 125.

CANCELLATION

—Of will, Authority to adopt etc.—See Penal Code (45 of 1860), S. 477.

CANTONMENT

——Records.

General Land Register of Rawalpindi Cantonment—Implicit reliance cannot be placed without corroborative evidence of the other records of the Cantonment Board or other testimony of an unimpeachable character. (Tekchand J.) Maman Singh v. Emperor,

A I R 1935 Lah 588 = 37 P L R 236 = 1935 Cr Cas 963=8 R L 317=158 I C 858=36 Cr L J 1475.

CANTONMENTS ACT (XIII of 1889)

—S. 5.

——Ss. 5, 89 and 283 — Building without permission of cantonment authority.

An Officer commanding a regiment is not the Cantonment authority which by reason of S. 5 is the Cantonment Committee. The building of a hut with the permission of the Officer Commanding but without the permission of the Cantonment Magistrate, who is the proper authority, is a breach of S. 89 and therefore an offence punishable under S. 283. (Banerji J.) Nathu v. King-Emperor,

1 A L J 608=1 Cr L J 979.

—S. 13.

——Intoxicating drug — Supply—Interpretation.

The word "supply" in S. 13 in its context indicates that its underlying idea is in common with the words "barters or sells" preceding it. For its purposes there must be a transaction between two persons dealing at arm's length and, therefore, independent of each other. Where a servant buys liquor on behalf of his master, a soldier, and gives it to him he cannot be said to have "supplied" the liquor to his master within the meaning of S. 13. (Chandavarkar and Heaton JJ.) Emperor v. Pascal Shimau,

9 Bom L R 703=31 B 523=6 Cr L J 67.

—S. 89.

——Ss. 5, 89 and 283 — Building without permission of cantonment authority—See ibid, S. 5.

1 Cr L J 979 (All).

—S. 131.

——Ss. 131 and 283 — Failure to comply with notice to pay rent under S. 131—No offence under S. 283.

Section 283 provides a penalty, in cases not otherwise provided for, for failure to comply with any notice under, or for breach of, any of the provisions of the Cantonment Code. But, a notice to pay stallage or rent is not a notice under the Code, and failure to pay such stallage or rent is not a breach of any provision of the Code, within the terms of S. 283. (Reid, C. J.) King-Emperor v. Maghi Ram,

15 P R 1906 Cr=45 P L R 1907=5 Cr L J 87.

—S. 283.

——Ss. 131 & 283—Failure to comply with notice to pay stallage or rent under S. 131—No offence under S. 283—See Cantonments Act (13 of 1889), S. 131.

5 Cr L J 87 (Lah).

CANTONMENTS ACT (XV of 1910)

—S. 266.

——Interpretation.

Section 266, Cantonments Act, only lays down that no Court shall proceed to the trial of any offence under Cantonments Act unless moved by the persons mentioned therein and if the persons mentioned therein initiate the proceedings as provided in the section, the Court must

CANTONMENTS ACT (XV of 1910), S. 266

follow the procedure laid down in Cr. P. Code. (Ghulam Mohiuddin, J.) Surajdeen Bania v. Emperor,

10 A I Cr R 365=109 I C 607=29 Cr L J 591 (Nag).

——Procedure—Cr. P. Code, S. 537 — Cantonment Board lodging a complaint signed by executive officer filing no authority but having power to file such complaint—Affidavit filed in the Revision Court showing that he had an authority to do so—Omission to file is curable.

A complaint was lodged by the Cantonment Board, through a Sub-Overseer, signed by the Executive Officer of the Board. The Executive Officer never appeared before the Magistrate. Sub-Overseer did not hold any power of attorney on behalf of the Board. No power of authority was filed to show that the Executive Officer had any authority to lodge such a complaint. On conviction the accused filed a revision. The Executive Officer filed an affidavit that he had an authority to file the complaint.

Held, that failure to file the authority is an omission curable under S. 537. 116 P L R 1907, Foll. (Addison, J.) Kushal Cushand v. Emperor,

A I R 1928 Lah 946=11 A I Cr R 13=111 I C 326=29 Cr L J 822.

CANTONMENTS ACT (II of 1924)

—S. 2.

——S. 2 (37)—Space having gates on both sides.

Where gates have been in existence on both sides for a number of years, it cannot be presumed that the public have a right of way over this space and the land cannot be deemed to be a street. (Tekchand J.) Maman Singh v. Emperor,

A I R 1935 Lah 588 = 37 P L R 236 = 1935 Cr Cas 963=8 R L 317=158 I C 858=36 Cr L J 1475.

—S. 81.

——Scope—See ibid, S. 103.

A I R 1953 Madh B 18=1953 Cr L J 236.

—S. 82.

——Scope—See ibid, S. 103.

A I R 1953 Madh B 18=1953 Cr L J 236.

—S. 83.

——Scope—See ibid, S. 103.

A I R 1953 Madh B 18=1953 Cr L J 236.

—S. 103.

——Ss. 103 and 81 to 83 — Applicability — Demand of information under S. 103 to ascertain liability to pay octroi—Legality.

Since Ss. 81 to 83 of the Act are a special provision dealing with octroi duties, S. 103 which is a general provision dealing with general taxes must be read as excluding from its operation the cases which have been provided for in Ss. 81 to 83. Hence, an Executive Officer of the Cantonment cannot under S. 103 require an inhabitant of the Cantonment to give information regarding goods imported into the Cantonment to ascertain liability to pay octroi. Failure to give such information cannot entail conviction under S. 103 (2). Section 103 also cannot be regarded as one meant for demanding information which may enable the Executive Officer to defect an evasion of a tax. The only object of this section is to enable the Executive Officer to ascertain the liability of any particular inhabitant of the Cantonment to pay any tax. (Chaturvedi J.) Punam Chand v. State,

A I R 1953 Madh B 18 = I L R (1952) M B 334 = 1953 Cr L J 236.

—S. 106.

——S. 106 (c) — Whether ultra vires the then Indian Legislature—Even if S. 106 had related to provincial and not central subject, Act once passed could not be

CANTONMENTS ACT (II of 1924), S. 106

challenged by virtue of S. 84 (2), Government of India Act, 1919 (9 & 10 Geo. V, Ch. 101).

No doubt fines imposed by Criminal Courts in the Province would be properly credited to provincial revenues as receipts accruing in respect of the administration of justice, but only if not otherwise appropriated by competent authority; and entry No. 30 in the list of central subjects, contained in Sch. 1 of Govt. of India Act of 1919, "Criminal Law, including criminal procedure," clearly includes the power to legislate for the destination of fines for any criminal offences with respect to which it was competent for the Indian Legislature to legislate. The Devolution Rules of 1920, in making criminal law a central subject, gave the then Indian Legislature power not only to create criminal offences but also to provide for the destination of fines imposed in respect of such offences. Thus the Indian Legislature had power under the Devolution Rules to legislate with respect to cantonments and with respect to criminal law and the latter power included a power to legislate with respect to the destination of fines imposed for breaches of the criminal law. The Indian Legislature had, therefore, power to enact S. 106 of the Cantonments Act, 1924. Section 106 was not, therefore, ultra vires the then Legislature.

Even if S. 106 of the Cantonments Act, 1924, had related to a provincial and not a central subject, the Act once passed could not be successfully challenged in any Court of law by virtue of S. 84 (2) of Government of India Act of 1919. Accordingly, it was a law in force in British India immediately before the commencement of Part III of the Constitution Act of 1935, and by reason of S. 292 of that Act it continued in force in British India until altered or repealed or amended by a competent Legislature or other competent authority. (Gwyer C. J., Sulaiman and Varadachariar JJ.) United Provinces v. Governor-General in Council,

A I R 1939 F C 58 = I L R (1939) Kar F C 98 = 11 R F C 44 (2) = 5 B R 554 = 1939 O L R 246 = 1939 M W N 750=1939-2 M L J 1 Sup = 50 M L W 209=180 I C 863=40 Cr L J 403 (FC).

—S. 118.

——Gaming—'Public place', meaning of.

A verandah of a private house accessible to a public street is not a public place within the meaning of S. 118 of the Cantonments Act and the mere fact that it is open to the road, and can be entered by the public is not sufficient for holding it to be a public place. (Dalip Singh J.) Jagna v. Emperor,

A I R 1931 Lah. 576 = 1931 Cr Cas 864 = Ind Rul (1932) Lah. 256 = 33 P L R 448 = 136 I C 720=33 Cr L J 345.

——Scope—Takhtposh or moveable wooden platform does not fall within Cl. (c).

A takhtposh or moveable wooden platform cannot be held to be "earth, or material of any description, or any offensive matter, or rubbish" within the meaning of Cl. (c), S. 118 (1). (Shadilal C. J.) Sriram v. Emperor,

A I R 1927 Lah. 647=103 I C 411=9 A I Cr R 24=28 Cr L J 683.

——Ingredients.

The giving of offence by the exposure of the person is not a necessary ingredient of the offence under S. 118 (1) (a) (iii). The offence is complete if the exposure is "wilful or indecent" and in a public place. (Boys J.) Behari v. Emperor,

A I R 1926 All. 263=1 I C 539=27 Cr L J 107.

—S. 141.

——Ss. 141 (1), (2), 268—Offences not specified in Sch. IV —Trial of them —Procedure.

CANTONMENTS ACT (II of 1924), S. 141

Offences under S. 141(1) read with S. 268, Cantonments Act, and offences under S. 141 (2), Cantonments Act are not specified in Sch. IV of the Act and therefore no Court can proceed with the trial of any of these offences except on the complaint of or upon information received from the Cantonment Authority concerned or a person authorised by such authority by a general or special order in that behalf.

The use of the word "again" suggests that the offence contemplated in sub-s. (2) of S. 141, Cantonments Act, is a recurring and not a continuing offence. In other words, the Legislature contemplated the service of a notice upon a person and eventually a cleaning up of the premises with or without an offence committed under S. 141 (1) read with S. 268, Cantonments Act. The Legislature then provided that if within three months of the service of the original notice the premises were again found to be filthy, proceedings could be commenced at once without a fresh notice. After the expiry of three months fresh notices would be required under S. 141 (1) of the Act. Consequently, where a person fails to comply with a notice under S. 141 (1) he cannot be prosecuted under S. 141 (2). He can be dealt with under S. 141 (1) read with S. 268 and in case of a continuing failure to comply with it he is liable to an additional fine. (Harries J.) Lachman Prasad v. Emperor,

A I R 1935 All. 905=1935 Cr Cas 1056=1935 A L R 1036=8 R A 359=158 I C 1010=36 Cr L J 1493.

—S. 184.

——Penalty for continuing failure, if provided by S. 184.

Section 184 provides no penalty for a continuing failure or contravention, although such a penalty is provided in S. 268. (Smith and Allsop JJ.) Gokul Chand Roy v. Emperor,

A I R 1934 Oudh 29 = 11 O W N 156=6 R O 396= 1934 Cr Cas 83 (2)=148 I C 420=35 Cr L J 666.

——Ss. 184 (b), 181, 268—Mere non-compliance with provisions of S. 181 (1)—Whether punishable — Substitution of conviction under S. 268 for one under S. 184 (b)—Propriety of.

Section 184 (b) does not provide a punishment for mere non-compliance with a direction made under sub-s. (1) of S. 181. What it makes punishable is the beginning, continuation or completion of the erection of a building without complying with such a direction. It is not proper to substitute a conviction under S. 268 for one under S. 184 (b). (Smith and Allsop JJ.) Gokul Chand Roy v. Emperor,

A I R 1934 Oudh 29 = 11 O W N 156=6 R O 396= 1934 Cr Cas 83 (2)=148 I C 420=35 Cr L J 666.

——Ss. 184, 185, 207 — Construction of building before new Act — Notice to alter after Act — Non-compliance—Prosecution under new Act—Competency of—Limitation.

Under the Cantonments Act of 1924, erecting or re-erecting a building without the permission of the Cantonment Authority and failure to comply with a notice to alter or demolish a building are separate offences; and therefore non-compliance with a notice given after the enactment of 1924, is punishable under the Act of 1924, even though the building in respect of which such notice was given was erected before 1924.

Further, prosecution for such disobedience may be launched within 6 months of such disobedience. (Jailal J.) Parma Nand v. Emperor,

A I R 1932 Lah. 370=33 P L R 380=Ind Rul (1932) Lah. 249=1932 Cr Cas 488=136 I C 713=33 CrLJ336.

—S. 187.

——Officer ordinarily authorized to communicate sanction, writing to applicant and conveying sanction—Applicant is entitled to act on it.

CANTONMENTS ACT (II of 1924), S. 187

Where the petitioner makes an application to the Cantonment Authority for sanction and a person ordinarily authorized to communicate the sanction writes and conveys sanction on an official form of the Cantonment Board, the petitioner is entitled to act on such sanction, it being not his business to enquire if the sanction conveyed by him had been granted by the Board. (Jai Lal J.) Gopichand v. Emperor

A I R 1934 Lah. 510 = 35 P L R 414 = 1934 Cr Cas 803=7 R L 682=155 I C 273=36 Cr L J 700.

——Ss. 187, 268—Conviction for disobedience of notice of Executive Officer—Legality of—Subsequent confirmation by Board, effect of.

A conviction cannot be sustained for disobedience of a notice issued by the Executive Officer of a Cantonment when the notice was not issued by or with the approval of the Cantonment Authority. Subsequent confirmation by the Board is of no avail. (Addison J.) Muhammad Ali Khan v. Emperor,

A I R 1933 Lah. 545 (1) = 6 R L 501 = 1933 Cr Cas 816 (1)=148 I C 56=35 Cr L J 612.

——Ss. 187, 268—Illegal notice — Compliance, if necessary — Qualified sanction to proceed with construction—Subsequent notice to demolish 'unauthorised construction' — Non-compliance — Prosecution — Whether proper — Dispute between parties, nature of.

A person is not bound to comply with any notice whatever, however illegal or peremptory, merely because it was issued to him by a Municipal Board or a Cantonment Authority, and if he fails to comply with it, he does not render himself liable to a fine under the Act.

Where the Cantonment Authority gave a qualified sanction to a person to proceed with the construction of his building at his own risk, the site having been claimed by the Government, but there was no 'Municipal objection,' and when he proceeded to build, the Cantonment Authority served him with a notice to demolish the unauthorised building on non-compliance with which he was prosecuted under S. 187, Cantonments Act, read with S. 268 :

Held, that there was no unauthorised construction as he had sanction from the Board to build the room which alone he had built; that it was preposterous to suggest that when he had the sanction of the Board in writing under S. 181 he did not have the permission in writing of the Cantonment Authority; and that the question between the parties was purely civil one. (Kendall J.) Cantonment Board, Agra v. Kashi Ram,

A I R 1933 All. 486= 6 R A 261 = 146 I C 2=34 Cr L J 1191.

—S. 210.

——Ss. 210 (3) (a), 213 — Person carrying on trade from commencement of Act—Whether must apply for licence—3 months' notice to apply for licence—Duty of Authorities.

Where a person has been carrying on a trade in the same part of the Cantonment from the commencement of the Cantonments Act, there is no obligation upon him to apply for licence to carry on the trade and it is incumbent upon the Cantonment Authority to give him 3 months' notice of his obligation to apply for a licence. Without such notice he cannot be convicted for carrying on trade without a licence. (Davis C. J. and Weston J.) Emperor v. Nathoo

AIR 1942 Sind 95 = ILR (1942) Kar 87=15 R S 6= 201 I C 66 = 43 Cr L J 733.

——S. 210 (3) (a) — "Same part of the Cantonment" meaning explained.

The word "locality" is not an unfair interpretation of the word "part" in cl. (a) of S. 210 (3). It covers all that

part of the Cantonment where the bazar was situated and where the particular trader could carry on his occupation without offence or danger to other parts of the Cantonment not used for the purpose of a bazar but where residences of officers or the barracks for troops are situated. (Davis C. J. and Weston J.) Emperor v. Nathoo

AIR 1942 Sind 95 = ILR (1942) Kar 87=15 R S 6= 201 I C 66=43 Cr L J 733.

——Notice served on person prohibiting him from selling fruit in cantonment area — On representation he allowed to continue business — He applying for licence but not paying prescribed fee — No issue of licence — Summary trial and conviction —Conviction held could not be interfered with in revision.

When the Cantonment Authority first served a notice upon certain person prohibiting him from selling fruit in his shop in cantonment area, he represented to the Authority that he had been carrying on business for 50 or 60 years, whereupon, he was allowed to continue his business. Whether the Cantonment Authority required him then to take out a licence or not, was not clear but he subsequently applied to the Cantonment Authority for a licence. The person did not pay the prescribed fee for the licence and therefore no licence was issued to him. He was tried summarily and convicted under Ss. 210 (g) and 213 of the Cantonments Act :

Held, that the person could not take advantage of S. 210 (3) owing to his own conduct in applying for a licence and not taking it out subsequently and his conviction could not be interfered with in revision :

Held, also that this was not a case which should have been tried summarily by the Magistrate as the question of compensation might have arisen under certain contingencies and it would have been difficult to ascertain it without sufficient record. (Jai Lal J.) Naru Ram v. Executive Officer, Cantonment Board, Multan Cantonment

AIR 1938 Lah 427 = 10 R L 742 = 175 I C 544= 39 Cr L J 653.

——Ss. 210 (m), 268 — Selling of bamboo within Cantonment area without licence — Conviction under S. 268— Legality of.

Bamboo being an inflammable wood, a person selling bamboos, 'ballies, takhats and karies' within the Cantonment without licence is guilty under S. 268, Cantonments Act. (Suleman C. J. and Rachhpal Singh J.) Sri Ram v. Emperor

AIR 1934 All 987 (1) = 1934 Cr Cas 1304 = 7 R A 447 = L R 16 A 20 (1) Cr=153 I C 131 (2)=36 Cr L J 261 (2)

—S. 213.

——Presumption—Evidence Act, S. 114.

Where a person, who was a butcher by trade and had no licence, actually imported meat in large quantities far more than could be required for his personal use and had distributed it but where there was no evidence that he actually received any money the presumption that he actually imported meat and sold it can be legitimately drawn. (Barlee J. C. and Kalumal Pahlumal, A. J. C.) Mahomeddin v. Emperor

AIR 1929 Sind 150 = 1929 Cr C 313 = 118 I C 223= 30 Cr L J 906.

—S. 236.

——S. 236 (1), (2)—Regimental Provost Sergeant sending complaint under S. 236 to Sub-Inspector — Latter forwarding original to Magistrate — Sergeant member of Military Police and authorised to make complaint under S. 236—Complaint held proper.

The regimental Provost Sergeant made a complaint under S. 236, Cantonments Act in writing which he sent

to the Sub-Inspector of Police and which the Sub-Inspector forwarded in original to the Magistrate who acted upon the complaint. The Regimental Provost Sergeant who was authorised to make complaints under S. 236 was a member of the Military Police employed in the Cantonment and the Magistrate found that at least part of the Offence was committed in the presence of the Regimental Provost Sergeant :

Held, that a proper complaint was made to the Magistrate in accordance with the provision of S. 236 (2), Cantonments Act. (Allsop and Ganga Nath JJ.) Narain v. Emperor

AIR 1936 All 129=1933 A L R 189=8 R A 670 (2)= 1936 Cr Cas 132 = 1936 A L J 193 = 58 All 684 = 160 I C 884=37 Cr L J 372.

——S. 236 (1) — Person importuning need not importune commission of sexual immorality with himself.

There is nothing in the wording of S. 236 (1), Cantonments Act, which says that the person importuning must importune to the commission of sexual immorality with himself or herself. (Allsop and Ganga Nath JJ.) Narain v. Emperor

AIR 1936 All 129=1933 A L R 189=8 R A 670 (2)= 1936 Cr Cas 132 =1936 A L J 193=58 All 684=160 I C 884 = 37 Cr L J 372.

——S. 236 (2) — Conviction under —Institution of prosecution — Compliance with S. 236 (2)—Necessity of.

A person can be legally convicted under S. 236, Cantonments Act, only when the prosecution is instituted strictly in accordance with the provisions of S. 236, sub-s. (2). (Addison J.) Abdul Karim v. Emperor

AIR 1933 Lah 590 = 6 R L 499 = 35 P L R 284 = 1933 Cr Cas 845 = 147 I C 1200 = 35 Cr L J 609.

——Males.

A Magistrate can convict a male of the offence of loitering for the purpose of prostitution under S. 236 (1), (Marten and Madgavkar JJ.) Emperor v. Maridas Lazar

AIR 1926 Bom 227 = 28 Bom L R 298 = 93 I C 1051 = 27 Cr L J 555.

—S. 247.

——The entry contemplated in S. 247, which requires four hours' written notice is an entry without the consent of the occupier or the owner and when the entry is with the implied consent no question of notice arises. (Bajpai J.) Kallan Khan v. Emperor

AIR 1935 All 160 = 1935 A L J 175 = 7 R A 505 = 1935 Cr Cas 212 =153 I C 469=36 Cr L J 356.

—S. 266.

——Ss. 266, 141 (1) (2) — Complaint or information from Cantonment Authority.

There was upon the record a letter addressed to the Sub-Divisional Magistrate, purporting to be signed by the Executive Officer ot the Cantonment Authority. No evidence was called to prove this letter. Neither was it proved that it was signed by the Cantonment Authority nor that the officer was authorised by the Cantonment Authority :

Held, that S. 266 of the Cantonment Act was not complied with and the proceedings held on that letter and orders were invalid. (Harries J.) Lachman Prasad v. Emperor,

A I R 1935 All 905=1935 Cr Cas 1056=8 R A 359 = 1935 A L R 1036=158 I C 1010=36 Cr L J 1493.

—S. 267.

——S. 267 (2)—Offence under Act—Procedure.

By reason of S. 5 (2), Criminal P. C., an offence under the Cantonments Act which is a special Act can be dealt with according to the procedure prescribed in the Act itself. Hence, notwithstanding the fact that an offence

CANTONMENTS ACT (II of 1924), S. 267

under the Cantonments Act, e. g. disobedience to a notice under S. 135 of that Act, may be triable under the Criminal P. C. as a summons case and the accused could only be acquitted and not discharged, the accused can be discharged or further proceedings against him can be dropped under S. 267 (2), Cantonments Act, if the offence with which he is charged has been properly compounded. (Davis C. J. and Thadani J.) Emperor v. Rajhumal Valiram,

A I R 1947 Sind 128 = 229 I C 174 = 48 Cr L J 300.

——S. 267 (2)—Offender not in custody — Proceedings, if can be dropped.

Where an offence under the Act has been properly compounded, the fact that the offender is not in custody and therefore it is not necessary to discharge him under S. 267 (2) does not preclude the Court from dropping further proceedings against the offender under S. 267 (2). (Davis C. J. and Thadani J.) Emperor v. Rajhumal Valiram,

A I R 1947 Sind 128 = 229 I C 174 = 48 Cr L J 300.

—S. 268.

——A person selling bamboos, ballis, takhtas and karies within the Cantonment without licence is guilty under S. 268. (Sulaiman C. J. and Rachhpal Singh J.) Sri Ram v. Emperor,

A I R 1934 All 987 (1) = 1934 Cr Cas 1304 = 7 R A 447=L R 16 A 20 (1) Cr=153 I C 131 (2) = 36 Cr L J 261 (2).

—S. 271.

——Completion of building more than six months prior to complaint—Trial.

Where there is nothing to show that any new building was built by the accused within limitation and what was built had been completed more than six months before the date of complaint, trial for an offence under S. 271, Cantonments Act, is not proper. (Smith and Allsop JJ.) Gokul Chand Roy v. Emperor

AIR 1934 Oudh 29=1934 Cr Cas 83 (2)=11 O W N 156=6 R O 396=148 I C 420=35 Cr L J 666.

CANTONMENT CODE (1899)

—S 17.

——Cantonment Magistrate, if can issue orders under S. 96 (2) (a) and (b)—See Cantonment Code (1899), S. 96

9 Cr L J 447 (Sind).

—S. 22.

——Failure to pay license fee for hackney carriage in time.

The fact that the tax collector has the trouble of making repeated demands does not constitute an offence under S. 22. Where a proclamation purporting to be one under S. 282 was issued in the Cantonment that license fees for hackney carriage were to be paid by the 15th of every month, failure to pay by that date is no offence under S. 22. (Reid Offg. C. J.) Jamala v. Emperor,

1 P W R Cr 42=22 P L R 1907=5 Cr L J 23.

—S. 66.

——S. 66 (1) — Carrying meat exposed to public view — Master's liability.

A master cannot be punished under the section for an act of his servant in carrying meat in a bullock cart exposed to public view, which is not proved to be committed with his knowledge or authority. The offences under S. 66 (1) are not offences which can be committed by delegation. (Basil Scott C. J. and Chandavarkar J.) Emperor v. Jaffar Haji Ismail,

10 Bom L R 1052=9 Cr L J 182.

——S. 66 (1) (g) — Use of common gaming house — No offence.

CANTONMENT CODE (1899), S. 66

Persons found gambling in a common gaming house cannot be said to be using the house as a common gaming house within the terms of S. 66 (1) (g) of the Code. (Reid J.) Madho v. King-Emperor of India

167 P L R 1905=3 Cr L J 78.

—S. 79.

——Delegation of power to sub-committee of two — Validity of notice issued by one.

Notice issued by only one of the two of the persons constituting the sub-committee to which power to issue notice has been delegated by the cantonment committee is invalid. (Aikman J.) Ram Saran Das v. Emperor,

4 A L J 694=A W N 1907, 275=6 Cr L J 348.

—S. 83.

——Ss. 83, 85, 283—Notice to carry out general repairs—Penalty for non-compliance.

Where a Cantonment Magistrate, by a notice purporting to have been issued in accordance with S. 83, Chap. VI, Cantonment Code, directed the accused to carry out certain general repairs in a house as recommended by a Committee of Arbitration, but the accused having failed to comply with the notice, was convicted under S. 283, Cantonment Code.

Held that, S. 83, Cantonment Code, did not authorise the procedure adopted by the Cantonment Magistrate, that the repairs ordered to be carried out were not the kind of repairs contemplated by S. 83, and that the notice purporting to have been issued under that section was bad and invalid in law.

Held, further, that as a penalty for failure to comply with a notice under S. 83, was expressly provided for in S. 85, the conviction under S. 283 was bad. (Mr. Macleod). Rai Narain Das v. King-Emperor

7 O C 68=1 Cr L J 215.

——Notice under S. 83 — Scope of — Notice for general repairs — Validity.

The phrase, "insanitary state" in S. 83 does not mean an insanitary state generally, but an insanitary state as qualified by the preceding words, that is, an insanitary state resulting from the ill construction or dilapidation of the building. The word "defects" in S. 83 means "sanitary defect" and the repairs which the notice may require the owner to execute must, therefore, be such repairs as are necessary to remove the sanitary defects resulting from the ill-construction or dilapidation of the building. Where the notice under S. 83 directed the accused to carry out repairs indicated in the attached reports, to his house which the notice declared to be in ruinous and insanitary condition, the attached report recommending general repairs.

Held, that the repairs which the accused was required to carry out were repairs of such a nature as to put the house into habitable order generally, and not merely repairs to remove the sanitary defects of the nature contemplated in S. 83; (notice held bad, since S. 83 did not authorize issue of notice for general repairs.) (Macleod A. J. C.) Jackson v. King-Emperor,

7 O C 51=1 Cr L J 160.

——Ss. 83, 85 — Notice under S. 83 — Disobedience — Prosecution under S. 85 — Presumption regarding due constitution of authority issuing notice—Onus

For the purposes of a prosecution under S. 85 read with S. 83, Cantonment Code, 1899, the prosecution need not begin by proving that the authority which issued the notice under S. 83 was duly constituted. The Court ought to presume, until some evidence is given to destroy the presumption, that the Cantonment authority used the regular and lawful procedure, that the common course of business was followed in its procedure; it is for

CANTONMENT CODE (1899), S. 83

the person raising the objection to give some evidence to show that it would not be safe to make such a presumption. (Macleod A. J. C.) Jackson v. King-Emperor
7 O C 51=1 Cr L J 160.,

—S. 85.

——Notice under S. 83 — Disobedience — Prosecution under S. 85 — Presumption that notice was issued by duly constituted authority and procedure prescribed was followed—See Cantonment Code (1899), S. 83
1 Cr L J 160.

—S. 89.

——Ss. 89 and 104—Conviction under a wrong section — Legality—Ignorance of law.

It is illegal to convict an accused person under a wrong section of the Cantonment Code; whether the conviction can be maintained on other grounds is perfectly immaterial. A conviction under S. 104 cannot be set aside on the ground of mere ignorance on the part of the accused of the amendment to that section. Ordering payment of a future daily fine on default of compliance with an order of Court is improper. The proper procedure in cases, where such an order is not complied with is to institute further proceedings giving the accused an opportunity of defending himself. The penal sections of the Cantonment Code must be construed strictly both in favour of and against an accused. (Kensington J.) Emperor v. Sita Ram,
206 P L R 1911 = 11 I C 139=60 P W R Cr 1911= 12 Cr L J 371.

—S. 94.

——Notice as to nature and extent of repairs, if necessary.

Under S. 94 of the Code, notice must be given to the owner as to the precise nature and extent of the repairs to be carried out and a notice not containing these particulars is illegal. (Shahdin J.) Emperor v. Qudir Baksh,
3 P R (Cr) 1912=9 P W R (Cr) 1912 = 13 I C 209= 56 P L R 1912=13 Cr L J 17.

——Public safety—Meaning of.

The provisions of S. 94 apply only to such repairs as may be necessary for the "public safety," i. e., the safety of the general public and not of a particular person, as a tenant of a bungalow or his guest. So, where the Cantonment authority, before issuing a notice had not decided that the step was necessary in view of the public safety, the Chief Court might hold the notice to have been illegal and might, on revision, set aside the conviction and sentence for not having complied with such notice. (William Clark C. J. and Chatterji J.) Wazir Ullah v. Emperor,
1 P R 1906 Cr=48 P L R 1906=3 Cr L J 346.

——Ss. 94, 104, 240 — Repair of buildings dangerous to "public safety," order issued by Cantonment authorities as to, conviction for disobedience of — Power of Chief Court to interfere on revision.

It is for the Cantonment authority to issue the notice under S. 94, and an appeal lies from that decision under S. 240; and with these orders the Court cannot interfere; but, when there is a criminal proceeding under S. 104 for not complying with the notice, and a conviction, it is open to the Chief Court to review the proceedings and decide the legality or otherwise of the conviction. (William Clark C. J. and Chatterji J.) Wazir Ullah v. Emperor,
1 P R 1906 Cr=48 P L R 1906=3 Cr L J 346.

——Ss. 94 and 104 — Notice by Cantonment authority for demolition — No option of repairing — Legality of conviction.

A notice under S. 94 must give the owner the option of removing the building or to repair it adequately. A conviction under S. 104 for disobeying a notice which does

CANTONMENT CODE (1899), S. 94

not give such option is illegal. (Reid J.) Petman v. Emperor,
23 P R 1905 Cr=168 P L R 1905=3 Cr L J 301.

—S. 96.

——S. 96 (2) (a) and (b) — Cantonment Magistrate whether cantonment authority — Order issued by him — Validity.

Under S. 17 of the Code, the Cantonment Magistrate is declared to be the executive officer of the Cantonment authority, and all orders must be issued through him but he has no authority of his own initiative, to issue an order under S. 96. Under sub-ss. (2) (a) and (b) of S. 96, the "Cantonment authority," i.e., the Cantonment Committee, is the only authority that can require the owner of land to remove a boundary wall. Before an order can be legally issued even by a Cantonment Committee, the members of that body must form the opinion that the wall is unsustainable, unsightly or otherwise objectionable. Where the order, is not based on an opinion formed by the Cantonment Committee, or is not one issued by them, has no legal validity as an order under S. 96 (2) (a) and (b). (Lucas J. C. and Crouch A. J. C.) Crown v. Detaram Watonmal,
3 S L R 11=1 I C 940=9 Cr L J 447.

——Delegation of power to Sub-Committee of two — Validity of notice issued by one—See ibid, S. 79,
6 Cr L J 348 (All).

—S. 104.

——Notice by Cantonment Authority for demolition—No option of repairing—Legality of conviction—See Cantonment Code (1899), S. 94,
3 Cr L J 301 (Lah).

—S. 167.

——S. 167, cl. (j) — Article of "perishable nature" — Brown sugar.

Brown sugar is not an "article of food which is of a perishable nature," within the meaning of S. 167, cl. (j), of the Cantonment Code and the person selling it within the Cantonment is not guilty of any offence. (Aikman J.) Mohib Ali v. King-Emperor,
3 A L J 694=A W N 1906, 303=4 Cr L J 374.

——Ss. 167, 168, 173 — Breach of invalid condition in the license—No offence.

Section 168 of the Cantonment Code only authorises the Committee to lay down the sources from which the water used in the manufacture is procured. There is no provision in the Code empowering the Committee to select manufacturers for the license. The condition in the license, which restricted him to vend aerated waters manufactured by certain manufacturers approved of by Cantonment Committee was therefore, ultra vires and the conviction for its breach was wrong. (Johnstone J.) Prabh Dial v. King-Emperor,
47 P R 1905, Cr=191 P L R 1905=3 Cr L J 131.

—S. 203.

——"Prima facie grounds for believing".

It is not the intention of the section that the authorities issuing the notice must have something in the nature of the legal evidence before them: on the contrary, the vague and general wording employed in the section seems intended to cover all such matters as would reasonably justify an executive officer in taking action. Hence the information sent by a medical officer of one Cantonment to the authorities in another Cantonment amounts to "prima facie grounds etc." as contemplated by S. 203. (Knight J. C. and Crouch A. J. C.) Imperator v. Phuski,
3 S L R 184=4 I C 1157=11 Cr L J 199 (1).

CANTONMENT CODE (1899)
—S. 283.
——Applicability.
——S. 283 does not apply where there is no proof that a notice was issued to the accused and that he did not comply with its provisions; that the proceedings were judicial proceedings and, as such, revisable by the Chief Court; that the only lawful penalty was the cancellation or suspension of the license; and that the accused was entitled to a copy of the proceedings in the summary register. (Johnstone J.) Mangi Ram v. King-Emperor,
9 P R 1909, Cr=37 P L R 1910=4 I C 611=30 P W R 1909, Cr=11 Cr L J 17.
——Breach of conditions in licence — Legal punishment.
The only lawful penalty that can be imposed is the cancellation or suspension of licence. Fine cannot be imposed. (Johnstone J.) Mangi Ram v. King-Emperor,
37 P L R 1910 = 4 I C 611 = 30 P W R 1909, Cr = 1909 P R 9 (Cr)=11 Cr L J 17.
——Nature of proceedings.
The proceedings commenced for the breach of the provisions of a licence are judicial proceedings revisable by the Chief Court. The accused is entitled to a copy of it from the Magistrate's summary register. (Johnstone J.) Mangi Ram v. King-Emperor,
37 P L R 1910 = 4 I C 611 = 30 P W R 1909 Cr = 1909 P R 9 (Cr)=11 Cr L J 17.
——Ss. 5, 89 and 283 — Building without permission of Cantonment authority—See ibid, S. 5,
1 Cr L J 979 (All).
——Notice to carry out general repairs—Penalty for non-compliance—*See* ibid, S. 83.
1 Cr L J 215 (Oudh).

—R. 94.
——Rr. 94, 104, 291 — Notice issued by Cantonment Magistrate, on his own authority, under R. 94, validity of.
The authority to issue notice under R. 94 is vested by the Code in a constituted Committee or Sub-Committee. A notice issued by the Cantonment Magistrate, without any reference to or direction or consideration by the Sub-Committee, of which he was only one of the members, is ultra vires, and a conviction under R. 104 for disobedience of such notice is illegal. The defect in authority to issue the notice is not a defect or irregularity not affecting the merits of the case, and so, cannot be condoned by R. 291. (Lal Chand J.) Gopal Singh v. King-Emperor of India,
3 P R 1907, Cr=47 P L R 1907=5 Cr L J 493.
——Rules 94, 104—Power of civil and Criminal Courts to interfere with discretion exercised under Cl. 94.
The Civil and Criminal Courts have no jurisdiction to interfere with the orders passed by a Cantonment authority in the exercise of discretion under clause 94, provided the authority does not act corruptly or maliciously in the exercise of the discretion.
The mere fact that the building directed to be repaired is situate within the compound of a private bungalow does not prove that its repair is not necessary in the interests of public safety. (Rattigan J.) Emperor v. Miran Baksh,
19 Pr Cr of 1904=1 Cr L J 1093.

—R. 104.
——Notice under R. 94 by Cantonment Magistrate on his own authority is ultra vires—Conviction under R. 104 for non-compliance of such notice is illegal and not cured by R. 291—*See* Cantonment Code, 1899, R. 94,
5 Cr L J 493 (Lah).
——Power of civil and Criminal Courts to interfere with discretion exercised under R. 94 — *See* Cantonment Code (1899), R. 94,
1 Cr L J 1093 (Lah).

CANTONMENT CODE (1899)
—R. 291.
——Rr. 94, 104 & 291 — Notice under R. 94 by Cantonment Magistrate on his own authority is ultra vires — Conviction under R. 104 for non-compliance of such notice is illegal and not cured by R. 291—*See* Cantonment Code, 1899, R. 94,
5 Cr L J 493 (Lah).

CANTONMENT CODE (1912)
—S. 92.
——Ss. 92 and 107 — Occupier — Magistrate ordering prosecution—Cr P. Code, Ss. 191 and 556.
An offence against S. 92 of the Cantonment Code may be committed by the occupier or trespasser and not merely by the owner or lessee. On a report by a Cantonment Official the Cantonment Magistrate directed a prosecution and then tried the case himself. Held, the Magistrate should have informed the accused that he was entitled to have the case tried by another Magistrate and should not have tried the case himself. (Wilberforce J.) Anandi Prasad v. Emperor,
A I R 1920 Lah 203 = 2 U P L R (Lah) 78 = 55 I C 1002=124 P L R 1920=21 Cr L J 394.

—S. 103B.
——Proceedings without notice.
Proceedings without written notice to accused under S. 103B are illegal. (Richards C. J.) Gur Din v. Emperor,
A I R 1919 All 158=17 A L J 503 = 50 I C 992 = 20 Cr L J 384.

—S. 231.
——S. 231, Cl. (2) — Absence of nine days — Failure to appoint agent—Effect of.
An absence of nine days from Cantonment station without appointing an agent renders the delinquent liable to conviction and punishment under S. 231, sub-s. (2) of the Code. (Pratt J. C. and Fawcett A. J. C.) Hotchand v. Emperor,
A I R 1918 Sind 47=12 S L R 40 = 47 I C 874 = 19 Cr L J 974.

—R. 97.
——Building in ruinous condition—Removal or repair — Choice of owner.
The option given by R. 97 of the Cantonment Code of deciding, whether the building should be removed or repaired is an option given to the Cantonment authority and not to the owner of the building. (Heaton and Shah JJ.) Byramji Pudumji v. Emperor,
A I R 1919 Bom 172=43 Bom 838=21 Bom L R 761 =52 I C 665=20 Cr L J 697.
——Rr. 97 and 107-A—Building — Ruinous condition — Order—Penalty.
It is competent to a Magistrate to sentence a person for having persisted in his failure to carry out his order only as regards the past ; but not as regards the failure in the future. A notice under R. 97 of the Code may require the owner to do one of two things, i. e., to remove the building or cause repairs to be made. The notice need not be in the alternative or give a choice to the owner. (Heaton and Shah JJ.) Byramji v. Emperor,
A I R 1919 Bom 28 (1)=43 Bom 836 = 21 Bom L R 759=52 I C 288=20 Cr L J 624.

CAPITAL OFFENCES
—Cognisance of — See Criminal Procedure Code (5 of 1898), S. 30.

CAPITAL SENTENCE
—Description—See Criminal Procedure Code (5 of 1898), Ss. 368, 371 (3).

CARGO BOAT RULES OF THE RANGOON PORT, R. 1
See Sea Customs Act (8 of 1878), S. 79.

CARRIERS ACT (III of 1865)
—S. 6.
——Ss. 6 and 8—Steamer Company — Negligence or criminal act of common carrier.

Where by a special contract a Steamer Company, common carriers, were exempted from liability for any loss or damage unless it arose from the negligence or criminal act of their servants or agents :

Held, that if the carriers seek exemption from liability they must prove that the loss must have been occasioned otherwise than by the negligence or criminal act of themselves, their servants or agents. The loss of goods is prima facie evidence of the negligence or criminal act of the carriers, their servants or agents. (Stephen and Holmwood JJ.) India General Steam Navigation Co. Ltd. v. Bhagawan Chandra Paul

40 Cal 716=19 I C 245 = 17 C W N 633 = 17 C L J 639.

CARTRIDGE CASES
See Arms Act (11 of 1878), S. 4.

CASE DIARY
See Criminal Procedure Code, S. 162.

CATTLE
See Cattle Trespass Act.

CATTLE POUNDS
See Cattle Trespass Act.

CATTLE TRESPASS
See Penal Code, S. 425.

CATTLE TRESPASS ACT (I of 1871)
——Conviction — Legality of — Conviction not justified under law and fine arbitrary—Conviction can be set aside —Criminal P. C., S. 439.

Where a conviction was not justified under the Cattle Trespass Act and especially where the fine was arbitrary High Court interfered and set aside the conviction. (Pullan J.) Emperor v. Madho

AIR 1930 Oudh 250=6 Luck 26=Ind Rul 1930 Oudh 369=126 I C 497=1930 Cr C 570 = 7 O W N 461=31 Cr L J 1015.

—S. 1.
——Ss. 1 and 18 — Object of — Private cattle pounds—Abolition of, by Government—Not actionable.

The maintenance of private cattle pounds is incompatible with the provisions of the Cattle Trespass Act and the establishment and maintenance of cattle pounds under the superintendence and control of Government Officials assisted by the police, may be considered essential for the maintenance of law and order and the peace and good government of the country. It is an act of the Executive Government with which it is not competent to the Civil Courts to interfere. (Lord Macnaghten) Bir Bikramdeo v. Secretary of State

39 Cal 615=39 I A 31=16 C W N 362=9 A L J 585 =15 C L J 633=(1912) M W N 657=14 Bom L R 812 =13 I C 965 (P C).

—S. 8.
——When the cattle are brought to the pound it is not necessary to inform the pound-keeper whether the cattle were seized rightly or wrongly. (Ghulam Hasan J.) Dayal v. Emperor

A I R 1943 Oudh 280=1943 O W N 202=16 R O 49 =207 I C 374=44 Cr L J 640.

CATTLE TRESPASS ACT (I of 1871)
—S. 10.

SYNOPSIS

1. Damage, whether essential.
2. "Produce" on the land.
3. Seizure, when to be made.
4. "Within twenty-four hours."
5. Who can seize.

1. Damage, whether essential.

——Cattle trespassing on field full of standing sugar cane —That cattle caused damage may be presumed. (Agarwala J.) Faiyaz Khan v. Rex

A I R 1949 Nag 180=1948 A W R H C 296.

——Damage may be nominal and not substantial. (Agarwala J.) Faiyaz Khan v. Rex

A I R 1949 Nag 180=1948 A W R H C 296.

——Ss. 10, 22—For compensation under S. 22, there must be finding that the seizure or detention of cattle was illegal, i. e., not in accordance with S. 10. Question here is whether cattle was doing damage to land or crop, etc.; if damage is done, the accused is entitled to impound. Compensation cannot be given. (Hamilton J.) Ram Chandra Singh v. Emperor

1939 O A 289 = 1939 A W R C C 56 = 1939 Oudh W N 150.

——Damage to private protected forests and to the embankment — Section 10 applies. (Courtney-Terrell C. J. and James J.) Gopal Sethi v. Hrudanand Mahapatra

(1939) 20 P L T 340.

——Damage.

The Magistrate found on the evidence that the cattle which the complainant had seized and was endeavouring to take to the pound were grazing in the complainant's field:

Held that this was sufficient damage to bring the case within the purview of S. 10. (H. V. Nanjundayya Offg. C. J. and Chandrasekhara Aiyar Offg. J.) Erappa v. Thippiah

13 M C C R 40=9 Cr L J 519 (Mys).

2. "Produce" on the land.

——Grass land—"Occupation" depends on nature of land.

Section 10, Cattle Trespass Act, refers to the crop or produce of the land, and grass being clearly the produce of land, S. 10 applies to grass land. Section 10 is not intended to apply to a case where, one claimant to the disputed possession of the disputed title sends his men, not primarily to protect his crop or produce, but to take by force the cattle of his opponent who claims in good faith a right to graze his cattle on the same land.

What is or is not "occupation" must depend upon the nature of the land. The fact that X's cattle grazed upon Y's land from time to time before a certain date is not itself sufficient to show that Y was not in possession or occupation of the land on that date. (Davis C. J. and Weston J.) Budho v. Emperor

AIR 1943 Sind 152=ILR (1943) Kar 112=16 R S 71 =208 I C 258=44 Cr L J 761.

3. Seizure, when to be made.

——"Cattle trespassing on such land", meaning of — Cattle trespassing doing damage — Capture of cattle at very long distance and near their sheds, if covered by S. 10.

Owner of animal using force to prevent seizure is protected under S. 104, Penal Code. In order to cover the act of the owner or occupier of a field who pursues a trespassing animal and captures it outside the field which has been damaged, the words "cattle trespassing on such land" in S. 10 have to be given an extended meaning and such an extension must be confined within reasonable limits. The act of seizure may be within section if it is effected at a spot within easy reach of the field damaged,

CATTLE TRESPASS ACT (I of 1871), S. 10 —

3. Seizure, when to be made

but where the distance is very great, and the cattle have already come, not merely constructively, but actually within their owner's possession, the act of the pursuers in seizing and attempting to remove the animals is not only not covered by S. 10, Cattle Trespass Act, but it also amounts technically to an offence of theft within the meaning of S. 378, Penal Code. Consequently, the owners of the animals are entitled under S. 104, Penal Code, to use force to any extent short of causing death in order to prevent the pursuers from carrying out their purpose. (Cornelius and Falshaw JJ.) Jiwana v. Emperor

AIR 1947 Lah 380.

——Ss. 10, 22 — Right of seizure, if extends to chasing cattle even outside field trespassed.

Although the right of capture of the cattle would not extend to following them to their sheds and seizing them there, yet if the owner of a field attempts to seize them while actually trespassing, he is within his rights in capturing them before they have definitely made their escape from the spot, even though they were not actually inside the field when captured. (Gruer A. J. C.) Jagannath Singh v. Emperor

AIR 1934 Nag 258 = 1934 Cr C 1297 = 7 R N 133= 31 N L R 139=153 I C 427=36 Cr L J 361.

——Penal Code, S. 105 — Right of private defence — Trespass by cattle—Cattle can be chased even outside the fields trespassed.

Certain cattle belonging to accused trespassed a field where they were grazing. An attempt was made by the owner of the field to seize them in order to take them to cattle pound. The cattle ran towards the field of the accused where the chasers followed them. The accused inflicted mortal injuries on one of the chasers, who consequently died. It was urged that the chaser had no right to pursue out of the field trespassed and the accused were entitled to a right of private defence.

Held, that notice of trespass being taken at once, the mere fact that the cattle had left the land, before they could be seized, did not deprive the owner of the field of the right of seizure conferred upon him by S. 10, and no case for private defence was proved : A I R 1925 Nag 53, Dist. (Shadi Lal C. J.) Waryami v. Emperor

AIR 1928 Lah 692=13 A I Cr R 39=116 I C 463= 30 Cr L J 627.

——Right to seize cattle subsists only until the cattle leave the land.

The owner of the land trespassed on cannot go to the owner of the errant cattle and demand their delivery in order that he may take them to the cattle pound. Because, under S. 10 the right to take hold of cattle trespassing on land and doing damage subsists only while the cattle are on the land. It does not continue after the cattle have left the land. (Kinkhede A. J. C.) Bhagwant Rao v. Champat Rao

AIR 1925 Nag 50=81 I C 716=25 Cr L J 1004.

——Cattle trespass — Right under S. 10 — "Seizure"— Damage to crops—Remedy—See Penal Code (Act XLV of 1860), S. 304

4 Cr L J 271 (Kathiawar).

4. "Within twenty-four hours".

——Offence under—Penal Code, S. 379 — Detaining cow for 24 hours is not theft, or any offence.

A person, detaining cow in his custody for less than 24 hours as he is entitled under S. 10, Cattle Trespass Act, is not guilty of offence under S. 379, intention for causing wrongful loss being absent. Where the accused kept the cow in his custody for damages done over-night for the purpose of impounding unless he received compensation, held, that he was legally entitled to keep it

CATTLE TRESPASS ACT (I of 1871), S. 10 —

4. "Within twenty-four hours"

in his own custody for 24 hours before lodging it in the pound : 14 C W N 238, Foll. (Batten J. C.) Ramratan v. Emperor

AIR 1923 Nag 64=68 I C 47=23 Cr L J 511.

——Seizure of cattle for getting rent for grazing—Theft.

(Per Huda J.) — Seizure by the lessee without any intention to take the cattle to the pound for the purpose of coercing the owner of the cattle to pay the arrears of rent for grazing is illegal and amounts to an attempt to commit theft : 22 C 1017, Foll. (Teunon and Huda JJ.) Wazuddin v. Rahimuddin

AIR 1918 Cal 701 (2)=41 I C 817=18 Cr L J 849.

5. Who can seize.

——Ss. 10 and 24 — Cattle grazing in Zamindari forest treated for some purposes as reserve forest under Ss. 26 and 32, Madras Forest Act — Seizure of cattle under orders of officer in charge of forest under Zamindar who is occupier of such forest—Seizure is lawful within S. 10 —Accused rescuing cattle committed offence under S. 24.

A private forest situate in a zamindary was for some purposes treated as a reserve forest by the application of Ss. 26 and 32 of the Madras Forest Act. The Range Officer appointed by the zamindar for the forest ordered the seizure of cattle belonging to the accused by his watchmen while the cattle were grazing in the forest. The accused obstructed while they were being taken to the cattle pound and eventually rescued them. The accused was tried and convicted for an offence under S. 24.

Held that the zamindar was still the occupier of the land and the seizure of the cattle with the help of the watchmen by the Range Officer who was in charge of the forest under the occupier, who was the zamindar, was perfectly lawful within the meaning of S. 10. The accused had therefore committed an offence under S. 24 by rescuing the cattle which had been lawfully seized : AIR 1922 Pat 317, Rel. on; AIR 1916 Lah 281, Ref. (Govinda Menon J.) In re Sathirnalan

AIR 1948 Mad 467=1948-1 M L J 428=1948 M W N 407 = 61 M L W 483 = 1948 A W R (Sup) 95 = 1948 O A (Sup) 95=49 Cr L J 689.

——Person with whom land has been settled for purpose of pasture is entitled to seize cattle encroaching upon it and eating grass and impound them.

A person with whom a land has been settled for the purpose of pasture is to be regarded as the occupier of the land within the meaning of S. 10 and the grass standing thereon is to be regarded as the produce of the land within the meaning of the section, so that, if the cattle of others trespass upon the land and eat the grass, the occupier, i. e., the person with whom the land is settled is entitled to seize them for the purpose of impounding. (Reuben and Dalziel JJ.) Bikram Mahton v. Emperor

AIR 1947 Pat 172=12 B R 785=1946 P W N 354= 226 I C 536=47 Cr L J 986.

——Proof of occupation — Admissibility of kabuliat required to be registered under S. 49, Registration Act, but not registered to prove possession (Quare).

For the purposes of Cattle Trespass Act, it is sufficient to prove occupation within the meaning of S. 10. There is no question of title involved in such a case. Hence, it is arguable that a kabuliat evidencing the settlement of land, though not registered according to S. 49, Registration Act, is admissible to prove the occupation at the relevant time of the person on whom the land was settled. (In view of the oral evidence of the settlement, however, this question was not discussed.) (Reuben and Dalziel JJ.) Bikram Mahton v. Emperor

AIR 1947 Pat 172=12 B R 785=1946 P W N 354= 226 I C 536=47 Cr L J 986.

CATTLE TRESPASS ACT (I of 1871), S. 10 — 5. Who can seize

——Watchman — General instruction to seize cattle trespassing — Rescuing cattle seized by watchman is an offence.

Under S. 10, a watchman watching crops on land on behalf of a cultivator or occupier is entitled to seize cattle trespassing on the land under his charge when he is given general instructions to seize them while so trespassing. (Adami, J.) K. Dusadh v. Sarabi Dusadh

A I R 1922 Pat 317.

——Where land is let out on a burga lease the lessor cannot seize cattle trespassing on the land unless it is shown that the burgadar is a mere servant of the lessor. (Chitty and Beachcroft, JJ.) Manikchandra Roy v. Ismail Kalu

A I R 1919 Cal 93=23 C W N 387=50 I C 1006=20 Cr L J 398.

——Occupier, meaning of.

A person in exclusive possession of land is an occupier thereof under S. 10. He can seize any cattle trespassing on his land. (Shadi Lal, J.) Emperor v. Soudagar

A I R 1916 Lah 281 (1)=3 P R Cr 1916 = 32 I C 655 =54 P W R Cr 1915=17 Cr L J 63.

——Ss. 10 and 24—Occupier defined.

A man in exclusive possession of a plot of land is an occupier under S. 10 and is entitled to seize cattle and any resistance to the removal is punishable under S. 24. (Twomey, J.) Emperor v. Nga Aw

A I R 1916 L B 8=8 Bur L T 246 = 8 L B R 217= 32 I C 654=17 Cr L J 62.

——"Impounding while trespassing."

The impounding of the cattle by a watchman who has got general instructions from the cultivator or occupier is authorised under S. 10, Cattle Trespass Act, to seize them while trespassing. (Ayling and Phillips, JJ.) In re, Subba Raya Pillai

A I R 1916 Mad 786 (1)=31 I C 372=16 Cr L J 772.

——Who may seize—Where an indigo factory supplies to the raiyats the seeds, pays for the labour of sowing, and gives compensation to raiyats growing indigo on their own land, but pays no advance in cash, held that, although the indigo was grown for the factory, a servant of the factory was not a person authorized under S. 10 of the Act, to seize cattle doing damage to the indigo. (Henderson and Geidt JJ.) Ram Karan Thakur v. Emperor

9 C W N 624=2 Cr L J 345.

—S. 11.

——Scope of — Legality of seizure of straying cattle — Liability of persons responsible—Deterrent punishment—Circumstancess to be considered.

The legislature with a view to protect the persons and property of the public in general has made it an offence to let cattle stray about without there being anyone to look after them. The legality of the seizure of such cattle and the conviction of the persons responsible therefor is not therefore made dependent on actual damage being caused.

Where the accused with several others have combined in order to flout lawful authority, such challenges to the upholders of law and order must necessarily be visited with deterrent punishment. But the fact that this was the first endeavour of the Municipality to purge the city of nuisance due to cattle and that the accused beyond lending the weight of their presence did nothing to cause hurt to the raiding party, must be considered in passing sentence on the accused. (Mehta A. J. C.) Ahmad Usman v. Emperor

A I R 1934 Sind 34=6 R S 212 = 28 S L R 73=148 I C 982=35 Cr L J 830.

CATTLE TRESPASS ACT (I of 1871), S. 11

——Ss. 11 and 24 — Conviction under — Railways Act, S. 125 (4) — Cattle passing over regular track at place where there is no fencing to railway line—Unless there is damage conviction under S. 24 cannot be sustained.

In order that an offence may be established under S. 24, the seizure of the cattle must be legal and consequently driving heards of cattle across the railway line at a place where there is no fence and where there is a regular track does not constitute any offence under S. 24 in the absence of any damage to the line. 43 I C 445 ; 1 P L T 176 and 23 C W N 387, Rel. on. (Pullan J.) Emperor v. Madho

AIR 1930 Oudh 250=6 Luck 26=Ind Rul 1930 Oudh 369=126 I C 497=1930 Cr C 570 = 7 O W N 461=31 Cr L J 1015.

—S. 12A.

——(as adapted in Saurashtra) — Order under, without giving opportunity to owners of cattle of being heard — Order is without jurisdiction.

The section requires the satisfaction of the Mamlatdar or the Mahalkari as to the likely damage of crops or disobedience of order as a condition precedent to making an order of removal of the cattle or imposing a fine for disobedience of the order. This satisfaction can only arise if the Mamlatdar or the Mahalkari gives the owner of the cattle an opportunity of being heard before making the order. Orders passed under the section ex parte against the owners of the cattle are without jurisdiction and cannot be sustained. (Shah C. J. and Baxi J.) Bhagat Sure v. State

A I R 1952 Sau 77=1952 Cr L J 1092.

—S. 20.

——Ss. 20, 22—Order of compensation by Magistrate not competent to receive complaint under S. 20 — Legality—Criminal P. C. (1898), Ss. 529, 537.

An order of compensation awarded by a Magistrate other than one before whom a complaint of illegal seizure was made and who was not competent to entertain the same is not cured either by S. 529 or by S. 537, Criminal P. C. (Ray C. J.) Padma Charan v. Rangadhar Das

A I R 1951 Orissa 40=16 Cut L T 51 =I L R (1950) Cut 149=52 Cr L J 15.

——Complaint to Magistrate not competent to receive it—Expiry of period of 10 days—Applicability of S. 14, Limitation Act—Limitation Act (1908), S. 14.

Where a complaint under the section is made to a Magistrate not competent to receive it and the period of ten days prescribed by section expires, it will no longer be open to the complainant to make a complaint to a competent Magistrate. Section 14, Limitation Act, is not applicable to such cases. (Ray C. J.) Padma Charan v. Rangadhar Das,

AIR 1951 Orissa 40=16 Cut L T 51=ILR (1950) Cut 149=52 Cr L J 15.

——Ss. 20 and 22—Order holding seizure not wrongful—Revision—Criminal P. C. (1898), S. 439.

An order in a complaint under S. 20 holding that the seizure of cattle is not wrongful does not amount to an acquittal and revision against it is maintainable. (V. R. Sen J.) Matru v. Dhunnilal,

AIR 1951 Nag 287=1950 N L J 36=ILR (1950) Nag 393.

——Offence under, does not give rise to a right of private defence of property—Scope of S. 97, Penal Code—Only offences under Penal Code give rise to right of private defence of property.

A right of private defence does not arise merely because an unlawful or wrongful act has been done. It arises only

when that unlawful or wrongful act is an offence. Further it must be an offence of a particular kind. In the case of defence of person, it must be an offence "affecting the human body," and in the case of defence of property, it must be theft, robbery, mischief or criminal trespass or an attempt to commit any of these offences. The commission of an offence under S. 20 of the Cattle Trespass Act would not give rise to the right of private defence of property. The owner of the cattle, therefore, cannot plead this right in defence of charges of offences like rioting, hurt, etc., alleged to be committed by him while rescuing by force cattle being illegally taken away to the pound although such illegal act of taking away the cattle to the pound is an offence under S. 20, Cattle Trespass Act : 16 Cal 206, Rel. on. (Agarwala J.) Faiyaz Khan v. Rex,

AIR 1949 All 180 = 1948 A W R H C 296 = I L R (1949) All 211=50 Cr L J 232.

——Complaint under—Claim for compensation for loss is not necessary—It is the duty of Magistrate to award compensation under S. 22. (Padhye J.) William Roger Fernandez v. Emperor,

AIR 1949 Nag 136=1948 A W R Sup 108=1948 N L J 394=50 Cr L J 335.

——Compensation—Illegal seizure and detention—Order of compensation—Person responsible for detention being Forest Officer—Incident having nothing to do with forest —Jurisdiction to award compensation—Counsel's fees, if can be taken into consideration in awarding compensation.

Where the seizure and detention of the sheep and goats belonging to the complainant and his party were wrongful and illegal, it makes no difference to the jurisdiction of the Magistrate to grant compensation under S. 22, Cattle Trespass Act, if the person who is responsible for the wrongful or illegal detention happens to be a Forest Officer who claims to act under colour of the Forest Act, if as a matter of fact the seizure and detention had nothing to do with any forest.

In awarding compensation under S. 22 of the Act, fees paid by the complainant to his counsel in prosecuting the application should not be considered. (Pandurang Row J.) Kotakonda Venkatesulu Naidu v. Golla Chittappa,

AIR 1938 Mad 820=1938 Mad 820=1938 M W N 831=(1938) 2 M L J 285=11 R M 390=48 M L W 214 =177 I C 896 (1)=39 Cr L J 956 (1).

——Ss. 20, 22—U. P. Village Panchayat Act (VI of 1920), S. 17 — Jurisdiction of Panchas to entertain complaint under S. 22—Such complaint filed within 10 days as required by S. 20—Case sent to proper Court — Limitation expiring—Court, if can entertain it—Defect, if curable under S. 537, Criminal P. C.

Under S. 17 of the U. P. Village Panchayat Act (VI of 1920) the Court of the Panchas has no jurisdiction to entertain the complaint under S. 22, Cattle Trespass Act, though in the complaint Ss. 323 and 501, I. P. C. are casually mentioned. Where, therefore, the complaint is made to the Panchas within ten days as required by S. 20 of the Cattle Trespass Act, but is subsequently transferred to the proper Court by which time the limitation has already expired the complaint is out of time and cannot be entertained. Section 537, Criminal P. C., does not cure the defect. (Thomas C. J. and Yorke J.) Mehdi Husain v. Emperor,

AIR 1938 Oudh 183=1938 O L R 303=1938 O W N 596=11 R O 2=175 I C 662=39 Cr L J 827.

——Complaint after 10 days of seizure.

Where the occurrence is alleged to have taken place on 29th September 1933, but the complaint is not filed till 10th October 1933, the complaint is barred by time under

S. 20 of the Cattle Trespass Act. (S. K. Ghose J.) Hemodhar Sarmah v. Anandiram Ram Saikia,

AIR 1935 Cal 116 (1) = 38 C W N 1072=7 R C 440 (1)=1935 Cr Cas 143 (1)=154 I C 197=36 Cr L J 495.

——Complaint under S. 20—Proper person to complain—'Agent personally acquainted,' meaning of—Complaint by wrong person—Validity.

The expression 'agent personally acquainted' in S. 20, Cattle Trespass Act, need not necessarily mean an eyewitness, but it may mean an agent or servant who could be said to have acted as an agent, such as a kamdar, who, if not present at the time of the seizure, had received information of it shortly after the event and was in a position to verify the information given to him. It cannot, however, include an agent, who lives at a distance and who has received information of the seizure at second hand.

Where a complaint under S. 20, Cattle Trespass Act, is made by a wrong person, there is no complaint at all and the Court has no jurisdiction to inquire into the matter.

A servant actually present at the time of the seizure might make a complaint under S. 20 when the owner himself is unable to do so, or when there is no agent who is able to make a complaint for the owner, but where the owner himself is able to make a complaint, or there is an agent, then a complaint should be made by the owner or such agent. (Staples A. J. C.) Hammirmal v. Vinayakrao,

AIR 1931 Nag 98=27 N L R 167 = Ind. Rul. (1931) Nag 105 = 1931 Cr Cas 450 = 132 I C 457=32 Cr L J 896.

——Interpretation—General Clauses Act, S. 10—Principle of S. 10 may be applied to S. 20.

Although S. 10, General Clauses Act, only applies to Acts made on or after 14th January 1897, and does not cover in terms, an Act like Cattle Trespass Act passed in 1871, the principle underlying S. 10, General Clauses Act should be applied to complaints under Cattle Trespass Act, S. 20. (Findlay J. C.) Mahadeo Ganpati Patil v. Nabha Vishwanath,

AIR 1929 Nag 96=113 I C 285=12 A I Cr R 69=30 Cr L J 125.

——Jurisdiction—Criminal P. C. (V of 1898), Ss. 4 (c) and 29—Magistrate generally empowered under Cr. P. Code, to try offences has jurisdiction to try offences under S. 20.

A Magistrate generally empowered under the Cr. P. Code to receive complaints of offences, has jurisdiction in respect of offences under S. 20 of the Cattle Trespass Act without any special authorization by the District Magistrate to receive complaints under the above section. A I R 1920 Bom 85 (1) and 34 Cal. 926, Foll. (Wallace J.) Deenadayalu v. Ratna Padayachi,

AIR 1927 Mad 396=100 I C 381=25 M L W 282= 1927 M W N 167=50 Mad 841=52 M L J 251=28 Cr L J 301.

——Ss. 20 to 23—Illegal seizure of cattle — If "offence" under — Criminal Procedure Code, S. 4 (o) — Power of District or specially empowered Magistrate to transfer such cases : 23 Cal 300; 23 Cal 442, Overruled.

The illegal seizure of cattle, mentioned in S. 20 of the Cattle Trespass Act (I of 1871), is an "offence" under S. 4, cl. (o) of the Criminal Procedure Code. Though according to the last clause of Sch. II, Criminal P. C., any offence, punishable with imprisonment for less than one year or with fine only, is triable by any Magistrate a complaint under S. 20 of the Cattle Trespass Act must be entertained either by a District Magistrate or a Magistrate specially authorized. Such Magistrate has no power under S. 192, sub-s. (1) to transfer the case, after taking cognizance of it, to any Subordinate Magistrate : 23 Cal

CATTLE TRESPASS ACT (I of 1871), S. 20

300; 23 Cal 442, Overruled. (Mitra and Coxe JJ.) Budhan Mahto v. Issur Singh,
34 Cal 926=6 Cr L J 363.

——Complaint in respect of illegal seizure of cattle—Compensation fee on complaint and process fees—Refund.

Compensation for loss caused by the illegal seizure of cattle must be claimed; if not, the complainant is not entitled to any compensation. To the expenses incurred in procuring the release of the cattle from the pound-keeper however the complainant has the right to be refunded. He is also entitled under S. 31, Court-fees Act, to the refund of the fees paid on the complaint and the process fees which he had paid. The word "offence" in the Criminal Procedure Code, includes any act, in respect of which a complaint may be made under S. 20 of the Cattle Trespass Act. (Irwin J.) King-Emperor v. Tha Nyo U,
4 L B R 11=6 Cr L J 122.

——Offence—See Criminal Procedure Code 1898, Ss. 4 (o), 250.
5 Cr L J 86 (Mad).

——Ss. 20 to 23 —Remedy under, when available—See Penal Code (Act XLV of 1860), S. 304.
4 Cr L J 271 (Kathiawar).

—S. 21.

——Under S. 21 the District Magistrate is enjoined to summon the person complained against and make an inquiry into the case. (Addison and Din Mohammad JJ.) Amar Singh v. E. H. Lincoln, Deputy Commissioner, Gujranwala,
AIR 1937 Lah 748=10 R L 57 = 39 P L R 915=169 I C 922.

——Grazier of cattle is agent within S. 22.

A grazier is entrusted with the charge of the cattle during the period the cattle are with him for the purpose of grazing and therefore he may be presumed to be an agent of the owners of the cattle during the time the cattle are in his charge. Such an authority must be presumed from the circumstances of the case. The person personally acquainted with the circumstances can only be the person in charge of the cattle when seizure is made and therefore comes under the category of "an agent personally acquainted with the circumstances" mentioned in S. 21. A I R 1923 Nag 156, Ref. (Mohiuddin A. J. C.) Manohar v. Ramdularey,
AIR 1929 Nag 152=116 I C 424 = 1929 Cr C 18=13 A I Cr R 63=30 Cr L J 633.

——Complaint—Validity of — Agent authorised to file a complaint though cannot give direct evidence of all circumstances.

For a complaint by an agent to be valid, it is not necessary that the agent must know all about the matter from what he has seen himself and not from what he has been told by others; that is, the agent need not be a person who is capable of giving what is called direct evidence of all the circumstances and not of a part of them only. (Hallifax A. J. C.) Tukaram v. Ganpat,
AIR 1923 Nag 156=84 I C 551=26 Cr L J 327.

—S. 22.

SYNOPSIS

1. Applicability and scope.
2. Appeal and revision.
3. Compensation.
4. Compensation to whom awarded.
5. Proceedings under S. 22, nature of.
6. Sentence of fine.
7. Sentence of imprisonment.
8. Specific claim for compensation, whether necessary.

CATTLE TRESPASS ACT (I of 1871), S. 22

9. Order of compensation by Magistrate not competent to receive complaint.

1. Applicability and scope.

——Impounding of cattle by Municipal servant—Prosecution of—U. P. Municipalities Act, S. 326 (1).

Section 326 (1) of the U. P. Municipalities Act relates only to suits of a civil nature in a Civil Court and has nothing to do with prosecutions under Cattle Trespass Act. The Magistrate found that cattle had done no damage to Municipal trees and that consequently the seizure of the cattle by the accused Municipal servants was bad, held, that the accused were rightly convicted under S. 22 of the Cattle Trespass Act. (Tudball J.) Satola v. Emperor,
AIR 1918 All 267=44 I C 592=16 A L J 14 = 19 Cr L J 358.

——Suit for damages for illegal seizure.

In a suit for damages for illegal seizure of cattle the onus lies on defendant to prove that the seizure was justifiable in law. Such a suit is not barred by reason of Ch. V of the Cattle Trespass Act: 15 W R 279; 16 Cal 159, foll. (Drake-Brockman J. C.) Bala v. Vithu,
44 I C 237 (Nag).

2. Appeal and Revision.

——Order holding seizure not wrongful—Order does not amount to acquittal—Revision is maintainable—Criminal P. C. (1898), S. 439—See ibid, S. 20.
AIR 1951 Nag 287.

——An order awarding compensation and repayment of fines under S. 22 of the Cattle Trespass Act (I of 1871) is appealable under S. 408 of the Cr. P. Code. The compensation so awarded not being a fine, the restrictive provisions of S. 413, Criminal Procedure Code, are not applicable. (Macleod C. J. and Shah J.) Barthol Duming Rodriks v. Papa Dada,
AIR 1922 Bom 191 = 63 I C 160=46 Bom 58=23 Bom L R 836=22 Cr L J 624.

3. Compensation.

——Award of excessive compensation — Interference—Criminal P. C. (1898), S. 439.

Where the compensation awarded under the section is excessive, High Court can interfere. (Ray C. J.) Padma Charan v. Rangadhar Das,
AIR 1951 Orissa 40 = 16 Cut L T 51=I L R (1950) Cut 149=52 Cr L J 15.

——Pleader's fee—Award of, to successful complainant—Legality of.

The language of S. 22 of the Cattle Trespass Act, 1871, is not wide enough to enable a Magistrate to award Pleader's fees to a successful complainant especially when the cattle had been released long before the complainant engaged a Pleader. (Burn J.) Pottella Ragadu v. Pondla Lakshminarappa Reddy,
AIR 1933 Mad 502 = Ind Rul (1933) Mad 381 (1) = 37 M L W 736=65 M L J 24=1933 Cr Cas 779 = 1933 M W N 549=144 I C 154 (1)=34 Cr L J 676 (1).

4. Compensation to whom awarded.

——Compensation may be awarded to owner of the cattle and not to agent filing complaint.

Where the complaint is lodged by an agent, the Magistrate can award reasonable compensation, which will be paid to the complainant (owner of cattle and not to the agent who filed the complaint). (Mohiuddin A. J. C.) Manohar v. Ramdularey,
AIR 1929 Nag 152=116 I C 424=1929 Cr C 18 = 13 A I Cr R 63=30 Cr L J 633.

CATTLE TRESPASS ACT (I of 1871), S. 22

5. Proceedings under S. 22, nature of

——Ss. 22 and 24—Orders under—Difference in nature.

There is a difference in the nature of the orders under Ss. 22 and 24. A person who is proceeded against for forcible seizure of cattle is an accused and the result of the proceeding under S. 24 is either conviction or acquittal, not so in a case instituted on a complaint under S. 22, Cattle Trespass Act. (V. R. Sen J.) Matru v. Dhunnilal,

AIR 1951 Nag 287=1950 N L J 36=ILR (1950) Nag 393.

——Scope — Section does not deal with "offence" and "conviction"—No imprisonment can be ordered in default of payment of fine and compensation — S. 545 (1) (b), Criminal P. C. has no application.

The person who is held liable under S. 22 of the Act is not 'an accused' nor is he convicted' of the 'offence.' Under S. 22 compensation together with fines and expenses, can only be ordered against the person who is adjudged liable. This money is recoverable under S. 23 of the Act as if it were a fine. This refers to S. 386, Criminal Procedure Code. No imprisonment can be ordered in default of payment of this money. Similarly, S. 545 (1) (b), Criminal Procedure Code, is not applicable. All the necessary powers in the matter of granting compensation are given by S. 22 of the Act: A. I. R. 1930 Nag. 149, Rel. on. (Hidayatullah J.) Ghulab Lahanu v. Emperor,

AIR 1948 Nag 117= 1948 N L J 389 = 1948 A W R Sup 107=I L R (1948) Nag 620=50 Cr L J 289.

——Cr. P. Code, Ss. 408 and 413—Order for compensation —Appeal, lies.

A person directed to pay compensation under Cattle Trespass Act, S. 22 is not convicted of an offence and the compensation to be paid though recoverable as fine is not 'fine' under Penal Code or other penal statutes, and therefore an appeal lies under S. 413, Cr. P. Code. (Macleod C. J. and Shah J.) Barthol Duming Rodricks v. Papa Dada,

AIR 1922 Bom 191=23 Bom L R 836=46 Bom 58= 63 I C 160=22 Cr L J 624.

——Illegal seizure—Order for compensation — Appeal — Criminal Procedure Code, Ss. 4 (o), 407, 439.

An order for compensation for wrongful seizure of cattle made under S. 22 is a conviction within the meaning of S. 407 of the Criminal P. C. An appeal lies against the order and therefore the High Court is debarred from interfering in revision. (Irwin J.) King-Emperor v. Mi Hari Ma,

4 L B R 10=6 Cr L J 121.

——Order for compensation under amounts to conviction on a trial within S. 407, Criminal P. C. — See Criminal P. C., (1898), S. 407.

5 Cr L J 86 (Mad).

6. Sentence of fine

——Complaint under S. 20 — Fine cannot be imposed — Compensation can be awarded under S. 22—S. 545 (1) (a), Criminal P. C., has no application.

No fine can be imposed on a complaint under S. 20. The Magistrate trying such a complaint can, under S. 22 of the Act, award to the complainant compensation for the loss caused by the seizure or detention by the accused. This compensation to be awarded would include the amount which the complainant had to spend for procuring the release of cattle.

Where the appellate Court sets aside the fine imposed by the Magistrate, and awards compensation, this is not a fine under S. 545 (1), Criminal P. C. So it is not a case of award of compensation under S. 545 (1) (a). What is awarded is compensation under S. 22, Cattle Trespass Act. **A I R 1925 Oudh 110**, Rel. on. (Padhye J.) William Roger Fernandez v. Emperor,

AIR 1949 Nag 136 = 1948 A W R Sup 108 = 1948 N L J 394=50 Cr L J 335.

CATTLE TRESPASS ACT (I of 1871), S. 22 —

6. Sentence of fine

7. Sentence of imprisonment

——Scope — Section does not deal with "offence" and "conviction"—No imprisonment can be ordered in default of payment of fine and compensation—S. 545 (1) (b), Criminal P. C., has no application — Criminal P. C. (1898), S. 545 (1) (b). (Hidayatullah J.) Ghulab Lahanu v. Emperor,

AIR 1949 Nag 117= 1948 N L J 389 = 1948 A W R (Sup) 107=I L R (1948) Nag 620=50 Cr L J 289.

——Compensation, when can be awarded — Sentence of imprisonment if can be awarded in default of payment of compensation.

Under S. 22 of the Cattle Trespass Act, compensation is to be awarded, but no compensation can be awarded for loss caused by the seizure of cattle unless the complainant makes the specific claim for it. The Magistrate is not competent to pass a sentence of imprisonment under S. 22 of the Cattle Trespass Act in default of payment of the compensation. (Thomas C. J.) Baijoo v. Emperor,

AIR 1939 Oudh 37=1938 O W N 1130= 1938 O L R 512= 11 R O 125=14 Luck 325 = 178 I C 722 = 40 Cr L J 241.

8. Specific claim for compensation, whether necessary.

——Compensation — Indication of heads on which losses suffered.

To entitle the complainant to compensation under the section, in the petition of complaint or, at any rate, in the evidence adduced for the complainant the different heads on which losses have been suffered must be specifically indicated. (Ray C. J.) Padma Charan v. Rangadhar Das,

AIR 1951 Orissa 40 =16 Cut I T 51 = I L R (1950) Cut 149=52 Cr L J 15.

——Complaint under S. 20 — Claim for compensation for loss is not necessary — It is the duty of Magistrate to award compensation under S. 22. (Padhye J.) William Roger Fernandez v. Emperor,

AIR 1949 Nag 136= 1948 A W R (Sup) 108 = 1948 N L J 394=50 Cr L J 335.

——Scope—Seizure found to be illegal and loss caused to complainant—Court's duty to award compensation.

There is nothing whatsoever in the language of S. 22, Cattle Trespass Act, to support the view that compensation can only be given to the complainant if he actually lays a claim for it in the petition of complaint. The only meaning that can be read into the words of S. 22 is that if the Court is of opinion that the seizure was illegal and that loss has been caused to the complainant thereby, it is its duty to award compensation for such loss to the complainant. (Collister J.) Bhujharat v. Emperor,

AIR 1935 All 925=1935 Cr Cas 1140 (1)=1935 A L J 1113=1935 A L R 1075=8 R A 395 (1)= 159 I C 154= 37 Cr L J 29.

——Compensation cannot be awarded in absence of loss and unless specifically claimed — Sentence of imprisonment under S. 22 in default of compensation is illegal.

Compensation under S. 22 cannot be allowed in the absence of loss alleged or proved. The Magistrate cannot award it arbitrarily at his own sweet will. The complainant must make a specific claim about it. Further the Magistrate can only award compensation for illegal seizure of cattle and cannot impose fine. He is also not competent under S. 22 to pass sentence of imprisonment and thus

CATTLE TRESPASS ACT (I of 1871), S. 22—8. Specific claim for compensation, whether necessary

when he passes a sentence of imprisonment in default of payment of compensation, the sentence is illegal. (Mohiuddin A. J. C.) Ramdularey v. Manohar,

AIR 1930 Nag 149=26 N L R 158= 121 I C 665=31 Cr L J 278.

——Compensation need not be claimed in the complaint.

There is no restriction in the Act that the Court cannot award compensation unless it is claimed in the complaint. A. I. R. 1923 Pat 292, Not foll. (Jackson J.) Kolandai Chetty v. Perumal Kavundan,

AIR 1928 Mad 369=108 I C 80= 1 M Cr C 125 = 29 Cr L J 325.

——Loss not proved — Compensation not asked for in petition—Compensation order is illegal.

If no compensation was claimed in the petition of complaint and no allegation was made as to the loss caused by the seizure of the cattle, the order directing payment of compensation cannot stand. The person under whose orders the cattle were seized is liable to compensate the complainant, equally with those who directly seized them under his orders. (Ross J.) Baijnath Sahay v. King-Emperor,

AIR 1923 Pat 292=4 P L T 231 = 72 I C 71 = 1923 P H C C 96=1 Pat L R Cr 34=24 Cr L J 311.

9. Order of compensation by Magistrate not competent to receive complaint

——Order of compensation by Magistrate not competent to receive complaint under S. 20 — Legality — See ibid, S. 20.

AIR 1951 Orissa 40=52 Cr L J 15.

—S. 24.

SYNOPSIS

1. Scope.
2. Appeal.
3. Conviction—Legality of.
4. Offence under Penal Code.
5. Offence whether compoundable.
6. Opposing seizure.
7. Rescue of cattle.
8. Sentence.

1. Scope.

——Proceedings in respect of offence under can be stayed under S. 5, Madras Prevention of Private Forests Act — See Madras Prevention of Private Forests Act (27 of 1949), S. 5.

AIR 1953 Mad 999= 1953 Cr L J 1864.

——Orders under Ss. 22 and 24 — Difference in nature— See ibid, Ss. 22 and 24.

AIR 1951 Nag 287.

2. Appeal

——Where a person was convicted under S. 447, Indian Penal Code, and S. 24, Cattle Trespass Act, and fined Rs. 50 for the former and Rs. 20 for the latter offence, by a Magistrate in the exercise of summary powers :

Held, that there was a combination of two punishments of the nature referred to in S. 414, Criminal P. C., and the order was appealable. (Bisheswar Nath J.) Kandhai v. Emperor,

AIR 1932 Oudh 27=1932 Cr Cas 59=8 O W N 1373 =7 Luck 501= Ind Rul (1932) Oudh 104=136 I C 248 =33 Cr L J 278.

3. Conviction—Legality of.

——Conviction—Damage to crops, proof of.

It must be shown that the cattle were causing damage to land or crops before it can be held that the owner was justified in seizing them and taking them to the pound. But the fact that the cattle have been grazing on crops in a field is sufficient to establish damage for the purposes of S. 24. (Bennett J.) Lachhman Singh v. King-Emperor.

A I R 1945 Oudh 116=1944 A W R C C 318 = 1944 O W N (C C) 523=1944 O A C C 318.

CATTLE TRESPASS ACT (I of 1871), S. 24 —

3. Conviction—Legality of

——Conviction under—Clear finding of damage by cattle essential.

A clear finding of 'damage done by the trespassing cattle is essential to a conviction under S. 24 of the Cattle Trespass Act. (Dhavle J.) Chokat Ahir v. Suraj Singh.

A I R 1940 Pat 299=21 P L T 627=6 B R 301 = 12 R P 474=186 I C 182=41 Cr L J 257.

——Offence under—Wrongful removal of cattle from pound—Offence of theft if constituted — Act constituting offence under Cattle Trespass Act also—Procedure.

A person who removes cattle from a pound where they are secured without paying the legitimate fee has the dishonest intention of saving himself the fee and is liable to be convicted under S. 24 of the Cattle Trespass Act as well as under S. 380, I. P. C. In such cases however the conviction cannot be under both provisions of law. Conviction for theft upheld. (Pandalai, J.) Veeraswami Naicken v. Emperor,

A I R 1931 Mad 18=1930 M W N 529=33 L W 205= 129 I C 451 (1)=Ind Rul 1931 Mad 252 (1)=1931 Cr C 32=32 Cr L J 354.

——Liability—For conviction under S. 24 liability of the cattle to be seized must be proved.

Before a conviction under S. 24 can be sustained it is necessary to prove that the cattle which has been rescued was liable to be seized under the Act. (Sulaiman, J.) Babu v. Emperor,

A I R 1926 All 276=24 A L J 280=7 L R A Cr 40= 92 I C 697=27 Cr L J 313.

——Offence under—Proof of damage.

There can be no conviction uuder S. 24 of Cattle Trespass Act unless it is proved and found that the cattle were liable to be seized within section 10 and that damage was caused. (Das J.) Dassi Goala v. Sardar Mahton,

A I R 1920 Pat 832=1 Pat L T 176=57 I C 464=21 Cr L J 640.

——Conviction—Finding as to legality of seizure.

To sustain a conviction, the accused must not only remove the cattle from the pound but the cattle must be liable to be seized under the Act, in other words, it must be proved that the cattle were seized while they were trespassing upon and doing damage to the field of the owner and were then put into the pound. (Jwala Prasad J.) Bhowanath Singh v. Emperor,

A I R 1918 Pat 628=4 Pat L W 40=43 I C 618=19 Cr L J 202.

——For a conviction under S. 24 of the Cattle Trespass Act there must be a finding of trespass or damage as contemplated by S. 10 of the Act. (Jwala Prasad J.) Sukhandan Rai v. Emperor,

AIR 1918 Pat 649=43 I C 445=19 Cr L J 157.

4. Offence under Penal Code.

——Offence — Conviction, if necessary for trial for other offences.

A conviction under S. 24, Cattle Trespass Act is not essential before any offence under the Indian Penal Code connected with such an offence can be taken into consideration. (Bennett J.) Lachhman Singh v. King-Emperor,

A I R 1945 Oudh 116 = 1944 O W N C C 523=1944 A W R C C 318=1944 O A C C 318.

——Offence—Penal Code, Ss. 447, 441 and 40—"Offence" in S. 441 includes offence under S. 24.

Entering the cattle pound with intent to commit an offence under S. 24, Cattle Trespass Act amounts to cri-

CATTLE TRESPASS ACT (I of 1871), S. 24 —

4. Offence under Penal Code

minal trespass within the meaning of S. 447, I. P. C. and entering the pound with intent to intimidate the person in charge of the pound amounts to an offence under S. 447. (Fforde and Addison, JJ.) Emperor v. Bhola,

A I R 1927 Lah 495 = 8 Lah 331=103 I C 201 = 28 P L R 519=8 A I Cr R 293=9 L L J 354 = 28 Cr L J 665.

5. Offence whether compoundable.

Offence under S. 24, Cattle Trespass Act, cannot be compounded even with the permission of the Court. (Govinda Menon J.) Harichandran Pagadai v. Thangaswami Nadar,

A I R 1949 Mad 501=1948 M W N 813=61 M L W 841=1948-2 M L J 571=50 Cr L J 778.

——Offence under is not compoundable.

An offence under S. 24 is not compoundable under S. 345, Criminal P. C. But the case under that section would be a summons case and the Magistrate can discharge the accused if no evidence, sufficient to support conviction is forthcoming. (Piggott J.) Emperor v. Julua,

L R 1 A 50 (Cr).

6. Opposing seizure.

——Trespass by cattle—No damage caused — Cattle not liable to be taken to pound—Resistance to their removal to pound is no offence under S. 24 — But owner of field removing them to pound under bona fide belief of his right to do so is not guilty of theft—He may however be liable for damages under civil law.

Where no damage is done by the cattle trespassing upon the fields of another, no offence is committed under S. 24 by persons who forcibly oppose their seizure and removal to the pound. In such a case, the owner of the field will not be legally entitled to remove the cattle to the pound. But where he does so, it does not follow that he was not under the bona fide belief that he had a right to do so. Where a person acts in good faith in taking away a property and does not intend to take it dishonestly, he does not commit the crime of theft, though he may be guilty of a civil wrong. He may be sued for damages in a civil Court but will not be liable to be punished for an offence under the Penal Code : A I R 1918 All 267; A I R 1940 Pat 299; AIR 1920 Pat 832; A I R 1918 Pat 649 and A I R 1933 All 620, Ref. (Agarwala J.) Faiyaz Khan v. Rex.

A I R 1949 All 180=1948 A W R (H C) 296=50 Cr L J 232.

——Where another person is in exclusive possession of the land persons claiming that they are the owners of the cattle and also of the land are liable under S. 24, if they resist the removal of the cattle. Their claim will not affect the title of the true owner. (Shadi Lal J.) Emperor v. Soudagar,

A I R 1916 Lah 281 (1)=54 P W R 1915 Cr=3 P R 1916 Cr=32 I C 655=17 Cr L J 63.

7. Rescue of cattle.

——Ss. 24 and 10 — Cattle grazing in Zamindari forest treated for some purposes as reserve forest under Ss. 26 and 32, Madras Forest Act—Seizure of cattle under orders of officer in charge of forest under Zamindar who is occupier of such forest—Seizure is lawful within S. 10—Accused rescuing cattle committed offence under S. 24 : See ibid, Ss. 10 and 24

AIR 1948 Mad 467=49 Cr L J 689.

——'Rescue'.

Driving cattle by shouts and cries does not constitute rescuing them under S. 24. (Spencer J.) Kamal Kondiah, In re,

A I R 1923 Mad 608=17 L W 546=32 M L T 365=1923 M W N 437=73 I C 616=24 Cr L J 456.

CATTLE TRESPASS ACT (I of 1871), S. 24 —

7. Rescue of cattle

——Rescue of cattle not seized in accordance with the Act is not illegal. (Chitty and Beachcroft, JJ.) Manik Chandra Roy v. Ismail Kalu,

A I R 1919 Cal 93=23 C W N 387=50 I C 1006=20 Cr L J 393.

8. Sentence.

——See also Penal Code (1860), S. 323.

AIR 1953 All 358=1953 Cr L J 817.

——Penal Code, S. 323 — Separate sentences can be passed.

The offence of causing hurt is a separate offence from that of rescuing cattle and separate sentences may legally be passed. (Wallace, J.) Anthoni Udaiyan v. Rayappudayar,

AIR 1928 Mad 18=39 M L T 543=1927 M W N 850 =105 I C 806=9 A I Cr R 160=53 M L J 653 = 28 Cr L J 982.

—S. 28.

——Proper order to be passed.

Where the accused have been sentenced to a fine of Rs. 10 and they have been also ordered to pay Rs. 10 as compensation to the complainant, the manner in which the Magistrate has worded the order is irregular and properly speaking he should have imposed a fine Rs. 20 and under S. 28 awarded Rs. 10 as compensation to the complainant out of the fine, if recovered. (Shah C. J. and S. H. Chhatpar J.) Bharwad Maiya Teja v. Patel Lava Mavji,

4 Sau L R 245.

CAVEAT EMPTOR

See (1) Contract Act (1872), S. 172.
(2) Sale of Goods Act 1930, S. 16.

CENSUS ACT (XXIV of 1939)

—S. 9.

——Trial under S. 9 (a), Census Act, 1939 — Prosecution asked for without any particulars, sanctioned without any particulars and started without any particulars—Case was not allowed to proceed further. (Dhavle J.) Ramsakal Singh v. Emperor

AIR 1942 Pat 130 = 8 B R 192 = 14 R P 319 = 197 I C 359=43 Cr L J 160.

—S. 10.

——Ss. 10, 11 — Prosecution either under Census Act or Penal Code (Act XLV of 1860) — Sanction of Provincial Government, if necessary.

Under Ss. 10 and 11, Census Act, no prosecution either under the Census Act or under the I. P. C. can be instituted except with the previous sanction of the Provincial Government or of an authority authorized in this behalf by the Provincial Government. (Derbyshire C. J. and Bartley J.) Emperor v. Haridas Ukil

AIR 1941 Cal 715 = 74 C L J 204=45 C W N 902= 14 R C 457 = 198 I C 196 = 43 Cr L J 326.

C. P. AND BERAR ACCOMMODATION (REQUISITION) ACT (LXIII of 1948)

—S. 3.

——Scope — Rights of owner — Abridgement of — No violation of Art. 19 (1) (f) — See Constitution of India, Art. 19 (1) (f)

AIR 1951 Nag 33.

——S. 3 (1)—'Public purpose,' interpretation of — Person holding office of profit under Government—Accommodation for him is public purpose — See Constitution of India, Art. 31 (2)

AIR 1951 Nag 33.

C. P. AND BERAR ACCOMMODATION (REQUISITION) ACT (LXIII of 1948), S. 3

——Ss. 3 and 4 — Requisition of premises occupied by tenant — No provision for payment of compensation to tenant—Invalidity of Act—Constitution of India, Art. 31 (2).

A tenant or a lessee of a property is the transferee of an interest therein inasmuch as he has the present right to occupy the demised premises. Art. 31 (2) of the Constitution clearly contemplates payment of compensation to the person who has a present right to occupy the requisitioned premises. There is no provision in the C. P. and Berar Accommodation (Requisition) Act for payment of compensation to a tenant. Section 4 (1) clearly refers to the payment of compensation to the owner and to none else. (Mangalmurti and Mudholkar JJ.) Manohar v. G. G. Desai

AIR 1951 Nag 33 = 1951 N L J 346 = ILR (1951) Nag 791.

——Ss. 3 & 4 — Act whether 'intra vires' Govt. of India Act, 1935, S. 104.

Except for the purposes of S. 299, Govt. of India Act, 1935, the word "land" has not been defined in the Government of India Act, 1935. Therefore, that word will have the meaning given to it in S. 3, Interpretation Act, 1889 (52 & 53 Vict., Ch. 63), not only wherever it occurs in the Government of India Act (except S. 299) but also in the notifications issued under any provision of that Act.

In exercise of the powers given by S. 104 of the Government of India Act, 1935, the Governor-General had, by Notification No. F. 311/47-C & G dated the 21st October 1947, specifically authorised the Provincial legislature to legislate on the requisitioning of "land." It was contended that as the word "land" did not include houses, therefore, in so far as the C. P. and Berar Accommodation (Requisition) Act, 1948 allowed the requisition of houses, it was ultra vires of the powers of the Provincial Legislature :

Held that by virtue of S. 31 of the Interpretation Act, 1889, the meaning of an expression used in any "instrument" issued under an Act of Parliament is unless the contrary intention appears, the same as in the Act conferring the power to issue the instrument and therefore the C. P. and Berar Act was valid. (Mangalmurti and Mudholkar JJ.) Manohar v. G. G. Desai

AIR 1951 Nag 33 = 1951 N L J 346 = I L R (1951) Nag 791.

——Requisition when can be said to be not bona fide.

It is desirable for the authority requisitioning any premises to make due enquiries about all available accommodation and to proceed to requisition occupied premises only in the last resort. But from the failure of the requisitioning authority to make such enquiry it does not follow that the order was not made 'bona fide'. However, it is possible to infer lack of 'bona fides' from the action of an authority requisitioning all the accommodation contained in the premises even though all the accommodation was not really required for the purpose for which it was requisitioned and no reason or no satisfactory reason was given for requisitioning accommodation in excess of that actually required.

[Note.—Attention of State Govt. drawn to instructions reproduced in Blackpool Corporation v. Locker (1948) 1 All E R 85]. (Mangalmurti and Mudholkar JJ.) Manohar v. G. G. Desai

AIR 1951 Nag 33 = 1951 N L J 346 = ILR (1951) Nag 791.

——Reasonability of provision—Court whether can question—Constitution of India, Art. 19.

The question whether a statute or a provision therein is reasonable or not is not a matter upon which Courts of law are entitled to pronounce an opinion except when the Constitution authorises them so to do, as for instance, clauses (3) to (6) of Art. 19 of the Constitution. But these clauses have no relevance in the case of requisition of accommodation by Govt. under C. P. and Berar Accommodation (Requisition) Act. Hence even if the provisions permitting requisitioning of occupied property are regarded as unreasonable they are not, for that reason alone invalid. (Mangalmurti and Mudholkar JJ.) Manohar v. G. G. Desai

AIR 1951 Nag 33 = 1951 N L J 346 = ILR (1951) Nag 791.

——Whether requisition of accommodation is restricted to unoccupied premises only.

The definition of the word "accommodation" in S. 2 (a) is wide enough to include "premises occupied by the owner or any other person." Indeed, from the fact that the word "occupier" itself is defined in S. 2 (b) and from the further fact that S. 3 (2) requires notice to be given to the owner as well as the occupier, it is clear that the power to requisition is not restricted to accommodation in unoccupied premises only. (Mangalmurti and Mudholkar JJ.) Manohar v G. G. Desai,

AIR 1951 Nag 33 = 1951 N L J 346 = ILR (1951) Nag 791.

—S. 4.

——"Land" interpretation of — If includes houses— See C. P. and Berar Accommodation (Requisition) Act (63 of 1948), S. 3

AIR 1951 Nag 33.

——Payment of compensation must be to the owner and to none else—See C. P. and Berar Accommodation (Requisition) Act (63 of 1948), S. 3

AIR 1951 Nag 33.

——S. 4 (3)—"Any person" whether includes tenant.

The words "any person appearing entitled to it" in S. 4 (3) must be interpreted as referring to persons of the same type as the one referred to in S. 4 (1) that is the owner. It would not be in consonance with the principles of construction of statutes to give a wider meaning to the words "any person" so as to include a tenant in the absence of anything either in S. 4 or in any other provision of the Act which recognises the right of a tenant, or confers on a tenant the right to receive compensation.

Hence, in the absence of a provision regarding the payment of compensation to a tenant, after the coming into force of the Constitution, the Central Provinces and Berar Accommodation (Requisition) Act, 1948, is void in so far as it permits requisitioning of property in the possession of tenants. (Mangalmurti and Mudholkar JJ.) Manohar v. G. G. Desai

AIR 1951 Nag 33 = 1951 N L J 346 = ILR (1951) Nag 791.

—S. 6.

——Information from owner not called—Order of requisition whether invalid.

Section 6 confers a power upon the Provincial Government and does not impose any obligation on it. Therefore, the mere fact that no information was called for from the owner by the Provincial Government does not affect the validity of the order of requisitioning. (Mangalmurti and Mudholkar JJ.) Manohar v. G. G. Desai

AIR 1951 Nag 33 = 1951 N L J 346 = ILR (1951) Nag 791

C. P. AND BERAR AGRICULTURAL PRODUCE MARKET ACT (XXIX of 1935)

—S. 5.

——Rules under — R. 3—Adatya — See C. P. and Berar Foodgrains Control Order (1945), Cl. 2 (a)

AIR 1953 Nag 289=1953 Cr L J 1555.

C. P. AND BERAR BOARD OF REVENUE ACT (XII of 1949)

—S. 6.

——Jurisdiction of Board — See Criminal P. C. (1898), S. 195 (5)

AIR 1953 Nag 121=1953 Cr L J 741.

C. P. AND BERAR BORSTAL ACT (IX of 1928)

—S. 5.

——Order for detention in default of payment of fine imposed — Legality.

Section 5 of the C. P. and Berar Borstal Act authorises detention in lieu of transportation or imprisonment. There is no provision, however, for further detention in default of payment of fine, and such an order is illegal. It is inexpedient to impose a fine when there is no hope of realisation. (Gruer J.) Emperor v. Pannalal,

AIR 1938 Nag 131=10 R N 334 (1)=1938 N L J 8=173 I C 899=39 Cr L J 427 (1)

——A person who had been detained at the Borstal Institution and had served out his term, cannot be so detained again a second time. (Bose J.) Emperor v. Ram Chand,

19 N L J 162.

C. P. AND BERAR CEMENT CONTROL ORDER (1947)

—Cl. 2.

——Clause 2 (b)—Applicability—Foreign cement.

The language of the Order is in very wide terms and covers Indian as well as foreign cement. (Hemeon and Sen JJ.), State Govt. of Madhya Pradesh v. Hiralal Tejulal

AIR 1952 Nag 58=1952 N L J 129=ILR (1951) Nag 930=1952 Cr L J 325.

C. P. AND BERAR CHILDREN ACT (10 of 1928).

—S. 3.

——"Youthful offender" if includes boy under age of 16 at time of conviction for an offence punishable with death.

Section 3 of the C. P. and Berar Children Act contains the definition of the expression "youthful offender," but it cannot include the case of a boy under the age of 16 years at the time of conviction and sentence who has been convicted of any offence punishable with death. Only S. 3 was made applicable to male persons in the whole of the Central Provinces with effect from 15th September 1932. The whole Act was not brought into operation. (Niyogi J.) Provincial Government, Central Provinces and Berar v. Mekhoo,

A I R 1942 Nag 74 = 15 R N 11 =1942 N L J 210= ILR (1942) Nag 305=200 I C 368=43 Cr L J 611.

C. P. AND BERAR COLLECTION OF INFORMATION AND LETTING OF HOUSES ORDER (1946).

——The Order is not ultra vires. See — C. P. and Berar Regulation of Letting of Accommodation Act (XI of 1946). S. 2,

AIR 1949 Nag 140=50 Cr L J 331.

—Cl. 2.

——Cls. 2 (a) and 3 (1) — "House" refers to building or part of building whether old or new (Hemeon J.) Shivdas Sinna Ajudya Singh v. King-Emperor,

A I R 1949 Nag 140 = 1949 N L J 38=1949 A W R Sup 18=ILR (1948) Nag 396=50 Cr L J 343.

C. P. AND BERAR COLLECTION OF INFORMATION AND LETTING OF HOUSES ORDER (1946)

—Cl. 3.

"House" refers to building or part of building, whether old or new. See ibid, Cls. 2 (a) and 3 (1),

AIR 1949 Nag 140=50 Cr L J 343.

C. P. AND BERAR COTTON CLOTH TRADE REGULATION ORDER (1948)

—Cl. 3.

——Clause is within ambit of saving Cl. (6) of Art. 19, Constitution of India — (Constitution of India (1950), Art. 19), (Hemeon and Choudhuri JJ.) State Government Madhya Pradesh v. Amritlal Amanlal,

A I R 1953 Nag 141=1953 N L J 357= I L R (1953) Nag 639=1953 Cr L J 801.

—Cl. 27.

——Mens rea is relevant when shop keeper is made vicariously liable. (Hemeon and Chondhuri JJ.) State Government, Madhya Pradesh v. Amritlal Amanlal.

A I R 1953 Nag 141 =1953 N L J 357=I L R (1953) Nag 639=1953 Cr L J 801.

C. P. AND BERAR CRIMINAL PROCEDURE CODE (AMENDMENT) ORDINANCE (II of 1948)

—— Assent of Governor-General is deemed to have been given by virtue of Ss. 88 (1) (b) (iii) and 88 (3).

The C. P. Ordinance, II [2] of 1948, having been enacted upon instructions from the Governor-General, under S. 88 (1) (b) (iii), Government of India Act, the Ordinance must be deemed, under S. 88 (3) of Government of India Act, to be an Act of the Provincial Legislature which has been reserved for the consideration of the Governor-General and assented to by him. Hence the conditions laid down in S. 107 (2) are satisfied and the Ordinance is not therefore ultra vires on the ground that no assent of the Governor-General was obtained to it. (Hemeon and Hidayatullah JJ.) Raonakali v. Emperor,

A I R 1949 Nag 16 = I L R (1948) Nag 785 = 50 Cr L J 84.

—S. 2.

——Pith and substance of S. 2 lies entirely within item 2 of Concurrent Legislative List of Constitution Act—It is not ultra vires, because it incidentally relates to firearms and ammunition.

Where a piece of provincial legislation incidentally touches upon a field reserved for the Centre, it is not ipso facto ultra vires. If the power to enact that legislation is to be found in either the Provincial or the Concurrent list, then the incidental overlapping does not necessarily render the law ineffective. It is true that the matter covered by S. 2 of C. P. Ordinance II [2] of 1948 incidentally relates to arms, firearms, and ammunition, but the pith and substance of the impugned section (bail in offences under Arms Act) lies entirely within item No. 2 of the Concurrent List (Criminal Procedure). On the date of the passing of the Constitution Act, the question whether bail ought or ought not be be granted in cases arising under S. 19-A of the Indian Arms Act was covered by Schedule II to Criminal Procedure Code where specific provision is made for it under the heading "Offences against other laws": AIR 1947 P C 60 and AIR 1947 P C 72, Rel. on ; AIR 1948 Nag 199, Ref.

Section 2 of C. P. Ordinance II of 1948 is not therefore ultra vires, on this account. (Hemeon and Hidayatullah JJ.) Raonakal v. Emperor,

A I R 1949 Nag 16 = I L R (1948) Nag 785 = 50 Cr L J 84.

C. P. & BERAR ENTERTAINMENTS DUTY ACT (XXX of 1936).

—S. 8.

——Rules under—R. 18—Percentage of complimentary admission.

Aggregate of the total accommodation of all the shows held on a particular day cannot be taken for arriving at the maximum percentage of complimentary admission. (Mudholkar J.) Brijlal Bansilal v. The State.

A I R 1950 Nag 193=1950 N L J 367=I L R (1950) Nag 895=51 Cr L J 1362.

——Rules under — R. 18 whether ultra vires.

Rule 18 is within the rule-making powers conferred on Government by S. 8 (2) (d). (Mudholkar J.) Briljal Bansilal v. The State,

A I R 1950 Nag 193=1950 N L J 367= I L R (1950) Nag 895=51 Cr L J 1362.

C. P. AND BERAR EXCISE ACT (II of 1915)

—S. 34.

——An Excise Sub-Inspector exercises in investigation the powers conferred on an officer in charge of a Police Station by the provisions of Chap. XIV, Criminal P. C., as regards offences under S. 34, C. P. and Berar Excise Act. (Hemeon J.) Bhikari Lal v. Emperor,

A I R 1945 Nag 217 = 1945 N L J 303=18 R N 64= 220 I C 226=46 Cr L J 710.

——Ss. 34 (a), 37—Rules 84 (7) and 498 if ultra vires.

Before a conviction can be obtained either under S. 34 (a) or under S. 37 read with R. 498 of Excise Act, for illegally importing or indenting foreign liquor, the Crown must show that it is necessary under the law to pay fees and obtain either a licence or a permit for the indent and import of foreign liquor. But no such law is in existence so far as indenting is concerned, and since the C. P. & Berar Excise Act does not empower the Provincial Government to make rules authorising the Government to collect a fee or require the possession of a licence in respect of the indent or purchase of foreign liquor, Rr. 84 (7) and 498 are ultra vires in so far as they attempt to regulate the purchase or indent of foreign liquor. (Bose J.) J. V. C. Lobo v. Emperor,

A I R 1942 Nag. 133=1942 N L J 552=I L R (1943) Nag. 502=15 R N 142=203 I C 532=44 Cr L J 104.

——Offence under — Bottling of liquor so that it may be kept and sold—Whether same transaction.

Where the bottling of the liquor is done some time previous to the selling but is done in order that the liquor should be kept and sold in pursuance of the unlawful designs of the accused, there is such continuity of action as is required by S. 239, Criminal P. C. (Gruer J.) Chhotey Miyan v. Emperor,

A I R 1936 Nag. 250= 1936 Cr Cas 1042=9 R N 228 =I L R (1937) Nag. 165=167 I C 860=38 Cr L J 482.

——Possession of charas.

The point for decision in a case under S. 34 (a), C. P. and Berar Excise Act, is whether or not the accused had legal possession of charas, and it is necessary to consider the evidence even if the Excise authorities had acted illegally in making the search. (Macnair J. C.) Local Government v. Nainsukh Teli,

A I R 1933 Nag. 99 = 29 N L R 67 = 1933 Cr Cas 364=Ind Rul (1933) Nag. 227=144 I C 240=34 Cr L J 721.

—S. 36.

——Conviction under S. 36—Trial for subsequent offence —"Warrant case".

C. P. AND BERAR EXCISE ACT (II of 1915), S. 36

Where a person who has been convicted of an offence under S. 36, C. P. and Berar Excise Act, again commits a similar offence, the subsequent offence should be tried as a warrant case inasmuch as such subsequent offence is punishable under S. 45 of the said Act with imprisonment for more than 6 months. (Niyogi A. J. C.) Gayaprasad v. Emperor,

A I R 1932 Nag. 111=28 N L R 18=Ind Rul (1932) Nag. 64 = 1932 Cr Cas 275 = 137 I C 150 = 33 Cr L J 573.

—S. 43.

——Diluted denatured spirit.

Under S. 2 (13) "liquor" includes spirit and under S. 2 (6) "excisable article" means any liquor. Diluted denatured spirit is therefore excisable article and presumption under S. 43 applies. (Pollock J.) Ahmad Khan v. Emperor,

1939 N L J 75.

—S. 58.

——Search witnesses.

Section 58, C. P. and Berar Excise Act, makes the provisions of the Criminal P. C., applicable in regard to search and seizure of excisable articles and these require that the witnesses to the search must be residents of the locality. (Subhedar A. J. C.) Hajari Tika Lodhi v. Emperor,

A I R 1934 Nag. 156=1934 Cr Cas 660=7 R N 30= 150 I C 916=35 Cr L J 1163 (2).

—S. 62.

——Partnership between partners to jointly work liquor shops—Agreement, if valid—Refund of sum advanced to defendant—Whether can be allowed.

The plaintiff and defendant were partners, each having 8 annas share in certain liquor contracts auctioned by Government. After the bid was accepted, an agreement of partnership was written and signed. The agreement said that the parties jointly agreed to work the liquor shops and there was nothing in it to prevent the other partner also taking an occasional hand in the management or at least influencing or advising in the management :

Held, that the partnership was prohibited by R. 6 made under S. 62, Excise Act. It would be against public policy and would tend to defeat the object of the rules if unapproved persons were allowed to have any hand in the workink of the licence and the agreement of partnership was void ab initio as being opposed to public policy :

Held, also, that the plaintiff might be allowed refund under S. 65, Contract Act, of the amount which he had advanced to defendant under the partnership. (Gruer J.) Nandlal v. Thomas J. William,

A I R 1937 Nag 250 = 10 R N 145 = I L R (1937) Nag. 376=171 I C 943.

C. P. AND BERAR FOODGRAINS CONTROL ORDER (1945)

—Cl. 2.

——Cl. 2 (a)—Dealer—(C. P. Agricultural Produce Market Act (29 of 1935), S. 5 and R. 3).

Applicant did not at any time purchase or sell the goods for himself and acted only on behalf of the purchasers who were present on the spot—Held that he was a commission agent or 'adatya' of the type contemplated in cl. 2 (a). (Hemeon J.) Krishnarao Vithobaji v. State,

A I R 1953 Nag. 289=1953 N L J 370=I L R (1953) Nag. 867=1953 Cr L J 1556.

C. P. AND BERAR FOODGRAINS CONTROL ORDER (1945), Cl. 2

——Cls. 2 (e), 3 (1)—Wholesale dealer — Storage of foodgrains exceeding ten maunds at one time is sufficient.

The words "engage in the business of sale or storage for sale," which appear in Cl. 2 (a), are not qualified by any expression which would limit their application to frequency in the trade of selling or storing for sale foodgrains. A person deals in foodgrains as soon as he begins so to deal and a person is a wholesale dealer as soon as he deals in foodgrains in quantities exceeding ten maunds of any one foodgrains or twenty maunds in the aggregate or a number of foodgrains in one transaction. The words 'in one transaction' signify 'at one time' or 'at a time'. The view, therefore, that before an offender could be convicted it would have to be established that he had so frequently sold more than the prescribed amount of foodgrains that he could be said to have done so usually is against the scheme of the Order :

Held that a retail dealer who had increased the stock of bagad in his shop to a quantity appreciably in excess of ten maunds, was engaged in the business of its storage for sale and had thus contravened Cl. 3 (1) of the order by becoming a wholesale dealer. (Hemeon and Hidayatullah JJ.) State Government, Madhya Pradesh v. Bhagwan,

A I R 1952 Nag. 6 = 1952 N L J 82 = I L R (1951) Nag. 786=1952 Cr L J 105.

——Cls. 2 (e) and 3 (1) (2)—Mere storage of foodgrain in excess of fifty maunds — No intention to sell — Cl. 3 (1) not contravened.

What is prohibited by sub-cl. (1) of Cl. 3 is dealing in foodgrains as a wholesale dealer without a licence. Merely being a wholesale dealer is not, according to the strict interpretation of this clause, prohibited. Even if the definition of 'wholesale dealer' in Cl. 2 (e) is read with sub-cl. 2 of Cl. 3, it does not appear that a person can be deemed to be dealing in foodgrains simply because he has stored foodgrain in excess of fifty maunds even though he may be presumed to be a "wholesale dealer". What must be shown in addition to the storage of foodgrain is that such storage was with the intention of selling the foodgrain. Where the evidence to prove this is lacking, a person cannot be convicted of the contravention of Cl. 3 (1). (Hemeon and Mudholkar J.) State v. Bokha,

A I R 1951 Nag. 193 = 1951 N L J 9 = I L R (1951) Nag. 185=52 Cr L J 160.

—Cl. 3.

——Cl. 3 (1)—Contravention of—Retail dealer increasing stock in excess of ten maunds—See ibid, Cl. 2 (e),

A I R 1952 Nag. 6=1952 Cr L J 105.

——Cl. 3 (1) (2) — Mere storage — No intention to sell—No contravention—See ibid, Cl. 2 (e),

A I R 1951 Nag. 193=52 Cr L J 160.

——Cl. 3 (1) — Allowing other person to store grain in one's house.

——A person cannot be charged of contravening Cl. 3 (1) because he allows a particular kind of foodgrain to be stored in his house in excess of 50 maunds as there is nothing in the Foodgrains Control Order which prohibits this. (Hemeon and Mudholkar JJ.) State v. Bokha,

A I R 1951 Nag. 193 = 1951 N L J 9 = I L R (1951) Nag. 185=52 Cr L J 160.

——Cl. 3 (1)—Contravention of—Mens rea is essential—One partner of firm committing offence punishable under S. 7, Essential Supplies (Temporary Powers) Act, of contravening Cl. 3 (1) of Foodgrains Control Order — Other partner who is not present cannot be convicted. (Mudholkar J.) Mahadeo Sheolal Agarwal v. Emperor,

A I R 1949 Nag. 401 = I L R (1949) Nag. 488=1949 N L J 419=51 Cr L J 81.

C. P. AND BERAR FOODGRAINS CONTROL ORDER (1945), Cl. 3

C. P. AND BERAR FOODGRAINS EXPORT RESTRICTIONS ORDER (1943)

——Order, if was validly continued after revocation of emergency.

Though the Foodgrains Order was not continued by the Emergency Provisions (Continuance) Ordinance of 1946 after the revocation of the proclamation of emergency the Order was validly continued by the Essential Supplies (Temporary Powers) Ordinance, 1946, and the Essential Supplies (Temporary Powers) Act, 1946. (Mangalmurti and Deo JJ.) Shriniwas Pannalal v. Crown,

A I R 1951 Nag. 226=I L R (1951) Nag. 104.

—Cl. 2.

——Cl. 2 (1) (a)—Export of 'chuni', if prohibited—Essential Supplies (Tmporary Powers) Ordinance (1946), S. 2 (a) (i)—Essential Supplies (Temporary Powers) Act (1946), S. 2 (a) (i).

In common parlance, foodstuffs mean "materials used as food". The term is not used only for material which is immediately fit for human consumption but it also applies to material which can be used as food after subjecting it to processes like grinding, cleaning etc. There is no reason to suppose that the word "foodstuffs" is not used, in the Essential Supplies Ordinance and Act in this usual sense but is used in the restricted sense of material which is fit for human consumption immediately without subjecting it to any process. It cannot, therefore, be said that export of 'chuni' was not prohibited under the Foodgrains Restriction Order. (Mangalmurti and Deo JJ.) Shriniwas Pannalal v. Crown,

A I R 1951 Nag 226=ILR (1951) Nag 104.

——Cl. 2 (1) (a) — Clause, if 'ultra vires' being in contravention of S. 297 (1) (a), Government of India Act.

The order was made in exercise of the powers conferred by R. 81 (2) (a) of the Defence of India Rules, and was thus made in exercise of the powers of the Central Legislature under S. 102 of the Government of India Act, delegated by it to the Provincial Government. It was thus a power different from the Provincial Government's power under S. 100 (3) which still continued in Provincial Legislature under S. 102 (2).

Section 297 (1) (a) lays down a restriction when the Provincial Legislature or Government acts by virtue of entry No. 27 or 29 in the Provincial Legislative List. Neither the Central Legislature in passing the Defence of India Act nor the Central Government in making the Defence of India Rules, nor the Provincial Government in making the Central Provinces and Berar Foodgrains Export Restrictions Order, 1943, under R. 81 (2) of the Defence of India Rules, were acting by virtue of the entry in the Provincial Legislative List and so the limitation in S. 297 (1) (a) did not apply. Clause 2 (1) (a) was thus not 'ultra vires' the Provincial Government. (Mangalmurti and Deo JJ.) Shriniwas Pannalal v. Crown,

A I R 1951 Nag 226=ILR (1951) Nag 104.

C. P. AND BERAR FOREIGN LIQUOR RULES (1938)

—R. 7.

——Rr. 7, 7A—Validity—Whether discriminatory within Art. 14 (1)—Constitution of India, Art. 14 (1).

Per Mangalmurti and Mudholkar JJ. — Where a law prevents the people in general from drinking intoxicating liquor, presumably on the ground that it is not desirable

C. P. AND BERAR FOREIGN LIQUOR RULES (1938), R. 7

for anyone to do so, there is no justification to put in one class of men of certain social and economic status and habits and allow them to drink. To give them this concession is not granting them a 'protection' but is just conferring a privilege on them.

Rule 7 enables any person who satisfies the appropriate authority that 'his social and economic status and habits' warrant the granting to him of a permit, to obtain a permit for the consumption of intoxicating liquor, not as a medicine but for his enjoyment as a beverage. Classification of persons who are used to drink on the basis of wealth or social position clearly amounts to invidious discrimination and is the very thing which the 14th Art. of the Constitution forbids. Rule 7 has therefore become void under Art. 13 (1) after the commencement of the Constitution.

Per Hidayatullah J.—The permit system envisaged by S. 29 (2) and Rr. 7 and 7A of the Central Provinces and Berar Foreign Liquor Rules, 1938, creates an inequality. By reason of this inequality, these rules and S. 29 (2), which enables the Provincial Government to enact such rules, are void under the present Constitution. (Hidayatullah, Mangalmurti and Mudholkar JJ.) Sheoshankar v. State Govt. of M. P.,

A I R 1951 Nag 58=ILR (1951) Nag 646=52 Cr L J 1140 (FB)

—R. 7A.

——Validity—See ibid, R. 7,

A I R 1951 Nag 58=52 Cr L J 1140 (FB).

C. P. AND BERAR FUNDAMENTAL RULES,

—Appendix XXV, Part E, Para. 2.

——Suspension ordered because of pendency of criminal proceedings—Notice before suspension.

No doubt one of the punishments described in the Civil Service Regulations is suspension of a Government servant but such suspension must be distinguished from the one ordered because of the pendency of criminal proceedings against a Government servant. There is no provision in any rule requiring a notice to be given to him before suspension pending such proceedings. (Mungalmurti and Mudholkar JJ,) M. Gopalkrighna Naidu v. State of Madhya Pradesh,

A I R 1952 Nag 170=1952 N L J 221=I L R (1952) Nag 52 = 1952 Cr L J 845.

——Suspension before Criminal Proceedings begin.

What is required by para. 2 is that there should be an accusation of a criminal offence against the person and not that criminal proceedings should actually commence in the sense that a challan is filed. Suspension cannot therefore be ordered before the criminal proceedings begin. (Mangalmurti and Mudholkar JJ.) M. Gopalkrishna Naidu v. State of Madhya Pradesh,

A I R 1952 Nag 170=1952 N L J 221=I L R (1952) Nag 52=1952 Cr L J 845.

——Suspension—Enuring of, after conviction is set aside in appeal.

Where the suspension of a Government servant does not depend upon the sanction or upon the fact that there was a trial and is based upon the fact that there was an accusation of a criminal offence, the suspension enures after his appeal is allowed and the conviction and sentence are set aside. (Mangalmurti and Mudholkar JJ.) M. Gopalkrishna Naidu v. State of Madhya Pradesh,

A I R 1952 Nag 170 = 1952 N L J 221 = ILR (1952) Nag 52=1952 Cr L J 845.

C. P. AND BERAR HOUSE RENT CONTROL ORDER (1947)

—Cl. 14.

——Indirect interference with water connection—Connection cut off by municipality on landlord's application —Landlord is liable.

Clause 14 applies to indirect interference also and when the municipality cuts off the water supply of the house as a result of the landlord's application, the landlord is liable under Cl. 14. (Hemeon J.) Gulabchand v. Crown,

A I R 1948 Nag 414=1948 A W R (Sup) 158=1948 N L J 439=ILR (1948) Nag 365=49 Cr L J 623.

——Clause is not ultra vires the powers under S. 2, C. P. and Berar Regulation of Letting of Accommodation Act (XI of 1946) under which the order was made.

Clause 14 of C. P. and Berar House Rent Control Order is covered by the words "regulating the letting and subletting of any accommodation" in S. 2, Regulation of Letting of Accomodation Act. Rule-making power is conferred by the opening part of the section and the function of cls. (a) to (d) is merely illustrative. This is borne out by the fact that they are preceded by the words, "in particular" which connote that the preceding contents of the section relate to the generality of the powers conferred on the Provincial Government.

Clause 14 is not therefore ultra vires the powers under S. 2: A I R 1945 P C 156, Foll.; A I R 1943 F C 1, Not foll. (Hemeon J.) Gulabchand v. Crown,

A I R 1948 Nag 414=1948 A W R (Sup) 158=1948 N L J 439=ILR (1948) Nag 365=49 Cr L J 623.

C. P. AND BERAR LOCAL SELF-GOVERNMENT ACT (IV of 1920)

—S. 41.

——Work paid for out of public funds — Bribe alleged to be received in relation to such work — Vice-Chairman performing official acts.

Where the Vice-Chairman purports to act in an official capacity and the work in respect of which the receipt of bribery is alleged, is one which is paid for out of public funds, he is to be deemed to have been performing an official act in respect of the work, especially as there is a presumption that all acts of a public officer which purport to be official, have been regularly performed. (Bose J.) Champat Rao Deshmukh v. Emperor,

167 I C 752 = 19 N L J 221=9 R N 211=38 Cr L J 444.

——Ss. 41, 42, 46, 79 — Vice-Chairman of Local Board, is a public officer within S. 21, Penal Code (Act XLV of 1860).

Persons like the Vice-Chairman of Local Board constituted under the C. P. and Berar Local Self-Government Act, who have been given authority to discharge certain public functions of a local or municipal nature are public officers within S. 21, Penal Code. (Bose J.) Champat Rao Deshmukh v. Emperor,

167 I C 752 = 19 N L J 221 = 9 R N 211=38 Cr L J 444.

—S. 46.

——Rule in S. 46 (2)—Object of.

A rule which merely deals with the discharge of officials from office cannot be extended to exonerate them from criminal liability. The only object of the rule in S. 46 (2) of the Local Self-Government Act is to prevent such officials from resorting to similar practices in the future, and to place these public bodies, as far as may be, beyond the pale of suspicion. (Bose J.) Champat Rao Deshmukh v. Emperor,

167 I C 752=19 N L J 221 = 9 R N 211=38 Cr L J 444.

S. N. Das
Advocate High Court
Jammu & Kashmir

C. P. AND BERAR LOCAL SELF-GOVERNMENT ACT (IV of 1920)
—S. 68.

——Prosecution, whether should be on complaint of District Council or Local Board, etc., as required by S. 68.

The words "under this Act or by a bye-law made thereunder" in S. 68 of the C. P. and Berar Local Self-Government Act, should not be read as including any rule made by the Local Government consistent with this Act.

Where what the accused has broken is not any section of the Act nor any bye-law under the section, which are the only cases mentioned in S. 68 in respect of which prosecution by a District Council or Local Board or Market Committee is necessary, but a rule made by the Local Government, there is no provision in S. 68 that prosecution for a breach of such a rule can only be initiated by a local body. (Grille J.) Emperor v. Gulab Singh,

A I R 1937 Nag 387=10 R N 921 = ILR (1938) Nag 420=171 I C 620=38 Cr L J 1093.

C. P. AND BERAR MAINTENANCE AND RESTORATION OF ORDER AND COLLECTION OF FINES (INDEMNITY) ACT (II of 1945)
—S. 4.

——Suit discharged under—Court cannot direct one party to pay costs of other—See Civil P. C. (1908), S. 35,

A I R 1951 Nag 419.

——Plaint alleging that defendants 1 and 2, servants of Provincial Government, 6th defendant, committed acts of assault and danger to property in league with defendant 3, also a servant of Provincial Government and defendants 4, 5 not servants of Provincial Government — Defendants 4, 5 alleged to have acted for their own ends —Question of good faith against defendants 1 to 3 held did not arise but to be considered against defendants 4 and 5—Suit to be discharged against defendants 1 to 3 and 6 but not against defendants 4 and 5. (Bose and Sen JJ.) Shankar Rao Balaji v. Shambihari,

A I R 1951 Nag 419=ILR (1949) Nag 560.

——Section is intra vires the Provincial Legislature.

It is not necessary that all the provisions of an Act should fall within a single category. The Legislature can derive its powers partly from one or more entries in the List and partly from those in another, and, provided the field is covered in one way or another, the legislation will be intra vires. Section 4 deals with various matters which fall under different heads of classification in Lists 2 and 3 of the Constitution Act and is intra vires. A I R 1941 F C 47 and A I R 1943 Nag 312, Rel. on. (Bose and J. Sen JJ.) Shankar Rao Balaji v. Shambihari

A I R 1951 Nag 419=I L R (1949) Nag 560.

——Suit instituted before passing of Act and pending—No question of previous sanction arises — Act discharges suit—S. 4 in such case leaves no discretion to Court.

Section 4 envisages two distinct classes of cases. The first is where proceedings have been instituted after the passing of the Act. The other provision covers cases instituted before the passing of the Act which are still pending. No question of previous sanction can arise in the case of proceedings instituted before the passing of the Act. Assuming however that the matters are to be referred to the Provincial Government and that the Provincial Government considered that this was a class of case in which sanction was necessary and gave its sanction, the Court would still be unable to proceed because S. 4 leaves the Court no discretion. The Act itself discharges the suit. It is not the Court which puts an end to the proceedings by its order but the Act which operates automatically as a guillotine. The Court has to decide whether S. 4 (1) applies in the case of previously instituted suits and not the Provincial Government, and if it decides that the section applies then such suits are automatically discharged. (Bose and J. Sen JJ.) Shankar Rao Balaji v. Shambihari

A I R 1951 Nag 419=I L R (1949) Nag 560.

C. P. AND BERAR MAINTENANCE AND RESTORATION OF ORDER AND COLLECTION OF FINES (INDEMNITY) ACT (II of 1945), S. 4

C. P. AND BERAR MAINTENANCE OF PUBLIC ORDER ACT (XV of 1946)
—S. 2.

——S. 2 (1) — Act whether repugnant to existing Indian Law—Government of India Act (1935), S. 107 and Entry No. 1 of List II and entry No. 29 of List III of Seventh Schedule.

The Act has for its purpose the maintenance of public order and though incidentally it touches upon the subject of strikes and trade disputes, it does so merely because strikes promoted solely for the sake of causing unrest among workmen lead directly or indirectly to a subversion of public order. Since the entire subject of the Act falls within entry No. 1 of List II of the Seventh Schedule of the Constitution Act and not within entry No. 29 of List III of the Schedule, no question of repugnancy either directly or indirectly to an existing Indian Law arises. (Bose and Hidayatullah JJ.) Om Prakash Mehta v. Emperor

A I R 1948 Nag 199=1947 N L J 326=I L R (1947) Nag 579=49 Cr L J 230.

——S. 2 (1)—"Provincial Government" — Meaning of—Presumption about orders passed under the section.

When S. 3 (43A) of the General Clauses Act, 1897, has defined the words "Provincial Government" and the orders made under S. 2 (1) of the C. P. and Berar Maintenance of Public Order Act (XV of 1946) use this phraseology, the meaning given to these words in the General Clauses Act must equally be held applicable to the same words used in the orders. In view of the fact that the C. P. and Berar Maintenance of Public Order Act uses the terms which have special meaning given to them for all purposes by the General Clauses Act the Court is entitled to presume, till the contrary is established, that the correct authority named in the Act had in fact passed the orders. (Bose and Hidayatullah JJ.) Om Prakash Mehta v. Emperor

A I R 1948 Nag 199=1947 N L J 326=I L R (1947) Nag 579=49 Cr L J 230.

——S. 2 (1)—"Is acting," meaning of—Past action.

Since the Act seeks to restrict the liberty of the subject it must be strictly construed. Construction which secures the liberty of the subject is to be preferred to one which curtails it. The Act in S. 2 (1) uses the words "is acting." There are no words in the Act which make it retrospective. Detention cannot, therefore, be ordered on the basis of past actions and some activity of the type contemplated by the Act must be shown to have continued after the Act came into force. (Bose and Hidayatullah JJ.) Om Prakash Mehta v. Emperor

A I R 1948 Nag 199=1947 N L J 326=I L R (1947) Nag 579=49 Cr L J 230.

—S. 159.

——Option under S. 159 of consenting to destruction of offending articles—Imposition of fine under S. 215 without affording chance of exercising option is not curable irregularity.

Section 159 gives the owner or possessor of offending articles the option of consenting to the destruction of those articles or of fighting the case before a Magistrate. Only in the latter event can a fine be imposed. Therefore, before any person is fined under S. 215, he must be afforded the chance of exercising the option. An omission

C. P. & BERAR MAINTENANCE AND RESTORATION OF ORDER AND COLLECTION OF FINES (INDEMNITY) ACT (II of 1945), S. 159

to do so is not a curable irregularity. (Vivian Bose J.) Hemakaran v. Municipal Committee, Betul

A I R 1946 Nag 432=1946 N L J 479=226 I C 286=I L R (1946) Nag 976=47 Cr L J 891.

C. P. AND BERAR MOTOR VEHICLES TAXATION ACT (IV of 1940)

—S. 3.

——S. 3 (1) — There is no initial presumption that a motor vehicle is necessarily kept for use. Bapu Rao v. Emperor

1942 N L J 419

——S. 3 (1), Proviso (as amended in 1935) — License fee imposed by Amraoti Town Municipality on motor lorry, if a tax—Person residing in Chandur Bazar Notified Area Committee plying lorry between Chandur Bazar and Amraoti — Amraoti Municipality, if can impose such fee.

By an Amending Act in 1935 the words "rent or fees" were deleted from the Proviso to S. 3 (1), C. P. and Berar Motor Vehicles Taxation Act This clearly raises the implication that the person residing within one Municipality would not be liable to pay any tax on his motor vehicles which any other Municipal Committee might impose under the provisions of S. 66 of the C. P. Municipalities Act as applied to Berar, but would be liable for any other fee imposed by its bye-laws. It would be quite impossible to conclude that the definition of "tax" in the Municipalities Act would include any toll, rate, due or fee of any kind whatever in addition to whatever kind of impost is mentioned in S. 66. License fee for motor lorry imposed by Amraoti Town Municipality is not a tax. Consequently, a person residing in Chandur Bazar Notified Area Committee would be liable for license fee imposed by Amraoti Town Municipality on motor lorries plying between Amraoti and Chandur Bazar. (Grille J.) Amrutlal v. The President, Town Municipal Committee, Amraoti

A I R 1939 Nag 171=11 R N 466=1939 N L J 262=I L R (1941) Nag 294=181 I C 520=40 Cr L J 556.

C. P. AND BERAR MOTOR VEHICLES TAXATION ACT (VI of 1947)

—S. 3.

——S. 3 (2), Proviso—Non-use of motor vehicle—Owner not giving notice—Still owner is not liable for tax.

The proviso to S. 3 (2) of the Act which lays down that the tax shall not be payable by the owner of the motor vehicle who does not use it during the period if he gives previous notice in writing, cannot be interpreted to mean that if he does not give notice, the tax shall be payable, because the substantive part of the section provides that the tax shall be payable only if the motor vehicle is used or kept for use. (Hemeon J.) Somalwar, W. G. v. State

A I R 1952 Nag 71=1952 N L J 103=1952 Cr L J 430.

——S. 3 (3)—Owner who keeps a motor vehicle of which the certificate of registration is current is to be presumed to keep such vehicle for use — Such presumption is however rebuttable. (Hemeon J.) Somalwar, W. G. v. State

AIR 1952 Nag 71=1952 N L J 103=1952 Cr L J 430.

C. P. AND BERAR MUNICIPALITIES ACT (II of 1922)

—S. 19.

——Bond contemplated by S. 19 is in addition to and not in lieu of the sentence. (Pollock J.) Provincial Government v. Hari

1939 N L J 289.

—S. 38.

——Absence of inclusion of disputed road in Municipal jamabandi—Whether negatives plea of road being public road.

C. P. & BERAR MUNICIPALITIES ACT (II of 1922), S. 38

Under S. 38 of the C. P. Municipalities Act, 1922, all public streets vest in the Municipal Committee; consequently, the absence of the inclusion of the disputed road in the Municipal jamabandi is prima facie good evidence which tends to negative the plea that the road is a public road. (Niyogi A. J. C.) Mahabir Prasad v. Pitamberprasad

146 I C 601=1933 Cr Cas 1001=6 R N 91=29 N L R 361=35 Cr L J 145.

—S. 45.

——S. 45 (1) — Interested in contract with Municipality —Night soil auctioned — Deposit of full price, condition of sale — Highest bid accepted — Part of purchase price deposited — Auction-purchaser selling manure to another who paying full price, removing it—Subsequent purchaser cousin of member — Night soil thrown on member's field —Another member helping in removal — Members if "interested" in contract with Committee.

There was an auction sale of night soil manure belonging to a Municipality and one M purchased it for Rs. 625. Under the condition attached to the sale, he had to pay the full price immediately and until payment be was not entitled to remove the material. He paid Rs. 300. He borrowed Rs. 325 from one N who deposited that amount with the Municipal Committee. Being unable to pay off the loan he sold the manure to N for Rs. 625 on receipt of Rs. 300 in cash and in adjustment of the loan of Rs. 325. N was the natural brother of H, one of the accused. N got permission from the Committee to remove the manure. Thereon the accused got it removed through the Municipal sweepers to H's field. The other accused G who was also a member of the Committee, helped the accused H by giving Municipal sweepers, in the removal of the manure:

Held, that the contract could not be discharged until the conditions were fulfilled, i.e., by payment of the full price. The transaction could be characterised as a "contract" even after the property in the manure had passed to M, the highest bidder, and by the purchase of the manure from M after he became owner of it. H could be regarded as having become interested in a contract with the Municipal Committee:

Held, also that G who simply assisted in the removal of the stuff could be regarded as a person interested in the contract with the Municipal Committee. The word 'interested', in S. 45 (1), C. P. Municipal Act, is to be interpreted in its ordinary wide sense and not confined to interest in money and includes jobbery. (Niyogi and Gruer JJ.) Hazarimal v. Emperor

A I R 1940 Nag 81 = 1939 N L J 567=I L R (1940) Nag 133=12 R N 278=187 I C 161=41 Cr L J 424.

——S. 45 (1)—Offence under S. 168, Penal Code — Sanction of Local Government — Criminal Procedure Code, S. 197.

A member who in his private capacity takes a contract with Municipal Committee cannot be said to have done so while acting or purporting to act in the discharge of his official duty. It is open to the Court to take cognizance of an offence under S. 168 against a member of a Municipal Committee within the meaning of S. 45 (1) C. P. Municipalities Act, without previously obtaining the sanction of the Local Government. (Macnair J. C.) Duloomiyan v. Tularam

A I R 1932 Nag 133 = 28 N L R 156 = 1932 Cr Cas 669 = Ind Rul (1933) Nag 10 = 140 I C 711 = 34 Cr L J 70.

—S. 98.

—— Breach of sub-s. (2) — Bye-laws framed under sub-s. (3) enabling Municipality to prosecute party concerned are not ultra vires.

C. P. & BERAR MUNICIPALITIES ACT (II of 1922), S. 98

If a person who does not give notice in writing of his intention to erect or re-erect any building as required by sub-s. (2), erects or re-erects or commences to erect or re-erect the building without the sanction of the Committee which is necessary under sub-s. (1) of S. 98 of the new Act, the person can be prosecuted for not giving the notice in the manner prescribed by bye-laws framed by the Committee in exercise of the power conferred under sub-s. (3) of the said section. Such bye-laws are not ultra vires. (Kinkhede, A. J. C.) King Emperor v. Shriballabh

A I R 1925 Nag 393=88 I C 28=26 Cr L J 1084.

—S. 103.

——Notice under, not fixing date for demolition—Defect if validated by S. 168 (4) — See C. P. and Berar Municipal Act (2 of 1922). S. 168.

A I R 1949 Nag 18=49 Cr L J 602.

——Notice under, not fixing time for demolition — Erection not demolished—No breach of S. 103—See C. P. and Berar Municipalities Act, S. 199,

A I R 1949 Nag 18=49 Cr L J 602.

——"May" in "may by notice to be delivered" does not mean that giving of notice is optional.

The word "may" in "may by notice to be delivered" etc., in S. 103, does not mean that the municipal committee is given the option to issue notice or not. "May" only means that the Committee is not bound to require demolition in all such cases. But if it wishes to prosecute, then the notice must be given. The mandatory provisions of S. 167 would become meaningless were it otherwise: A I R 1937 Nag 79, Applied. (Bose J.) Emperor v. Gulabchand Sitaram,

A I R 1949 Nag 18 = 1948 N L J 105=I L R (1948) Nag 373=49 Cr L J 602.

—S. 133.

——Conviction under S. 133—Continuing fine.

Where the accused was convicted under the C. P. and Berar Municipalities Act, and the Magistrate further ordered the accused to remove all his merchandise outside municipal limits by a certain date and imposed a daily fine in default of removal:

Held that such an order was an illegal order, as the imposition of a continuing fine cannot be prospective but can only follow on proof that the offence has been continued. (Jackson J. C.) Abdul Razak v. Municipal Committee, Nagpur,

A I R 1932 Nag 116 = Ind Rul (1932) Nag 274=139 I C 496=33 Cr L J 859.

—S. 140.

——S. 140 (1)—Power of Municipal Committee to abolish slaughter house—Penal Code (Act XLV of 1860), S. 447—Offence under.

Under S. 140 (1), C. P. & Berar Municipalities Act, a Municipal Committee is empowered, with the approval of the Deputy Commissioner to fix premises for the slaughter of animals and implies power to abolish premises so fixed. The power to abolish does not require the previous sanction of the Deputy Commissioner but merely his approval.

Where such a slaughter house has been abolished, slaughtering animals therein without the permission of the Municipality is an offence, and when the accused act with intent to annoy the Municipal Committee they are punishable under S. 447, I. P. C. (Pollock A. J. C.) Amir v. Emperor,

141 I C 543 (1) = 15 N L J 89=Ind Rul (1933) Nag 73=34 Cr L J 224 (2).

—S. 167.

——Notice under S. 103 not fixing date for demolition — Defect if validated by S. 168 (4) — See C. P. and Berar Municipal Act (2 of 1922), S. 168,

A I R 1949 Nag 18=49 Cr L J 602.

C. P. & BERAR MUNICIPALITIES ACT (II of 1922), S. 167

——Notice under S. 103 not fixing time for demolition —Erection not demolished—Effect—See C. P. and Berar Municipalities Act, S. 199,

A I R 1949 Nag 18=49 Cr L J 602.

—S. 168.

——Ss. 168 (4), 103 and 167 — Notice under S. 103 not fixing date for demolition of building erected when sanction was refused—Defect is not validated by S. 168 (4).

Omission to fix a date, in a notice under S. 103 for demolition of the structure for which the sanction was refused, is not a defect in form. S. 168 (4) does not validate such notice. The fixing of a date which is compulsorily required to be fixed under the Act is a matter of substance and not of form. The manner in which it is fixed, that is to say, the language employed, the place where the date occurs, whether in a postscript or at the top and so forth, would be a matter of form, but not the fixing of the date. (Bose J.) Emperor v. Gulabchand Sitaram,

A I R 1949 Nag 18 = 1948 N L J 105=I L R (1948) Nag 373=49 Cr L J 602.

——Ss. 168, 199 — Health Officer appointed Secretary of Municipal Committee — Whether delegation of power—Notice by such officer under S. 199, not signed by him as Secretary — Non-compliance with such notice if can be punished.

There is nothing in the C. P. Municipalities Act to prevent the appointment of two Secretaries and allocation of duties between them. It is not a case of delegation of duties but of distribution of duties. An order appointing the Health Officer, as Secretary to the Municipal Committee, for the purpose of issuing notices relating to the Health Department which received the sanction of Government does not amount to delegation of powers, but there is distribution of duties.

The consequent notice under S. 199, by the Health Officer in his capacity as an officer and not as a Secretary is perfectly correct and legal and any defect in form would be cured by S. 168 (4). (Gruer and Bose JJ.) Local Government v. Ganpatrao,

A I R 1937 Nag 119 = 19 N L J 192 = 9 R N 204= 167 I C 729=38 Cr L J 437.

—S. 179.

——S. 179 (1) (b-1) — Municipal Committee can frame bye-laws not merely for physical use of market but also for commercial use of it—Limits of such power.

Under S. 179 (1) (b-1) the Municipal Committee is given power to frame bye-laws for regulating the use of the market. Since the regulation is of the use of the market, it must affect the physical as well as the commercial use of the building and therefore the Municipal Committee will have the power to make bye-laws for ensuring rectitude in the business transactions conducted at the place no less than the health, safety and convenience of the dealers. The power of regulation is not confined merely to the prevention of nuisance or the maintenance of order but extends to the imposition of restrictions on the trade itself provided they do not have the effect of preventing or prohibiting it. (Grille and Niyogi JJ.) The Municipal Committee, Khini v. Firm Kalu Ram Hira Lal,

A I R 1944 Nag 73=1943 N L J 490 = I L R (1943) Nag 740=218 I C 161.

——S. 179 (1) (b-1) — Bye-laws under, by Bina Municipality—Bye-Law No. 11 — Buyers to satisfy themselves as to quality of commodities before they are put to auction —Bye-law not ultra vires as being in restraint of trade and unreasonable.

The chief feature of the market mentioned in S. 179 (1) (b-1), C. P. Municipalities Act is the putting up of

C. P. & BERAR MUNICIPALITIES ACT (II of 1922), S. 179

grain to auction, and rules regulating these auctions thereby regulate the use of the market. Such rules, if wisely framed, afford salutary protection to sellers and purchasers alike and secure stability in trading and avoid needless disputes. No doubt, the bye-laws must be reasonable and not repugnant to the general law. Rules and bye-laws made under statutory powers enforceable by penalties must, on pain of invalidity, be not unreasonable nor in excess of the statutory power authorising them; nor repugnant to that statute or to the general principles of law. Courts of Justice are slow to condemn Municipal bye-laws as invalid, on the supposed ground of unreasonableness, and support them if possible by a 'benevolent' interpretation, crediting those who have to administer them with an intention to do so in a reasonable manner, and with being the best judges whether a particular bye-law is required in their district or not.

If a bye-law can be divided one part may be rejected as bad while the rest may be held to be good.

The bye-law No. 11 framed under S. 179 (1) (b-1) by Bina Municipality which was alleged to be ultra vires was as follows : "Buyers shall satisfy themselves as to the quality of any commodities before these are put to auction. They shall not be allowed to cancel any purchase on the ground that they had not inspected the commodities or commodities were not up to sample":

Held, that the first rule applicable to purchase of a specific article is that of caveat emptor. According to S. 16 (2) of the Sale of Goods Act there is an implied condition that the goods shall be of merchantable quality but with the important proviso that if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed. It would be just the same if he had an opportunity of examining and did not take advantage of it. Thus, the bye-law under examination in no way goes against the general rule of contract or the provisions of the Sale of Goods Act. On the contrary it simply emphasizes them. Nor could it be said that such a provision hampers trade. On the contrary it should help trade by introducing certainty into dealings and making people careful and avoiding subsequent futile disputes. Consequently the bye-law was not ultra vires. (Grille and Gruer JJ.) Provincial Government, Central Provinces and Berar v. Nemichand,

A I R 1941 Nag 203=1941 N L J 201=I L R (1941) Nag 624=14 R N 51=195 I C 369=42 Cr L J 732.

——S. 179 (g), (as applied to Berar)—Rules under—R. 1, by Amraoti Town Municipal Committee — "Plying for hire within limits of Amraoti Town Municipality," interpretation of.

The words "plying for hire within the limits of Amraoti Town Municipality," occurring in R. 1, framed by Amraoti Town Municipality under S. 179 (g), C. P. Municipalities Act (as applied to Berar) cannot be confined to the narrow interpretation that the whole of the service which is offered must take place within the limits of the Municipalities and that otherwise the rules do not apply.

Therefore vehicles operating as a regular service between Amraoti and Chandur Bazar and picking up passengers within limits of the Amraoti Town Municipality ply for hire within the limits of the Amraoti Town Municipality. (Grille J.) Amrutlal v. President, Town Municipal Committee, Amraoti,

A I R 1939 Nag 171=11 R N 466=1939 N L J 262=181 I C 520=40 Cr L J 556.

——Bye-law No. 5 framed under S. 179—Whether ultra vires.

Bye-law No. 5 framed under S. 179 of the C. P. & Berar Municipalities Act of 1922, is not ultra vires and a

C. P. & BERAR MUNICIPALITIES ACT (II of 1922), S. 179

breach of the bye-law is punishable. (Gruer A. J. C.) Municipal Committee, Bilaspur v. Bansidhar,

157 I C 781=8 R N 64=31 N L R 261=1936 Cr Cas 312=36 Cr L J 1336.

——S. 179, sub-s. (1), cl. (b) — Bye-law No. 3 framed by Committee under Notification No. 987-611-VIII, dated 18th March 1926, whether ultra vires.

The mere fact of the Local Government having signified its approval to a bye-law will not render the bye-law valid, in the absence of clear and unmistakable language in the Act empowering a Committee to make such a bye-law.

The bye-law framed under S. 179, sub-s. (1), cl. (b) of the C. P. & Berar Municipalities Act for regulating the use of grain, cotton and timber markets within the limits of a particular notified area, is ultra vires as the Committee exceeded the power conferred upon it by S. 179 (1) (b) of the Act in framing the bye-law in question. (Subhedar A. J. C.) A Merchant at Kareliganj v. Notified Area Committee, Kareliganj

A I R 1933 Nag 68 = 15 N L J 168=Ind Rul (1933) Nag 139 = 1933 Cr Cas 297 = 142 I C 857 (2) = 34 Cr L J 408.

—S. 180.

——S. 180, proviso—"At the time of the making of such bye-law," meaning of — Limitation — Confirmation by Government — Delegation of powers to Health Officer — Fresh delegation, it to be made each time a bye-law is made.

The words "at the time of the making of such bye-law" in the proviso to S. 180, C. P. & Berar Municipalities Act must refer to the making by the Municipal Committee and can have no reference to the confirmation of a bye-law by an authority which has no power to make any bye-law. The date of confirmation by Government may be a more convenient and generally intelligible starting point for the limitation provided in the proviso to S. 180, but it is impossible to depart from the clear meaning of the words used. Government has no power to make bye-laws or to alter them. It can only accept or reject what is put before it by a Municipal Committee, and the making of bye-laws must accordingly refer to the final resolution of the Municipal Committee in respect of the bye-laws:

Held, on facts that the bye-laws in question were made on 22nd July 1933, and that two hotels in respect of which the applicant had been convicted had not then been in existence for one year and he was consequently not entitled to a notice of six months:

Held, also that sanction is given to prosecute in respect of offences against bye-laws framed inter alia under S. 180, cl. (a), and not in respect of specific or existing bye-laws. The sanction is given to take action for breach of any bye-laws which have been made under that section or which will be made under that section, and it is quite unnecessary for the Municipal Committee to give fresh delegation each time a bye-law is made, if it falls under the clause in respect of which sanction has already been given. (Grille J. C.) Ramchandra Jagannath v. Emperor,

167 I C 777 = 19 N L J 195 = 9 R N 218 (2)=38 Cr L J 459.

—S. 199.

——Ss. 199, 103 and 167—Notice under S. 103 not fixing time for demolition of building erected when sanction refused—Erection not demolished—There is no breach of S. 103.

If a building is erected when sanction is refused, the only power the Committee has, in the first place, is to issue a notice under S. 103 and fix a reasonable time for the demolition under S. 167. The right to prosecute only

C. P. & BERAR MUNICIPALITIES ACT (II of 1922), S. 199

arises on a failure to comply with this notice provided the notice is valid and according to law. Where the notice does not fix any time for demolition, there can be no breach of the provisions of these sections. (Bose J.) Emperor v. Gulabchand Sitaram,

A I R 1949 Nag 18 = 1948 N L J 105=I L R (1948) Nag 373=49 Cr L J 602.

——Ss. 199, 103—Mere erection of building without sanction — Whether punishable under S. 199 — Proper procedure—S. 199, when applicable.

Under S. 199, C. P. Municipalities Act, it is disobedience of a lawful direction given by the Municipal Committee which is punishable. There is no provision in that section for punishing the mere erection of a building without the sanction of the Committee. The correct procedure if a person erects a building without sanction, is laid down in S. 103 of the Municipalities Act whereby the Committee may require the building to be demolished. If that order is disobeyed, then S. 199 comes into play but not before. When the Municipal Committee has omitted this necessary step, there is no order in existence in respect of which a person can be convicted for disobedience of an order. (Grille J.) Pandurang v. Secretary, Municipal Committee, Chanda

A I R 1937 Nag 79=19 N L J 81=I L R (1936) Nag 56=9 R N 47=164 I C 939=37 Cr L J 1038. (2)

——Interpretation — Words "every day after the first" must be interpreted as every day after first day to which conviction relates.

The words "every day after the first" must be interpreted as every day after the first to which the conviction relates. If a person has been committing a breach of a bye-law since 8th July 1928, he can be properly fined Rs. 50 on 21st November, 1928. It is misreading S. 199 to think that he should be fined Rs. 5 only on 21st November, 1928, because he was on that date continuing the offence. (Macnair, Offg. J. C.) Secretary, Municipal Committee, Nagpur v. Yenka Khatik

A I R 1929 Nag 360 (1) = 1929 Cr C 684=121 I C 64 =31 Cr L J 197.

——Proof — Lawful direction by notice lawfully issued and disobedience to such a direction must be proved.

What the prosecution has to prove under S. 199 is that a lawful direction was given to the accused by a notice lawfully issued under the powers conferred by Part 3 of the Act and that the accused disobeyed the said direction. (Kolhatkar, A. J. C.) Wasudeo v. Akola Municipality

A I R 1928 Nag 337=10 A I Cr R 566 = 111 I C 113 =29 Cr L J 785.

—S. 218.

——Complainant — Police officer authorised to make complaints by committee — Police officer making complaint and not committee is complainant.

Where a police officer is authorized under S. 218 by the Municipal Committee to make complaints with regard to offences under the Municipal Act, that police officer making the complaint and not the committee is to be regarded as complainant. (Staples, A. J. C.) Nanhe v, Municipal Committee Jubbulpore

A I R 1930 Nag 33=25 N L R 194 = 1930 Cr C 89= 12 N L J 127=122 I C 258=31 Cr L J 382.

——Public servant — Committee delegating authority to public servant by virtue of his office—Such public servant acts in his capacity as public servant when making complaint and his personal attendance in Court for examination is not necessary—Cr. P. Code, S. 200, Proviso (aa).

As a Municipal Committee is empowered to delegate its authority of making complaint under S. 218 (2), when

C. P. & BERAR MUNICIPALITIES ACT (II of 1922), S. 218

such authority is delegated to a public servant by virtue of his office and not by name, he acts in his capacity as a public servant when making a complaint within the meaning of S. 200, proviso (aa), Cr. P. Code, and his personal attendance for examination is not necessary. (Staples A. J. C.) Nanhe v. Municipal Committee, Jubbulpore

A I R 1930 Nag 33 = 25 N L R 194=122 I C 258 = 1930 Cr C 89=12 N L J 127=31 Cr L J 382.

C. P. AND BERAR PANCHAYATS ACT (I of 1947)

——Validity—See Constitution of India, Art. 14

A I R 1953 Nag 14=1953 Cr L J 251

—S. 51.

——Case under S. 51 is a criminal case within the meaning of expression "any criminal case" in S. 83 (3) — See ibid S. 83

A I R 1951 Nag 21=52 Cr L J 308.

—S. 83.

——S. 83 (3) — High Court's power of revision and of judicial superintendence — See Constitution of India, Art. 227

A I R 1953 Nag 14=1953 Cr L J 251.

——S. 83 (3) — Order in revision confirming decision of Nyaya Panchayat—If open to revision—Civil P. C. (1908), S. 115 — Criminal P. C. (1898), S. 439 — Letters Patent (Nag.), Cl. 11 — Government of India Act (1915), S. 107 —Government of India Act (1935), Ss. 223, 224.

The accused were convicted of certain offences by a Nyaya Punchayat and their convictions were confirmed on 30-5-1949 on revision under S. 83 (3), C. P. and Berar Nyaya Panchayats Act. The accused thereupon filed a revision against the order under S. 115, Civil P. C., Cl. 11 of the Letters Patent and S. 107, Government of India Act, 1915, read with S. 223, Government of India Act, 1935:

Held, that (i) the order passed on revision was final and not open to appeal or revision in view of S. 83 (3), Nyaya Panchayats Act, and, therefore, an application in revision on the Civil side or Criminal side was equally barred.

(ii) Clause 11 of the Letters Patent of the Nagpur High Court did not enlarge the jurisdiction of the High Court. It only preserved the jurisdiction which was conferred on the Judicial Commissioner's Court. Clause 11 of the Letters Patent cannot thus be construed as conferring independent appellate or revisional jurisdiction.

(iii) The order not being otherwise subject to appeal or revision it could not be challenged under S. 107, Government of India Act, 1915, read with S. 223 or under S. 224, Government of India Act, 1935. (Hidayatullah, Mangalmurti and Mudholkar JJ.) Rajaram Dadu v. The State

A I R 1951 Nag 443=1951 N L J 535=I L R (1951) Nag 741=1952 Cr L J 1 (F B).

——Ss. 83 and 51 — 'Any criminal case' in S. 83 (3) if includes case under S. 51.

When a Nyaya Panchayat punishes an act falling under S. 51, it cannot but be regarded as administering criminal justice. It is dealing with a special offence created by the enactment. That being so, the expression "any criminal case" in sub-s. 3 of S. 83 does not cover only cases relating to offences mentioned in the schedule but is comprehensive enough to include a case in which punishment is imposed by a Nyaya Panchayat for an offence under S. 51. (R. Kaushalendra Rao and Deo JJ.) Baharta Murtiram v. L. M. Paranjpe

A I R 1951 Nag 21 = 1951 N L J 137=I L R (1951) Nag 239=52 Cr L J 308.

C. P. & BERAR PANCHAYATS ACT (I of 1947)

—S. 86.

——S. 86 (1) (iv)—Scope.

A suit for damages for wrongful seizure and impounding of cattle falls under S. 86 (1) (iv) and is, therefore, triable by a Nyaya Panchayat. (Sinha C. J. and Mudholkar J.) Alla Malua Kurmi v. Civil Judge

A I R 1953 Nag 213=1953 N L J 237 = I L R (1953) Nag 620=1953 Cr L J 1096.

——S. 86 (1) (iv) — "Wrongly taking" — (Words and Phrases).

The expression 'wrongly taking' in S. 86 (1) (iv) is a wide one and it comprises not only of an act which would amount to conversion but also an act which would amount to trespass to goods. It thus includes wrongful impounding of cattle. (Sinha C. J. and Mudholkar J.) Alla Malua Kurmi v. Civil Judge

A I R 1953 Nag 213=1953 N L J 237=I L R (1953) Nag 620=1953 Cr L J 1096.

——S. 86 (1) (iv)—Construction.

Clause, 'not exceeding one hundred rupees in value' qualifies "suits" and not "movables." Under the whole of sub-s. (1) the valuation of a suit is to be made with reference to the amount claimed therein and not to anything else. (Sinha C. J. and Mudholkar J.) Alla Malua Kurmi v. Civil Judge

A I R 1953 Nag 213=1953 N L J 237=I L R (1953) Nag 620=1953 Cr L J 1096.

C. P. AND BERAR PREVENTION OF ADULTERATION ACT (II of 1919)

—S. 5.

——Ss. 5 (1), 11 — Presumption under S. 5 (1) when can be drawn.

Where milk is analysed by the analyst a week after the samples were taken, no presumption of adulteration under S. 5 (1) can be drawn in the absence of proof of the manner in which the samples were sent and the condition in which the milk was when the samples were received by him. (Mudholkar J.) Dattappa Mahadappa v. Secretary, Municipal Committee, Buldana

A I R 1951 Nag 191=1952 Cr L J 471.

——S. 5 (2) — Examination of Analyst — Criminal P. C. (1898), S. 510.

The accused should not be denied the right to test the opinion of the Analyst by his examination as a witness when the conviction is based solely on his opinion. (Mudholkar J.) Dattappa Mahadappa v. Secretary, Municipal Committee, Buldana

A I R 1951 Nag 191=1952 Cr L J 471.

——Sale of milk which is below prescribed standard — Pre-emption—Burden of proof.

Where the prosecution establishes the fact that the accused was selling milk which was below the standard of purity prescribed under S. 5 (2) the Court is bound to presume under S. 5 (1) that the milk is adulterated and that the accused knew that. The knowledge of the accused is to be presumed under S. 5 (3). It does not matter who originally owned the milk. The burden is then upon the accused to show that the milk is not adulterated. It cannot be presumed that the animal in question gives milk naturally of that kind. Where the accused fails to discharge the burden of proving that the milk was of the prescribed standard of purity he would be guilty under S. 5 (2). (Bose C. J. and Hemeon J.) State Govt. Madhya Pradesh v. Sonabai

A I R 1952 Nag 83=1951 N L J 282 = I L R (1951) Nag 751=1952 Cr L J 448.

C. P. & BERAR PREVENTION OF ADULTERATION ACT (II of 1919)

—S. 11.

——Certificate under — Value to be attached — See ibid, S. 5 (1)

A I R 1951 Nag 191=1952 Cr L J 471.

C. P. AND BERAR PROHIBITION ACT (VII of 1938)

—S. 1.

——Policy of the Act — Duty of Court — See Interpretation of Statutes

A I R 1951 Nag 58=52 Cr L J 1140 (F B).

——Ss. 1 (3) and 1A — Validity — Whether amount to territorial discrimination or constitute delegation of legislative power.

Section 1 (2) of the Prohibition Act makes it clear that it is enacted not for any part of the Province but for the whole of it. The provisions contained in sub-s. (3) of S. 1 and S. 1A cannot therefore be regarded as discriminatory but are only instances of conditional legislation. It is well settled that a legislature may delegate the power to determine the conditions or contingencies under which a statute shall be operative even though such conditions may be determined by the Government.

Moreover, it stands to reason that when a measure of social reform such as the Prohibition Act, 1938, which, on the one hand, denudes the State of a large revenue and, on the other, imposes additional duties and expenses for the purposes of preventing and penalising the evasion of the law, it should be applied stage by stage and in the light of the experience gained. For this reason, power must be conferred upon someone to determine the conditions and circumstances" in which the measure would be applied. The conferral of such power by the legislature upon Government is neither delegation of legislative power nor discrimination and so, the impugned provisions are perfectly valid. (Hidayatullah, Mangalmurti and Mudholkar JJ.) Sheoshankar v. State Govt. of M. P.

A I R 1951 Nag 58 = I L R (1951) Nag 646 = 52 Cr L J 1140 (F B).

——Validity — Whether infringes Art. 19 (1) (f) — Property—Meaning—Constitution of India, Art. 19 (1) (f).

What the Constitution safeguards is a right to property or to follow a trade. It does not guarantee that what is regarded as property or what is regarded as an object of trade shall for ever be continued to be so regarded. The legislature having come to the conclusion that the consumption of intoxicating liquor is not in the public interest its conclusion is not open to question before a Court of law. From this conclusion, it follows that intoxicating liquor must be regarded as a noxious object. It therefore ceases to be a legitimate object of 'property' or a legitimate object of commerce. What has been rendered contraband cannot be the object of 'property'. The general right to property or to carry on any activity is not unreasonably restricted merely because a particular commodity is excepted from its purview in the public interest. Liquor is not an innocuous article and regulation or prohibition of its consumption by the C. P. and Berar Act, 1938 therefore, does not infringe the provisions of Art. 19 (1) (f) of the Constitution. (Hidayatullah, Mangalmurti and Mudholkar JJ.) Sheoshankar v. State Govt. of M. P.

AIR 1951 Nag 58=I L R (1951) Nag 646=52 Cr L J 1140 (FB).

——Validity of the Act—Government of India Act (1935), List II, item 31 and List I, items 19, 34 — Constitution of India, Art. 372 (1).

In view of the wide meaning which one must attribute to the term "intoxicating liquors" in item 31 of the

C. P. & BERAR PROHIBITION ACT (VII of 1938), S. 1

Second List in Sch. 7 to the Government of India Act, 1935, it must be taken that the entire subject of the control, including the prohibition of its use, could be legislated upon by the provincial legislature. The provincial legislature must be taken to be possessed of such plenary powers of legislation on this topic as the Imperial Parliament itself. The C. P. and Berar Prohibition Act, 1938 was, therefore, validly enacted by the Legislature. Further it cannot be challenged on the ground of repugnancy to items 19 and 34 of List I as a close examination of the provisions shows that the entire subject is related to intoxicating liquors and the effect of items Nos. 19 and 44 of the first list is merely incidental. The Prohibition Act is continued in force unaffected after the Constitution under Art. 372 (1) except in so far as its validity could be brought into question by reason of the 'non-obstante' clause in Art. 13 (1). Case law referred. (Hidayatullah, Mangalmurti and Mudholkar JJ.) Sheoshankar v. State Government of M. P,

AIR 1951 Nag 58=I L R (1951) Nag 646=52 Cr L J 1140 (FB).

—S. 1A.

——Validity—See ibid, S. 1 (3).

AIR 1951 Nag 58=52 Cr L J 1140 (FB).

—S. 3.

——Definition of 'liquor' in S. 3 (h) includes methylated spirit. (Pollock J.) Fida Hussain v. Emperor,

1942 N L J 81.

—S. 6.

——S. 6 (1) (a) and (g) — Possession of incriminating articles.

Charge under S. 6 (1) (a) and (g) for possession of incriminating article — Mere proof that an incriminating article is found in premises occupied by a number of persons does not in itself establish 'prima facie' the guilt of any particular person or all of them jointly. (Hemeon and Choudhuri JJ.) State Government, Madhya Pradesh v. Ithi,

AIR 1953 Nag 253 = 1953 N L J 227 = 1953 Cr L J 1299.

——S. 6 (1) (g)—Possession of incriminating articles—See ibid, S. 6 (1) (a).

AIR 1933 Nag 253=1953 Cr L J 1299.

——Ss. 6 (1) Proviso, 29 (2) and 32 (a)—Validity—Whether discriminatory within Art. 14 (1) of the Constitution —Constitution of India, Art. 14 (1).

Per Mangalmurti and Mudholkar JJ.—The Court will not pronounce the law itself as discriminatory even though it lends itself to the practice of discrimination unless it is clear that in the guise of conferral of discretion upon an authority, arbitrary power is given to it with the sole or dominant intention that it be used for favouring or oppressing a particular class, community, race or other group : 321 U. S. 1, Rel. on.

There is no reason for saying that Ss. 6 (1), Proviso, 29 (2) and 32 (a) are made with an ulterior object of favouring or oppressing particular class, community or group. Section 29 (2) in particular, which enables the Provincial Government to exempt any person or class of persons from all or any of the provisions of the Act or of the rules made thereunder, recognises the principle that persons differently situated, where the difference in situation is real, may have to be exempted from the operation of the Act. The mere conferring of power of exemption does not itself create inequality and hence neither the proviso to S. 6 (1) nor S. 29 (2) is rendered void by Art. 14 (1) of the Constitution. Similarly Cl. (a) of S. 32 is not void because of the power it confers upon certain officers to put in special class those who obtain his consent by way of the permit issued thereunder.

C. P. & BERAR PROHIBITION ACT (VII of 1938), S. 6

Per Hidayatullah J. — By reason of the inequality which underlies Rr. 7 and 7A, these rules and S. 29 (2), which enables the Provincial Government to enact such rules, are void under the present Constitution. (Hidayatullah, Mangalmurti and Mudholkar JJ.) Sheoshankar v. State Govt. of M. P,

AIR 1951 Nag 58=I L R (1951) Nag 646=52 Cr L J 1140 (FB).

—S. 11.

Section 11 is not intended to apply to a host who offers spirituous refreshment to a friend. (Grille J.) Emperor v. Mahadeo.

1940 N L J 574.

——Sentence of four months for first offence of drinking is entirely disproportionate, when provision for binding over exists. (Grille J.) Emperor v. Mahadeo,

1940 N L J 574.

—S. 29.

——S. 29 (2)—Validity—See ibid, S. 6 (1),

AIR 1951 Nag 58=52 Cr L J 1140 (FB).

——Ss. 29 (2), 32 (a) — Validity — Whether amount to delegation of legislative power.

The power delegated by Ss. 29 (2) and 32 (a) is not a legislative power. It is merely a power to determine the circumstances in which the law shall be applied or to what areas its operation shall be extended or the particular class of persons to whom it shall be applied. The sections are not therefore invalid on the ground that they amount to delegation of legislative power. (Hidayatullah, Mangalmurti and Mudholkar JJ.) Sheoshankar v. State Govt. of M. P,

AIR 1951 Nag 58=I L R (1951) Nag 646 = 52 Cr L J 1140 (FB).

—S. 32.

——S. 32 (a)—Validity—See ibid, S. 6 (1).

AIR 1951 Nag 58=52 Cr L J 1140 (FB).

——S. 32 (a)—Validity—See ibid, S. 29 (2).

AIR 1951 Nag 58=52 Cr L J 1140 (FB).

C. P. AND BERAR PROTECTION OF DEBTORS ACT (IV of 1937)

—S. 3.

——"Molestation" — Creditor demanding payment of debt — Debtor becoming angry and bidding him go to Civil Court — Creditor losing temper beating debtor with shoe and leaving the place.

The terms of the definition of "molestation" given in S. 3, C. P. and Berar Protection of Debtors Act, indicate that the obstruction or using violence or intimidation to constitute molestation should be accompanied by the intent to cause the debtor to abstain from doing what he has right to do or to compel him to do what he has a right to abstain from doing. It is evident that the particular intent is a question of fact in every case. If the Court holds that the creditor's intention in obstructing, or using violence to, or intimidating, the debtor is to compel him to pay a debt which he has a right in certain circumstances to abstain from doing, the creditor's act would amount to molestation.

The creditor demanded payment of his debt, from his debtor whereupon the latter became angry and bade him go to Civil Court. The creditor lost his temper and beat the debtor with a shoe and left the place. The creditor was prosecuted for an offence punishable under S. 4 of the C. P. Protection of Debtors Act, 1937, for molesting the debtor for the recovery of a debt owed by him :

Held, that the circumstances in which the creditor used violence did not warrant any assumption that the creditor's intention was to compel him to pay the debt.

C. P. & BERAR PROTECTION OF DEBTORS ACT (IV of 1937), S. 3

But on the contrary its effect would presumably be to confirm the debtor's resolve not to pay. Here the creditor did not resort to violence as an instrument to compel the debtor to pay when he was not disposed to pay. It was only a manifestation of the pitch of his passion that was aroused by the debtor's remark that the creditor should look to Civil Court. But the creditor was indeed liable to be punished for assault under the Penal Code. (Niyogi J.) Laxman v. Emperor.

AIR 1939 Nag 281=1939 Nag L J 455=12 R N 156 =185 I C 348=41 Cr L J 168.

C. P. AND BERAR PUBLIC SAFETY ACT (XXXVIII of 1947)

—S. 2.

——Membership of Communist Party.

A membership of the Communist party of India, which has not been declared an unlawful body, without anything else does not 'prima facie' attract the provisions of the Act. (Hemeon and Padhye JJ.) R. L. Reddy v. Provincial Government, C. P. and Berar.

AIR 1949 Nag 146 = I L R (1949) Nag 363=50 Cr L J 363.

——S. 2 (1) (a) — Order reciting that Government are satisfied that person has been acting and is likely to act in manner prejudicial to public safety, order and tranquillity, etc.—Act using word "or"— Order held not defective.

The preamble of the order under S. 2 (1) (a) was as follows :

"Whereas the Provincial Government are satisfied that S. A. has been acting and is likely to act in a manner prejudicial to the public safety, order and tranquillity, etc." In the Act the word used was "or".

Held that the "acting" could be prejudicial to the public safety as well as order and tranquillity.

Held further that as regards the first "and" in the order, the fact that the Government did not deny that the detenu was law-abiding before his detention, did not make the order bad. Being law-abiding is one thing and not acting in a manner prejudicial to the safety, etc., is quite another, specially when the matter was made clear in the return and the grounds of detention, that the detenu's membership of the R. S. S. was in mind of the authorities : AIR 1943 F C 75, Ref. (Hemeon and Hidayatullah JJ.) Wasudeo Anant Sohoni v. Emperor,

AIR 1949 Nag 50=I L R (1948) Nag 488=50 Cr L J 165.

——S. 2 (1) (a)—Satisfaction of Provincial Government— Court cannot enquire into—Presumption as regards satisfaction of Government.

The Act purports to give plenary powers to the Provincial Government inasmuch as the 'satisfaction' of the Provincial Government is all that is required before the detention can be ordered. The plain meaning of the words in S. 2 (1) (a) is that the only test to be applied is whether there is in fact an order of detention and whether it shows that the Provincial Government had satisfied itself. The legislature has chosen in its wisdom to invest the Provincial Government with the power to detain persons after satisfying itself that they are either acting or are likely to act in a particular manner and to make the Provincial Government the sole judge of this matter. The Courts are precluded from going behind the opinion of a person so empowered and this is true of proceedings in the nature of habeas corpus unless there is a question of identity, or manifest fraud upon the statute or the power conferred by the statute is utilised for some indirect purpose not connected with the objects of the Act or the mischief it seeks to remedy. The maxim 'omnis acta rite esse praesumuntur' applies to such order and if

C. P. & BERAR PUBLIC SAFETY ACT (XXXVIII of 1947), S. 2

the order was neither proved nor admitted, it must be taken prima facie — that is, until the contrary is proved —to have been properly made, and it must be taken that the requisite as to a particular belief was complied with. The presumption cannot be rebutted by mere denial or by asserting that the detenu is not aware of any reasons. In this respect "if satisfied" and "reasonable cause to believe" connote much the same thing. The sufficiency of the material on which the 'satisfaction' is based cannot be the subject of scrutiny by the Courts : AIR 1945 Pat 59; AIR 1943 All 277; AIR 1945 F C 18; AIR 1931 P C 111; (1917) A C 260; (1942) A C 284; AIR 1945 Nag 8; AIR 1943 Cal 377; AIR 1943 F C 75 and AIR 1946 Oudh 183, Rel. on.

No hard and fast rule can be laid down by which all such cases can be decided. The Court has to consider the order in the light of the surrounding circumstances. Foremost among the considerations is any allegation of fraud or abuse of the powers. These, however, have to be proved like any other fact. Though the Court should not insist on mere technicalities, the petitioner must satisfy the Court that there has been in fact a misuse of the powers. Similarly, fraud has to be pleaded and proved and the petitioner here also is in no better position than an ordinary litigant who alleges fraud and is required to prove it as pleaded by him. It, however, is open to the detenu to show on the record that there was in fact no satisfaction : AIR 1945 Bom 212 (FB); (1916) 2 K B 742, Rel. on.

Once the legislature has given powers of detention to any person that power can be exercised as the occasion arises and subject to the restrictions imposed in that behalf. If the law allows the authority named to come to its own conclusions, a valid order showing on its face that the power has been properly exercised is a good return and raises a presumption that the action was validly and properly taken. To get rid of this presumption, the person detained must allege facts tending to show that there has been a mistaken identity or fraud on the statute or other misuse of the powers. If he fails to allege and prove facts he is not entitled to be released. On the other hand, the Courts must be satisfied that the proper authority has considered the matter. Any error or mistake which shows that due care and attention was not paid to any particular case might prove fatal to the order : AIR 1946 Bom. 333, Ref.

Under S. 2 (1) (a) the satisfaction of the Provincial Government must be in respect of one of two things, viz., that the person detained is either acting or is likely to act in a manner prejudicial to the public safety, order or tranquillity. The object of the section is not penal but merely preventive. Courts have accordingly to see whether the Provincial Government has satisfied itself on one or the other or both before taking action.

Quaere.—Whether the doctrine of 'malice in law' can rightly be extended to such cases : AIR 1945 Nag 8 and AIR 1946 P C 123, Ref. (Hemeon and Hidayatullah JJ.) Wasudeo Anant Sohoni v. Emperor,

AIR 1949 Nag 50=ILR (1948) Nag 488=50 Cr L J 165.

—S. 5.

——Grounds of detention and particulars — Purpose and object of—Court cannot ask Government to reveal all information on which action was taken.

The grounds are not given to justify the detention but to afford the detenu a chance to make a representation. Their purpose is limited. Though being a document vitally connected with the reasons of detention it forms an important piece of evidence. The restraint in the matter of disclosure of grounds and particulars which S. 5 of the Act envisages must be borne in mind and it is

C. P. & BERAR PUBLIC SAFETY ACT (XXXVIII of 1947), S. 5

not expected that the Provincial Government would reveal all its information. And the law does not allow the Courts in such circumstances to ask the Provincial Government to disclose to them all the materials and information on which the action was taken. The petitioner cannot shift the onus from himself by merely asserting in a general way that there are no grounds. Nor does such assertion constitute proof of fraud or indirect motive. (Hemeon and Hidayatullah JJ.) Wasudeo Anant Sohoni v. Emperor,

AIR 1949 Nag 50=ILR (1948) Nag 488=50 Cr L J 165.

C. P. & BERAR PUBLIC SAFETY ACT (LXII of 1948)

—S. 2.

——S. 2 (1)—Detention under—Validity of, after coming into force of Constitution—Constitution Order No. 8—Effect — Validity of subsequent order of detention under Preventive Detention Act, 1950, S. 3 (1)—Preventive Detention Act (1950), S. 3 (1).

Per Mudholkar J.—Since the provisions of S. 2 (1), C. P. and Berar Public Safety Act, 1948, in so far as they permitted the detention of a person for more than three months without reference to an Advisory Board had become void on coming into force of the Constitution of India, the order of detention under S. 2 (1) passed against certain person lapsed after the inauguration of the Constitution as more than three months had expired since his detention. Constitution Order No. 8 could not and did not revive or keep in force the order but only permitted the continuance of his detention. The State Government could, therefore, act under S. 3 (1) (a), Preventive Detention Act and pass the new order against him under the Act. (Hemeon A. C. J., Hidayatullah and Mudholkar JJ.) B. N. Mukerjee v. State Govt. Madhya Pradesh,

AIR 1951 Nag 1=1951 A W R (Sup) 21=1951 N L J 71=ILR (1951) Nag 1 (FB).

——Responsibility of making detention order rests on provincial executive—Court cannot substitute its judgment for satisfaction of executive authority and undertake investigation of sufficiency of materials on which satisfaction was grounded—See Government of India Act (1935), Sch. VII, List. II, Entry 1.

AIR 1950 F C 129=51 Cr L J 1480 (FC).

——S. 2 (1) (a)—Enquiry before detention order—Court, if can examine grounds disclosed by Government.

Elimination of a review of the grounds of detention by an independent body like an Advisory Council against the misuse of the power of detention cannot by itself import an obligation on the Provincial Government to hold an enquiry before issuing a detention order. The Court can, however, examine the grounds disclosed by the Government to see if they are relevant to the object of prevention of acts prejudicial to public safety and tranquillity. (Kania C. J. Fazl Ali, Patanjali Sastri, Mahajan and B. K. Mukherjea JJ.) Machindar Shivaji v. The King,

A I R 1950 F C 129=1949 F C R 827=51 Cr L J 1480 (FC).

——S. 2 (1) (a) — Party spreading doctrine of violence — Affiliation to such party.

Affiliation to a party which is alleged to be spreading its "doctrine of violence rendering life and property insecure and trying to seize power by violence" may, in certain circumstances, lead to an inference that the person concerned is likely to act in a manner prejudicial to the public safety, order or tranquillity. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan and B. K. Mukherjea JJ.) Machindar Shivaji v. The King,

AIR 1950 F C 129=1949 F C R 827=51 Cr L J 1480 (FC).

C. P. & BERAR PUBLIC SAFETY ACT (XXXVIII of 1948), S. 2

——S. 2 (1) (a)—Constitution of India, Arts. 22 (7), 373—Validity of S. 2 (1) (a).

Section 2 (1) (a), in so far as it provides for the detention of certain classes of persons, is not rendered void by the Constitution. What is rendered void, however, is the implied provision conferring a power to detain a person for an indefinite period because sub-cl. (b) of Cl. (7) of Art. 22 requires a maximum period to be fixed by the law governing preventive detention.

The President can, by virtue of the powers conferred on him, by order, prescribe the circumstances under which the period of detention may extend beyond three months without obtaining the opinion of the Advisory Board. (Hemeon and Mudholkar JJ.) Trimbak v. The State,

AIR 1950 Nag 203=1951 N L J 1=51 Cr L J 1372.

—S. 4.

——Retrospective effect—See ibid, Ss. 35 (2) and 4.

AIR 1949 Nag 146=50 Cr L J 363.

—S. 16.

——Ss. 16 and 17 — Offence under S. 307, Penal Code, made punishable with death by S. 16 — Notification excluding trial by jury in such offences—Sessions Judge trying offence under S. 307, Penal Code, with jury—Trial is invalid — Provisions of S. 17 do not apply to Sessions Court. (Hemeon J.) Santa Singh v. The Crown,

AIR 1950 Nag 49=I L R (1949) Nag 925=51 Cr L J 474.

—S. 17.

——Offence under S. 307, Penal Code, made punishable with death by S. 16, C. P. and Berar Public Safety Act—Notification excluding trial by jury in such offences—Sessions Judge trying offence under S. 307, Penal Code with jury—Trial is invalid — Provisions of S. 17 do not apply to Sessions Court. (Hemeon J.) Santa Singh v. The Crown

A I R 1950 Nag 49 = I L R (1949) Nag 925 = 51 Cr L J 474.

—S. 35.

——Ss. 35 (2) and 4—Retrospective effect.

Section 35 (2) of the C. P. Act LXII [52] of 1948, does not give retrospective effect to S. 4 of the Act of 1948. In fact, the proviso to that section refers specifically to the communication made to a detenu under the section itself and there is no reference whatever to S. 5 of the Act of 1947.

Where the grounds supplied to the detenu under S. 5 of the Act of 1947, are vague, the defect cannot be cured by invoking the provisions of S. 4 read with S. 35 (2) of the Act of 1948. (Hemeon and Padhye JJ.) R. L. Reddy v. Provincial Government C. P. & Berar

A I R 1949 Nag 146 = I L R (1949) Nag 363 = 50 Cr L J 363.

C. P. AND BERAR RATIONING REGULATIONS (1943)

—R. 28.

——R. 28 (3) — Servant of retail distributor refusing to register holder of ration card — Retail distributor even though not present at that time is liable—See Defence of India Rules (1939), R. 5.

A I R 1946 Nag 372=47 Cr L J 947.

C. P. AND BERAR REGULATION OF LETTING OF ACCOMMODATION ACT (XI of 1946)

—S. 2.

——C. P. and Berar Collection of Information and Letting of Houses Order, 1946—Ultra vires.

The C. P. and Berar Collection of Information and Letting of Houses Order, 1946, made under S. 2 of the

C. P. AND BERAR REGULATION OF LETTING OF ACCOMMODATION ACT (XI of 1946), S. 2

Act, is not ultra vires of the C. P. and Berar Regulation of Letting of Accommodation Act, 1946. (Hemeon J.) Shivdas Singh Ajodhia Singh v. King-Emperor

A I R 1949 Nag 140=1949 N L J 38 = 1949 A W R Sup 18=I L R (1948) Nag 336=50 Cr L J 343.

C. P. AND BERAR SALES TAX ACT (XXI of 1947)

—S. 2.

——S. 2 (g)—'Sale' explained.

For a transaction to be regarded as a sale under S. 2 (g) there must be a transfer of property in the goods. Where goods are merely ordered but delivery is not given or taken and there is nothing from which it can be ascertained that the property in the goods has actually been transferred from the seller to the buyer it cannot be said that there was a sale. A contract of sale is not the same thing as sale. (Mudholkar J.) Punamchand v. King-Emperor

A I R 1951 Nag 188=1950 N L J 558=1951-2 S T C 14=I L R (1950) Nag 991=52 Cr L J 96.

——Ss. 2 (1), 4 and 28—Rules under S. 28, R. 18—Interpretation of—Dealer in goods obtained locally and also in imported goods—Taxable quantum.

The words 'five thousand rupees' in S. 2 (1) (a) refer to the turnover of goods manufactured or produced by a dealer for purposes of sale by himself. It is only when the sale price of goods manufactured or produced by a dealer exceeds Rs. 5,000 that he becomes liable to pay tax under S. 4 (1) of the Act.

Similarly the words 'five thousand' in R. 18 of the rules framed under S. 28 of the Act refer to the turnover of imported goods and not to goods obtained locally. It is only when the sale price of goods imported exceeds Rs. 5,000 that an importer of goods becomes liable under S. 4 (1) of the Act to pay tax. There is no liability by an importer to pay tax if the sale price of imported goods is less than Rs. 5,000 and the total turnover does not exceed Rs. 25,000. (Hemeon Ag. C. J. and V. R. Sen J.) Ayodhyaprasad v. Crown

A I R 1951 Nag 24=1951 N L J 216 = 1951-2 S T C 44=I L R (1951) Nag 188.

——Ss. 2 (1), 4 and 28—Interpretation of — (Interpretation of Statutes—Fiscal enactment).

The C. P. and Berar Sales Tax Act is a fiscal enactment and has therefore to be construed strictly and any ambiguity or doubt arising out of its interpretation has to be resolved in favour of the subject. (Hemeon Ag. C. J. and V. R. Sen J.) Ayodhyaprasad v. Crown

A I R 1951 Nag 24=1951 N L J 216 = 1951-2 S T C 44=I L R (1951) Nag 188.

—S. 4.

——Interpretation of — See C. P. and Berar Sales Tax Act (XXI of 1947), S. 2 (1).

A I R 1951 Nag 24.

—S. 8.

——S. 8 (1) — Registration certificate — Who should obtain.

It is not every dealer but only a dealer liable to pay a tax under the Act, who is required by S. 8 (1) to obtain a registration certificate. (Mudholkar J.) Punamchand v. King-Emperor

A I R 1951 Nag 188=1950 N L J 558=1951-2 S T C 14=I L R (1950) Nag 991=52 Cr L J 96.

—S. 28.

——Interpretation of — See C. P. and Berar Sales Tax Act (XXI of 1947), S. 2 (1).

A I R 1951 Nag 24.

C. P. AND BERAR SALES TAX ACT (XXI of 1947), S. 28

——S. 28, Rules under R. 18 — Interpretation of — See C. P. and Berar Sales Tax Act (XXI of 1947), S. 2.

A I R 1951 Nag 24.

C. P. AND BERAR SUGAR CONTROL ORDER, 1949

—Cl. 2.

——Cl. 2 (a) (as amended on 18-10-1949)—Batashas.

Batashas, which consist entirely or almost entirely of sugar, fall within the ambit of the definition of 'sugar' in Cl. 2 (a) as substituted on 18-10-1949. (Hemeon and Choudhuri JJ.) State Government, Madhya Pradesh v. Rammilal

A I R 1953 Nag 275=1953 N L J 318=I L R (1953) Nag 623=1953 Cr L J 1513.

——Cl. 2 (a) (as amended by Food Department Notification No. 25640-1446-XXV-FZ, D/- 18-10-1949)—Validity of Notification.

When a power, which was subject to a condition or conditions, to make orders was delegated, the authority to whom the power was delegated could not vary the orders without observance of the condition or conditions.

The power to amend the original Sugar (Control) Order was subject to the obtaining of the concurrence of the Central Government. As that condition was not fulfilled, the amending Notification was 'ultra vires' of the Provincial Government. (Hemeon J.) Radhakisan Laximinarayan v. State

A I R 1952 Nag 387=1952 N L J 353 = 1952 Cr L J 1632.

C. P. AND BERAR TEMPLE ENTRY AUTHORIZATION ACT (XLI of 1947)

—S. 2.

——Ss. 2 (c) and 3 (1) — "Worship" in S. 3 (1) must be construed in terms of its definition in S. 2 (c). (Hemeon J.) Shridhar Krishnarao Date v. The Crown.

A I R 1949 Nag 383 = I L R (1949) Nag 421 = 1949 N L J 508=51 Cr L J 95.

——S. 2 (b)—Temple—Question of ownership of temple is immaterial. (Hemeon J.) Shridhar Krishnarao Date v. The Crown

A I R 1949 Nag 383 = I L R (1949) Nag 421 = 1949 N L J 508=51 Cr L J 95.

—S. 3.

——Ss. 3 (1), 2 (c) and 6 (1)—Denying entry into temple to excluded persons.

Where rules and regulations under the Act have not been made, it is not possible to determine the exact nature of the religious service which the excluded classes are entitled to take part in or to offer. In other words, it is not possible to decide the character of the religious service from which they might legally be debarred.

In the absence of rules and regulations, denying entry into temple and worship therein cannot be held to be illegal. (Hemeon J.) Shridhar Krishnarao Date v. The Crown

A I R 1949 Nag 383 = I L R (1949) Nag 421 = 1949 N L J 508=51 Cr L J 95.

—S. 6.

——S. 6 (1) — Denying entry into temple to excluded person, if illegal—See ibid, S. 3 (1).

A I R 1949 Nag 383=51 Cr L J 95.

C. P. AND BERAR TOBACCO ACT (VIII of 1939)

—S. 3.

——Ss. 3 and 13—S. 3 does not apply to agent or servant of wholesale dealer—Conviction of agent or servant under S. 13 is illegal.

Section 3 does not apply to an agent or servant who offers for sale and delivers tobacco to customers on behalf

C. P. AND BERAR TOBACCO ACT (VIII of 1939), S. 3

of a wholesale dealer. Conviction of such a person under S. 13 is illegal. (Hemeon J.) Manoharbhai v. Emperor

A I R 1946 Nag 258=I L R (1946) Nag 422 = 1946 N L J 319=224 I C 293=47 Cr L J 587.

——Schedule—Proviso to Cl. (e) of Schedule — Proviso is not ultra vires the Provincial Legislature.

The proviso to Cl. (e) of the Schedule which requires a wholesale dealer to pay an additional fee for each place of manufacture other than the shop or stall where he deals in bidis, etc., is not ultra vires of the Provincial Legislature as the levy of the fees falls within Entries 27 and 54 of the Provincial Legislative List and not within Entry 45 of the Federal Legislative List to Sch. 7, Government of India Act, 1935. (Hemeon J.) Manoharbhai v. Emperor

A I R 1946 Nag 258=I L R (1946) Nag 422 = 1946 N L J 319=224 I C 293=47 Cr L J 587.

C. P. AND BERAR TOWN PLANNING ACT (LXVII of 1948)

—S. 9.

——Ss. 9 (2), 15 (1) (c) and R. 5—Publication of declaration of intention—Modes of—Omission to publish in prescribed manner—Effect.

Section 9 (2) requires the declaration of intention to be despatched to for publication in the Gazette and also to be published in the prescribed manner which is stated in Rule 5. Publication therefore does not mean publication in the Gazette only. It comprises of both the modes referred to in S. 9 (2). The publication in the prescribed manner cannot be presumed. It has to be proved and when there is no proof of such publication, no person can be convicted under S. 15 (1) (c). (Mudholkar J.) Municipal Committee, Umerkhed v. Harsukh Ramlal

A I R 1953 Nag 305=1953 N L J 652 = 1953 Cr L J 1590.

—S. 15.

——S. 15 (1) (a) — Erection of building under Municipal permission granted before declaration of intention — Legality.

The language of Cl. (a) of S. 15 (1), Town Planning Act clearly shows that the prohibition enacted by it applies to every case of commencement of erection of a building by a person. Therefore, the fact that the plot holder has secured permission under the Municipalities Act to erect a building before the publication of the declaration is wholly immaterial.

Further, though Municipal Committee will have no right under S. 99 (2), Municipalities Act, to refuse permission to erect a building in an area included in the scheme till the Government actually sanctions a scheme under the C. P and Berer Act (67 of 1948), despite the grant of permission by the Municipal Committee a disability would operate 'upon the person' to whom permission is granted to commence the erection or continue with the erection of a building. (Mudholkar J.) Municipal Committee, Umerkhed v. Harsukh Ramlal

AIR 1953 Nag 305 = 1953 N L J 652 = 1953 Cr L J 1590.

——S. 15 (1) (c)—Prosecution under—Awarding cost of—Validity.

Expenses incurred by a Municipal Committee in prosecuting a person who is said to have contravened S. 15 (1) (c) cannot be awarded thereunder. (Mudholkar J.) Municipal Committee, Umerkhed v. Harsukh Ramlal

AIR 1953 Nag 305 = 1953 N L J 652 = 1953 Cr L J 1590.

C. P. AND BERAR TOWN PLANNING ACT (LXVII of 1948), S. 15

——S. 15 (1) (c) — No proof of publication of declaration under S. 9—Person cannot be convicted under S. 15 (1) (c) —See ibid, S. 9 (2)

AIR 1953 Nag 305=1953 Cr L J 1590.

—R. 5.

——Publication of declaration of intention as required under, not proved—Effect—See ibid, S. 9 (2)

AIR 1953 Nag 305=1953 Cr L J 1590.

C. P. AND BERAR YARN DEALERS' LICENSING ORDER (1949)

——Order is not ultra vires — Essential Supplies (Temporary Powers) Act (1946), S. 2 (e) (ii).

The term 'cotton textiles' in S. 2 (e) (ii) of the Essential Supplies Temporary Powers Act, 1946, includes yarn and as such the C. P. and Berar Yarn Dealers' Licensing Order is not ultra vires. (Deo J.) Shyamlal Bhaddu v. State

AIR 1952 Nag 104 = 1952 N L J 132 = 1952 Cr L J 614.

—Cl. 3.

——Contravention of—See Essential Supplies (Temporary Powers) Act (1946), S. 7

AIR 1953 Nag 263=1953 Cr L J 1349.

—Cl. 20.

——Provision as to issue of cash memoranda or credit notes with specified details is not merely directory—Its breach constitutes an offence. (Deo J.) Shyamlal Bhaddu v. State

AIR 1952 Nag 104 = 1952 N L J 132 = 1952 Cr L J 614.

—Cl. 22.

——Scope.

Clause 22 gives the licensing authority power to impose additional penalty by cancelling the licence irrespective of punishment awarded under S. 7, Essential Supplies (Temporary Powers) Act, for contravention of any of the provisions of this Order or condition of the licence. (Hemeon and Chaudhuri JJ.) State v. Pirmohammad Nazafikhan

AIR 1953 Nag 263 = 1953 N L J 251 = ILR (1953) Nag 679=1953 Cr L J 1349.

C. P. COURTS ACT (II of 1904)

—S. 8.

——S. 8, sub-s. 1 (a)—Rules under—Applicability.

A District Magistrate receiving applications for licenses under the Arms Act, 1878, is not a Criminal Court, but is an executive officer. Hence an order by him, fining a person writing applications for hire, for violating a rule made under cl. (a), sub-s. 1 of S. 8, Central Provinces Courts Act, 1904, is not valid. The rules framed by the Judicial Commissioner's Court under cl. (a), sub-s. 1 of S. 8, C. P. Courts Act, 1904, apply only where the act complained of is done in a Court subordinate to the Judicial Commissioner's Court or in that Court itself. (Drake-Brockman J. C.) Suraj Prasad v. Emperor

4 N L R 134=8 Cr L J 347.

CENTRAL PROVINCES COURTS ACT (I of 1917)

—S. 21.

——Under the general power of superintendence and control conferred on it by S. 21, the Judicial Commissioner's Court of Nagpur has jurisdiction to revise an order of a Subordinate Court made in a proceeding under S. 36, Legal Practitioners Act. (Jackson J. C.) Yeshwant Rao v. Secretary High Court Bar Association, Nagpur

AIR 1932 Nag 50 = 28 N L R 4 = Ind Rul (1932) Nag 57=137 I C 66=33 Cr L J 408.

CENTRAL PROVINCES CRIMINAL CIRCULARS

——No. 1-28, Para. 6 — Procedure — Trial of young offenders by Second Class Magistrate is barred.

The Circular states that adolescents should be tried by a Magistrate not below the rank of Sub-Divisional Magistrate. It does not say that a Second Class Magistrate may try an adolescent but must refer the case for punishment to the Sub-Divisional Magistrate. (Kotwal A. J. C.) Baba v. Emperor

AIR 1924 Nag 37 = 22 N L R 166 = 74 I C 66 = 24 Cr L J 738.

CENTRAL PROVINCES JAIL MANUAL

—R. 235.

——Rr. 235 and 300 — Breach of liability for escape of prisoner.

Under R. 224 of the Jail Manual in the event of an escape taking place, the head warders shall be held primarily responsible unless they can satisfactorily prove that the escape was due to no laxity of duty on their part.

Under R. 235 of the Jail Manual, every change in a gang passed out of the Jail has to be noted by the gatekeeper in a gate register and under R. 300 every change of a prisoner from one gang to another must be recorded in a gang book. The record in the gang book is essential for fixing responsibility upon the officer to whose negligence a prisoner's escape is due. (Drake Brockman J.) Ramautar v. Emperor

4 N L J 171.

C. P. LAND REVENUE ACT (XVIII of 1881)

—S. 162.

——Forest rules—Penalty attached to breach—Breach of rules — Whether criminal offence within Criminal P. C. (1898), S. 4 (o).

The definition of an offence in S. 4 (o), Criminal P. C., is meant for the Code itself, and controlled by the restrictive words in sub-s. (1) of the section, namely, "unless a different intention appears from the subject or context" —Hence, read in its context, the violation of some of the forest rules promulgated under S. 162, C. P. Land Revenue Act, to which penalty has been added by Notification of the Chief Commissioner, No. 720 IVL-16-R dated 21-1-1931 does not amount to an offence within the meaning of S. 4 (o), Criminal P. C.—Consequently orders of the Deputy Commissioner imposing the penalties under the said provisions are not revisable by the High Court : 20 All 95; A I R 1921 Bom 107; 5 Cr L J 463 (Cal); 7 Bom H C R Cr 55 and A I R 1930 Sind 162, Rel. on; A I R 1924 Bom 489, Disting; A I R 1923 Pat 1, Expl; A I R 1943 Pat 364, Ref. (Meredith and Ray JJ.) Sri Udit Prasad v. Sukru Kisan

AIR 1947 Pat 381=13 Cut L T 14=25 Pat 806.

C. P. LAND REVENUE ACT (II of 1917)

—S. 128.

——Ss. 128, 227 (2) (k) — Warrant for arrest under Central Provinces Tenancy Act (I of 1920), not bearing seal of Court—Legality—Person breaking arrest—Offence under S. 225B, Penal Code.

Warrant for arrest issued under the provisions of C. P. Tenancy Act must be in Form II appended to the C. P. Land Revenue Act and that form provides for the affixing of the seal of the Court which issues it and thus, like S. 75 of the Criminal P. C., lays stress on the general principle that a process must always bear the seal of the Court from which it issues. The warrant not bearing the seal of the Court has, therefore, no force and the arrest under it is illegal, and in breaking arrest the person commits no offence, and his conviction under S. 225B, Penal Code, cannot stand. (Grille J.) In re Bhullikhan Mansabkhan

AIR 1938 Nag 45=10 R N 196 (1)=20 N L J 219=172 I C 335=39 Cr L J 118.

—S. 131.

——Offence under Penal Code, S. 353 — C. P. Code, O. 21, R. 24 — O. 21, R. 24 applies to warrants under L. R. Act, S. 131 — Resistance to a time-barred warrant issued under S. 131 is no offence.

Where the date fixed for the return of the warrant had already expired on the day that the process-server went to execute it :

Held, that he was not acting in the execution of his duty and the conviction under S. 353 for assaulting him was bad. O. 21, R. 24, C. P. Code, applies to a warrant issued under S. 131 of the Land Revenue Act : 10 C 18 and 31 C 424, Foll. (Baker Offg. J. C.) Nandlal v. Emperor

AIR 1924 Nag 68 = 19 N L R 183 = 76 I C 655 = 25 Cr L J 223.

—S. 188.

——Lambardar of undivided village has no sole right to appoint village servants.

There is no authority to support the proposition that a person as the lambardar of the undivided village has the right to appoint persons who simply make a living in the village by their labour as village servant and a cosharer has no right to interfere with their appointment. (Subhedar A. J. C.) Kashiram Hazari v. Asaram.

AIR 1929 Nag 328 = 1939 Cr C 532 = 120 I C 215= 31 Cr L J 20.

——Consent — Condition in a wajib-ul-arz — Consent of every cosharer in petty cases is not necessary.

Where under the wajib-ul-arz of the village the lambardar was to manage the village with the consent of the cosharers, the lambardar need not obtain the consent of every individual cosharer, in petty cases such as allowing a cow to graze in the village. (Baker J. C.) Parasram v. Kanhiya

AIR 1923 Nag 336 = 7 N L J 193 = 84 I C 862 = 26 Cr L J 382.

—S. 193.

——Ss. 193 (1881) Ss. 137 and 141—Mukaddam Gumasta —Penal Code, S. 176, Cr. P. C., S. 45, Mukaddam receiving information of non-bailable offence—Agent omitting to report—Offence.

The Mukaddam is not relieved of responsibility by the appointment of a Gumashta, for the Gumashta works as his agent. The Gumashta should discharge the duties laid upon the Mukaddam by the Land Revenue Act, but if Mukaddam finds, that the Gumashta is neglecting his duties, he must take steps to get them performed by the Gumashta or perform them himself. If a mukaddam receives information of a non-bailable offence, he must report the offence under S. 45 of the Cr. C. C.; an omission to do so will constitute an offence under S. 176, I. P. C. (Batten A. J. C.) Local Government v. Manihar Singh.

7 N L R 101=11 I C 785=12 Cr L J 441.

—S. 201.

——Procedure — Criminal Procedure Code or Penal Code if applicable.

The definition of "offence" contained in S. 4 (o) of the Criminal P. C., does not apply to cases under the Central Provinces Land Revenue and Tenancy Acts and the so-called "penal sections" thereof, are not governed by S. 5 (2) or any other provisions of that Code or of the Penal Code. (G. C. F. Ramsden F. C.) Ranshah Bapu v. Shaligram

1945 N L J 542 (Rev).

C. P. LAND REVENUE ACT (II of 1917), S. 201

——Proceedings under, affidavit in evidence accepted—Legality—Applicability of Civil Procedure Code to revenue proceedings—Civil Procedure Code (Act V of 1908), O. 41, O. 19, R. 2.

Any application made under S. 201 of the C. P. Land Revenue Act is an original proceeding which must be governed by the procedure laid down in the Civil P. C. Similarly, the provisions of O. 41 of the Civil P. C. apply to the proceedings in appeal before any Revenue Court. Under O. 19, R. 2, it is permissible for any party to give evidence upon any application by affidavit, although the Court may at instance of either party, order the attendance for cross-examination of the deponent. Thus, as the Revenue Court is a Court of civil judicature it is authorised to receive affidavits in evidence. (Niyogi A. J. C.) Bade v. Emperor

AIR 1935 Nag 125 (1)=1931 Cr C 564=7 R N 195=155 I C 557=36 Cr L J 765.

—S. 219.

——Government Notification No. 332-341-XII dated January 29, 1931— Tahsildar removing unathorised encroachments— Whether acting in execution of duty as public servant — Assault on Tahsildar while doing so — Penal Code (Act XLV of 1860), S. 353.

By Government Notification No. 332-341-XII, dated 29th January 1931, the Governor-in-Council invested all Tahsildars with the powers of a Deputy Commissioner under S. 219, Central Provinces Land Revenue Act and consequently a Tahsildar while removing unauthorised encroachments is acting in the execution of his duty as a public servant and a conviction under S. 353, I. P. C., for assaulting the Tahsildar while doing so is justifiable. (Grille A. J. C.) Dinanath Hatiram v. Emperor,

AIR 1933 Nag 295 = 1933 Cr Cas 1067=6 R N 206=143 I C 803=35 Cr L J 746.

C. P. POLICE MANUAL

—S. 10.

Paragraph 418 of S. 10 of the Central Provinces Police Manual requires a report book to be maintained by village watchmen in connection with the reports of births and deaths they have to make to the Police. (Niyogi and Pollock JJ.) Shrikisan v. Jagoba,

AIR 1937 Nag 264=20 N L J 139=10 R N 191=ILR (1937) Nag 382=172 I C 287.

—S. 636.

——Ss, 621, 636—The Village Crime Note book is one of the registers prescribed for station houses under S. 621 of the Police Manual, and according to S. 636 every cognizable crime committed in a village should be entered in it. (Grille J. C., Niyogi and Pollock A. J. Cs.) Amdu Miyan v. Emperor,

A I R 1937 Nag 17=9 R N 132 = I L R (1937) Nag 315=166 I C 587=38 Cr L J 237.

CENTRAL PROVINCES MUNICIPAL ACT (XVIII of 1889).

—S. 66.

——S. 66 (5)—Notice requiring alteration — Reasonable time to be granted.

A notice given by a Municipal Committee requiring a person to alter or demolish a building is bad unless a reasonable time is given; what is "reasonable time" is determined according to circumstances of the case and with particular reference to the means and ability of the person by whom the duty is to be discharged. (Drake-Brockman J. C.) Abdul Sattar v. Secretary, Municipal Committee,

A I R 1915 Nag 70 = 11 N L R 87= 29 I C 660=16 Cr L J 532.

CENTRAL PROVINCES MUNICIPAL ACT (XVI of 1903)

—S. 35.

——"Market due" meaning—Unpaid lease—Money is not a tax recoverable under S. 44.

At an auction held by the Municipal Committee of Nagpur of the right to sell provisions at a certain stall in the Cotton Market near the Railway Station the applicant Yeshwant made the highest bid. He paid a portion of the amount of his bid and the sale was presumably sanctioned in due course. But before Yeshwant executed the deed required of him, the Committee broke one of the conditions of the contract and he filed a suit for damages. The Committee then applied under S. 44 to a Magistrate to recover the unpaid balance of the lease money from him by distress and sale of his moveable property.

Held, that the unpaid lease money was not a "market-due" or tax of the kind mentioned in S. 35 as it was never imposed in the manner prescribed by that section and, therefore, not recoverable by the summary procedure provided by S. 44. (Hallifax. A. J. C.) Yeshwant Rao v. Nagpur Municipality,

A I R 1923 Nag 264=19 N L R 122 = 73 I C 52=24 Cr L J 516.

—S. 66.

——Ss. 66 and 139—Encroachment — Conviction — Imposition of daily fine in the future is not legal.

The accused was convicted under S. 139 read with S. 66 (1) of the C. P. Municipal Act and sentenced to pay a fine of Rs. 5 in addition to Re. 1 per day from 14th August 1922 onwards, in case he did not remove the encroachment or obtain the sanction of the Municipal Committee to its continuance. Held that the order imposing a daily fine in the future could not stand. No person can be sentenced to punishment for a thing which he has not done but may possibly do in the future or even is likely to do in the future. (Hallifax, A. J. C.) Babu Rao v. Municipal Committee, Nagpur,

AIR 1924 Nag 66=72 I C 78=24 Cr L J 318.

——Ss. 66 (1), 122—Building implies structure with roof—Conviction is bad in absence of proof that new structure occupied more space than the old one.

A "building" within S. 66 (1) of the C. P. Mun. Act, implies a structure with a roof. Moir v. Williams (1892) 1 Q. B. 264, Ref. Where the petitioner is convicted for encroaching upon a street in a Municipal town by putting up a new structure in the place of an old one. Held in the absence of proof that the new structure occupied more space than the old one, the conviction was bad, (Drake-Brockman, J. C.) Thakurlal v. Secretary Municipal Committee, Khandwa,

AIR 1921 Nag 147 (2)=64 I C 274=22 Cr L J 754.

——S. 66 (1) (3)—Delay in passing orders—Notice under S. 66 (1) —Presumption—Sanction.

Under S. 66 of the C. P. Municipal Act, delay in passing orders on a valid notice given under S. 66 (1) of the Act may, if followed by a failure to reply to a written reminder, lead to a conclusion that the proposed building has been absolutely sanctioned. (Drake Brockman, J. C.) Mahomed Yacub v. The Secretary, Municipal Committee, Nagpur,

AIR 1918 Nag 121=48 I C 889=20 Cr L J 89.

—S. 67.

——Ss. 67 (1), (2), 122 and 139 — Old encroachment — Punishment.

Section 122 cannot reasonably be construed as making punishable an existing encroachment not made by the accused person but by his predecessor-in-title. In the case of an encroachment not made by the accused, S. 67(2) of the Act provides full means of redress which can be enforced by the penal provisions of S. 139. The word 'such'

CENTRAL PROVINCES MUNICIPAL ACT (XVI of 1903), S. 67

in Sub-S. (2) of S. 67 of the Act refers back to the words "structure encroaching on any street" in Sub-S. (1) and not only to new encroachments as is clear from the proviso in which encroachments of old standing are referred to (Batten, A. J. C.) Madan Gopal Deokaran v. The Secretary Municipal Committee, Nagpur,

AIR 1918 Nag 239=47 I C 879=19 Cr L J 979.

—S. 86.

——Notice to erect latrine—Contents of —Duty of Committee.

A notice under S. 86 (1) of the C. P. Municipal Act must contain the directions as to the nature and position of the latrine. Delegation to an individual officer of the power to give directions is improper. (Drake Brockman, J. C.) Abdul Sattar v. Secretary, Municipal Committee, Nagpur,

AIR 1918 Nag 135=48 I C 882=20 Cr L J 82.

—S. 105.

——S. 105—By-law 5 (a)—Lease can only be terminated according to law and it does not come to end at mere will of Committee—Transfer of Property Act, S. 106.

A lease can only be terminated according to law and it does not come to an end, at the sweet will of the Committee, by passing a resolution. A Municipal Committee granted a lease of immovable property. The lease was from month to month. No 15 days' notice as required by law was given, but the Committee passed a resolution by which the lessee was to quit the land after seven days' notice. On lessee's failure to do so he was convicted for breach of the bye-law 5 (a).

Held, that the lease could only be terminated with 15 days' notice and as no such notice was given, there was no breach of the bye-law 5 (a), and the conviction was illegal. (Mohiuddin, A. J. C.) Mulchand Balbadhar v. Municipal Committee, Gondia,

AIR 1929 Nag 332 = 124 I C 256 = 1929 Cr C 511= 31 Cr L J 667.

—S. 122.

——Ss. 122, 67 (a) and 289 — Encroachment by previous owner—Present owner not liable.

Section 122 cannot be interpreted as making punishable an omission to remove an existing encroachment not made by the accused person. The word "obstructs" in Section 122 of the Act applies to persons who built or caused to be built the encroachment and not to the accused who originally had nothing to do with its erection. Subsection (2) of Section 67 read with Section 139 provides remedy in the case of an encroachment not made by the present owner. (Prideaux A. J. C.) Chunilal v. Municipal Committee Arvi,

AIR 1922 Nag 167 (2)=18 N L R 92 = 65 I C 559= 23 Cr L J 127.

——Conviction under — Absence of proof that structure occupies more space—Notice for prosecution — Authority for sanction.

In the absence of proof that a new structure put up occupied more space than the original one a conviction under S. 122, C. P. Municipal Act cannot be supported. Meaning of "Building," explained. A prosecution under the Act can take place only after a resolution passed at a meeting properly convened and conducted. (Drake Brockman J. C.) Thakur Lal v. Secretary, Municipal Committee, Khandwa,

AIR 1921 Nag 147 (2)=64 I C 274=22 Cr L J 754.

—— Knowledge of conditions essential before liability for breach arises.

If the accused fails to comply with any conditions which are not placed on record or shown to have been actually communicated to him and subject to which, permission to build was given to him under S. 66 of the

CENTRAL PROVINCES MUNICIPAL ACT (XVI of 1903), S. 122

C. P. Municipal Act, 1903, the disobedience or omission does not amount to an offence punishable under the Act provided the sanctioned plan has not been departed from (Drake Brockman. A. J. C.) Nandlal v. Khandwa Municipality,

4 N L J 266.

—S. 139.

——Fine in respect of future breach.

The daily fine may be increased under S. 139 of the C. P. Municipal Act. It must relate to a period anterior to the Magistrate's order of conviction. There cannot be punishment for future breach, 6 C. P. L. R. 32, foll, (Drake Brockman, J. C.), Mahomed Yacub v. Secretary-Municipal Committee, Nagpur,

AIR 1918 Nag 121=48 I C 889=20 Cr L J 89.

—S. 152.

——Notice—Attestation of service by non-official persons.

S. 152 does not require that the report of services of notice should be attested by any non-official person. (Drake-Brockman J. C.) Bijaram v. Secretary, Municipal Committee of Nagpur

AIR 1918 Nag 122 = 49 I C 928 = 20 Cr L J 256.

—S. 159.

——Complaint—Accused tried jointly.

A complaint has to be made as required by S. 159 of the C. P. Municipal Act in order to enable a Court to take cognizance of an offence punishable under the Act. Once cognizance has been legally taken of an offence the Magistrate is seized of the whole matter as to all other accused whose guilt may appear during the trial of the case. (Drake-Brockman J. C.) Gambhir Chand v. Secretary, Municipal Committee, Nagpur

AIR 1918 Nag 134 (2)=48 I C 886 =20 Cr L J 86.

CERTIFICATE.

—Issuing or signing false one — See Penal Code (45 of 1860), S. 197.

CERTIFIED COPIES

—Of public documents — See Evidence Act (1 of 1872), S. 76.

—Produced for proving documents— See Evidence Act (1 of 1872), S. 77.

CERTIORARI

See under Constitution of India, Art. 226.

CESS ACT (BENGAL) (IX of 1880)

—S. 14.

——Object of return—See ibid, S. 94

11 Cr L J 11 (Cal).

—S. 94.

——Object.

The object of S. 94 and other sections in the Act is that the person submitting return under S. 14 should not undervalue his property for purposes of Cess. (Brett and Ryves JJ.) Mohamed Wasil v. Emperor

13 C W N 191 = 5 M L T 93=4 I C 578=11 Cr L J 11 (2).

—S. 95.

——Object—See ibid, S. 94

11 Cr L J 11 (Cal).

CEYLON CRIMINAL PROCEDURE CODE (ORDINANCE NO. XV OF 1898)

—S. 355.

——S. 355 (1)—Reference—Full note of Judge's summing up — Necessity of recording.

In cases under S. 355 (1), Ceylon Criminal P. C., it is desirable that there should be available for the tribunal

CEYLON CRIMINAL PROCEDURE CODE (Ord. No. XV of 1898), S. 355

dealing with the reference a full note of the Judge's summing up. (Lord Atkin, Lord Tomlin, Lord Macmillan) Albert Godamune v. The King

AIR 1933 P C 7 = 64 M L J 290 = 1933 Cr Cas 130 (2)= Ind Rul (1933) P C 140 = 143 I C 224 = 34 Cr L J 550 (P C).

CEYLON PENAL CODE.

—S. 386.

——Criminal misappropriation— Trustee — Hypothecary action — Private arrangement between trustee and defendants.

A was one of the trustees of the marriage settlement of H and the trust property included a first mortgage on an estate. The interest on the mortgage having fallen into arrears, A and his co-trustee began an hypothecary action to enforce the mortgage. The defendants to this action were the mortgagor and certain other persons (called collectively as the syndicate) who claimed an interest in the equity of redemption of the mortgaged estate through the mortgagor. The syndicate being anxious to obtain a postponement of the hypothecary action entered into an agreement with A under the following terms "I understood from you at the interview you had with Mr. C. W. Peiris at my office some days ago that provided you were paid Rs. 10,000 on account of accumulated interest you would get the case to lay by for one year and that during that period the balance interest should be paid from time to time as my clients were able. Further, that you would undertake not to certify or record any payments made by my clients on account, should it become necessary for you to enforce writ for the recovery of the claim. Of course, if the amount realised by the sale of the property does not fetch the amount of your claim, then you could appropriate the moneys paid by my clients towards the deficiency."

The whole of the accumulated interest was paid to A on whose failure to account for the sum, the beneficiary procured the launching of a prosecution against A for criminal misappropriation :

Held, that the letter afforded no evidence that the moneys were paid to A as agent for the beneficiary or that such moneys by reason of the payment to A became the beneficiary's property, and that, therefore, the conviction of A under S. 386, Ceylon Penal Code, should be quashed (Lord Atkin, Lord Tomlin and Lord Macmillan) Albert Godamune v. The King

AIR 1933 P C 7 = 64 M L J 290 = 1933 Cr Cas 130 (2)=Ind Rul (1933) P C 140 = 143 I C 224=34 Cr L J 550 (PC).

—S. 388—See Penal Code (45 of 1860), S. 405.

—S. 392.

See Penal Code (45 of 1860), S. 405.

—S. 427.

——Intention—See Penal Code, S. 441

52 Cr L J 173 (P C).

CHAMBA PAID FORCED LABOUR ACT (3 of 2004B)

——Validity—See Constitution of India, Art. 23.

AIR 1953 H P 18 = 1953 Cr L J 400.

CHANDERNAGORE (APPLICATION OF LAWS) ORDER (1950)

—Para. 7.

——"Things done" — Meaning of — Offence committed before commencement of Order — Charge under Art. 437 (1), French Penal Code—Prosecution under charge.

The expression "things done" in para 7 include offences previously committed.

Where, therefore, the accused was charged under Art. 437 (1) of the French Penal Code for his alleged complicity in an occurrence which was alleged to have happened before the commencement of the Order :

Held that Para 7 of the Order preserved the right to prosecute the accused under the then existing law, viz., Art. 437 (1) of the French Penal Code and therefore the accused was liable to be prosecuted under the charge, (Harries C. J., Das and S. R. Das Gupta JJ.) Sankar Mowli Datt v. State

AIR 1952 Cal 588 = 56 C W N 500 = 1952 Cr L J 1308 (S B).

——Para 7—Offences committed prior to commencement of Order—Trial of — Procedure — (Criminal P. C. (1898) Sections 5 (2) and 29 (17)).

The effect of paragraph (7) of the Order is not that the trial of offences committed prior to the commencement of the Order would be regulated by the Criminal P. C. In view of Ss. 5 and 29 of the Code, the procedure to be followed in respect of such prior offences, must be regulated by the French Cr. P. C. that is to say, the commitment must be made by a tribunal empowered under the French Criminal Procedure and the Sessions Court must also be one constituted under the French Criminal Procedure Code. (Harries C. J., Das and S. R. Das Gupta JJ.) Sankar Mowli Datt v. State.

AIR 1952 Cal 588 = 56 C W N 500 = 1952 Cr L J 1308 (FB).

CHARACTER

—Evidence of—See Criminal P. C., S. 110.

—In civil cases, irrelevant — See Evidence Act (1 of 1872), S. 52.

—Relevancy of—See Evidence Act (1 of 1872), Ss. 52, 55.

CHARGE

See also Criminal P. C., Ss. 221, 240 and 256.

—Addition of charge—See Criminal P. C., S. 227.

—Alteration — See Criminal P. C. (5 of 1898), Ss. 227, 236, 237, 238.

—Commitment without—See Criminal P. C. (5 of 1898), S. 226.

—Construction of—See Criminal P. C. (5 of 1898), S. 224.

—Conviction for offence not charged — See Criminal P. C., S. 237.

—Defined—See Criminal P. C. (5 of 1898), S. 4 (1) (c).

—Errors in—See Criminal P. C. (5 of 1898), Ss. 225, 537.

—Form of—See Criminal P. C. (5 of 1898), Ss. 221, 223.

—Framing of by committing Magistrate—See Criminal P. C. (5 of 1898), S. 210.

—Framing of in warrant cases — See Criminal P. C. (5 of 1898), S. 254.

—Imperfect—See Criminal P. C. (5 of 1898), S. 226.

—Joinder— See Criminal P. C. (5 of 1898), Ss. 233, 240.

—Language of — See Criminal P. C. (5 of 1898), S. 221 (6).

—Making falsely — See Penal Code (45 of 1860), S. 211.

—Material errors — See Criminal P. C. (5 of 1898), S. 232.

—Misjoinder—See Criminal P. C., Ss. 233 to 235.

—Previous conviction to be stated—See Criminal P. C. (5 of 1898), S. 221 (7).

—Time and place to be noted—See Criminal P. C. (5 of 1898), S. 222.

—To jury—See Criminal P. C. (5 of 1898), Ss. 297, 307.

CHARGE

—To jury, misdirection effect—See Criminal P. C. (5 of 1898), S. 537.
—To jury, Record of—See Criminal P. C., S. 367.
—Where offence doubtful — See Criminal P. C. (5 of 1988), S. 236.
—Withdrawal—See Criminal P. C. (5 of 1898), Ss. 240, 494.

CHARITABLE AND RELIGIOUS TRUSTS ACT (XIV of 1920)

——Applicability—See Civil P. C. (1908), S. 92.
AIR 1951 Pat 340.
—Preamble.
——Trust, how constituted.

To constitute a trust "created or existing for a public purpose of a charitable or religious nature" within the meaning of the Act, the author or authors of the trust must be ascertained, and the intention to create a trust must be indicated by words or acts with reasonable certainty. Moreover, the purpose of the trust, the trust property, and the beneficiaries must be indicated so as to enable the Court to administer the trust if required. (O'Sullivan and Thadani JJ.) Sham Das v. Gurmukh Singh,

AIR 1945 Sind 57=ILR (1945) Kar 40.

——Applicability of Act — Trust must be for public purposes and not merely incidentally — Trust mainly for worship of idol and incidentally for feeding sadhus and wayfarers.

For Act XIV of 1920 (Charitable and Religious Trusts Act) to apply to a trust, the trust must be substantially for public purposes. It is not sufficient if one of the purposes of a trust is public. A mere provision for the service of sadhus, occasional guests and wayfarers in a dedication to an idol does not render the dedication substantially for public purposes.

Where the main purpose of the trust is making provision for the due worship of the idol and performance of the necessary ceremonies, the feeding of sadhus and giving hospitality to occasional guests and wayfarers is inevitable. Where the worship of an idol is carried on, these duties are regarded in a sense as part of the due worship of the particular god. (Harries C. J. and Manohar Lall J.) Ram Saran Das v. Jai Ram Das,

A I R 1943 Pat 135=21 Pat 815=9 B R 273=15 R P 320=206 I C 214.

——Applicability.

In order to bring the matter within the purview of Charitable and Religions Trusts Act, the points which must be established are the same as the requirements of S. 92, Civil P. C. (Stone C. J. and Vivian Bose J.) Byankat Paikaji Lonari v. Ramchandra Mahadeo,

A I R 1941 Nag 317 = 1941 N L J 396=ILR (1942) Nag 468=14 R N 179=197 I C 602.

——Essentials for constituting trust for a public purpose of a charitable or a religious nature.

To constitute a trust "created or existing for a public purpose of a charitable or religious nature" within the meaning of the Charitable and Religious Trusts Act the author or authors of the trust must be ascertained, and the intention to create a trust must be indicated by words or acts with reasonable certainty. Moreover, the purpose of the trust, the trust property, and the beneficiaries must be indicated so as to enable the Court to administer the trust, if required :

Held, on facts and evidence that the institution and property attached to it was not the subject-matter of a trust for a public purpose of a charitable or religious nature. (Lord Wright, Lord Romer, Sir Lancelot Sanderson, Sir Shadi Lal and Sir George Rankin) Parma Nand v. Nihal Chand,

A I R 1938 P C 195=1938 O L R 309 = 1938 A L R 502=4 B R 673 = 11 R P C 6 = 42 C W N 1013 = 48 M L W 62=1938 O W N 693=65 I A 252 = 67 C L J 540=(1938) 2 M L J 228=40 P L R 829=1938 M W N 885=19 P L T 712=1938 A L J 799=40 Bom L R 907 =I L R (1938) Lah 453 = 32 S L R 821 = 175 I C 459 (PC).

CHARITABLE AND RELIGIOUS TRUSTS ACT (XIV of 1920), Preamble

——Interpretation of Act — Mussalman Wakf Act (XLII of 1923), if to be considered—Acts, if mutually exclusive.

The Charitable and Religious Trusts Act (XIV of 1920) was passed earlier and was applicable to persons of all creeds, whereas the Mussalman Wakf Act of 1923 was confined to Mussalmans only. The General Act has laid down certain provisions which are applicable to all trusts. The mere fact that the two Acts contain provisions which are overlapping would not necessarily justify an inference that the two Acts should necessarily be mutually exclusive. An examination of the two Acts shows that there is really no contradiction. The later Act is a special Act intended to apply to wakfs of the Mussalmans, which has more stringent provisions and can, in no way, derogate from the provisions of the earlier Act. There is no justification for trying to interpret the earlier Act of 1920 in the light of the later Act, which was intended to be applicable to one particular community only. It is true that the later Act deals with wakfs whether for purposes public, private, or partly private and partly public; but it does not follow that the earlier Act must deal with only such public trusts as are created by deeds in which there are no provisions for private purposes. (Sulaiman C. J. and Harries J.) Pratap Singh v. Brijnath Dass,

AIR 1937 All 786=1937 A L J 1183=10 R A 437= 1938 A L R 46=ILR (1938) All 1=1937A W R 373= 172 I C 945=1937 A W R 873.

——Applicability—Muhammadan wakf—Charity if public or private—Test—Intention of wakif.

The Charitable and Religious Trusts Act, 1920, applies only to those cases where the entire benefit under the wakf in trust is allotted to public purposes and not where the purpose of the trust is partly public and partly private. The Courts have to look to the real substance of the trusts. The question to be decided is whether the dedication in favour of the poor relations of the creator, destroyed the public nature of the trust. The intention of the wakif has to be taken into consideration in this behalf. That intention has to be gathered from the wakfnama itself. The test whether a charity is public or private is to see whether the class benefited is one which extends to a substantial body of the public. The extensiveness of the nature of the charity has to be kept in view in applying the test. (Guha and Bartley JJ.) Emdad Ali Chaudhuri v. Tabubulla,

AIR 1937 Cal 313=10 R C 522=173 I C 453.

——Validity of trust under Act—Tests—Held, deed could not be treated as title deed.

In order that a trust of a religious and charitable nature may be valid and enforceable according to law, certain material matters must be ascertainable. In the first place, it is material to ascertain the author or authors of the alleged trust. Next the intention to create a trust must be indicated by words or acts with reasonable certainty. The purpose of the trust, the trust property and the beneficiaries must be indicated in such a way that the trust could be administered by the Court if the occasion arose.

A trust deed was executed by certain members of the Central Council Radha Swami Satsang and the objects of the trust were that "the trustees named above or those

CHARITABLE AND RELIGIOUS TRUSTS ACT (XIV of 1920), Preamble

that may be appointed hereafter to succeed them, all of whom will hereafter be called 'trustees,' shall collect, preserve, administer, and if necessary, alienate the properties, moveable or immovable that have been or may hereafter be dedicated to the Supreme Being, Radha Swami Dayal, or that may be acquired for or presented to the Radha Swami Satsang and its branches in accordance with such directions as may, from time to time, be issued in this behalf by the said Council or the Sant Sat Guru for the time being, if any who is recognised as the representative of the Supreme Being, Radha Swami Dayal, and as such is the sole master of all moveable and immovable properties of the aforesaid Satsang, provided that Samadhs and places of public worship of the Radha Swami Satsang shall at no time be alienated" :

Held, (i) that the deed could not be treated as a title deed creating a legal trust :

(ii) that according to the tenets of the Radha Swami religion, and in consideration of the position and authority of the Sant Sat Guru, the complete and absolute submission of his followers to him and the teachings and doctrines, the followers of the true faith when making their gifts to the "Sant Sat Guru" whom they regarded as their spiritual head (whether he was the incarnation of the Supreme Being or only his representative) in accordance with the mandates of their religion, could not be supposed to have intended to create any trust and it could not be said that the donors of the gifts were the authors of the alleged public trust;

(iii) that the provisions in the deed were wholly inconsistent with any intention on the part of the "Sant Sat Guru" for the time being, to alter his position as "Sant Sat Guru" or to divest himself of the control of the property and to create a trust for a public purpose of a charitable or religious nature, such as is contemplated by the Act XIV of 1920, but on the other hand, the regulations relating to the Central Council and the provisions of the so-called "trust" deed were inconsistent with a desire on the part of the Sant Sat Guru to obtain the assistance of some of his followers in the management of the property, which was increasing as the years passed ;

(iv) that in view of the essential and unalterable doctrines of the faith with respect to the "Sant Sat Guru," his supremacy and his control over the offerings, by which the properties were acquired, it would be difficult to arrive at the conclusion that it was ever intended that such a trust as is contemplated by Act XIV of 1920, should be created.

[Doctrines, principles and tenets of the Radha Swami religion discussed.] (Lord Thankerton, Sir Lancelot Sanderson and Sir Shadi Lal) Patel Chhotabhai v. Jnan Chandra Basak,

AIR 1935 P C 97=1935 O W N 627=7 R P C 201=61 C L J 285=39 C W N 865=1935 M W N 625 = 69 M L J 1=1935 A L J 775=42 M L W 188=37 Bom L R 567=57 All 330=62 I A 146=155 I C 409 (PC).

——Application for accounts — Decision as to nature of property—Res judicata

The Charitable and Religious Trusts Act of 1920 authorises the District Judge to decide the question, whether the property is or is not devoted to public religious or charitable purposes. This, however, is only in order to enable him to determine whether he would or he would not order the respondents to file accounts. The proceedings are of a summary nature and do not fall within the definition of a suit, nor the decision operates as res judicata. (Jai Lal and Monroe JJ.) Prem Nath v. Hari Ram,

AIR 1934 Lah 771 = 36 P L R 13 = 7 R L 531 = 16 Lah 85=154 I C 229.

CHARITABLE AND RELIGIOUS TRUSTS ACT (XIV of 1920)

—S. 3.

——Application under S. 3—District Judge holding that trust was public one and ordering furnishing of accounts—Order is a decision in a summary proceeding and is not revisable. (Bennett J.) Nageshwar Dass v. Harnam Das

A I R 1942 Oudh 387=1942 O W N 337 = 15 R O 29 =1942 A W R CC 225=1942 O A 246=200 I C 611.

——Dedication to idol—Nature of trust—If should be by registered instrument.

There can be a trust in the case of dedication of property to an idol, though it is not the exact kind of trust which is contemplated by the English law. None the less they are trusts though of a special and peculiar kind. These are the sorts of trusts which the Charitable and Religious Trusts Act is intended to cover.

A dedication of property to an idol is not a gift and it can be accomplished without a registered instrument. (Stone C. J. and Vivian Bose J.) Byankat Paikaji Lonari v. Ramchandra Mahadeo

A I B 1941 Nag 317=1941 N L J 396=14 R N 179= I L R 1942 Nag 468=197 I C 602.

——Ss. 3, 12 — Application under S. 3 — Proceedings, nature of—Decision, if operates as res judicata.

The decision of the District Judge under the Charitable and Religious Trusts Act—a decision from which by S. 12 there is no appeal — is a decision in a summary proceeding which is not a suit nor of the same character as a suit ; it has not been made final by any provision in the Act ; and the doctrine of res judicata does not apply so as to bar a regular suit even in the case of a person who was a party to the proceedings under the Act.

The existence of a public trust is the foundation of the proceedings authorised by S. 3 of the Act ; prima facie while the District Judge may have to come to a decision upon this point in order to satisfy himself on the question of his own jurisdiction, he cannot by an erroneous decision thereon give himself jurisdiction. No matter how long or how peaceably an individual may have been in possession and enjoyment of property, it is always possible for persons claiming to be acting for the public to lay claim to the property as having been impressed with a trust of a charitable or religious nature. It would be both drastic and anomalous to provide that a person in possession, if not willing to bring a suit to establish his own title affirmatively, must be content to abide without right of appeal by the decision of the District Judge in a proceeding of this character. (Lord Macmillan, Sir George Rankin and Mr. Jayakar) Bhagwan Din v. Gir Har Saroop

A I R 1940 P C 7=1939 O W N 1078 = 6 B R 179= 12 R P C 89=1939 O L R 729=(1940) 1 M L J 1 = 51 M L W 4 = 1940 M W N 3 = 42 Bom L R 190 = 44 C W N 294=71 C L J 169=15 Luck 1=1940 Kar (PC) 25 Sup = 67 I A 1=42 P L R 457=185 I C 305 (PC).

——Order under S. 3—Revision.

Revision lies against an order passed under S. 3 of the Charitable and Religious Trusts Act. (Ziaul Hasan and Yorke JJ.) Ganga Ram Jaitley v. J. N. Jaitley

A I R 1938 Oudh 262=1938 O W N 1054=11 R O 92 =1938 O L R 467=1938 O A 800=1938 A W R C C 85 =178 I C 167.

——S. 3, Cl. (2)—Audit of—Direction as to accounts.

Under S. 3, Cl. (2), Charitable and Religious Trusts Act, the Court is enabled to direct the examination and audit of the accounts, in whosoever's hands the funds or the properties of the trust may be, quite apart from whether he is a trustee or not. (Agarwala and Varma JJ.) Ramsaroop Das v. Rameshwar Das

AIR 1938 Pat 280=4 B R 622=11 R P 5=19 P L T 639=175 I C 636.

CHARITABLE AND RELIGIOUS TRUSTS ACT (XIV of 1920), S. 3

——Applicability—Public trust but some income allotted for purposes not public.

If the trust is in substance a trust for public purposes, then even though part of the income might have been specifically allotted to purposes which cannot be regarded as public, the trust would nevertheless be for public purposes. On the other hand, if the trust is substantially for private purposes, then even though a small and negligible amount may be set apart for public purposes either in the present time or in a future eventuality, the trust in itself would not be for public purposes. But where under the same deed either a specified part of the property, for example, a defined share in property, or a specified part of the income has been definitely set apart for public purposes, then the mere fact that any other part of the property or any other specified part of the income is for private purposes would not take the case out of the provisions of the Charitable and Religious Trusts Act. (Sulaiman C. J. and Harries J.) Pratap Singh v. Brij Nath Das

A I R 1937 All 786=1937 A L J 1183=10 R A 437=1938 A L R 46=I L R (1938) All 1=1937 A W R 873=172 I C 945.

——Applicability—Deed containing trust, for a public and charitable purpose and also for a private purpose.

Section 3 applies to a deed which contains more than one trust, one of which may be a trust for a public purpose of a charitable or religious nature and the other for a private purpose. The words "constructive trust" in S. 3 further show that the trust to which the Act applies need not be an express trust for a public purpose, but it would apply also to a trust which, on the construction of the deed of trust, may be held to be a trust created for a public purpose of a charitable or religious nature. (Ganga Nath J.) Nageshwar Prasad Singh v. Ram Sarup Singh

A I R 1936 All 411=1936 A L J 546 = 8 R A 948 = 1936 A L R 536=1936 A W R 420=163 I C 234.

——Order under S. 3, whether revisable—Civil Procedure Code, S. 115—Mosque held public trust — Punjab Courts Act (VI of 1918), S. 44.

The provisions of S. 115, C. P. C. and S. 44, Punjab Courts Act, are very wide and an order of the District Judge under S. 3, Charitable and Religious Trusts Act should be revisable.

A mosque built with public subscriptions was used by the Muhammadan public for offering prayers. In fact the respondent mutawalli who was a party to a certain compromise relating to this very mosque admitted therein that it was a "religious trust" within the meaning of S. 3, Act XIV of 1920 :

Held that the mosque was a public trust and that an application under S. 3, Charitable and Religious Trusts Act, calling upon the respondent to furnish certain information should be decided on merits. (Bhide J.) Muhammad Yar v. Khalil-ul-Rahman

A I R 1936 Lah 695=38 P L R 900 = 9 R L 281 (1) =17 Lah 768=165 I C 664 (1).

——Public trust or endowment—Essentials of.

To constitute a valid public trust or endowment there must be proof of a grant with the intention that the profits should be utilised for the services of the idol, and that the members of the family of the founder had not treated the property as their own personal property, the income of which would be applied for their own personal benefit. (Nanavutty and Ziaulhasan JJ.) Har Saroop v. Bhagwandin

A I R 1935 Oudh 96=7 R O 250=1934 O L R 890 = 11 O W N 1435=152 I C 861.

CHARITABLE AND RELIGIOUS TRUSTS ACT (XIV of 1920), S. 3

——Person interested.

Members of the general public who worship at religious institution are persons interested in the public trust for the purposes of Act XIV of 1920. (Coldstream and Hilton JJ.) Nihal Chand v. Narain Das

A I R 1934 Lah 949=36 P L R 162=7 R L 748=155 I C 620.

——Ss. 3, 5 — Applicability of Act to wakfs — Trust, meaning of—Denial that wakf is a trust—Effect.

Religious endowments created for public purposes of a charitable or religious nature either by Hindus or by Muhammadans are not trusts in the strict sense of the term as understood in English law. The term 'trust', however, is used in Act XIV of 1920 and in other Acts of the Legislature, and the term so used does not bear the strict English significance and is indiscriminately used to signify endowments for religious and charitable purposes.

The District Judge has, therefore, jurisdiction to proceed under the Charitable and Religious Trusts Act, 1920, in respect of a wakf the bulk of the income of which is devoted to public and charitable purposes.

Where the opposite party does not deny that there is a wakf but only denies that they are trustees and that the wakf is a trust within the meaning of Act XIV of 1920, it is open to the District Judge to proceed under that Act. (Kulwant Sahay and Macpherson JJ.) Ali Hussain v. Akhtari Begum

A I R 1931 Pat 354 = 10 Pat 506 = 12 P L T 793 = Ind Rul 1931 Pat 449=134 I C 417.

—S. 5.

——Trust denied by non-applicant — Jurisdiction of District Judge—Order if operates as res judicata.

The provisions under the Charitable and Religious Trusts Act are wider than those under the Mussalman Wakf Act.

The jurisdiction of the District Judge to decide the question as to the existence of a trust (wakf) is not ousted by the mere denial of trust by the non-applicant or by his setting up an adverse title.

The order of the Court is passed in a summary proceeding. It does not operate as res judicata, nor does it preclude the persons aggrieved from filing a suit. (Sen J.) Kubrahi v. Snbrati

A I R 1944 Nag 190 = I L R (1944) Nag 775 = 1944 N L J 170=220 I C 57.

——Trespasser—Remedy of mutwalli.

Limitation is a matter of procedure and the Limitation Act, 1908, applies to immovables made wakf under the Muhammadan Law. The remedy of the mutwalli against a person claiming adversely to trust is to file a suit for ejectment and recovery of mesne profits against the trespasser and not an application under the Act. (Sen J.) Kubrahi v. Shubrati

A I R 1944 Nag 190=1944 N L J 170=I L R (1944) Nag 775=220 I C 57.

——Cause of action against trustee terminates by his death.

The right to demand accounts from an alleged trustee is a personal right available against him. That right will not survive as against his widow and daughters but will terminate by death of the trustee. (Sen J.) Kubrahi v. Shubrati

A I R 1944 Nag 190=1944 N L J 170 = I L R (1944) Nag 775=220 I C 57.

——S. 5 (3) — Suit by shebait — Shebait in possession—Onus is on person alleging that property is trust property.

Where the shebaits of an idol bring a suit under S. 5 (3), Charitable and Religious Trusts Act, for a declaration that the Act did not apply to the properties and the properties are admittedly in possession of the shebaits on behalf of the idol, onus is on the party alleging that the property is

CHARITABLE AND RELIGIOUS TRUSTS ACT (XIV of 1920), S. 5

trust property held for public purposes. (Harries C. J. and Manohar Lall J.) Ramsaran Das v. Jai Ram Das

A I R 1943 Pat 135=21 Pat 815=9 B R 273=15 R P 320=206 I C 214=I L R 21 Pat 815.

——Suit referred to in S. 5 (3) not filed — District Judge, if can himself decide question — Civil P. C., S. 115.

In a case when no such undertaking to institute a suit for a declaration, as referred to in S. 5 (3) of the Act is given, sub-cl. (4) of the section applies and the Court shall itself decide the question. The section thus in terms gives the Court of the District Judge jurisdiction to decide the question whether the trust is one to which the Act applies. Where, therefore, the District Judge so exercises a jurisdiction vested in him by law and there is no illegality, or material irregularity, no application under S. 115, Civil P. C., against his order shall be entertained (Ziaul Hasan and Yorke JJ.) Ganga Ram Jaitely v. J. N. Jaitley,

A I R 1938 Oudh 262 = 11 R O 92 = 1938 O L R 467=1938 O W N 1054=1938 O A 800=1938 A W R C C 85=178 I C 167.

——Order under S. 5—Revision lies.

An application for revision lies against an order passed under S. 5, Charitable and Religious Trusts Act. (Ganga Nath J.) Nageshwar Prasad Singh v. Ram Sarup Singh,

AIR 1936 All 411=1936 A L J 546=1936 A L R 536 =8 R A 948=163 I C 234=1936 A W R 420.

——Madras Hindu Religious Endowments Act of 1927 does not take away the jurisdiction of the District Judge to take action under the Charitable and Religious Trusts Act in respect of a religious endowment.

The fact that the Madras Hindu Religious Endowment Board had shown no inclination to exercise its powers under the Madras Hindu Religious Endowments Act is a good reason for the District Judge for taking action under the Charitable and Religious Trusts Act. (Beasley C. J. and King J.) Srielasri Thirugana v. Kannuchami Pillai,

AIR 1935 Mad 56 (1)=7 R M 309=40 M L W 920= =68 M L J 55=152 I C 1052.

——Question of title — Jurisdiction — Decision if conclusive.

As there is no express provision in Act XIV of 1920, making the decision of the District Judge under S. 5 of the Act final and conclusive, that decision will not debar the party that is unsuccessful before him from filing a declaratory suit challenging the correctness of his order in a regular suit and it is for the party who seeks to oust the jurisdiction of the Civil Court to establish that contention of his. (Nanavutty and Ziaulhasan JJ.) Har Saroop v. Bhagwan Din,

AIR 1935 Oudh 96=11 O W N 1435 = 7 R O 250 = 1934 O L R 890=152 I C 861.

——Order under S. 5—Regular suit to establish title.

An order passed by the District Judge under S. 5 of the Act does not debar the opposing party from filing a regular suit afterwards to establish his title. (N. J. Wadia J.) Haidarali Gulamali v. Ghulam Mohiuddin,

AIR 1934 Bom 343 =36 Bom L R 687= 7 R B 180= 58 Bom 623=152 I C 781.

——Ss. 5, 3 — Petition under S. 3 — Claim adverse to trust if ousts jurisdiction of Court.

It is not the intention of S. 5 (6) Charitable and Religious Trusts Act, that the moment a claim adverse to the trust is advanced, the jurisdiction of the Court should be ousted. If a person claims to hold adversely to the trust, it is open to him to take advantage of the concession given to him by S. 5, sub-s. (3), and to get the question determined by a regular suit. If he does not claim this concession, or if, having claimed it, he does not avail himself of it, the Court must decide for itself whether a trust exists. But the Court is precluded from trying or determining any question of title between the petitioner and the party claiming adversely to the trust. (N. J. Wadia J.) Haidarali Gulamali v. Ghulam Mohiuddin,

AIR 1934 Bom 343= 36 Bom L R 687=7 R B 180 = 58 Bom 623=152 I C 781.

——Before passing an order under S. 5 (5), finding under S. 5 (1) is necessary. (Cornish J.) Kotta Sanyasayya Naidu v. Vemula,

1934 M W N 205.

—S. 6.

——Scope.

The terms of S. 6 of the Act are intended to define the consequences of an order made by the District Judge directing the persons to furnish particulars of the property, etc., but the words "if a trustee without reasonable excuse fails to comply" in S. 6 cannot be read to exclude a contention in a regular suit that the plaintiff is not a trustee or to prevent a similar contention being raised by a defendant to a suit under S. 92 of the Civil P. C. (Lord Macmillan, Sir George Rankin and Mr. Jayakar) Bhagwan Din v. Gir Har Saroop,

AIR 1940 P C 7=1939 O W N 1078= 6 B R 179=12 R P C 89 = 1939 O L R 729 = (1940) 1 M L J 1 = 51 M L W 4 = 1940 M W N 3 = 42 Bom L R 199 = 44 C W N 294=71 C L J 169=15 Luck 1=67 I A 1=ILR (1940) Kar (P C) 25=42 P L R 457= 185 I C 305 (PC).

——Disobedience of order of District Judge to produce accounts — Suit under S. 92, Civil P. C. — Sanction of Advocate General, if necessary — Withdrawal of plaintiff obtaining permission — Other plaintiffs can proceed with suit.

Under S. 6 of the Charitable and Religious Trusts Act once the breach referred to in that section is committed by the disobedience of an order passed by the District Judge for production of accounts, a suit so far as it is based on such disobedience may be instituted under S. 92, without the sanction of the Advocate-General and it is not necessary that the suit under S. 92 should be instituted only by the person who secures the order from the District Court:

If the plaintiff who has obtained permission under S. 6 of the Act to institute a suit under S. 92, Civil P. C., drops out, it is open to the other plaintiffs who had joined with him in instituting the suit to proceed with the suit. (Madhavan Nair and Jackson JJ.) Kalavacherla Bapiraju v. Ramacharandas Bavajee,

AIR 1933 Mad 854= 1933 M W N 1286 = 65 M L J 690 = 38 M L W 730 = 57 Mad 153 = 6 R M 301 = 146 I C 628 (2).

—S. 7.

——Scope of—Dispute between two brothers mutawallis of wakf—District Judge appointing third person for collection of profits—One brother refusing to execute power of attorney in favour of agent—Court itself doing it.

It is not intended by S. 7, Charitable and Religious Trusts Act, that a District Judge should have any power to compel a trustee to follow his advice given under this section or to carry out any direction so given. The trustee is entitled to seek advice for his own protection and if he follows that advice, he is protected, but if he does not choose to follow it, he cannot be compelled to do so, although his failure to follow it would be at his own risk.

On a dispute between two brothers, who were mutawallis of certain wakf as regards profits, the District Judge appointed a third person to manage the property. He directed the brothers to execute the power of attorney in favour of the third person, for the purposes of collec-

CHARITABLE AND RELIGIOUS TRUSTS ACT (XIV of 1920), S. 7

tion. On refusal of one of them, the District Judge himself executed the power of attorney :

Held, that the action of the District Judge was without jurisdiction and the person had no right to collect the profits at all, and if he collected them, he was liable to be called to account by the person who was entitled.

Held, also that the District Judge was acting merely on behalf of the brother and the person appointed by the Court was in the same position as he would have been if the brother had executed the power of attorney himself.

Held further, that the agent was liable to be sued for profits without the issue of any notice under S. 80, Civil P. C. (Allsop J.) Abdul Rob v. Muhammad Hasan Khan,

AIR 1936 All 801=1936 A L J 1112=1936 A L R 948 =9 R A 296=165 I C 681=1936 A W R 1012.

——Trustee, if can apply to Civil Court for opinion, advice or direction.

A trustee of an express or constructive trust created or existing for a public purpose of a charitable or a religious nature can apply by petition to the Civil Court, within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, for the opinion, advice or direction of the Court on any question affecting the management or administration of the trust property, and the Court shall give its opinion, advice or direction, as the case may be, thereon. (Bennet and Bajpai JJ.) Madho Ram v. Jai Chand Rai,

A I R 1935 All. 350 = 4 A W R 111 = 1935 A L R 481=7 R A 999=155 I C 933.

——Revision.

Order by District Judge on application under S. 7 cannot be treated as a decree and is not appealable. But where there has been a material irregularity in the exercise of jurisdiction and the case has certainly been decided, High Court will interfere in revision. (Sulaiman C. J. and Ganga Nath J.) Ahmad Ullah Khan v. Ahsan Ali Khan,

A I R 1935 All. 147=8 R A 386 = 1935 A L J 113= 1931 A L R 1064=159 I C 64=1935 A W R 46.

——District Judge not allowing parties to produce evidence—Material irregularity.

When an application is filed under S. 7, Charitable and Religious Trusts Act, the District Judge should not express an opinion without allowing the parties to produce evidence and without going into the points in controversy. Where he disposes of the matter without doing so, it constitutes a material irregularity in exercise of jurisdiction. (Sulaiman C. J. and Ganga Nath J.) Ahmad Ullah Khan v. Ahsan Ali Khan,

A I R 1935 All. 147= 1935 A L J 113 = 1935 A L R 1064=8 R A 386=159 I C 64=1935 A W R 46.

CHARTER ACT 1861 (24 & 25 Vict. c 104)

See under Indian High Courts Act, 1861, (24 & 25 Vict. c 104).

CHARTERED ACCOUNTANTS ACT (XXXVIII of 1949)

—S. 8.

——S. 8 (vi) and S. 20 (2) have to be read with S. 21 (3) —See ibid, S. 21 (3)

A I R 1952 Nag 393=1953 Cr L J 46.

—S. 20.

——S. 20 (2) — Power of High Court to award punishment — Different ways of punishment — Duty of the Council—See ibid, S. 21 (3)

A I R 1952 Nag 393 = 1953 Cr L J 46.

CHARTERED ACCOUNTANTS ACT (XXXVIII of 1949)

—S. 21.

——Ss. 21 (3), 8 (vi), 20 (2) — Provisions are to be read together—Power of High Court to award punishment.

It is not correct to say that the High Court has no alternative but to order removal of the name of a member from the register if it affirms the finding of the Council to the effect that the member is guilty of conduct which renders him unfit to be a member of the institute. It is true that there is no express provision in the Chartered Accounts Act for temporary removal or reinstatement. However, S. 8 (vi) and S. 20 (2) have to be read with S. 21 (3). The power of the High Court in the exercise of disciplinary jurisdiction under S. 21 (3) is unfettered. The High Court is empowered to award punishment by way of censure, reprimand, suspension or removal of a member.

If the final order of the Court requires the removal of the name of the defaulting member, the Council is bound to carry out that order under S. 20 (2) of the Act and the member will not be entitled to have his name borne on the Register. Nor will he be entitled to have his name again entered on the Register (Section 8 (vi) unless so permitted by the High Court Regulation 13). The two provisions contained in S. 8 (vi) and S. 20 (2) do not thus limit the powers of the High Court, but prescribe the duty of the Council to carry out the order and the right of the member to be readmitted in accordance with the order of the High Court.

(Note : In this reference the High Court was of the opinion that the proper punishment would be to remove the name of the member from the Register with liberty to him to make an application for restoration of his name to the Register in accordance with the Regulations framed under the Act.) (Mangalmurti and Deo JJ.) Ambekar W. G., In re,

A I R 1952 Nag. 393=1953 N L J 221=I L R (1953) Nag. 324=1953 Cr L J 46.

CHARTS

—Presumptions in connection with—See Evidence Act (1 of 1872), S. 87.

—Statements in, relevancy of—See Evidence Act (1 of 1872), S. 36.

CHEATING

—And inducing to deliver property—See Penal Code (45 of 1860), S. 420.

—By personation—See Penal Code (45 of 1860), Ss. 416, 420.

—By personation, punishment for—See Penal Code (45 of 1860), S. 419.

—Defined—See Penal Code (45 of 1860), S. 415.

—Punishment for—See Penal Code (45 of 1860), S. 417.

—With loss to one entitled to protection by offender—See Penal Code (45 of 1860), S. 418.

CHEMICAL EXAMINER'S REPORT

See Criminal P. C., S. 510.

CHILD

See (1) Fatal Accidents Act.
(2) Oaths Act, S. 13.

—Exposure or abandonment of—See Penal Code (45 of 1860), S. 317.

—Employment of, in factory —See Factories Act (1934) Ss. 50-59 and Factories Act (1948), Ss. 67-77.

CHILD

—Evidence of—See Evidence Act, S. 118.
—Immunity, from punishment—See Penal Code (45 of 1860), Ss. 82, 83.
—In mother's womb — See Penal Code (45 of 1860), S. 299, Expl. 3.
—Maintenance—See Criminal P. C., Ss. 488-490.
—Offence by.
See (1) Penal Code, S. 83.
(2) Reformatory Schools Act (1897).

CHILD MARRIAGE RESTRAINT ACT (XIX of 1929)

——Application in administration suit to spend money on marriage expenses of minor plaintiff — Marriage against provisions of Child Marriage Restraint Act — Parties to marriage domiciled in Bikanir—Marriage to be performed in Bikanir—Source of income in British India :

Held, application should not be granted as it would amount to facilitating conduct which in British India is illegal, though it would not be so in Bikanir. (M. C. Nair J.) Hansraj Bhuteria v. Askaran Bhuteria,

A I R 1941 Cal. 244=14 R C 9=194 I C 730.

—— Scope—Validity of marriage not affected.

A distinction must be observed between the performance of the act and the act itself. The Child Marriage Restraint Act aims at the restraint of the solemnization of child marriages. It does not affect the validity of the marriages after they have been performed. (Bennet and Ganga Nath JJ.) Ram Baran Upadhiya v. Sital Pathak,

AIR 1939 All 340 = 1939 A L J 173 = 12 R A 72 = 1939 A W R 246=182 I C 568.

——Scope—If extra-territorial.

The Child Marriage Restraint Act as well as the Penal Code are extra-territorial to the extent that if native Indian subjects commit offences punishable under these laws even outside British India, they are liable to be tried and punished when found in British India. (Pandrang Row J.) Sreeramamurthy v. Ranganayakulu,

AIR 1937 Mad 273 = 1937 M W N 22 = 45 M L W 210=(1937) 1 M L J 388 = 9 R M 628 = 168 I C 736= 1937 M Cr C 98=1937 M W N Cr 6=38 Cr L J 587.

——Scope.

It is true that the celebration of marriage of child of 12-13 years may contravene the provisions of the Child Marriage Restraint Act of 1929; but such marriage is not declared by the Act to be invalid. The Act merely imposes certain penalties on persons bringing about such marriages. (Thom J.) Moti v. Beni,

AIR 1936 All 852=1936 A L J 1097=1937 A L R 90 =9 R A 455 = 1936 Cr Cas 1111 = 165 I C 847=38 Cr L J 301.

——Scope—Minor's estate in hands of Receiver — Marriage in contravention of Act to be performed at place where it is not prohibited — Court, if can sanction expenditure.

Even assuming that the parties to the intended marriage are not British subjects and are domiciled out of British India, it would surely be wrong in principle for the Court to facilitate conduct which the Legislature has made penal as being socially injurious, on the ground that the promotion of the contemplated marriage is not punishable by the law of the place where it is proposed to celebrate it. More so, when the minor's estate is in the hands of the Receiver appointed by the Court and where the property, from which the funds for the marriage are sought to be obtained, is in the hands of the Court, through its Receiver the Court ought not to sanction it being used for a purpose, of which the Legislature has so clearly expressed its disapproval. (Pankridge J.) Panmull Lodha v. Gadhmull Lodha,

AIR 1937 Cal 257 = 10 R C 147 = 63 Cal 1153=170 I C 309.

——Scope.

There is no rule of Hindu Law sanctioning early marriage. Sanction by usage also has been disapproved by the passing of the Act. (Mukherjea J.) Ramjas Agarwala v. Chand Mandal,

I L R (1937) 2 Cal 764 = 65 C L J 557 = 41 C W N 1176.

——Prosecution — Failure to prove girl's age — False complaint.

In a prosecution under the Sarda Act, it is the duty of the prosecution to establish that the girl in question was below 14 at the time of her marriage, but for awarding compensation under S. 250, the position is the reverse. There ought to be evidence before the Magistrate for a positive finding that the complainant's allegation that the girl was below 14 at the time of her marriage was false. The mere fact that the evidence produced by the complainant in support of his allegation was unreliable or inconclusive will not justify the opposite finding that the allegation was false. In the absence of definite evidence showing the age of the girl, it is impossible to say that the complainant's allegation that the girl was below 14 at the time of her marriage is false. All that can be said is that he failed to prove his allegation. It does not necessarily follow that his allegation was false. (Niamat Ullah J.) Bechan Prasad v. Jhuri,

AIR 1936 All 363 = 1936 Cr Cas 427 = 8 R A 714= 1936 A L R 248 = 1936 A L J 189=161 I C 49=37 Cr L J 424 (2).

——Possession of wife below 14 years, by force.

To obtain the benefit of exception in S. 89, Penal Code, it is necessary to show that the act was for the benefit of the minor wife not attaining age of puberty—Husband desiring to take her possession presumably for purpose of sexual intercourse — Act is not for her benefit — It is against the policy of Act 19 of 1929 that a husband should obtain possession of his wife, if she has not attained the age of 14 years. Although for husband to take his wife would not be an offence, he has no legal right to cause injury, fear, and annoyance to her by using criminal force and his right can be enforced by having recourse to the Court, and not by use of force. (Bennet J.) Nanku v. Emperor,

AIR 1935 All 916 = 1935 Cr Cas 1133 = 1935 A L J 1096=1935 A L R 1078=8 R A 400=17 L R A Cr 30= 159 I C 183=37 Cr L J 35.

——Applicability—Marriage, whether should be valid.

The Child Marriage Restraint Act aims at and deals with the restraint of the performance of the marriage. It has nothing to do with the validity or invalidity of the marriage. The question of the validity or invalidity of the marriage is beyond the scope of the Act. Consequently, the Act applies even where the parties to the marriage belong to the same 'gotra.' (Ganga Nath J.) Munshi Ram v. Emperor.

AIR 1936 All 11 = 1935 A L R 1035 = 8 R A 353 = 1935 A L J 1166=1936 Cr Cas 14=58 All 402=158 I C 1007=36 Cr L J 1483.

——Summary trial for offences — Whether permitted—Criminal P. C., Ss. 260 (1) (a), 4 (1) (o).

A trial under the Child Marriage Restraint Act may be summary, as it is permitted by S. 260 (1) (a), Criminal P. C., as the offences charged come under the heading "offences not punishable with imprisonment for a term exceeding six months." Section 4 (1) (o), Criminal

CHILD MARRIAGE RESTRAINT ACT (XIX of 1929)

P. C., states that "offence" means any act or omission made punishable by any law for the time being in force. Therefore, an offence under any law such as the Child Marriage Restraint Act will come under this provision in S. 260 (1) (a), Criminal P. C. (Bennet J.) Jwala Prasad v. Emperor,

AIR 1934 All 331 = 1934 A L R 387 = 6 R A 693= 1934 Cr Cas 414 (2)=148 I C 351=35 Cr L J 677 (2).

——'Ultra vires.'

So far as Hindus are concerned the Child Marriage Restraint Act is not 'ultra vires.' (Macpherson J.) Jalsi Kuar v. Emperor,

AIR 1933 Pat 471=14 P L T 438=1933 Cr Cas 1027 =6 R P 248=146 I C 298=35 Cr L J 20.

——Sentence.

Obiter. — The Courts are not at liberty to treat the Act as a legislative imposture and manifestly, if it is to be effective, the sentence upon the priest or other celebrant without whose aid ordinarily no infringement of the Act is possible, should be such as to deter other avaricious members of his caste from following his example. (Macpherson J.) Jalsi Kuar v. Emperor,

AIR 1933 Pat 471=1933 Cr Cas 1027 = 6 R P 248= 14 P L T 438=146 I C 298=35 Cr L J 20.

——Intention to give child in marriage — Whether 'unlawful purpose.'

An intention to give a child in marriage in contravention of Act XIX of 1929 is an 'unlawful purpose' within the exception to S. 361, Penal Code, on the ground that if the purpose is carried out the person giving the child in marriage is liable to conviction and punishment for a criminal offence. (Page C. J., Das, Mya Bu, Brown and Dunkley JJ.) Khalilur Rahman v. Emperor,

AIR 1933 Rang 98=Ind Rul (1933) Rang 81 = 1933 Cr Cas 573 (2)=11 Rang 213 = 143 I C 872=34 Cr L J 696 (FB).

——Complaint under.

Complaint not inculpating complainant — Magistrate deputed for local investigation—In his report, Magistrate recommending prosecution of complainant also under section 6 :

Held, that the report constituted a complaint and the District Magistrate could take cognizance on it. (James J.) Sukha Sahu v. Emperor,

AIR 1933 Pat 87 = 13 P L T 791 = Ind Rul (1933) Pat 91=141 I C 810=34 Cr L J 237.

——Proceeding for appointment of guardian—Injunction against father preventing marriage of girl in contravention—Guardians and Wards Act, 1890.

Where a relation of the mother of a girl applied to be appointed the guardian of the girl and obtained an injunction against the father of the girl restraining him from giving her in marriage in contravention of the provisions of the Child Marriage Restraint Act, and the father gave the girl in marriage notwithstanding the injunction and it was contended on behalf of the father that the Court had no jurisdiction to issue the injunction and that he did not receive any notice of the injunction before the marriage :

Held, that the father was entitled to an opportunity to prove that he had not received the notice before the marriage.

Quære : — Whether the Court has jurisdiction in a proceeding under the Guardians and Wards Act to issue an injunction restraining the father from giving the girl in marriage. (Mitter and S. K. Ghose JJ.) Basant Kumar Das v. Nagendra Nath Pal,

AIR 1932 Cal 719=Ind Rul (1932) Cal 301=137 I C 425.

CHILD MARRIAGE RESTRAINT ACT (XIX of 1929)

—S. 4.

——Certificate by private medical officer that girl is 14 years of age — Civil Surgeon finding the girl to be only 12 years old—Offence, if committed.

Where in a case under the Child Marriage Restraint Act, the defence put forward was that the applicants were misled by a certificate granted by the woman medical officer in charge of a hospital to the effect that the girl was not less than 14 years of age, but according to the Civil Surgeon, the girl was about 12 years of age only and no evidence was produced to contradict the Civil Surgeon :

Held, that the applicant should have gone to the Civil Surgeon in order to obtain a certificate and that the fact of their having secured a certificate from the woman medical officer was not material although the existence of the certificate was a matter which might be taken into account in considering whether imprisonment or fine should be ordered. (Bennet J.) Jwala Prasad v. Emperor,

AIR 1934 All 331 = 1934 A L R 387=6 R A 693 = 1934 Cr Cas 414 (2)=148 I C 351=35 Cr L J 677 (2).

——Ss. 4, 5, 6 — Conviction under—Parties to marriage Rajputs—Deterrent sentence against priest — Necessity of — Government of India Act, 1915 (5 & 6 Geo. V. Ch. 61) S. 67 (2B)

Where the mother of a Rajput girl of seven years of age, the bridegroom and the priest who conducted the marriage were convicted under Ss. 6, 4 and 5, Child Marriage Restraint Act, respectively and in revision it was urged that the Act was ultra vires of the Indian Legislature, previous sanction of the Governor-General in Council not having been given to the Bill as passed :

Held, that the contracting parties in the case being Rajputs who were unquestionably Hindus of high caste, they came within the scope of the original Bill; and that it was safe to hold that the changes introduced in the Select Committee were not such as to render inadequate the "previous sanction" accorded by the Governor-General or the introduction of the Bill unlawful, (Macpherson J.) Jalsi Kuar v. Emperor

AIR 1933 Pat 471 = 14 P L T 438 = 1933 Cr Cas 1027 = 6 R P 248 = 146 I C 298 = 35 Cr L J 20.

—S. 5.

——Property alienated for marriage expenses of minor son of vendor — See Custom (Punjab)—Ancestral Property.

AIR 1949 East Pnnj 354.

——Interpretation — "Perform, conduct or direct" child marriage.

The words 'perform, conduct or direct' in S. 5, Child Marriage Restraint Act, bear the same import and mean working towards the end, that is completing the union; and are used by the Legislature to indicate the solemnization of the marriage. That is the ordinary interpretation of those words. They do not suggest the arranging of marriage merely or attending a marriage ceremony with a view to assisting in the solemnization of the marriage. The mere participation by parents in the ceremony of 'kanyadan would not offend against the provisions of S. 5. (Beaumont C. J. and Wassoodew J.) Emperor v. Fulabhai Bhulabhai

AIR 1940 Bom 363 = 42 Bom L R 857=ILR (1940) Bom 709=13 R B 132=190 I C 794 = 42 Cr L J 62.

——Ss. 5, 6—Offence under—Essentials.

In cases of complaints under Ss. 5 and 6 of the Child Marriage Restraint Act, it is essential that the trying Magistrate should find definitely that either or both of the contracting parties to the marriage were infants within the meaning of the Act, that is to say, that the bride-

CHILD

—Evidence of—See Evidence Act, S. 118.
—Immunity, from punishment—See Penal Code (45 of 1860), Ss. 82, 83.
—In mother's womb — See Penal Code (45 of 1860), S. 299, Expl. 3.
—Maintenance—See Criminal P. C., Ss. 488-490.
—Offence by.
See (1) Penal Code, S. 83.
(2) Reformatory Schools Act (1897).

CHILD MARRIAGE RESTRAINT ACT (XIX of 1929)

——Application in administration suit to spend money on marriage expenses of minor plaintiff — Marriage against provisions of Child Marriage Restraint Act — Parties to marriage domiciled in Bikanir—Marriage to be performed in Bikanir—Source of income in British India :

Held, application should not be granted as it would amount to facilitating conduct which in British India is illegal, though it would not be so in Bikanir. (M. C. Nair J.) Hansraj Bhuteria v. Askaran Bhuteria,

A I R 1941 Cal. 244=14 R C 9=194 I C 730.

——Scope—Validity of marriage not affected.

A distinction must be observed between the performance of the act and the act itself. The Child Marriage Restraint Act aims at the restraint of the solemnization of child marriages. It does not affect the validity of the marriages after they have been performed. (Bennet and Ganga Nath JJ.) Ram Baran Upadhiya v. Sital Pathak,

AIR 1939 All 340 = 1939 A L J 173 = 12 R A 72 = 1939 A W R 246=182 I C 568.

——Scope—If extra-territorial.

The Child Marriage Restraint Act as well as the Penal Code are extra-territorial to the extent that if native Indian subjects commit offences punishable under these laws even outside British India, they are liable to be tried and punished when found in British India. (Pandrang Row J.) Sreeramamurthy v. Ranganayakulu,

AIR 1937 Mad 273 = 1937 M W N 22 = 45 M L W 210=(1937) 1 M L J 388 = 9 R M 628 = 168 I C 736= 1937 M Cr C 98=1937 M W N Cr 6=38 Cr L J 587.

——Scope.

It is true that the celebration of marriage of child of 12-13 years may contravene the provisions of the Child Marriage Restraint Act of 1929; but such marriage is not declared by the Act to be invalid. The Act merely imposes certain penalties on persons bringing about such marriages. (Thom J.) Moti v. Beni,

AIR 1936 All 852=1936 A L J 1097=1937 A L R 90 =9 R A 455 = 1936 Cr Cas 1111 = 165 I C 847=38 Cr L J 301.

——Scope—Minor's estate in hands of Receiver — Marriage in contravention of Act to be performed at place where it is not prohibited — Court, if can sanction expenditure.

Even assuming that the parties to the intended marriage are not British subjects and are domiciled out of British India, it would surely be wrong in principle for the Court to facilitate conduct which the Legislature has made penal as being socially injurious, on the ground that the promotion of the contemplated marriage is not punishable by the law of the place where it is proposed to celebrate it. More so, when the minor's estate is in the hands of the Receiver appointed by the Court and where the property, from which the funds for the marriage are sought to be obtained, is in the hands of the Court, through its Receiver the Court ought not to sanction it being used for a purpose, of which the Legislature has so clearly expressed its disapproval. (Pankridge J.) Panmull Lodha v. Gadhmull Lodha,

AIR 1937 Cal 257 = 10 R C 147 = 63 Cal 1153=170 I C 309.

CHILD MARRIAGE RESTRAINT ACT (XIX of 1929)

——Scope.

There is no rule of Hindu Law sanctioning early marriage. Sanction by usage also has been disapproved by the passing of the Act. (Mukherjea J.) Ramjas Agarwala v. Chand Mandal,

I L R (1937) 2 Cal 764 = 65 C L J 557 = 41 C W N 1176.

——Prosecution — Failure to prove girl's age — False complaint.

In a prosecution under the Sarda Act, it is the duty of the prosecution to establish that the girl in question was below 14 at the time of her marriage, but for awarding compensation under S. 250, the position is the reverse. There ought to be evidence before the Magistrate for a positive finding that the complainant's allegation that the girl was below 14 at the time of her marriage was false. The mere fact that the evidence produced by the complainant in support of his allegation was unreliable or inconclusive will not justify the opposite finding that the allegation was false. In the absence of definite evidence showing the age of the girl, it is impossible to say that the complainant's allegation that the girl was below 14 at the time of her marriage is false. All that can be said is that he failed to prove his allegation. It does not necessarily follow that his allegation was false. (Niamat Ullah J.) Bechan Prasad v. Jhuri,

AIR 1936 All 363 = 1936 Cr Cas 427 = 8 R A 714= 1936 A L R 248 = 1936 A L J 189=161 I C 49=37 Cr L J 424 (2).

——Possession of wife below 14 years, by force.

To obtain the benefit of exception in S. 89, Penal Code, it is necessary to show that the act was for the benefit of the minor wife not attaining age of puberty—Husband desiring to take her possession presumably for purpose of sexual intercourse — Act is not for her benefit — It is against the policy of Act 19 of 1929 that a husband should obtain possession of his wife, if she has not attained the age of 14 years. Although for husband to take his wife would not be an offence, he has no legal right to cause injury, fear, and annoyance to her by using criminal force and his right can be enforced by having recourse to the Court, and not by use of force. (Bennet J.) Nanku v. Emperor,

AIR 1935 All 916 = 1935 Cr Cas 1133 = 1935 A L J 1096=1935 A L R 1078=8 R A 400=17 L R A Cr 30= 159 I C 183=37 Cr L J 35.

——Applicability—Marriage, whether should be valid.

The Child Marriage Restraint Act aims at and deals with the restraint of the performance of the marriage. It has nothing to do with the validity or invalidity of the marriage. The question of the validity or invalidity of the marriage is beyond the scope of the Act. Consequently, the Act applies even where the parties to the marriage belong to the same 'gotra.' (Ganga Nath J.) Munshi Ram v. Emperor.

AIR 1936 All 11 = 1935 A L R 1035 = 8 R A 353 = 1935 A L J 1166=1936 Cr Cas 14=58 All 402=158 I C 1007=36 Cr L J 1483.

——Summary trial for offences — Whether permitted—Criminal P. C., Ss. 260 (1) (a), 4 (1) (o).

A trial under the Child Marriage Restraint Act may be summary, as it is permitted by S. 260 (1) (a), Criminal P. C., as the offences charged come under the heading "offences not punishable with imprisonment for a term exceeding six months." Section 4 (1) (o), Criminal

CHILD MARRIAGE RESTRAINT ACT (XIX of 1929)

P. C., states that "offence" means any act or omission made punishable by any law for the time being in force. Therefore, an offence under any law such as the Child Marriage Restraint Act will come under this provision in S. 260 (1) (a), Criminal P. C. (Bennet J.) Jwala Prasad v. Emperor,

AIR 1934 All 331 = 1934 A L R 387 = 6 R A 693= 1934 Cr Cas 414 (2)=148 I C 351=35 Cr L J 677 (2).

——'Ultra vires.'

So far as Hindus are concerned the Child Marriage Restraint Act is not 'ultra vires.' (Macpherson J.) Jalsi Kuar v. Emperor,

AIR 1933 Pat 471=14 P L T 438=1933 Cr Cas 1027 =6 R P 248=146 I C 298=35 Cr L J 20.

——Sentence.

Obiter. — The Courts are not at liberty to treat the Act as a legislative imposture and manifestly, if it is to be effective, the sentence upon the priest or other celebrant without whose aid ordinarily no infringement of the Act is possible, should be such as to deter other avaricious members of his caste from following his example. (Macpherson J.) Jalsi Kuar v. Emperor,

AIR 1933 Pat 471=1933 Cr Cas 1027 = 6 R P 248= 14 P L T 438=146 I C 298=35 Cr L J 20.

——Intention to give child in marriage — Whether 'unlawful purpose.'

An intention to give a child in marriage in contravention of Act XIX of 1929 is an 'unlawful purpose' within the exception to S. 361, Penal Code, on the ground that if the purpose is carried out the person giving the child in marriage is liable to conviction and punishment for a criminal offence. (Page C. J., Das, Mya Bu, Brown and Dunkley JJ.) Khalilur Rahman v. Emperor,

AIR 1933 Rang 98=Ind Rul (1933) Rang 81 = 1933 Cr Cas 573 (2)=11 Rang 213 = 143 I C 872=34 Cr L J 696 (FB).

——Complaint under.

Complaint not inculpating complainant — Magistrate deputed for local investigation—In his report, Magistrate recommending prosecution of complainant also under section 6 :

Held, that the report constituted a complaint and the District Magistrate could take cognizance on it. (James J.) Sukha Sahu v. Emperor,

AIR 1933 Pat 87 = 13 P L T 791 = Ind Rul (1933) Pat 91=141 I C 810=34 Cr L J 237.

——Proceeding for appointment of guardian—Injunction against father preventing marriage of girl in contravention—Guardians and Wards Act, 1890.

Where a relation of the mother of a girl applied to be appointed the guardian of the girl and obtained an injunction against the father of the girl restraining him from giving her in marriage in contravention of the provisions of the Child Marriage Restraint Act, and the father gave the girl in marriage notwithstanding the injunction and it was contended on behalf of the father that the Court had no jurisdiction to issue the injunction and that he did not receive any notice of the injunction before the marriage :

Held, that the father was entitled to an opportunity to prove that he had not received the notice before the marriage.

Quære : — Whether the Court has jurisdiction in a proceeding under the Guardians and Wards Act to issue an injunction restraining the father from giving the girl in marriage. (Mitter and S. K. Ghose JJ.) Basant Kumar Das v. Nagendra Nath Pal,

AIR 1932 Cal 719=Ind Rul (1932) Cal 301=137 I C 425.

CHILD MARRIAGE RESTRAINT ACT (XIX of 1929)

—S. 4.

——Certificate by private medical officer that girl is 14 years of age — Civil Surgeon finding the girl to be only 12 years old—Offence, if committed.

Where in a case under the Child Marriage Restraint Act, the defence put forward was that the applicants were misled by a certificate granted by the woman medical officer in charge of a hospital to the effect that the girl was not less than 14 years of age, but according to the Civil Surgeon, the girl was about 12 years of age only and no evidence was produced to contradict the Civil Surgeon :

Held, that the applicant should have gone to the Civil Surgeon in order to obtain a certificate and that the fact of their having secured a certificate from the woman medical officer was not material although the existence of the certificate was a matter which might be taken into account in considering whether imprisonment or fine should be ordered. (Bennet J.) Jwala Prasad v. Emperor,

AIR 1934 All 331 = 1934 A L R 387=6 R A 693 = 1934 Cr Cas 414 (2)=148 I C 351=35 Cr L J 677 (2).

——Ss. 4, 5, 6 — Conviction under—Parties to marriage Rajputs—Deterrent sentence against priest — Necessity of — Government of India Act, 1915 (5 & 6 Geo. V. Ch. 61) S. 67 (2B)

Where the mother of a Rajput girl of seven years of age, the bridegroom and the priest who conducted the marriage were convicted under Ss. 6, 4 and 5, Child Marriage Restraint Act, respectively and in revision it was urged that the Act was ultra vires of the Indian Legislature, previous sanction of the Governor-General in Council not having been given to the Bill as passed :

Held, that the contracting parties in the case being Rajputs who were unquestionably Hindus of high caste, they came within the scope of the original Bill; and that it was safe to hold that the changes introduced in the Select Committee were not such as to render inadequate the "previous sanction" accorded by the Governor-General or the introduction of the Bill unlawful, (Macpherson J.) Jalsi Kuar v. Emperor

AIR 1933 Pat 471 = 14 P L T 438 = 1933 Cr Cas 1027 = 6 R P 248 = 146 I C 298 = 35 Cr L J 20.

—S. 5.

——Property alienated for marriage expenses of minor son of vendor — See Custom (Punjab)—Ancestral Property.

AIR 1949 East Pnnj 354.

——Interpretation — "Perform, conduct or direct" child marriage.

The words 'perform, conduct or direct' in S. 5, Child Marriage Restraint Act, bear the same import and mean working towards the end, that is completing the union; and are used by the Legislature to indicate the solemnization of the marriage. That is the ordinary interpretation of those words. They do not suggest the arranging of marriage merely or attending a marriage ceremony with a view to assisting in the solemnization of the marriage. The mere participation by parents in the ceremony of 'kanyadan would not offend against the provisions of S. 5. (Beaumont C. J. and Wassoodew J.) Emperor v. Fulabhai Bhulabhai

AIR 1940 Bom 363 = 42 Bom L R 857=ILR (1940) Bom 709=13 R B 132=190 I C 794 = 42 Cr L J 62.

——Ss. 5, 6—Offence under—Essentials.

In cases of complaints under Ss. 5 and 6 of the Child Marriage Restraint Act, it is essential that the trying Magistrate should find definitely that either or both of the contracting parties to the marriage were infants within the meaning of the Act, that is to say, that the bride-

CHILD MARRIAGE RESTRAINT ACT (XIX of 1929), S. 5

groom was under the age of 18 or that the bride was under the age of 14). (Bartley and Henderson JJ.) Sew Ratam Lal v. Emperor.

AIR 1939 Cal 288 = 11 R C 874 = 181 I C 916 = 40 Cr L J 605

——Negotiations, preparation or preliminary acts, if punishable.

Section 5 of the Child Marriage Restraint Act takes account only of performing, conducting or directing a child marriage, that is to say, the actual marriage ceremony itself, and not of any negotiation, preparation or any other preliminary acts.

Section 3 of the Penal Code postulates that before any person can be tried in British India for an offence committed beyond British India, there must be in existence a law making him liable to be so tried. The contraction of a child marriage outside British India is not an offence under the Child Marriage Restraint Act, since there is no provision in the Act nor in any part of the Penal Code that participating in such a marriage is an offence when committed outside British India. (Grille J.) Haider v. Syed Issa

AIR 1938 Nag 235 = 11 R N 2 = ILR (1939) Nag 241 = 175 I C 615 = 39 Cr L J 651.

——Liability of parents.

Section 5 applies only to the solemnization of marriage by persons other than parents and hence S. 6 alone applies to parents who promote a child marriage or permit it or negligently fail to prevent it. (Pandrang Row J.) Public Prosecutor v. Thammanna Rattayya

AIR 1937 Mad 490=9 R M 633=1937 M W N 212= 45 M L W 437 = ILR (1937) Mad 854 = 1937 M Cr C 73=168 I C 723=38 Cr L J 594.

——Purohit — Duty of — Proof of enquiry and bona fide belief — Necessity.

Section 5 contemplates that the person who solemnizes a marriage must make some reasonable enquiry as to the ages of the parties to the marriage and satisfy himself that neither of the participants is a child. It is not enough if he merely looks at the bride and the bridegroom and forms his own opinion. He must know that it is difficult to judge by appearance and the law casts upon him the duty of making reasonable enquiry before he can claim to have had reason to believe that neither the bride nor the bridegroom was a child. (Pandrang Row J.) Public Prosecutor v. Thammanna Rattayya

AIR 1937 Mad 490 = 1937 M W N 212=45 M L W 437 = 9 R M 633=ILR (1937) Mad 854= 1937 M Cr C 73 = 168 I C 723=38 Cr L J 594

——Ss. 5, 6 — Marriage celebrated outside British India under mistake of fact — Offence — Act, how for extra-territorial — Criminal P. C. (1898), Ss. 186, 188.

A mistake of fact can be pleaded successfully only if on account of such mistake an act which otherwise would be an offence ceases to be an offence.

The Penal Code as well as the Child Marriage Restraint Act are extra-territorial to the extent, that if native Indian subjects commit offences punishable under these laws even outside British India, they are liable to be tried and punished when found in British India. Where a child marriage is celebrated under a mistaken view that the territory where it was celebrated was outside British India the mistake of fact does not have the effect of rendering the celebration of the child marriage in question innocuous or innocent. The Child Marriage Restraint Act 1929, can pursue them even when they have broken that law after going outside British India, and 'a fortiori' after going to a place which they believed to be not part of

CHILD MARRIAGE RESTRAINT ACT (XIX of 1929), S. 5

British India but is really part of British India. (Pandrang Row J.) Sreeramamurthy v. Ranganayakulu.

AIR 1937 Mad 273 = 1937 M W N 22 = 45 M L W 210 = (1937) 1 M L J 388=9 R M 628 = 168 I C 736= 38 Cr L J 587.

——Ss. 5, 6 (1) — Offence under Act committed in British India, by Native Indian subject—Accused, if guilty.

The Child Marriage Restraint Act is penal statute and, under its provisions, whoever offends against those provisions, commits a crime. Such a statute is, of course, applicable to all such crimes committed in British India. The fact that the persons accused are foreigners makes no difference even if such an act is not an offence in the foreign place. This matter can be considered in mitigation of punishment (Lort-Williams and Jack JJ.) Superintendent & Remembrancer of Legal Affairs, Bengal v. Radha Kissen Agarwalla

163 I C 147 = 39 C W N 656 = 8 R C 697 = 37 Cr L J 757.

——Applying for permission to hold music and fireworks on occasion of marriage — Whether offence.

Merely applying for permission to the Municipal Board for conducting festivities like 'nach' with music and fireworks on the occasion of a marriage does not amount to "performing, conducting or directing a child marriage." It is a sort of act that might be done by any servant or agent or the parents of the children to be married and clearly does not amount to an offence under S. 5. (King C. J.) Bachchu Lal v. Emperor

AIR 1936 Oudh 311 = 12 Luck 263 = 1936 O W N 480 = 1936 O L R 254=8 R O 376=1936 Cr Cas 712= 162 I C 389 (2) = 37 Cr L J 616.

——Marriage contracted outside British India, whether offence—Applicability of S. 188, Criminal P. C.

The Child Marriage Restraint Act contains no provision similar to S. 4, Penal Code, and before S. 188, Criminal P. C., can be applied for trial of an offence under the Act, the prosecution must prove that the Act makes penal a child marriage performed outside British India. The Act is limited in its operation to British India and only strikes at marriages contracted in British India. Therefore the child marriage contracted outside British India is not an offence under the Act, and if it is not an offence under the Act, there is no offence to which S. 188, Criminal P. C., can apply. (Beaumont C. J. and N. J. Wadia J.) Narayan Mudlagiri v. Emperor,

A I R 1935 Bom 437=37 Bom L R 885=1935 Cr Cas 1305 = 8 R B 239 = 59 Bom 745 = 159 I C 923=37 Cr L J 211.

——Scope—Case of fathers of both bridegroom and bride, if covered.

Section 5 is wide enough to cover the case of the fathers of both the bridegroom and the bride. (Ganga Nath J.) Munshi Ram v. Emperor,

A I R 1936 All 11=58 All 402 = 1935 A L R 1035 = 8 R A 353=1935 A L J 1166=1936 Cr Cas 14=158 I C 1007=36 Cr L J 1483.

——Consummation of marriage, if necessary, for conviction.

The fact, that the Gauna ceremony has not been performed does not affect the performance of the marriage, which is complete as soon as the ceremony of the marriage is performed. Consummation is not a part of the marriage ceremony. (Ganga Nath J.) Munshi Ram v. Emperor,

A I R 1936 All 11=58 All 402 = 1935 A L R 1035 = 8 R A 353=1935 A L J 1166=1936 Cr Cas 14=158 I C 1007=36 Cr L J 1483.

——Offence under — Jurisdiction — Court at place where Tilak ceremony was performed, if has jurisdiction— Criminal P. C., Ss. 177, 179, 182.

CHILD MARRIAGE RESTRAINT ACT (XIX of 1929), S. 5

Where the accused are not charged with the commission of an offence by reason of having performed the Tilak ceremony, nor can the marriage be properly called a "consequence" of the Tilak ceremony, but they are charged for the offence of performing, conducting or directing the child marriage under S. 5, Child Marriage Restraint Act, Ss. 179 and 182, Criminal P. C., do not apply and the case is not triable in the place where the Tilak ceremony took place, inasmuch as for the purpose of S. 5 of the Act, it is only the marriage ceremony that has to be considered and it is quite immaterial where or when or by whom the Tilak ceremony was performed. (King J.) Matuk Deo v. Vinayak Prasad,

A I R 1934 All 829 (1) = 1934 A L J 681=7 R A 59 (1)=L R 15 A 160 Cr = 1934 Cr Cas 1012 (1)=150 I C 993=35 Cr L J 1175 (1).

——Ss. 5. 6 — Parent or guardian of minor contracting party—Punishment under Ss. 5 and 6.

Where a Hindu parent or guardian takes part in a child marriage, he must be deemed to have done an act to promote the marriage, to have permitted the solemnization of the marriage or to have negligently failed to prevent the solemnization and is liable to punishment only under S. 6 of the Child Marriage Restraint Act and not for two offences under Ss. 5 and 6 respectively.

Section 5 of the Act should not be construed so broadly as to include the bridegroom and the parent or guardian of a minor contracting party. The section applies to persons other than the contracting parties to the marriage and the parent or guardian of a minor contracting party. (Niyogi A. J. C.) Ganpat Rao v. Emperor,

A I R 1932 Nag 174 = 28 N L R 302 = 1932 Cr Cas 909 = Ind Rul (1933) Nag 104 = 142 I C 277 = 34 Cr L J 311.

——Ss. 5, 6 — Creditor advancing money for marriage — Advancing money to enable an infant to marry in violation of the Act is not by itself punishable and does not bring the creditor within the mischief of the Act. (Mukherjea, J.) Ram Jash Agarwala v. Chand Mandal,

ILR (1937) 2 Cal 764=65 C L J 557=41 C W N 1176.

—S. 6.

——Father alive and in charge of daughter — Conviction of grandfather for marriage of daughter.

When the father is alive and is presumably in charge of the daughter, it cannot be held that the grandfather has also charge of her. Hence the conviction of the grandfather for the marriage of the daughter in contravention of the Act is bad. (Bennett J.) Bhagwat Sarup v. Emperor,

A I R 1945 All 306 = 1945 A W R (H C) 67 = 1945 A L J 232 = I L R (1945) All 272 = 1946 All Rul 48 =221 I C 47=47 Cr L J 43.

——Performance of marriage outside British India, if punishable — Promotion of marriage performed outside British India, punishable.

Section 6 has a reference only to the promotion of a marriage referred to in Ss. 4 and 5, that is to say, a marriage that is prohibited. As such marriage is not prohibited when performed outside British India, the promotion of such marriage cannot be made punishable under the Child Marriage Restraint Act itself. (Grille J.) Haider v. Syed Issa,

A I R 1938 Nag 235=I L R (1939) Nag 241=11 R N 2=175 I C 615=39 Cr L J 651.

——Mother of bridegroom not in actual charge of minor and not able to prevent marriage.

Where the mother of the bridegroom had no authority by law to prevent the marriage, her mere participation in the marriage cannot be regarded as constituting an offence punishable under S. 6 of the Act which is confined only to

CHILD MARRIAGE RESTRAINT ACT (XIX of 1929), S. 6

the person who has actual charge of the minor either as parent or as guardian at the time. (Pandrang Row J.) Public Prosecutor v. Thamanna Rattayya,

A I R 1937 Mad 490 = 1937 M W N 212 = 45 L W 437=9 R M 633=I L R (1937) Mad 854=1937 M Cr C 73=168 I C 723=38 Cr L J 594.

——Liability of parents.

Section 5 applies only to the solemnization of marriage by persons other than parents and hence S. 6 alone applies to parents who promote a child marriage or permit it or negligently fail to prevent it. The parents of the bridegroom cannot be convicted under S. 6 merely because the bride was under 14 years and they can be convicted, if at all under S. 6 only if the bridegroom that is their own son who was in their charge was under 18 years at the time of the marriage. (Pandrang Row J.) Public Prosecutor v. Thammanna Rattayya,

A I R 1937 Mad 490 = 1937 M W N 212 = 45 L W 437=9 R M 633=I L R (1937) Mad 854=1937 M Cr C 73=168 I C 723=38 Cr L J 594.

——Age—Proof of.

Certificate of birth of a person is conclusive evidence of his age so long as it is not disproved by evidence of the party denying its correctness. (Wort J.) Nanhak Lal v. Baij Nath Agarwala,

AIR 1935 Pat 474= 16 P L T 629=1935 Cr Cas 1175 =2 B R 164=8 R P 334=160 I C 116=37 Cr L J 227.

——Acquittal—Setting aside of.

In a case under the Act under which the Police can take no action and the Legislature has in a sense made the members of the public litigants under it, Courts should not apply strictly the principles with regard to setting aside of acquittals. (Wort J.) Nanhak Lal v. Baijnath Agarwala,

AIR 1935 Pat 474=16 P L T 629 = 1935 Cr Cas 1175 =2 B R 164=8 R P 334=160 I C 116=37 Cr L J 227.

——Abetment of offence under Act — Prosecution for — Legality.

There can be no doubt that although the Child Marriage Restraint Act of 1929 makes no mention of abetting, yet under the provisions of the Penal Code, it is possible for there to be a prosecution for abetting an offence although the accused is not the father of one of the parties who is under age so long as the other party is below the prescribed age. (Wort J.) Nanhak Lal v. Baijnath Agarwala,

AIR 1935 Pat 474=16 P L T 629= 1935 Cr Cas 1175 2 B R 164=8 R P 334=160 I C 116=37 Cr L J 227.

——Scope.

Section 6 only aims at permitting or failing to prevent a marriage which is made penal under the earlier sections, and does not impose a penalty for permitting a marriage which is lawful. (Beaumont C. J. and N. J. Wadia J.) Narayan Mudlagiri v. Emperor,

AIR 1935 Bom 437=37 Bom L R 885 = 1935 Cr Cas 1305=8 R B 239=59 Bom 745=159 I C 923=37 Cr L J 211.

——One party a minor—S. 6, if applies.

The expression "when a minor contracts a child marriage" used in S. 6 is wide enough to cover a case of a marriage to which both parties are minor as well as to one to which one party is a minor. (Niyogi A. J. C.) Ganpatrao v. Emperor,

AIR 1932 Nag 174=28 N L R 302= 1932 Cr Cas 909 =Ind Rul (1933) Nag 104=142 I C 277=34 Cr L J 311.

—S. 8.

——Ss. 8 and 9 (as amended by Act 19 [XIX] of 1938) — Repealing Act 25 [XXV] of 1942 — Effect of — Words "Magistrate of the first class" in S. 8 and limitation prescribed in S. 9 being incorporated in original Act by Amend-

CHILD MARRIAGE RESTRAINT ACT (XIX of 1929), S. 8

ing Act are not affected by repeal of later Act by Repealing Act of 1942.

When one substitutes one set of words for another, one erases the original set and writes in the new. In other words, one incorporates the new words into the old enactment. It follows that the words 'Magistrate of the first class' in S. 8 and the provision prescribing the limitation of one year in S. 9, Child Marriage Restraint Act, 1929, are incorporated in that Act by the Amending Act, 19 [XIX] of 1938. Section 4 of the Repealing Act (25 [XXV] of 1942), enacts that the repeal will not affect the incorporated enactment. Hence, the incorporated provisions are not affected by the repeal of the amending Act by Act 25 [XXV] of 1942. A Magistrate of the first class, therefore, continues to have jurisdiction to entertain a complaint under the Child Marriage Restraint Act, in spite of the repeal. Similarly, the limitation of one year still holds good despite the repeal. (Criminal Revn. No. 574 of 1945, Dissent. (Bose J.) Amritrao Kole v. Chandrabhan Kaveley,

AIR 1947 Nag 79=225 I C 624 = 1946 N L J 460 = ILR (1947) Nag 80=47 Cr L J 794.

——Ss. 8, 10—Issue of process under S. 8, without holding enquiry under S. 10—Legality.

A preliminary enquiry is absolutely necessary before the Court can take cognizance of an offence under the Child Marriage Restraint Act. Section 10 of that Act is very clear on the point and the provisions of it are mandatory. Hence the issue of process in a case under S. 8 without holding an enquiry under S. 10 is unauthorized by law and must be set aside. (Pandrang Row J.) In re Jaggu Naidu,

AIR 1939 Mad 530= 49 L W 552=1939 M W N 411 =(1939) 1 MLJ 900 =12 R M 343 (1)= 183 I C 581=40 Cr L J 818 (1).

——An Additional District Magistrate who has been given all the powers of a District Magistrate is empowered to try a case under the Child Marriage Restraint Act also. (Horwill J.) Abdur Rahiman Kutty v. Emperor,

AIR 1937 Mad 637=1937 M W N 321=45 L W 435 =(1937) 1 M L J 498=9 R M 679 = I L R (1937) Mad 1034=169 I C 71=38 Cr L J 664 (2).

—S. 9.

——Limitations prescribed in being incorporated in original Act by Amending Act XIX of 1938 are not affected by repeal of later Act by Repealing Act XXV of 1942 — See Child Marriage Restraint Act, S. 8.

AIR 1947 Nag 79=47 Cr L J 794.

——Cognizance—Magistrate, if can take cognizance before obtaining certificate required under S. 188, Criminal Procedure Code.

Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Thus, it occurs as soon as he reads the complaint and even before he examines the complainant which he is bound to do. Having taken cognizance he proceeds to enquire into the charge.

Hence, a Magistrate has jurisdiction to take cognizance under S. 9 of the Child Marriage Restraint Act before certificate is obtained under S. 188 of the Criminal P. C.; the taking of cognizance is an action which is prior to and independent of the enquiry into the charge, so that the Court may have jurisdiction to take cognizance, although it has no jurisdiction to enquire into the charge before certificate required by S. 188, Criminal P. C., is obtained. (Gruer J.) Harnarayan v. Govindram,

AIR 1940 Nag 245=1940 N L J 304=13 R N 9=ILR (1942) Nag 193=188 I C 606=41 Cr L J 645.

CHILD MARRIAGE RESTRAINT ACT (XIX of 1929), S. 9

——Section 14, Limitation Act does not apply to a complaint under S. 9 (Lakshmana Rao J.) Vellan Chetty Venkata Narasim Ram v. Satya Narayan Rao

A I R 1939 Mad 512 = 49 M L W 547 (1) = 1939 M W N 315=(1939) 1 M L J 775=12 R M 717 = 183 I C 595=40 Cr L J 816 (1).

——Complaint — Case sent by Magistrate to police, for investigation — Letter by such officer to Magistrate held not "complaint".

When a Police Officer investigates a non-cognizable case under the orders of a Magistrate, the report which he makes, at the end of his investigation, is of the same nature as a report made under S. 157, Criminal P. C., and such a report being a police report is not a "complaint," though if a Police Officer acting without instructions from a Magistrate reports a non-cognizable offence to a Magistrate with a view to the Magistrate taking action, this is a complaint.

An offence under S. 5 of the Child Marriage Restraint Act, XIX of 1929, being punishable only with simple imprisonment up to one month or a fine of Rs. 1000 or both, under Sch. III, Criminal P. C., is not cognizable; so when such a case is forwarded to an Assistant Superintendent of Police for investigation a letter written on behalf of the Assistant Superintendent of Police to the District Magistrate is a "police report" and not a "complaint". (Baguley J.) Jagdeo Pandey v. N. C. Hill, Assistant Superintendent of Police Myitkyina

A I R 1938 Rang 257 = 1938 Rang L R 150 = 11 R Rang 74=176 I C 694=39 Cr L J 776.

—S. 10.

——Scope.

The provisions of S. 10 are mandatory and a preliminary inquiry is absolutely necessary before the Court can take cognizance of an offence under the Act. Omission to comply with the section vitiates all proceedings right from the issue of process and the acquittal founded on such an illegal trial cannot stand. Case law referred. (Chhatpar and Baxi JJ.) State v. Majan Narshi Parbat

6 Sau L R 252.

——Preliminary enquiry.

The omission to hold a preliminary inquiry under S. 202, Criminal P. C., vitiates the latter proceedings. (Davis C. J. and Weston J.) Emperor v. Muhammad Hashim

AIR 1940 Sind 213 = ILR (1940) Kar 442 = 13 R S 127=191 I C 123=42 Cr L J 83.

——Non-compliance with procedure under S. 10 — Court of competent jurisdiction taking cognizance and deciding case — No injustice occasioned — Defect is curable under S. 537, Criminal Procedure Code.

It is proper in revision to send a case back for correction of an illegality such as an omission to hold preliminary enquiry provided under S. 10, Child Marriage Restraint Act in a case under that Act, when that can be done before the case is tried, but after judgment has been delivered the position is different. It would be harassing then to remand the case and start proceedings with a preliminary enquiry all over again. Where a Court of competent jurisdiction had taken cognizance of the offence and decided the case without any objection being raised, the mere omission to comply with S. 10, Child Marriage Restraint Act, is an irregularity of procedure only although it is non-compliance with a mandatory provision of law and when it has not occasioned any failure of justice it is curable under S. 537, Criminal P. C. The

CHILD MARRIAGE RESTRAINT ACT (XIX of 1929), S. 10

High Court will not in such a case interfere under S. 439, Criminal P. C. (Gruer J.) Emperor v. Mehtar

AIR 1940 Nag 375 = 1940 N L J 224 = ILR (1940) Nag 488=13 R N 159=190 I C 838=42 Cr L J 37.

——Preliminary inquiry — Object — Omission to hold— Accused making no objection — Result of trial going against him — He cannot benefit by subsequent technical objection.

The object of S. 10 is that no one should be harassed by a prosecution under the Act until a Magistrate has satisfied himself by inquiry that there is a prima facie case against him. The object of the preliminary enquiry is, therefore, to inquire whether there is a prima facie case or not. If the accused objects to being tried until a preliminary inquiry is made, the Magistrate must make such an inquiry, and if he proceeds in disregard of the objection of the accused, his order would be set aside. But where the accused makes no objection to the trial, he cannot, when the result has gone against him, showing that there was not only a prima facie case against the accused, but there was a substantive case against the accused, benefit by an objection which is entirely technical in its nature. (Agarwala J.) Harihar Tiwari v. Etwari Gope

AIR 1939 Pat 525 = 20 P L T 495 = 12 R P 231 = 6 B R 24=184 I C 230=40 Cr L J 887 (1).

——Issue of process under S. 8 without enquiry under S. 10—Legality.

Section 10 is mandatory and, therefore, the issue of process in a case under S. 8 without holding an enquiry under S. 10 is unauthorised by law. (Pandrang Row J.) In re Darapureddi Jaggu Naidu

AIR 1939 Mad 530=49 M L W 552=1939 M W N 411=(1939) 1 M L J 900=12 R M 343 (1)=183 I C 581 =40 Cr L J 818 (1).

——Transfer of case—When illegal.

Transfer of case under S. 10 to Sub-Divisional Magistrate for disposal according to law without an inquiry under S. 202, Criminal P. C., is illegal. (Lakshmana Rao J.) Sivagami Ammal v. Muthu Iyer

AIR 1939 Mad 294=48 M L W 774=1938 M W N 1312=(1939) 1 M L J 111=11 R M 766=180 I C 902 (1) =40 Cr L J 514 (2).

——Preliminary enquiry to be made before issuing summons to accused.

Under S. 10 the Court taking cognizance of an offence under this Act is bound to hold a preliminary enquiry before taking further action unless it dismisses the complaint under S. 203 of the Criminal P. C. (Tek Chand J.) Emperor v. Chand Mal Goenka

AIR 1934 Lah 155 = 1934 Cr C 333 = 15 Lah 63 = 7 R L 209 = 35 P L R 8 = 151 I C 830 (1)=35 Cr L J 1436.

——Omission to hold preliminary inquiry before issuing process to accused—Validity of trial.

A Court taking cognizance of an offence under the Child Marriage Restraint Act is bound to hold a preliminary inquiry before directing the issue of process for the attendance of the accused and an omission to comply with this mandatory provision of the Act is an illegality which vitiates the trial. (Tapp J.) Mangal v. Kalu

AIR 1931 Lah 56 (1)=31 P L R 945=Ind Rul (1931) Lah 351 = 12 Lah 383 = 1931 Cr C 120 (1) = 130 I C 783 (2)=32 Cr L J 616.

—S. 11.

——Security found defective—Trial, if vitiated.

The mere fact that the security bond under S. 11, Child Marriage Restraint Act, which was 'prima facie' sufficient was afterwards found to be defective does not vitiate the trial. (King C. J.) Bachchu Lal v. Emperor,

AIR 1936 Oudh 311=1936 O W N 480=1936 O L R 254=8 R O 376=1936 Cr Cas 712=12 Luck 263 = 162 I C 389 (2)=37 Cr L J 616.

——S. 11 (1) — Omission to record reason why complainant was not required to execute bond is not cured by Criminal P. C., S. 537.

The provision contained in S. 11 (1) is imperative and where the Magistrate has not recorded any reason why the complainant was not required to execute a bond, a material irregularity is committed and this irregularity cannot be cured by anything contained in S. 537, Criminal P. C., and the conviction of the accused is liable to be set aside for this reason. (Guha J.) Kalu Ram Daga v. Emperor,

AIR 1933 Cal 433 (1)=Ind Rul (1933) Cal 393 = 37 C W N 626=1933 Cr Cas 705 (1)=143 I C 279=34 Cr L J 554.

——Bond—Complainant a Judicial Officer — Omission to record reasons to exempt execution of bond — If vitiates proceedings.

Ordinarily the District Magistrate ought under S. 11 to record in writing his reasons for exempting the complainant from liability to execute a bond, but where the complaint is by a Judicial Officer, omission to record reasons for not requiring him to execute a bond cannot be held to vitiate the proceedings. (James J.) Sukha Sahu v. Emperor,

AIR 1933 Pat 87=Ind Rul (1933) Pat 91=13 P L T 791=1933 Cr Cas 211 (2)=141 I C 810=34 Cr L J 237.

CHILD WITNESS

See (1) Evidence Act, S. 118.
(2) Oaths Act, S. 13.

CHIN HILLS REGULATION (V of 1896)

—S. 4.

——Interpretation—An application under S. 488, Criminal P. C., is not of a civil nature — S. 4, Cl. 1 is qualified by clauses 4 and 5.

An application under S. 488, Criminal P. C., cannot be regarded as a proceeding of a civil nature within S. 12 although the failure to maintain a child is not a criminal offence. Clause 1 of S. 4 is qualified by Cls. 4 and 5. The words "so far as regards persons other than Chins" in S. 4 (i) must be construed as meaning "so far as regards liabilities imposed by law on persons other than Chins." (MacColl A. J. C.) Maung v. Mang Tom,

AIR 1925 Rang 140=76 I C 111=4 U B R 169 = 25 Cr L J 111.

—S. 10.

——Ss. 10, 41 — Revision in proceedings from Chin Hills —Forum.

The Rangoon High Court has no power of revision in proceedings from Chin Hills, whatever the nationality of accused or the law under which he has been or should be tried. The High Court in revision is the Court of the Commissioner. (Mosely J.) The King v. Yoo Ngoon,

AIR 1941 Rang 332 = 1941 Rang L R 555 = 14 R Rang 145=197 I C 734=43 Cr L J 258.

—S. 22.

——Order under — Interference by Civil or Criminal Court.

An order passed under S. 22 cannot be called in question in any civil or criminal Court. The Provincial Government alone has the power to revise such orders. (Thadani C. J. and Ram Labhaya J.) Ganpatrai v. State.

AIR 1951 Assam 47 = I L R (1950) 2 Assam 107= 52 Cr L J 200.

CHIN HILLS REGULATION (V of 1896), S. 22

——Ss. 22, 23, 38 (2), 40 — Application of, to frontier tracts by notification — Notification if impliedly repealed by Regulation I [1] of 1945.

There is no essential conflict between Ss. 22, 23, 38 (2) as applied by Notification to frontier tracts of Assam and Regulation I (1) of 1945 which was intended to consolidate and amend the law governing the administration of justice in the frontier tracts. The sections of the Chin Hill Regulation can be enforced without contravening any provision of Regulation I [1] of 1945. In these circumstances there cannot be any implied repeal of the Notification applying the sections of the Chin Hill Regulation to the frontier tracts. (Thadani C. J. and Ram Labhaya J.) Ganpatrai v. State,

AIR 1951 Assam 47=I L R (1950) 2 Assam 107=52 Cr L J 200.

—S. 23.

——Application of, to frontier tracts—See ibid, S. 22,

AIR 1951 Assam 47=52 Cr L J 200.

—S. 34-A.

——Offence under S. 34-A by Chinaman in Chin Hills —Conviction should be under Excise Act.

A Chinaman committing an offence in China Hills, which falls under S. 34-A of the Regulation, should be convicted under the Excise Act and not under the Chin Hills Regulation. (Mosely J.) The King v. Yoo Ngoon,

AIR 1941 Rang 332 = 1941 Rang L R 555 = 14 R Rang 145=197 I C 734=43 Cr L J 258.

——Ss. 34-A, 3, 4—Manufacture and possession of liquor —If two offences.

Where the accused is found in possession of liquor manufactured by him, he need not be charged with and convicted of two offences, for, the offence of manufacture necessarily includes the possession of the article manufactured. It would be otherwise where the accused is not found manufacturing but only in possession of apparatus for manufacturing plus the article manufactured. (Mosely J.) The King v. Yoo Ngoon,

AIR 1941 Rang 332 = 1941 Rang L R 555 = 14 R Rang 145=197 I C 734=43 Cr L J 258.

——"Whoever," meaning of.

Though S. 34-A begins with the word "whoever," that wording merely refers to any person who commits an offence punishable under the Regulation. (Mosely J.) The King v. Yoo Ngoon,

AIR 1941 Rang 332 = 1941 Rang L R 555 = 14 R Rang 145=197 I C 734=43 Cr L J 258.

—S. 38.

——S. 38 (2) — Application of to Frontier Tracts by notification—Notification if impliedly repealed by Regulation I of 1945 — See Chin Hills Regulation (V [5] of 1896), S. 22,

AIR 1951 Assam 47=52 Cr L J 200.

—S. 40.

——Application of, to Frontier Tracts by notification — Notification if impliedly repealed by Regulation I of 1945—See Chin Hills Regulation (V [5] of 1896), S. 22,

AIR 1951 Assam 47=52 Cr L J 200.

CHOTA NAGPUR TENANCY ACT (VI of 1908)

—S. 14.

——Effect of resumption — Resumption of Jagir tenure annuls all sub-tenures — Lands on which mines sunk are excepted—Onus of proof of consent.

"Land whereon a mine has been sunk under lawful authority is expressly excepted from annulment by exception (a) of S. 14. When a jagir tenure is resumed, all sub-tenures created by the previous Jagirdars are annulled and become void, and not merely voidable.. The words "grantee or any of his ancestors" clearly mean 'succeeding grantees' and under tenures, created by whichsoever grantee (who successively held the tenures), would be annulled on resumption. To prove consent to the under-tenure is upon him who asserts it. A grantee or any of his successors could not create an under-tenure to exceed in duration the subsistence of their own tenure. Section 14 expressly provides that on resumption of the tenures all sub-tenures granted by the grantee of tenure whom he succeeded should be deemed to be annulled : 27 Cal 156; 24 Cal 715 and 17 M L J 598, Foll. (Adami J.) Maharaja Pratab v. Sunderbans Koer,

AIR 1923 Pat 76=71 I C 999=3 P L T 628 = 24 Cr L J 279.

—S. 63.

——(As amended by Act II of 1938) — Offence under S. 63 — Only committed when landlord or his agent makes demands from tenants in excess of rent—Manager, Court of Wards, making such demands.

An offence under S. 63, Chota Nagpur Tenancy Act is only committed if the landlord or his agent levies or makes certain demands over and above the rent legally due from the tenants. There is no offence if anybody other than the landlord or an agent of the landlord demands commodities from persons who are not his tenants. Where the Manager of the Court of Wards demands certain commodities or animals or birds from the tenants of the estate which he is not entitled to demand, he commits an offence under S. 63.

Section 63 (1) (a) of the Chota Nagpur Tenancy Act creates an offence but does not deal with the method in which investigation is to be made and the trial to be held; therefore by reason of S. 5 (2) of the Criminal P. C., it must be investigated into and tried according to the provisions of the Code. (Harries C. J. and Manohar Lall J.) M. O. Angelo v. Kandan Manjhi,

A I R 1940 Pat 316 = 6 B R 241 = 12 R P 440=185 I C 738=41 Cr L J 221.

——Offence to be investigated and tried according to provisions of Criminal Procedure Code — Appointment of manager with previous sanction of Government — Sanction if necessary.

There is nothing in S. 63 which deprives the ordinary Criminal Courts of jurisdiction to try all offences under that section. Section 258 does not deprive a Criminal Court of its jurisdiction to try a criminal offence.

Under S. 59A, Court of Wards Act, a Manager of Court of Wards is a public servant and where according to the rules made by the Court of Wards under S. 70 of that Act such a person .getting certain salary cannot be appointed without the previous sanction of the Government, it follows that he cannot also be dismissed without the sanction of the Government. When such a manager therefore commits an offence under S. 63, Chota Nagpur Tenancy Act, while acting in his capacity as a manager of the estate, a sanction of the Government under S. 197, Criminal P. C., is necessary for his prosecution. (Harries C. J. and Manohar Lall J.) M. O. Angelo v. Kandan Manjhi,

A I R 1940 Pat 316=6 B R 241 = 12 R P 440 = 185 I C 738=41 Cr L J 221.

——Appeal against order — Order under S. 63 is appealable under S. 215 and not under Criminal Procedure Code.

An order under S. 63 shall have the force and effect of a decree of a civil Court and consequently it follows that any procedure to be adopted by a party subsequent to the making of that order cannot be governed by the Code of Criminal Procedure but comes under S. 215 and the

CHOTA NAGPUR TENANCY ACT (VI of 1908), S. 63

appeal lies to the officers named therein. (Adami and Wort JJ.) Krishna Prasad v. Emperor,

A I R 1928 Pat 370=7 Pat 421=9 P L T 496 = 108 I C 556=10 A I Cr R 154=29 Cr L J 420.

—S. 72.

——Rights of under raiyat.

Section 72, Cl. (4), does not require an ejectment suit to be brought against the under-raiyat, nor is any notice or formality necessary to eject him. The landlord is entitled to enter on the holding immediately after surrender by the raiyat and either let it to another or take it under cultivation. The right of an under-raiyat ceases after surrender by the raiyat and he becomes a trespasser so far as the landlord is concerned : 40 Cal. 858; 4 C. W. N. 792; A.I.R. 1922 Pat. 197 and A.I.R. 1926 Pat. 244, Foll. (Jwala Prasad J.) Harprasad Singh v. Hulsan Chamar,

10 A I Cr R 420 = 110 I C 98 = 9 P L T 728=29 Cr L J 642.

—S. 84.

——Ss. 84, 132 — Presumption of correctness.

The record of rights relating to a particular plot though it may not be a record under S. 132, Chota Nagpur Tenancy Act, is record entitled to the presumption of correctness under S. 84 of the Act and should not be overlooked. (Dhavle J.) Gobardhan Das v. Sureshchandra,

A I R 1942 Pat 489=9 B R 91=15 R P 180=203 I C 521=44 Cr L J 95.

CHOWKIDAR

See Penal Code, S. 225.

CHRISTIAN MARRIAGE ACT (XV of 1872)

—S. 3.

——Baptism not necessary for professing Christian religion.

Baptism is not a condition precedent to a person professing Christian religion. Any person professing the Christian religion is a Christian for the purpose of the Act. Hence, a person though unbaptised, can be a Christian for the Indian Christian Marriage Act. (Narasimham J.) David v. Nilamoni Devi,

A I R 1953 Orissa 10=19 Cut L T 34=I L R (1952) Cut 511=1953 Cr L J 260.

—S. 4.

——Ss. 4 and 5 — Marriage among Indian Christians — Proof of.

There is no provision in the Indian Christian Marriage Act to the effect that marriage amongst Indian Christians can be proved only by affirmatively establishing that the provisions of S. 5 of the Act were complied with or by production of a certified copy of the marriage certificate as permitted by S. 80 of that Act. The Evidence Act also does not lay down any special mode of proof of a Christian marriage. Hence admissions by either of the spouses of the fact of marriage, evidence of eye-witnesses who were present during the marriage ceremony, subsequent conduct of the couple in living as husband and wife for some time and the opinion expressed by conduct of persons who had special means of knowledge of the subject, being all various recognised modes of proof of a marriage may be admitted in evidence to prove a marriage among Indian Christians also. (Narasimham J.) David v. Nilamoni Devi,

A I R 1953 Orissa 10=19 Cut L T 34= I L R (1952) Cut 511=1953 Cr L J 260.

—S. 5.

——Marriage among Indian Christians — Proof of — See ibid, S. 4.

A I R 1953 Orissa 10=1953 Cr L J 260.

CHRISTIAN MARRIAGE ACT (XV of 1872), S. 5

——Proof of marriage among Indian Christians — Standard of proof—See Criminal P. C. (1898), S. 488,

A I R 1953 Orissa 10=1953 Cr L J 260.

—S. 38.

——Space for age, whether should be filled.

Section 38, Indian Christian Marriage Act, governs the schedule and the space left for age is not necessary to be filled with that particular, because no such provision is made in the section. (Lort-Williams and Jack JJ.) A. R. Manuel v. Emperor,

A I R 1935 Cal 678 = 39 C W N 1303=8 R C 217 = 158 I C 791=36 Cr L J 1462.

—S. 68.

——Ss. 68 and 3—Christian marrying according to Hindu rites.

The Act is not applicable to cases which do not come within the reasonable meaning of its terms and within the spirit and scope of the enactment. The word "means" in S. 3 is an inclusive term; therefore no one except a person who professes the Christian religion comes under S. 68 of the Act. The mere fact that a person was baptised as an infant or that he is attending a Christian School or he is dressing as a Christian is not sufficient to treat him as "a person professing the Christian religion." One who performs 'Devika puza,' at the time of his marriage cannot be said to profess the Christian religion. There is no express prohibition preventing a person professing Christianity from doing violence to his faith and marrying a Non-Christian, by a Non-Christian ceremony. Section 68 does not make it penal for a professing Christian to marry by a ceremony which is void under S. 4 of the Act. (Knox and Walsh JJ.) Maha Ram v. Emperor,

A I R 1918 All 168=40 All 393 = 16 A L J 414 = 45 I C 519=19 Cr L J 615.

—S. 88.

——Prohibition under personal law invalidating marriage —Nature of—Criminal Procedure Code (1898), S. 448.

The prohibition referred to in S. 88, must be an absolute impediment or a total incapacity according to the personal law and not an impediment or incapacity which is dependent upon the fact that the marriage is a sacrament or on the form of marriage, re-solemnization of the marriage amongst the followers of a particular religion and those who do not profess it are not allowed to be solemnised by ministers of a particular faith.

Where a Roman Catholic husband marries a lady professing Jewish faith there is no such absolute impediment or incapacity according to the personal law of parties and the marriage solemnised under the Act, is not invalid so as to render an order of maintenance under S. 488, Criminal P. C. illegal. (Roxburgh and K. C. Chunder JJ.) A. C. Smyth v. Mrs. Hannah Smyth,

A I R 1951 Cal 293=I L R (1950) 1 Cal 409.

——Scope—Personal law.

Section 88 relates to impediments to marriage and not all the impediments enumerated in the Canon law are necessarily attracted by the section. As the marriage, to attract the provisions of S. 88, must be a nullity according to the personal law of a party that part of the personal law of the parties only is contemplated by the section which relates to absolute impediments to any marriage at all between the parties, even marriage according to the rites of their own churches impediments such as prohibited degrees of consanguinity or affinity. (Happell J.) Gnanasoundari v. Nallathambi,

A I R 1945 Mad 516 = (1945) 2 M L J 80 = 58 L W 446 = 1946 Mad Rul 83=1945 M W N 421 = 222 I C 328=47 Cr L J 421.

——Custom as to dissolution of Christian marriage by release deed.

CHRISTIAN MARRIAGE ACT (XV of 1872), S. 88

Custom of dissolution of a Christian marriage by a release deed is not a part of the personal law which invalidates the marriage ab initio within the meaning of S. 88. There is nothing in the Divorce Act which permits the dissolution of a legal marriage between Christians by virtue of any custom applicable to either or both of the parties to the marriage. (Happell J.) Gnanasoundari v. Nallathambi,

A I R 1945 Mad 516 = (1945) 2 M L J 80 = 58 L W 446 = 1946 Mad Rul 83 = 1945 M W N 421=222 I C 328=47 Cr L J 421.

——Scope of.

Section 88 of the Christian Marriage Act clearly contemplates and prevents a marriage which would be invalid in places elsewhere, including in England and it does not become a valid marriage because it is celebrated in India. (Gentle J.) William Hudson v. Mrs. K. M. Webster,

A I R 1937 Mad 565=1937 M W N 363=10 R M 63 =46 L W 602=169 I C 516.

CINEMATOGRAPH ACT (XXXVII of 1952)

—S. 2.

——Ss. 2 (c) and 10—Production of films for exhibition—Movies—Nature of.

As regards the production of the films for exhibition, Court can take judicial notice of the fact that the completed production of a film is a highly technical and scientific process which requires the services of persons who are experts in that line. Movies are generally media of expression. What is finally distributed to the various picture houses for exhibition is not what existed at the initial stage, but it is the story, the plot or the idea that are worked up and knit into a continuous version that constitutes the entertainment that is catered to the public. (Govinda Menon and Basheer Ahmed Sayeed JJ.) K. V. Sarma, In re

A I R 1953 Mad 269 = 65 M L W 1198 = 1952-2 M L J 917=1953 M W N 153 = I L R (1953) Mad 775 =1953 Cr L J 532.

—S. 10.

——Production of films for exhibition—Movies — Nature of—See ibid, S. 2 (c)

A I R 1953 Mad 269=1953 Cr L J 532.

CIRCUMSTANTIAL EVIDENCE

See Evidence Act, S. 3.

CITY OF BANGALORE IMPROVEMENT ACT (V of 1945)

See (Bangalore) City of Bangalore Improvement Act (V of 1945).

CITY OF BOMBAY MUNICIPAL ACT (III of 1888)

See Bombay Municipal Corporation Act (III of 1888)

CITY OF BOMBAY POLICE ACT (IV of 1902)

See (Bombay) City of Bombay Police Act, 1902.

CIVIL COURT

See Criminal P. C. (5 of 1898), S. 195 (2).

—Powers in contempt cases—See Criminal P. C. (5 of 1898), Ss. 478, 479.

—Jurisdiction barred in nuisance cases—See Criminal P. C. (5 of 1898), S. 140 (3).

CIVIC GUARDS ORDINANCE (VIII of 1940)

—S. 4.

——Member when entitled to powers, privileges and protection of Police officer — Member when called out under S. 4 would become public servant under S. 21, Penal Code—See ibid, S. 5.

I L R (1947) 1 Cal 409.

——When the order calling out the members of the Civic Guards on duty was not notified in the Calcutta Police Gazette, as required by R. 7, the members cannot be said to have been called out on duty within S. 4 and hence resistance to arrest attempted to be made by them cannot constitute an offence under S. 353, Penal Code. (Edgley and Das JJ.) Jitendra Mohan v. Emperor,

A I R 1944 Cal 79=48 C W N 138 = I L R (1944) 1 Cal 456=16 R C 562=211 I C 392=45 Cr L J 384.

—S. 5.

——S. 5 (2) — Prosecution of member of Civic Guard for abetting attempted extortion—No sanction under S. 5 (2) is necessary: A I R 1944 F C 66, Rel. on. (Roxburgh and Ormond JJ.) Sadak Ali v. Emperor,

A I R 1948 Cal 47=I L R (1945) 2 Cal 478=230 I C 271=48 Cr L J 587.

——S. 5 (2)—S. 217, Penal Code (1860)—Nature of offence under — Sanction is necessary for prosecution for offence under S. 217 — Proceedings commenced without first obtaining sanction are null and void and are not validated by subsequent sanction.

Section 217, Penal Code, makes punishable a certain dereliction of duty quite apart from the question as to whether any bribe is paid to induce such dereliction. The dereliction must, clearly from the nature of the definition of the offence, be committed in the discharge of the functions of the person charged. Thus, the very nature of the offence under the section makes it clear that sanction for prosecution for this offence is clearly required. A I R 1939 F C 43, Rel. on; A I R 1944 F C 66, Ref.

Proceedings commenced in respect of an offence under S. 217 without first obtaining such sanction are null and void and subsequent sanction is not sufficient to validate them. A I R 1945 F C 16, Rel. on. (Roxburgh and Blank JJ.) S. B. Hossain v. Emperor,

A I R 1947 Cal 29=224 I C 422=47 Cr L J 623.

——Ss. 5 and 4—For enjoying privileges of Police Officer, Civic Guard must be called out under S. 4.

No member of the Civic Guard force can enjoy the powers, privileges and protection of an officer of police unless he has been called out in accordance with S. 4 of the Ordinance. (Khundkar and Roxburgh JJ.) Supdt. and Remembrancer of Legal Affairs, Bengal v. Gopi Ballav Dutta,

I L R (1947) 1 Cal 409.

——S. 5 (2) — No sanction under S. 5 (2) — Trial and conviction is illegal for anything done in discharge of duty by Civic Guard.

However reprehensible the conduct of a member of the Civic Guard who happens to be on duty within the meaning of sub-s. (2) of S. 5 may be, no prosecution can be launched against him without the sanction referred to for anything done in the discharge of his duty for the time being. The trial and conviction without the sanction required by sub-s. (2) of S. 5 is illegal and must be set aside. (Khundkar and Roxburgh JJ.) Krishna Prosad Banerji v. Emperor,

I L R (1947) 1 Cal 302.

—S. 8.

——Ss. 8, 4—Rules under S. 8—R. 7—Order calling out members of Civic Guard on duty not notified in Calcutta Police Gazette under R. 7—Resistance to arrest attempted to be made by members does not constitute offence under S. 353, Penal Code (Act XLV of 1860).

Under R. 7 of the rules made under S. 8, Civic Guards Ordinance (VIII of 1940), any order calling out the Civic

CIVIC GUARDS ORDINANCE (VIII of 1940), S. 8

Guard to duty must be notified in the Calcutta Police Gazette. Until and unless this mandatory provision of R. 7 is observed, it cannot be said that the Civic Guard has been called out for duty, and its members cannot, therefore, legally perform any of the functions with which Police Officers are specially invested under the law. It follows that, until such time as the Civic Guard has been legally called out for duty and the order calling them out for duty has been notified in the Calcutta Police Gazette, the members of the Civic Guard are merely empowered to perform duties which an ordinary citizen may perform, and are invested with the further duties mentioned in R. 5 of the rules regarding regular attendance at parades and lectures, and they are also required to obey lawful orders of their superior officers. Nor can it be said that members of the Civic Guard are in actual possession of the situation of Police Officers within the meaning of S. 21, Expl. 2, Penal Code, until they are legally called out for duty under the terms of Ordinance VIII of 1940 read with the rules. (Edgley and Das JJ.) Jitendra Mohan v. Emperor,

A I R 1944 Cal 79=48 C W N 133 = I L R (1944) 1 Cal 456=16 R C 562=211 I C 392=45 Cr L J 384.

CIVIL PROCEDURE CODE (XIV of 1882)

—S. 251.

——Decree—Warrant for possession — Execution beyond time—Obstruction to—See Penal Code, S. 353,

1 Cr L J 442 (Cal).

—S. 350.

——Ss. 350, 351 and 359—Power of Court to send insolvent to Magistrate.

Where after an enquiry held under S. 350, an order is passed under S. 351, declaring the petitioner an insolvent, the Court has no jurisdiction to pass an order under S. 359. (Sankaran Nair J.) Narasayya v. Subbayya,

15 M L J 12.

—S. 351.

——Order under—Subsequent order under S. 359—Validity—See Civil P. C. (1882), Ss. 350, 351, 359,

15 M L J 12.

—S. 359.

——Order under S. 350—Subsequent order under S. 359—Validity—See Civil P. C. (1882), Ss. 350, 351, 359,

15 M L J 12.

—S. 481.

See Penal Code (1860), S. 78.

—S. 568.

See Criminal P. C. (1898), S. 195.

—S. 569.

See Criminal P. C. (1898), S. 195.

—S. 622.

——Civil Court enquirying into truth of charge against legal practitioner — Perjury by witness in such enquiry—Sanction to prosecute — Revision under S. 439, Criminal P. C. or under S. 622, Civil P. C., maintainability of—See Criminal P. C., S. 195,

9 Cr L J 39 (All).

——Stay of criminal proceedings pending civil appeal — See Criminal P. C. (1898), S. 476,

8 Cr L J 435 (Cal).

——Order of District Judge revoking sanction—Power of High Court to interfere — See Criminal P. C. (1898), S. 195,

4 Cr L J 168 (Cal).

——Sanction to prosecute by Civil Court—Revision—Jurisdiction of High Court — See Criminal P. C. (5 of 1898), S. 195,

3 Cr L J 400 (All).

CIVIL P. C. (XIV of 1882), S. 622

——Order passed by a Civil Court under S. 476, Criminal P. C.—Entertainment of revision by High Court under S. 622. (Aikman J.) Emperor v. Durga Prasad,

1 A L J 481=1904 A W N 170=1 Cr L J 639.

——Revisional jurisdiction of High Court to interfere with order of subordinate civil Court under S. 476, Criminal P. C.—See Criminal P. C. (1898), S. 476B,

1 Cr L J 73 (All) (FB).

——Order of munsif under S. 476, Criminal P. C., directing prosecution—Revision under S. 439 — Jurisdiction of Criminal Bench of High Court — See Criminal P. C. (5 of 1898), S. 439,

1 Cr L J 21 (Cal).

—S. 647.

——Effect of—The effect of S. 647, Civil P. C., is not to make the provisions of the Civil P. C., applicable to proceedings under S. 195, Criminal P. C., which are of a criminal, rather than a civil nature. (Arnold White C. J. and Wallis J.) Rama Aiyar v. Venkatachala Padayachi,

30 M 311=2 M L T 84=17 M L J 123=5 Cr L J 288.

CIVIL PROCEDURE CODE (V of 1908)

—Preamble.

——Interpretation of Statutes — See "Interpretation of Statutes"

——Judicial precedents—See Precedents.

——Applicability of Code — See Criminal P. C. (1898), S. 145,

A I R 1950 All 490=51 Cr L J 1314.

—S. 4.

——S. 4, O. 18, R. 6 — Oudh Laws Act (XVIII of 1876), S. 19—Evidence of witness given in Urdu but recorded in English—Need for explaining same to witness — Applicability of O. 18, R. 6 to Oudh.

Under S. 19, Oudh Laws Act, it is necessary to interpret the evidence recorded in English to a witness who gives his evidence in another language, such as Urdu only, if he does not understand English, and requests that his deposition be interpreted to him.

Under S. 4, Civil P. C., it is S. 19 of the Oudh Laws Act which applies to the recording of evidence in a criminal case in Oudh and not O. 18, R. 6, Civil P. C. (Kisch J.) Hazari v. Emperor,

A I R 1931 Oudh 385=8 O W N 685=Ind Rul (1931) Oudh 270 = 1931 Cr Cas 817 = 132 I C 270=32 Cr L J 851.

—S. 9.

——Jurisdictions of criminal and civil Courts—See Criminal P. C., S. 488,

A I R 1953 Vind-Pra 28=1953 Cr L J 1214.

——Exercise of civil jurisdiction if made in exercise of criminal jurisdiction is wholly without jurisdiction — See Constitution of India, Art. 226,

A I R 1953 Nag 213=1953 Cr L J 1096.

——Delegated legislation—See Constitutional Law

A I R 1951 Sau 69=52 Cr L J 1300.

——Special procedure prescribed under Mysore Act (24 of 1942) — Validity — See Mysore Special Criminal Courts Act (XXIV of 1942),

A I R 1951 Mys 72=52 Cr L J 992 (FB).

——Case cognisable by Small Cause Court—District Court is not principal Court of original jurisdiction — See Criminal P. C. (1898), S. 195 (7) (c) (Roe, J.) Sukhdeo Singh v. District Magistrate of Muzaffarpore,

AIR 1916 Pat 53 = 38 I C 754 = 2 P L J 1 = 3 P L W 433 = 18 Cr L J 370.

——Question of ownership of land — Person accused of theft by cutting and removing bamboos from land, claiming land to belong to him—Bona fide claim — It is in the

province of civil court to determine question of ownership—See Penal Code, S. 379.

2 Cr L J 754 (Mad).

——Bar of suit in respect of acts done under S. 140 (3), Cr. P. C. — See Criminal P. C. (1898), S. 140 (3)

ILR (1951) 1 All 719.

——Ss. 9, 11—Suit by witness in proceedings under S. 145, Cr. P. C. for costs — Costs incurred in giving evidence in proceedings under the section — Suit for.

Where a Magistrate in a proceeding under S. 145, Criminal P. C. refuses to give a witness the costs incurred by him in appearing to give evidence before him a civil suit for the recovery of such costs is maintainable. The case may come under S. 70 of the Contract Act. The order of the Magistrate does not operate as 'res judicata' in bar of a suit in the Civil Court for such costs. (Banerjee and Pargiter JJ.) Nemai Chundra Ghose v. Ajahar Chowdhury,

8 C W N 178.

——Right to take religious procession — Criminal P. C. (1898), S. 146).

The right of Muslims to prohibit music being played before the mosque cannot be recognised by Courts, even on the ground of established custom as it is opposed to reason and democratic principles. No such privilege can be claimed on the highway road by any one community. Case law discussed. (Balakrishnaiya and Mallappa JJ.) The Govt. of Mysore v. Abdul Rauf,

55 Mys H C R 317.

—S. 10.

——Arbitration.

Where objections to an award are preferred in a Court no application under S. 10 for stay of proceedings lies on the ground that a suit in respect of the same subject-matter has been instituted in another Court by the applicant. (Rupchand A. J. C.) Grahams Trading Co. (Ind.) Ltd. v. Chandulal Parma Nand,

AIR 1935 Sind 228 = 8 R S 102 = 159 I C 824 = 37 Cr L J 175.

—S. 11.

See also Criminal P. C. (1898), S. 403.

——Dacoity—Suit against instigators of dacoity.

Where in a dacoity in the plaintiff's house it is found that the defendants though not actual participators had instigated the commission of the crime, were fully privy to it and financed the dacoits, they are liable in damages to the plaintiff. The suit is maintainable under S. 11, Civil P. C. and the somewhat artificial rule of English law that the suit against the felons would not lie unless they had been first prosecuted and convicted does not hold good. The confession and the deposition of the defendant as approver in the Criminal case are admissible in the Civil suit against the defendants though the Criminal Court did not act upon them because the conditions for receiving and acting on evidence in Civil Courts are very different to those governing the procedure of criminal Courts. (Sharf-ud-din and Coxe JJ.) Keshab Nath v. Manir-ud-din

13 C W N 501 =4 I C 523.

——Refusal of costs of witness in proceedings under S. 145 Cr. P. C.— Suit for recovery — 'Res judicata' — See ibid, Ss. 9, 11.

8 C W N 178.

—S. 13.

——Order obtained under S. 488, Criminal P. C. from Court at Lahore before partition — Executability of, in India after partition—See Criminal P. C. (1898), S. 490

AIR 1953 S C 441 = 1953 Cr L J 1923 (S C).

—S. 35.

—— Costs to be borne by successful party.

In a petition under Art. 226, Constitution of India, the State though successful was ordered to bear its costs,

regard being had to the irregularities in respect of the initial orders and to the attitude taken on behalf of the State in the matter of production and use of the Rules of Business to which it partly owed its success. (Koshi C. J. Govinda Pillai and Subramonia Iyer JJ.) Joseph John v. State of Trav-Co.

AIR 1953 T-C 130 = 1953 Ker L T 1 = ILR (1952) T C 884 = 1953 Cr L J 752 (FB).

—— Proceedings under contempt of Courts Act initiated by private parties — Costs—See also Contempt of Courts Act (1926), S. 2

AIR 1953 Cal 919 = 1953 Cr L J 136.

—S. 47.

——Applicability — See Press (Emergency Powers) Act (1931), S. 27

52 Cr L J 880 (Lah).

——'Res judicata'—Objections to award overruled—Subsequent suit challenging award on same grounds— Maintainability of.

Where in proceedings in execution for enforcing an award, objections under S. 47, challenging the decree and award are overruled, the objector cannot challenge the award on the same grounds by a subsequent suit for declaration that the award was void and without jurisdiction. (Guha and Bartley JJ.) Gour Chandra v. Ranaghat People's Bank, Ltd.,

AIR 1935 Cal 396 = 60 C L J 572 = 7 R C 708=156 I C 405 (2).

—S. 48.

——Applicability and scope.

S. 48, Civil P. C. which does not prescribe any period of limitation consequently does not apply to the warrant under S. 386 (1) (b), Criminal P. C. (Broomfield and Divatia JJ.) Collector of Broach & Panch Mahals v. Ochhavlal Bhikalal,

AIR 1941 Bom 158=194 I C 217=43 Bom L R 122= ILR (1941) Bom 147 = 13 R B 363=42 Cr L J 534.

—S. 60.

——Criminal Court directing monthly allowance to be paid by husband for maintenance of wife — It is not assignable by wife and arrears payable to her cannot be attached. (Guha and Bartley JJ.) Giribala Devi v. Nirmalbala Devi,

AIR 1935 Cal 578 = 62 Cal 404 = 39 C W N 281 = 157 I C 1089 = 1935 Cr C 1002.

—S. 62.

——S. 62 (3), if contains any limitations — Scope.

In S. 62 (3), there is no limitation that the particular room in question must be in the occupancy of the judgment-debtor. The Code apparently contemplates that it is sufficient that the decree-holder or the person making the attachment should consider that there may be property of the judgment-debtor in those rooms. (Bennet J.) Tej Sing v. Emperor

AIR 1935 All 490 = 7 R A 778 = 1935 ALJ 367= 1935 A W R 206=154 I C 631 = 36 Cr L J 545.

—S. 70.

——Assistant Collector not competent to receive application under rules framed under S. 70, Civil Procedure Code, cannot order prosecution under S. 182, Penal Code — See Penal Code (XLV of 1860), S. 182

AIR 1915 All 283 = 37 All 334 = 29 I C 89 = 13 A L J 479 = 16 Cr L J 457.

—S. 80.

——Substantial compliance with all the express requirements of this law is a sufficient compliance of S. 80, Civil P. C. (Aston A. J. C.) Asandas Hashmatrai v. Khan Chand

AIR 1933 Sind 240 = 1933 Cr C 800 = 148 I C 178.

CIVIL P. C. (V of 1908), S. 80

——Police Inspector acting in official capacity.

Police Inspector proceeded to the scene of offence on receipt of the report forwarded to him by the head muharrir. His subsequent report complaining of assault and obstruction by the plaintiff and his party was made by him in his capacity as police officer. One of the offences with which the plaintiff was charged was that under S. 332 I. P. C. Plaintiff was acquitted and suit was filed by him for damages for malicious prosecution.

Held that the Police Inspector was acting in his official capacity and that it was imperative on the plaintiff to give notice to him of the suit for malicious prosecution : A I R 1924 All 851, Foll.; 5 I C 467, Dist.'(Sen and Niamatullah JJ.) Mohamed Shariff v. Nasir Ali

AIR 1930 All 742 = 1930 Cr C 998 = 1930 A L J 1443 = 53 All 44 = 132 I C 17.

—S. 92.

——Charitable and Religious Trusts Act (XIV of 1920) — Applicability — Trust for public purposes is essential — Burden of proof — Gifts to Mohant of an asthal — Dedication for public purposes — Use of expression 'Shriprit' or 'Vishnuprit'—Inference.

For applying Act XIV of 1920 or S. 92, Civil P. C., it must be established that the trust was substantially for public purposes of a charitable or religious nature. It is not sufficient if one or some of the purposes of the trust are public.

To constitute a trust created or existing for a public purpose of a charitable or religious nature within the meaning of Act XIV of 1920, the author or authors of the trust must be ascertained, and the intention to create a trust must be indicated by words or acts with reasonable certainty. Moreover, the purpose of the trust, the trust property and the beneficiaries must be indicated so as to enable the Court to administer the trust if required.

Where an asthal is founded by a bairagi Sadhu and there is nothing to show that the founder dedicated the temple attached to it for public use, the mere fact that during festivals and on ceremonial occasions a large number of people used to come to the temple to make offerings and to receive 'prasad' cannot establish that the temple was a public institution. So also the feeding of Sadhus and the distribution of alms and the entertainment of guests are inevitable in a temple and these are merely incidental to the worship of the deities. Where properties have been gifted to the Mohant of the asthal without any indication that they were dedicated for public use, the mere use of the expression 'Vishnuprit', 'Sheoprit' or 'Sriprit' in the deed of gift does not indicate that the gift was made for public purposes. The incidents attaching to the properties depend in each case upon the conditions on which the properties were dedicated or upon the conditions which can be gathered from the way they have been dealt with or which may be inferred from the usage and the custom of the institution. (Sinha and Narayan JJ.) K. N. Missir v. R. N. Das

AIR 1951 Pat 340 = 28 Pat 890.

—S. 100.

——Mixed question of fact and law — Criminal P. C. (1898), S. 145.

Whether the other members of the joint Hindu family who were not parties to the proceedings under S. 145, Criminal P. C., are bound by the order of the Magistrate is a mixed question of fact and law and should not be raised at the late stage of second appeal for the first time. (Sinha and Rai JJ.) Pitambar Chaudhury v. Achoki Chaudhury

AIR 1951 Pat 325=29 Pat 311.

——Question or finding of fact—Signature — Genuineness of signature.

CIVIL P. C. (V of 1908), S. 100

A finding on a question as to genuineness of a signature is a finding of fact. (Rowland J.) Radhika Prasad v. Emperor

166 I C 531 = 38 Cr L J 235 (Pat).

—S. 109.

——S 109 (c) — Certificate of fitness under Art. 134 (1) (c) of the Constitution—Considerations involved are same as those under S. 109 (c), Civil P. C.— See Constitution of India, Art. 134 (1) (c).

AIR 1953 Mad 66=1953 Cr L J 256.

——Appreciation of approver's evidence by High Court—No ground for certificate of fitness—See Constitution of India, Art. 132 (1).

AIR 1951 Trav-Co 45.

——Contempt of Court.

The jurisdiction which the High Court exercises in proceedings for contempt of Court is a jurisdiction of a criminal nature and not of a civil nature at all. Where, therefore, the High Court has refused to punish a party for contempt, the provisions of S. 109, Civil P. C., have no application. (Collister and Bajpai JJ.) Radhey Lal v. Niranjan Nath,

AIR 1941 All 211 = (1941) A L J 265 = 14 R A 3= 1941 O W N 455=I L R (1941) All 364= 1941 A W R (H C) 120=1941 A Cr C 98=1941 A L W 319 (2)=1941 O A (Sup) 193=194 I C 606.

——Refusal to stay criminal complaint.

Where the High Court has refused to stay the criminal complaint, the jurisdiction it has exercised is of a criminal nature and S. 109 does not apply to an application for leave to appeal to the Privy Council. (Collister and Bajpai JJ.) Radhey Lal v. Niranjan Nath,

AIR 1941 All 211= 14 R A 3 = (1941) A L J 265 = 1941 O W N 455=1941 A W R (H C) 120=ILR (1941) All 364=1941 A Cr C 98 = 1941 A L W 319 (2)=1941 O A (Sup) 193=194 I C 606.

——Ss. 109, 110, 112 — Proceedings for contempt for publication of article in newspaper by Advocate.

Where the High Court took cognizance of contempt committed by the publication of an article in a newspaper by an Advocate and ordered notice to be issued to the writer, editor and printer and publisher to show cause why they should not be convicted and punished for contempt, the proceedings are in the exercise of the inherent jurisdiction of the High Court and of a criminal nature. A mere misdescription in the notice issued by the office will not make the proceeding one of a civil nature. Nor can it be said that merely because the Advocate was an officer of the Court, the proceeding against him was of an administrative character. The conviction and the fine imposed are themselves sufficient to show at least that the proceeding was not of a civil nature. The matter is of an exclusive jurisdiction and the order is final.

Section 110, Civil P. C., has no application to such a case. Nor is S. 109 applicable and S. 112, sub-s. (2) expressly makes the Code inapplicable to matters of criminal jurisdiction. Further, as the question for consideration being not so much of jurisdiction as of an interpretation of the passage objected to, the case cannot be certified as being otherwise a fit one for appeal to His Majesty in Council. (Sulaiman C. J. and Bennet J.) Kapildeva Malviya v. Hon'ble the Chief Justice and the Hon'ble Judges of the High Court at Allahabad,

AIR 1935 All 811 =7 R A 902 = (1935) A L J 810= 1935 A W R 669=57 All 910= 1935 Cr C 913=155 I C 188

——S. 109 (c)—Letters Patent (Allahabad), cl. 30— Legal Practitioner—Punishment for contempt of Court.

CIVIL P. C. (V of 1908), S. 109

Where a legal practitioner was punished by a Bench of the High Court for contempt of Court for certain remarks, which were held to be derogatory to the High Court, made by him as a party to a suit and was later on suspended from practising for six months under the Legal Practitioners Act and he made an application for leave to appeal to the Privy Council against the order :

Held, that leave to appeal might be granted under S. 109 (c), Civil P. C., or under cl. 30 of the Letters Patent :

Held, also, that he should furnish security as in appeals in ordinary civil cases. (Mukerji Ag. C. J. and Bennet J.) In re R, a Pleader,

AIR 1933 All 225 = (1933) A L J 273=55 All 246=6 R A 179=145 I C 853.

—S. 110.

——Certificate of fitness — See Constitution of India Art. 132 (1).

AIR 1951 Trav-Co 45.

——Applicability—Proceedings for contempt of Court for publication of article in newspaper by Advocate — Misdescription in notice — Effect — See Civil P. C. (1908), S. 109.

AIR 1935 All 811.

——Contempt proceedings.

Proceedings for contempt for publication of article in newspaper by Advocate are in the exercise of the inherent jurisdiction of the High Court and of a criminal nature. Mere misdescription in notice will not make it of civil nature; ss. 109 or 110 or 112 are inapplicable to such a case. (Sulaiman C. J. and Bennet J.) Kapildeva Malviya v. Hon'ble the Chief Justice and the Hon'ble Judges of the High Court at Allahabad,

AIR 1935 All 811=(1935) A L J 810=7 R A 902=57 All 910=1935 A W R (H C) 669=1935 Cr C 913 = 155 I C 188.

—S. 112.

——Applicability—Proceedings for contempt of Court for publication of article in newspaper by Advocate — Misdescription in notice — Effect — See Civil P. C. (1908), S. 109.

AIR 1935 All 811.

—S. 115.

See also Criminal P. C. (1898), Ss. 439 and 476.

——Proceedings under S. 78, Gwalior Municipal Act — Revision lies on civil side — See Municipalities — Gwalior Municipal Act S. 78.

AIR 1952 Madh-B 29=1952 Cr L J 269.

——Order in revision under S. 83 (3) C. P. & Berar Panchayats Act confirming decision of Nyaya Panchayat — If open to revision — See Central Provinces and Berar Panchayats Act (1 of 1947), S. 83 (3).

AIR 1951 Nag 443=1952 Cr L J 1 (FB).

——Order under S. 110, Bombay Municipal Boroughs Act (18 of 1925)—Revision lies on civil side of High Court—See Bombay Municipal Boroughs Act (XVIII [18] of 1925), Ss. 110, 111.

AIR 1950 Bom 397=52 Cr L J 1411.

——Discretion.

Criminal Law Amendment Ordinance (38 of 1944), Ss. 3 and 4— Attachment by District Judge— High Court in revision cannot go into question whether he was right or wrong in issuing attachment — See Criminal Law Amendment Ordinance (38 of 1944), Ss. 3 and 4.

AIR 1946 Lah 406=48 Cr L J 136.

——Revenue Court deciding appeal under S. 476-B, Criminal Procedure Code, is not subordinate to High Court— Order passed on such appeal is not revisable under S. 115.

CIVIL P. C. (V of 1908), S. 115

A Revenue Court deciding an appeal under S. 476-B, Criminal P. C., is not a Court subordinate to the High Court and, therefore, an order of a Revenue Court passed in an appeal under S. 476-B, Criminal P. C., is not open to revision under S. 115, Civil P. C. (Agarwal and Madeley JJ.) Jang Bahadur v. Emperor,

AIR 1944 Oudh 23 = 1943 O W N (C C) 176 = 1943 A W R (C C) 41=16 R O 79 = 208 I C 247=44 Cr L J 757.

——Criminal P. C. (1898) Ss. 476B and 439—Complaint under S. 476 by Civil Court—Revision — S. 439 and not S. 115, Civil P. C. applies — Revisional powers are not limited by powers of appeal conferred by S. 476B — See Criminal P. C. (1898), S. 476.

AIR 1941 Sind 217=43 Cr L J 259.

——Civil or revenue Court acting under S. 476, Criminal P. C.—Revision—Maintainability.

——Where a civil or a revenue Court decides to institute or withhold a prosecution under S. 476, Criminal P. C. the appeal is to the civil or the revenue Court, as the case may be, and the revision, if any, therefrom to the High Court is also on the civil side under S. 115 Civil P C. and not under S. 439 Criminal P. C. (Mya Bu and Ba U JJ.) Daw Saw Khin v. Ko Hpar,

AIR 1941 Rang 163=42 Cr L J 735.

——Order of Civil Court under S. 476—Revision lies under S 115 Civil P. C. and not under S. 439 : AIR 1939 Mad 472 : 41 Cr L J 705, Overruled — See Criminal P. C. (1898) S. 439.

AIR 1940 Mad 465=41 Cr L J 769 (FB).

——High Court's powers in revision in Civil, Criminal and Revenue matters.

Where a Civil or Revenue Court has initiated proceedings under S. 476 of the Criminal P. C., the High Court can in revision interfere with an order of the Appellate Court in such proceedings only under S. 115 and where a Criminal Court takes proceedings under S. 476 of the Criminal P. C., the appellate order of the Sessions Judge can only be revised by the High Court under the provisions of S. 439 of the Criminal P. C. (Nanavutty and Zia-ul-Hasan JJ.) Mendi Lal v. Ram Adhin,

AIR 1935 Oudh 59=11 O W N (C C) 1469 = 7 R O 291=10 Luck 335=153 I C 104=36 Cr L J 254.

——S. 115 and O. 8, R. 2 — Something put in written statement which is not true and something omitted which ought to have been there—Court holding that such action constituted offence under S. 193, Penal Code—Order is so misconceived that High Court is bound in revision to set it aside.

In many cases persons in verifying the pleadings, defendants their written statements, or plaintiffs their plaints, are often found to say something which is not strictly true; for example a defendant may deny the making of a contract or deny that a certain transaction took place in order to force the plaintiff to give evidence and be subjected to cross examination in the matter or to put the matter raised in issue. But by such action he does not render himself liable for prosecution for perjury for making false statement. Where the Judge so misconceives the operation and function of a written statement as to imagine that because something is put in in a written statement which is in a sense not true and something is omitted from the written statement, that of itself constitutes offence under S. 193, Penal Code, and the High Court is not only justified in exercising but is bound to exercise its power in revision to set aside the order. (Suhrawardy and Costello JJ.) Rash Behary Ray v. Emperor,

AIR 1930 Cal 639=32 Cr L J 238.

CIVIL P. C. (V of 1908), S. 115

——Scope — No revision lies against order under Legal Practitioners Act (18 of 1879), S. 36.

A High Court has no power under S. 115, Civil P. C. to interfere with an order under S. 36 Legal Practitioners Act. (Kennedy and Raymond A. J. Cs.) In re Mulchand Bhopatrai,

AIR 1920 Sind 70=21 Cr L J 449.

——Ss. 100 and 115 — Sanction granted by lower Court confirmed by first Appellate Court — Second Appeal does not lie — Remedy is by way of revision — Criminal P. C. (1898), S. 195.

Where a First Appellate Court confirms a sanction granted by the lower Court, no second appeal lies against the order of the First Appellate Court. The only remedy of the aggrieved party is to apply for revision under S. 115 of the Civil P. C. (Parlett, J.) Iyavoo Raja v. Thayammal,

AIR 1917 L B 85=18 Cr L J 977.

——Interference—Appellate order of District Judge under S. 195 (6), Criminal P. C.—High Court can interfere under S. 115, Civil P. C.—Criminal P. C., S. 195 (6).

The High Court can interfere under its revisional jurisdiction conferred by S. 115, Civil P. C. with an appellate order of a District Judge passed under S. 195 (6), Criminal P. C. Case-law reviewed. (Jwala Prasad J.) Rang Bahadur Singh v. Sheonandan Singh,

AIR 1917 Pat 173=41 I C 985=18 Cr L J 873.

——Refusal of application under S. 195 Criminal P. C. by Calcutta Small Cause Court—Proper forum for filing revision application.

A 'case' under S. 115, Civil P. C. includes an application for sanction made under S. 195, Criminal P. C. to the Smaii Cause Court. The High Court has revisional powers under S. 115, Civil P. C. to interfere with the order made because when the Small Cause Court acts under S. 135 it does not act as a Criminal Court. The High Court has no jurisdiction under S. 439, Criminal P. C. to interfere with the order. (Pugh J.) Ramadhin Bania v. Sew Balak Singh,

37 Cal 714 = 14 C W N 806 = 6 I C 473 = 11 Cr L J 357.

——"And in which no appeal lies thereto."

An application under S. 195 (6) is not an appeal. Hence the power of revision of High Court is not excluded. (Pugh J.) Ramadhin Pania v. Sew Balak Singh,

37 Cal 714=14 C W N 806 = 6 Ind Cas 473 = 11 Cr L J 357.

——'Illegal exercise of jurisdiction'—Offence against public justice committed before Small Cause Court — Sanction granted by such Court revoked by District Judge—Powers of High Court in revision — See Criminal P. C. (1898), S. 195,

10 Cr L J 454 (Cal).

——Order under S. 36, Legal Practitioners Act—See Legal Practitioners Act, S. 36.

A I R 1951 Ajmer 13.

—S. 135.

——S. 135 (2)—Construction of—Party arrested one hour after rising of Court — Arrest at place not on his way to his residence—Protection from arrest if can be given.

A reasonably wide construction must be given to S. 135, Sub-s. (2) of the Civil P. C.

Where party to a suit was arrested one hour after the Court had risen, when he was on his way to a place, which, though within the same compound as that in which the Court building was situated, was not on the way to his residence, and no explanation was offered as to how he had spent the interval :

Held, that under the circumstances, it could not be said he was attending the Court at the time so as to be given

CIVIL P. C. (V of 1908), S. 135

the benefit of the section by way of affording him protection from arrest. (Panckridge J.) Ram Prasad v. Emperor,

AIR 1933 Cal 11=36 C W N 1071 = Ind Rul (1933) Cal 143=141 I C 605=34 Cr L J 173.

——No protection is given against writ issued under Criminal P. C., S. 488.

Section 135 only gives a person engaged in civil litigation sanctuary from arrest under civil process. And a warrant issued under S. 488, Criminal P. C., though entrusted to a civil bailiff does not come within S. 135. (Tek Chand, J.) Mt. Dani v. Emperor,

AIR 1929 Lah 785=30 Cr L J 788.

—S. 136.

——Powers under—Provisions must be strictly observed.

When a Court exercises the extraordinary powers conferred on it by S. 136, Civil P. C., the provisions of that section must be strictly observed; and the warrant must be endorsed to the District Court outside the jurisdiction of the issuing Court, in which the warrant is to be executed. Therefore, a warrant sent to the Munsif is defective and where a person arrested in pursuance of such warrant escapes, he cannot be convicted under S. 225-B, I. P. C. (James and Madan JJ.) Bansropan Singh v. Emperor,

AIR 1937 Pat 603=1938 P W N 97=18 P L T 760=4 B R 85=10 R P 258=171 I C 894=39 Cr L J 2.

—S. 144.

——Interest of stranger cannot be prejudiced—Nature of enquiry—Complicated question.

Though as regards restitution, the parties must be placed in the position in which they previously were, irrespective of any other rights accruing to any of the parties during the litigation and though it is clear that restitution is a duty on the part of the Court as well as an obligation on the part of the party against whom the variation or reversal of the decree or of an order has taken place, yet under the words of S. 144, Civil P. C., or under the general jurisdiction of a Court, the rights or benefits acquired by third parties strangers to the decree or order that has subsequently been varied or reversed cannot be interfered with by an order for restitution because restitution is not always meant to be a complete remedy and because these sections apply only to the parties or their representatives and not to strangers. In proceedings relating to restitution only a summary inquiry is contemplated and hence the complicated question of a stranger's rights should not be gone into. (Mukerji and Guha JJ.) Rajjabali Khan v. Faku Bibi,

AIR 1932 Cal 29 = 58 Cal 1070 = 35 C W N 483 = Ind Rul (1931) Cal 906=(1932) Cr C 66=134 I C 906.

——Court's jurisdiction as to restitution arises under S. 144 and also is inherent in its general jurisdiction.

The duty or jurisdiction of a Court in respect of restitution does not arise merely under S. 144 but is inherent in the general jurisdiction of the Court : A I R 1931 Cal 42; A I R 1922 P C 269, Ref. (Mukerji and Guha JJ.) Rajibali Khan Talukdar v. Faku Bibi

AIR 1932 Cal 29=35 C W N 483=58 Cal 1070=134 I C 906=1932 Cr C 66.

—S. 151.

——Applicability — See Press (Emergency Powers) Act (1931), S. 27

52 Cr L J 880 (Lah) (FB).

——Legal Practitioner—Hyderabad High Court—Power of, to grant permission to any advocate from outside, not on the rolls of the High Court to appear in particular civil case'— Hyderabad High Court Act (3 of 1337 F), S. 13 (18) and (24) — Hyderabad Legal Practitioners Act

CIVIL P. C. (V of 1908), S. 151

(VI of 1318F) S. 6—Bar Councils Act (1926), S. 19 (4) — Legal Practitioners Act (1879)—Civil P. C. (1908), Ss. 116, 151, Constitution of India, Art. 225.

Majority opinion of the Full Bench :

(1) Per Naik C. J., Sripat Rao, A. M. Ansari, M. A Ansari, M. S. Ali Khan, Suryanarayana Rao, Srinivasa Chari JJ. (Manohar Prasad and V. R. Deshpande JJ. Contra). — Even though all the provisions of the Indian Bar Councils Act, 1926 and the Indian Legal Practitioners Act, 1879 have not been made applicable to the Hyderabad State by a proper notification in this regard, the Hyderabad High Court has full power to grant permission to any Advocate from outside the State who is not on the rolls of that High Court to appear and argue in civil case.

Per Naik C. J. — Section 3 of the Hyderabad Legal Practitioners Act has been repealed and is no longer in force and at any rate it certainly does not control the exercise of powers of the Hyderabad High Court under sub-s. (18) of S. 13 of the High Court Act. Besides S. 3 of the said Act refers to persons who are entitled to practice as a matter of right. To have a right to appear in a case is one thing and to permit anyone to appear in a special case is quite another thing. In one case it is the right of the individual and in another it is the discretion of the High Court.

Per M. A. Ansari J. — The High Court's powers under S. 13 (18) of the High Court Act are still intact, which have been preserved by Art. 225 of the Constitution and permission can be granted by it to any Advocate from outside who is not on the rolls of this Court.

(2) Per Naik C. J., Sripat Rao, A. M. Ansari, M. A. Ansari, Suryanarayana Rao and V. R. Deshpande JJ.— S. 19 (4), Indian Bar Councils Act and S. 6, Part B States (Laws) Act read with S. 16, Hyderabad General Clauses Act do not affect the powers of the Hyderabad High Court to grant such permission.

Per Naik C. J.—The effect of the application of S. 19 (4) of the Indian Bar Councils Act and S. 6 of the Part B States (Laws) Act, read with S. 16 of the Hyderabad General Clauses Act does not save S. 3 of the Hyderabad Legal Practitioners Act. S. 19 (4) of the Indian Bar Councils Act is the usual provision made in the case of repealed and amended enactments. It has nothing to do with the grant of a permission to an Advocate enrolled in other High Courts in India. If anything, it supports the contention that whatever prohibition there may have been under S. 3 of the Hyderabad Legal Practitioners Act and the rules made thereunder, they cannot be deemed in force as being repugnant to the context of this Act. Similarly, S. 6 of the Part B States (Laws) Act read with S. 16 of the Hyderabad General Clauses Act provides the saving of the previous operation of the law and treats the acts done thereunder so far as they are not opposed to the provisions of the new law. None of these sections come in the way of the High Court granting permission to a lawyer to appear in a particular case. In the very nature of things, the High Court has the power to grant permission when it deems it necessary in the interest of justice.

Per Manohar Prasad J. — Section 3 of the Hyderabad Legal Practitioners Act remains in force unrepealed. The effect of the application of S. 19, Cl. (4) of the Indian Bar Councils Act of 1926 and S. 6 of Part B States (Laws) Act read with Ss. 16 and 19 of the Hyderabad General Clauses Act is that only such of the provisions of the Hyderabad Legal Practitioners Act as are inconsistent with the provisions which have come into operation will

CIVIL P. C. (V of 1908), S. 151

stand repealed 'pro tanto' leaving unaffected the other provisions of the Hyderabad Legal Practitioners Act.

(3) Per Naik C. J., Sripat Rao, A. M. Ansari, M. A. Ansari, Srinivasa Chari, and Suryanarayana Rao and V. R. Deshpande JJ.—Irrespective of any enactment the High Court as a Court of Record has inherent power to grant permission to advocates who are not on the rolls of the High Court to appear in particular civil case.

Per Manohar Prasad and M. S. Ali Khan JJ.—Question of inherent power does not arise when there is specific provision. (Naik C. J., Qamar Hasan, Sripat Rao, A. M. Ansari, Manohar Pershad, M. A. Ansari, M. S. Ali Khan, V. Suryanarayana Rao, Srinivasa Chari and Deshpande JJ.) Ramdayal v. Shankarlal

AIR 1951 Hyd 140=ILR (1951) Hyd 689 (FB).

——Injunction, in personam against party restraining it from proceeding with criminal complaint in Court outside jurisdiction of High Court.

High Court has inherent jurisdiction to grant an injunction in personam against a person who has submitted to the jurisdiction to restrain him from proceeding with a criminal complaint in a Court which is not subject to the jurisdiction of that High Court. This jurisdiction, however, should be exercised with extreme caution.

[Bombay High Court refused to grant injunction in personam against a defendant who had submitted to its jurisdiction restraining him from proceeding with the complaint filed by him against the applicant in the Court of a Magistrate at Benares, charging him with an offence of criminal misappropriation as the plaintiff had not, in the first instance, applied to the Criminal Court for the stay of criminal proceedings, had instituted the civil suit with the object of forestalling and preventing the criminal proceedings, and there was a long delay in praying for the injunction]. (Blackwell J.) Kanhayalal Harkarandas v. Mohanlal Ramvallabh,

AIR 1941 Bom 219 = 43 Bom L R 287=14 R B 9= 194 I C 814.

——Section 151 does not confer summary jurisdiction to punish contempts of Court—Criminal P. C., S. 480.

Section 151 does not give the Court a blank cheque or an absolute discretion to make any order it pleases. It certainly does not confer upon any Court a summary jurisdiction which it does not otherwise possess to punish contempts by fine or imprisonment. After the petitioner's suit in a Court of Small Causes was decreed the defendants on the next following day applied for a revival or retrial of the suit whereupon the Munsif who sat as a Judge of the Small Cause Court served the petitioner with a notice to appear with his books on a certain day and give his deposition. The petitioner did not comply with the terms of the notice and the Munsif called upon him to show cause why he should not be fined for his disobedience. The petitioner showed cause by a petition. The matter was then taken up by the Munsif on a date on which the petitioner was absent and the following order was made : "The plaintiff was served with a notice by the Court to appear for a certain reason. He did not obey the Court's order and was again asked to show cause why he should not be fined for contempt of Court. He filed an application showing cause but is absent today and the case is going on ex parte. I fine him Rs. 50 for contempt of Court for disobeying the Court's order :"

Held that the Munsif had no jurisdiction either under S. 151 or S. 480, Criminal P. C. to make the order fining the petitioner for contempt of Court. (Richardson and Shamsul Huda JJ.) Chogmal Seraogi v. Emperor,

AIR 1919 Cal 44=20 Cr L J 373.

CIVIL P. C. (V of 1908) —O. 1, R. 8.

——Representative suit.

A representative suit does not lie for damages in tort though when a representative suit properly framed for other reliefs incidentally involves a claim for damages put forward by certain individuals among the plaintiffs, such a claim has been permitted to be urged as ancillary to the main suit. (Wadsworth J.) Narayana Mudali v. Peria Kalathi

AIR 1939 Mad 783=49 L W 664=1939 M W N 593 =(1939) 2 M L J 296=13 R M 110=188 I C 801=41 Cr L J 677.

—O. 3, R. 1.

——Appearance by pleader—See Hyderabad Legal Practitioners Act (6 of 1318F), S. 3

AIR 1951 Hyd 140.

—O. 3, R. 4.

——Power to make admissions.

Per Achhru Ram J. — Any admission by the Advocate-General on a question of law cannot bind the Crown nor can it stand in its way of deciding the case by the High Court according to its view of the law. (Munir, Achhru Ram and Mohammad Sharif JJ.) In the matter of Nawai Waqt, Daily Lahore

AIR 1948 Lah 161=ILR (1947) Lah 497=49 Cr L J 480 (SB).

——O. 3, R. 4 (2) — Power in suit — Pleader can act in miscellaneous proceedings arising — Vakalatnama — Acceptance must be endorsed — When power terminates stated.

In miscellaneous proceedings arising out of a suit a pleader is entitled to act on the authority of a vakalatnama obtained by him in the principal suit.

A pleader ought to endorse his acceptance on the vakalatnama under which he acts as required by the rules of the High Court, and if he does not accept the authority in writing he should not be allowed by the Judge to be heard or to act in any manner on behalf of the party.

Under O. 3, R. 4 (2), Civil P. C. after a pleader has once been appointed by a party his employment cannot be determined except (1) by a writing signed by the client or the pleader and filed in Court with the leave of the Court, or (2) by the termination of the proceedings in the suit. This rule should be strictly observed. (Chamier C. J., Sharfuddin and Chapman JJ.) Two Pleaders, in the matter of,

A I R 1917 Pat 211 = 41 I C 328 = 1 P L W 483 = 1917 P H C C 217=2 P L J 259=18 Cr L J 808 (SB).

—O. 5. R. 20.

——Non-compliance with S. 82 of Code of 1882 (O. 5, R. 20) and warrant issued for arrest of witness—Witness arrested—Another rescuing him by committing assault—Offence held though not under S. 225-B was under S. 353, I. P. C.—See Penal Code, Ss. 225-B and 353.

2 Cr L J 155 (All).

—O. 6, R. 2.

——Construction of pleadings—Pleadings in the Mofussil where no great exactitude of expression is found should not be taken too literally. (Munro and Abdur Rahim JJ.) Narain Sastrulu v. Kanaknuna,

3 I C 723=6 M L T 346=10 Cr L J 364.

—O. 6, R 5.

——Rejected replication — S. 145, Evidence Act (I of 1872).

Though the replication which is rejected cannot be treated as a pleading, the Court can place the replication on the record with its order thereon. The replication can be used as a previous statement to contradict the statement made by the petitioner in Court under S. 145, Evidence Act, (Bhide J.) Behari Lal Sud v. Emperor,

A I R 1939 Lah 529= 41 P L R 652= 12 R L 313 = 185 I C 588=41 Cr L J 204.

—O. 6, R. 14

——Plaint signed by prisoner in contravention of jail regulations is as good as any other plaint.

A plaint signed or a suit authorized by a man in jail is just as good as any other suit or plaint, although the plaintiff in signing the plaint or authorizing the suit contravenes some of the provisions of the jail Manual. (Walsh, J.) Bisheshar Nath v. Emperor,

AIR 1918 All 275=19 Cr L J 865.

—O. 6, R. 16.

——Scandalous remarks in pleading against stranger — Expungement of.

A stranger to a suit against whom certain scandalous remarks have been made in the pleading, can obtain leave of the Civil Judge to make an application for the expunction of those remarks, though he cannot claim the expunction as of course: (Harish Chandra and Desai JJ.) L. Jagannath Prasad v. Ramchandra,

AIR 1948 All 408=1949 All L J 297=1949 All W R (HC) 346=ILR (1950) All 415=1952 Cr L J 786.

—O. 6, R. 17.

——Allegation of fact, however scandalous it may be, cannot be expunged if it is relevant or pertinent. (Harish Chandra and Desai JJ.), L. Jagannath Prasad v. Ramchandra,

AIR 1948 All 408=1949 All L J 297=1949 All W R (HC) 346=ILR (1950) All 415=1952 Cr L J 786.

—O. 8, R. 2.

——Something put in written statement which is not true and something omitted which ought to have been there — Court holding that such action constituted offence under S. 193, Penal Code—Order is so misconceived that High Court is bound in revision to set it aside— See Civil P. C. (1908), S. 115,

AIR 1930 Cal 639=32 Cr L J 238.

—O. 8, R. 5.

——Denial by necessary implication.

There is no denial by necessary implication of the statements in the plaint when the language which can be looked to, to find that denial is a statement which is in itself so inconsistent as not to be capable of admitting or denying anything. (Roberts, C. J. and Dunkley J.), In re S. K. Mitra,

AIR 1940 Rang 190=13 R Rang 81 = 190 I C 320= 41 Cr L J 899.

—O. 9 R. 9.

——Plaintiff pardanashin lady — Counsel engaged in another Court when case called—Suit can be restored if application made the same day.

If plaintiff is a pardanashin lady and her counsel is engaged in another Court when the case is called in the early part of the day, the suit can be restored if the application for restoration is made the same day. (Bhide J.) Sardar Begam v. Muhammad Said,

AIR 1930 Lah 943=31 P L R 550=129 I C 890.

—O. 10.

——Statement of party unless substantiated by evidence of party in witness box cannot be treated as evidence against opposite party.

The statement under O. 10 cannot be treated as evidence in the case against the opposite party who has no opportunity of cross-examining his opponent who made the statement. The party to a suit must give evidence as a witness in respect of matters which are directly within

CIVIL P. C. (V of 1908), O. 10

his knowledge. (Shadi Lal, C. J. and Agha Haidar J .), Dongar Mal-Amir Chand v. P, a pleader,

AIR 1930 Lah 947=32 Cr L J 303.

—O. 10, R. 1.

——O. 10, R. 1, O. 18, R. 5—Court not bound to examine parties on oath under O. 10, R. 1 — Reasons for reading out statement of witnesses recorded stated — Omission to note that statement was read out and admitted correct —Presumption.

Under O. 10, R. 1 of the Civil Procedure Code a Court is not bound to examine the parties on oath, but it has power to do so if it should think fit. O. 18, R. 5 of the Civil Procedure Code requires that a statement of a witness when recorded should be read out to him and this for a double reason. In the first place any mistake made either by the deponent or by the writer can be corrected and in the second place a locus pœnetentiæ is provided for a person who has made false statement.

Where the record itself does not contain the usual note that the statement has been read out and admitted correct it cannot be presumed that it was read out. 28 Mad. 308 and 12 C W N 845, Ref. (Chevis, J.) Kartar Singh v. Emperor,

AIR 1917 Lah 192=39 I C 847=12 P R Cr 1917=15 P W R Cr 1917=18 Cr L J 607

—O. 11, R. 21.

——Disobedience if can be punished as an offence under S. 175, Penal Code—See Penal Code S. 175

6 I C 623=11 Cr L J 386.

—O. 16, R 10.

——Civil P. C., O. 16, R. 10—Witness refusing to accept summons but attending Court on the date fixed — Fine cannot be imposed.

Order 16, R. 10 only comes into play where a person has failed to attend to give evidence or to produce a document which has been summoned from him. If a person refuses to accept a summons, but attends the Court on the date fixed, R. 10 does not apply. (Dalip Singh J.) Sundar Singh v. Emperor,

AIR 1928 Lah 469=29 Cr L J 704.

—O. 18, R. 5.

——Judge .recording evidence under O. 18, R. 5, is not bound to append note that evidence was read out to witness when completed—No evidence that Judge has not read out depositions—Presumption is that the Judge has complied with provisions of O. 18 R. 5 — Evidence Act, Section 80.

There is no provision of law that a Judge who records the evidence of a witness in cases to which O. 18, R. 5, applies shall append a note to the effect that the evidence of the witness when completed has been duly read out to him. In every such case it should be presumed under S. 80, that the statement was duly taken.

Where therefore there is no evidence to show that the deposition of a witness in a civil suit was not read over to him by the Judge, it must be presumed under S. 80, Evidence Act, that the judge complied with the provisions of O. 18 R. 5, Civil P. C. (Rattigan C. J. and Le Rossignol J.), Emperor v. Jagat Ram,

AIR 1919 Lah 348=19 Cr L J 972.

——Court not bound to examine parties on oath under O. 10, R. 1—Reasons for reading out statement of witnesses recorded stated — Omission to note that statement was read out and admitted correct—Presumption – See Civil P. C. (5 of 1908), O. 10, R. 1. (Chevis J.) Kartar Singh v. Emperor,

AIR 1917 Lah 192=39 I C 847=12 P R Cr 1917=15 P W R Cr 1917=18 Cr L J 607.

CIVIL P. C. (V of 1908)

—O. 18, R. 6.

——Applicability of, to Oudh — See Civil P. C. (1908), S. 4.

AIR 1931 Oudh 385=32 Cr L J 851.

—O. 19, R. 3.

——Scope—Affidavit to prove that certain order was validly made by State Government—Form of—See Constitution of India, Art. 166 (1).

AIR 1952 S C 317=1952 Cr L J 1269 (SC).

—O. 21, R. 22.

—— Plea as to non-service of notice — Whether valid defence.

The question whether there was due service of notice under O. 21, R. 22, is immaterial where the notice has in fact been issued and it is found that the judgment-debtor had knowledge of the fact of issue of the notice and possession was delivered to the decree-holder in execution. (Macpherson and Rowland JJ.) Kallu Mahto v. Emperor,

AIR 1932 Pat 244=13 P L T 395 = Ind. Rul. (1932) Pat 346=139 I C 585=33 Cr L J 862.

——Notice under warrant of arrest.

Provided the Court intended to exercise its powers under sub-r. (2), a simultaneous issue of notice under O. 21, R. 22, to show cause why the judgment-debtor should not be arrested and a warrant of arrest does not make the warrant of arrest an illegal warrant and a person resisting such a warrant is guilty of an offence under S. 353, Penal Code. (Rankin C. J. and Mallik J.) Rajani Kanta v. Emperor,

AIR 1931 Cal 443=35 C W N 228=58 Cal 940=Ind. Rul. (1931) Cal 564=132 I C 244=32 Cr L J 886.

——O. 21, R. 22 (2)—Issue of process forthwith without recording reason does not make order without jurisdiction.

Issuing any process forthwith without notice under O. 21, R. 22 in a case coming under that rule cannot be said to be without jurisdiction merely on the ground of the failure to record the reasons for so doing under O. 21, R. 22 (2). AIR 1924 Cal 1 (FB), Rel. on. (Rankin C. J. and Mallik J.) Rajani Kanta Saha v. Emperor,

AIR 1931 Cal 443=35 C W N 228=132 I C 244=1931 Cr C 595=58 Cal 940=32 Cr L J 886.

—O. 21, R. 24.

——Applicability—See Press (Emergency Powers) Act (1931), S. 27.

52 Cr L J 880 (Lah) (FB).

——O. 21, Rr. 24, 44—Warrant of attachment not signed by Court—If legal—Removing of produce, if an offence—Penal Code (Act XLV of 1860), S. 379.

Under O. 21, R. 24 every process issued by a Court for the execution of the decree should bear date, the day on which it is issued and should be signed by the Judge or such officer as the Court may appoint in this behalf and should be sealed with the seal of the Court and delivered to the proper officer to be executed. Where, therefore, the warrants are not signed by the Court and do not bear the seal of the Court, the attachment is illegal and if the procedure prescribed by O. 21, R. 44, is not followed, the produce attached cannot be deemed to have passed from the possession of the judgment-debtor into the possession of the Court, and if therefore the crops are removed with the consent of the judgment-debtor the person removing the crops cannot be said to be guilty of theft. (Bajpai J.) Beni v. Emperor,

AIR 1935 All 214=7 R A 499=1935 A W R 59=1935 A L J 63=57 All 660=153 I C 428=36 Cr L J 340.

——O. 21, R. 24 (3) — If mandatory — Date for return fixed in process—Subsequent attachment.

Where a process has a date fixed for its return under O. 21, R. 24 (3), it cannot be executed after that date and

CIVIL P. C. (V of 1908), O. 21, R. 24

any person whose property is attached after the date fixed for the return of the process may, when charged with a criminal offence under S. 424, Penal Code, plead that this property has never been lawfully removed from his possession and that, therefore, he can commit no offence by taking the property in his own use.

The provisions of O. 21, R. 24 are mandatory (Pullan J.) Gurdial v. Emperor,

AIR 1933 All 46=1933 A L J 1=Ind. Rul. (1933) All 368=55 All 119=144 I C 32.

——O. 21, R. 24 (2) — Warrant sent to Nazir for execution—Nazir's power to delegate.

There is nothing in the Civil P. C., to prevent an officer to whom a warrant is issued from delegating his authority to some subordinate officer for executing the warrant. (Sulaiman J.) Jagannath v. Emperor,

AIR 1932 All 227=Ind. Rul. (1932) All 611=1932 A L J 179=140 I C 118=33 Cr L J 887.

—O. 21, R. 32.

——Injunction—Meaning explained—Order in preliminary decree to furnish account is not injunction.

An injunction is in its essence the grant of a mode of relief consequential upon an infringement of a legal right. It forms part of a decree made at a hearing upon the merits, whereby the defendant is perpetually inhibited from the assertion of a right, or perpetually restrained from the commission of an act contrary to equity and good conscience. A preliminary decree in a suit for accounts directing the defendant to furnish and render accounts is not an "injunction" within the meaning of R. 32, O. 21, and the failure of the defendant to furnish accounts does not entitle the Court to take proceedings under that section. (Mullick and Atkinson JJ.) Arjun Suie v. Emperor,

AIR 1918 Pat 451=19 Cr L J 385.

—O. 21, R. 35.

——The rule for delivery of possession in the case of eviction under the Land Revenue Code is the same as that under Civil P. C.—See Criminal P. C., S. 145.

AIR 1953 Sau 135=1953 Cr L J 1253.

——Standing crops.

Where the decree-holder is put in possession of land, such possession includes the standing crops. The judgment-debtor cannot re-enter in order to reap and dispose of the crops which he had cultivated upon the land. (Mya Bu J.) Maung Kan v. Maung Po Tok,

AIR 1939 Rang 388=12 R Rang 183=1940 Rang L R 157=185 I C 119=41 Cr L J 123.

——O. 21, R. 35 (1)—Under O. 21, R. 35 (1), there is no need to give any information of actual ejectment or delivery of possession to the judgment-debtors. (Ganga Nath J.) Gajraj Sinha v. Emperor,

AIR 1935 All 938=1935 A L J 1108 = 1935 A W R 1067=1935 R D 491=8 R A 425=159 I C 306=37 Cr L J 56.

——Delivery of possession can be made to agent, authorized by decree-holder.

Under the provisions of O. 21, R. 35, Civil P. C., delivery of possession can be made to any person orally authorized by the decree-holder to take possession, even though he does not hold a power-of-attorney from the latter. (Mittra Offg. A. J. C.) Lava v. Emperor,

AIR 1917 Nag 231 = 40 I C 689 = 13 N L R 87=18 Cr L J 689.

—O. 21, R. 37.

——Notice to show cause — See Bihar and Orissa Public Demands Recovery Act (4 of 1914), S. 7.

AIR 1953 Pat 313=1953 Cr L J 1681.

CIVIL P. C. (V of 1908), O. 21, R. 37

——Procedure—Courses before Court.

Two courses are open to the Court under O. 21, R. 37, either it can issue a warrant of arrest, or it can issue a notice giving the judgment-debtor a date on which to appear in Court. If the Court follows the second mode of procedure, the question of arrest can only arise when the judgment-debtor fails to comply with the notice. In this case, his arrest within that period will be illegal. (Pullan and Thom JJ.) Fattu v. Emperor,

AIR 1932 All 692=1932 A L J 1073=Ind Rul (1933) All 139=55 All 109=142 I C 887=34 Cr L J 455.

——O. 21, R. 37, cls. (1) and (2) — Notice and warrant of arrest — Simultaneous issue of — Judgment-debtor's refusal to accept notice—Obstruction to arrest—Whether an offence—Legality of warrant.

Though under O. 21, R. 37 (1) and (2), the Court may either issue a notice upon the debtor to show cause why he should not be committed to prison, or a warrant for his arrest, yet having decided to issue a notice it should not deprive the judgment-debtor of the opportunity which the notice affords him.

Where the executing Court simultaneously issued a notice to the judgment-debtor to appear and also a warrant to arrest him in case he intended not to appear and the judgment-debtor refused to accept the notice and offered resistance with the help of others when the warrant was sought to be executed, and he and his associates were convicted under S. 225-B and Ss. 353 and 225-B, I. P. C., respectively :

Held, that a mistake was made by the executing Court in exercising its discretion to issue to the peons a warrant of arrest after it had already issued a notice for appearance and before the expiry of the term specified in the notice, but it was the duty of the peons to execute that warrant and it was no part of their duty to ascertain whether executing Court had properly exercised its undoubted legal discretion to issue that warrant, and that the apprehension of the judgment-debtor having been a lawful one, escape from and obstruction to that apprehension were unlawful. (Courtney Terrell C. J.) Puna Mahton v. Emperor,

AIR 1932 Pat 315=13 P L T 502 = 11 Pat 743=Ind Rul (1933) Pat 125=142 I C 160=34 Cr L J 269.

—O. 21, R. 39.

——Subsistence money — See Bihar and Orissa Public Demands Recovery Act (4 of 1914), S. 47,

AIR 1953 Pat 313=1953 Cr L J 1681.

—O. 21, R. 43.

——"Actual seizure" does not mean seizure by force of property on person of judgment-debtor.

When a writ of attachment of property is issued by a Court and the bailiff goes to execute it, he cannot arrest or search the judgment-debtor; he cannot lay violent hands on his person even if this was necessary to seize property in the actual possession of the judgment-debtor. The words "actual seizure" occurring in O. 21, R. 43 only mean the taking of physical possession and do not mean seizure by means of force or violence of the property on the person of the judgment-debtor : Case law referred. (Davis C. J. and Thadani J.) Emperor v. Ghanshamdas Lokumal,

AIR 1946 Sind 166=I L R (1946) Kar 57=228 I C 4 =48 Cr L J 35.

——Attachment of cattle securely tied — Actual contact is not necessary — Mere declaration by Court Officer of intention to attach is enough.

Actual seizure of moveables to be attached does not always require physical contact but this depends upon the particular fact.

CIVIL P. C. (V of 1908), O. 21, R. 43

Where the goods to be seized were cattle securely tied by ropes so that they could not run away of their own accord :

Held, that it was sufficient for the officer of the Court to go sufficiently near the cattle and declare to others his intention to attach the cattle : 27 Mad 346, Appr. (Pandalai J.) Pinnamraju Rajamraju v. Potturi Tirupatiraju,

AIR 1930 Mad 670=31 Cr L J 1086.

——End of liability of supertdar on attachment falling through.

Liability of the custodian (Supertdar) of attached property, necessarily terminates, if the attachment falls through. (Chatterji J.) Hiralal v. Emperor,

3 Ind Cas 638=10 Cr L J 353 (Punjab).

—O. 21, R. 44.

——Attachment not in accordance with R. 44.

An alleged attachment which was not in accordance with the provisions of R. 44, O. 21, would not operate to transfer possession of the property to the Court. But the presumption of law is that anything which is done by the officer of the Court is properly done until the contrary is shown :

Held, that in the absence of any attempt on the part of the accused in the Magistrate's Court to elicit from the 'amin' that he had failed to carry out the provisions of the law, it cannot be said that those provisions were not carried out and that the attachment was void. (Allsop J.) Ram Bahal Ahir v. Emperor,

AIR 1935 All 364 = 1936 A W R 325 = 1936 A L J 283=8 R A 882=162 I C 653=37 Cr L J 675.

——Warrant of attachment not signed by Court—Legality —Removing of produce, if an offence—See Civil P. C., O. 21, R. 24.

AIR 1935 All 214=36 Cr L J 340.

—O. 21, R. 45.

——O. 21, R. 45 (2) — In default of payment, warrant of attachment directing peon to hold attached property — Removal of crop, whether theft—Absence of charge under theft—Effect of.

Where the warrants of attachment direct the peon to hold the attached property, in default of payment, until further orders, the peon's custody is plainly operative in law. If in these circumstances the judgment-debtors and their men not only cut and gather the produce as they are entitled to do under sub-r. (2) of R. 45, O. 21, but also take the produce away, their offence would on the face of it be one of theft. The fact that they were not charged with this offence, does not improve matters for them that in committing this offence they obstructed the peon in the discharge of his duty of holding the crop. (Dhavle J.) Mahabir Sah v. Emperor,

AIR 1941 Pat 136=13 R P 447=7 B R 326=22 P L T 662=192 I C 177=42 Cr L J 251.

—O. 21, R. 55.

——Scope—See Criminal P. C. (1898), S. 195.

10 Cr L J 496 (Mad).

—O. 21, R. 63.

——Court giving delivery to auction purchaser in execution — Not only judgment-debtor but others also dispossessed—Their remedy—See ibid, O. 21, R. 101,

AIR 1953 Trav-Co 40=1953 Cr L J 1394.

—O. 21, R. 90.

——O. 21, R. 90, Proviso (Rangoon) — Deposit of purchase-money of auction-purchaser whether can be deemed to be deposit by decree-holder.

The terms of the proviso to O. 21, R. 90, are substantially complied with in a case where the decree-holder applies to set aside a sale under that rule, if the Court

CIVIL P. C. (V of 1908), O. 21, R. 90

treats the deposit of purchase money of the auction-purchaser, which stands to the credit of the decree-holder, as a deposit by the decree-holder who has made the application. (Page C. J. and Baguley J.) Min Sin Maung v. Maung Maung,

AIR 1931 Rang 181 (1)=9 Rang 366=Ind Rul (1931) Rang 240=133 I C 96 (2).

—O. 21, R. 95.

——Scope.

Decree-holder obtaining legal possession in execution of his decree — He cannot be deprived of it by subsequent order upon him not to enter it — Such order is without any legal effect. (Koshi C. J. and Vithayathil J.) Madhava Kurup Velayudha Kurup v. State,

AIR 1953 Trav-Co 40 = 1953 Ker L T 31 = 1953 Cr L J 1394.

—O. 21, R. 96.

——Proclamation by beat of drums is prescribed in cases where delivery of immovable property in possession of tenant is made by symbolical possession under R. 96. (Subhedar A. J. C.) Laxman Rao Narain Rao v. Emperor,

AIR 1934 Nag 172=7 R N 45 = 150 I C 1028=35 Cr L J 1213.

—O. 21, R. 101.

——O. 21, Rr. 101, 63—Court giving delivery to decree-holder or auction purchaser in execution — Not only judgment-debtor but others in possession are dispossessed —Their remedy is to ask for re-delivery under O. 21 or to file suit for possession. (Koshi C. J. and Vithayathil J.) Madhava Kurup Velayudha Kurup v. State,

AIR 1953 Trav-Co 40 = 1953 Ker L T 31 = 1953 Cr L J 1394.

—O. 21, R. 105 (All.)

——Court employing a Vakil to secure attachment — Quarrel and attack on Vakil's party—Omission to record reasons in order of appointing Vakil :

Held, that the provisions under O. 21, R. 105 may be taken to be not mandatory but directory and hence the omission did not give rise to any right of private defence. (Bennet J.) Tej Singh v. Emperor,

AIR 1935 All 490=(1935) A L J 367 = 1935 A W R 206=7 R A 778=154 I C 631=36 Cr L J 545.

—O. 22, R. 4.

——O. 22, Rr. 4 & 11—Abatement of appeal against one of respondents — Subsequent reference to Full Bench regarding validity of order allowing a lawyer to appear in the case—Competency.

Per Naik C. J., Sripat Rao, Manohar Prasad, M. S. Ali Khan, Srinivasachari, V. Suryanarayana Rao JJ. (Q. Hasan J. dissenting) :—Where certain questions regarding the validity of an order allowing lawyer to appear in a particular case are referred to a Fuller Bench by a Full Bench and it is found that one of the respondents to the appeal had died before the reference is made without his legal representatives being brought on record, this can make the reference to the Fuller Bench incompetent and it would not deter the Fuller Bench from giving its answers to the questions referred. The matter is not one arising between the parties and does not affect the merits of the appeal and as such the fact of abatement of appeal as against one of the respondents cannot affect the opinion expressed by the Fuller Bench. (R. S. N. Naik C. J., S. K. Hasan, Shripat Rao, A. M. Ansari, Manohar Pershad, M. A. Ansari, M. S. Alikhan, V. Suryanarayana Rao, A. Srinivasa Chari and V. R. Deshpande JJ.) Ramdayal v. Shankarlal,

A I R 1951 Hyd. 140=I L R (1951) Hyd. 689 (FB).

—O. 22, R. 6.

——Case heard after death of sole plaintiff and decree passed—Decree is nullity.

CIVIL P. C. (V of 1908), O. 22, R. 6

The Court has no jurisdiction to pass a decree in a case which is heard after the death of the sole plaintiff without bringing his legal representative on record and such a decree, if passed, is a nullity : 5 S. L. R. 260 and 4 I. C. 137, Foll.; 33 Mad. 167, Not Approved; 39 Mad. 386 and A. I. R. 1929 Cal. 527, Expl. and Disting. (Rupchand and Wild A. J. Cs.) Hassanand v. Nandiram,

A I R 1930 Sind 259=32 Cr L J 174.

—O. 23, R. 3.

——Undertaking given by party embodied in consent decree—Alteration in undertaking—Power of Court.

A final consent decree cannot be altered by the Court unless the parties thereto agree to do so. It is true that an undertaking contained in such a decree is primarily a matter between the Court and the litigant but it is also one of the major considerations by which the other contending party agrees to certain terms. To vary, therefore, one particular undertaking of a particular party, and at the same time keeping the other undertakings of the other party to the Court intact, would be unjustified : 11 Ch. D 763, Disting.; (1896) 1 Ch. D 673, Rel. on. (P. B. Mukharji J.) Sambhu Charan Nundy v. Gopi Mohan,

A I R 1951 Cal. 507=88 C L J 196.

Editorial Note.—In so far as it may be implied that a final consent decree may be altered by consent of parties, the proposition does not seem to be correct : See A. I. R. Commentary on Civil P. C., O. 23, R. 3, N. 28, Pts. 7 and 8.

—O. 32, R. 7.

——Penal Code (Act XLV of 1860), S. 420—Partition suit — Mother accepting valuation by son, though having ample opportunities to ascertain its value — Compromise decree — Complaint for cheating — Maintainability — Remedy of mother.

In a suit for partition of the property of the deceased, the mother in addition to being a party represented her minor sons as next friends. The major son and his son, a minor, were defendants. The mother, though she had ample opportunities of ascertaining the value of the properties, accepted the valuation by the son. A decree was passed. Subsequently, she filed a complaint against the son for cheating :

Held, that the mother's remedy was to apply in the first instance to the Civil Court to have the decree vacated and if she succeeded there would be ample time for her to move the Civil Court to prosecute her son, and that the son was not criminally liable for cheating whatever other offences he might have committed. (Rupchand and Mehta A. J. Cs.) Virji Kallianji v. Emperor,

A I R 1935 Sind 95=7 R S 223=156 I C 153=36 Cr L J 872.

—O. 38, R. 3.

——Penal Code, S. 225 (b) — Order under Civil P. C., O. 38, R. 3 not in accordance with law — Detention is illegal and leaving custody in defiance is not indictable—Civil P. C., O. 38, R. 3.

A Court passed an order under O. 38, R. 3, as follows : "Surety is discharged. Judgment-debtor will remain arrested unless he can produce another surety." He was also orally directed not to leave the Court. In defiance to the order he left the Court. On being prosecuted under S. 225B :

Held, as no order to find fresh security was passed, the order was illegal and the judgment-debtor could not be convicted. (Fforde and Skemp JJ.) Gopal Singh v. Crown,

A I R 1929 Lah. 163=30 Cr L J 663.

—O. 38, R. 5.

——Illegal warrant—Conviction in respect of such warrant —Legality of.

CIVIL P. C. (V of 1908), O. 38, R. 5

Where it appears that no legal warrant was issued under O. 38, R. 5, Civil P. C., a conviction under S. 186, Penal Code, cannot be upheld, although the facts proved may otherwise amount to an offence under that section. (King and Collister JJ.) Emperor v. Tohfa,

A I R 1933 All. 759=(1933) A L J 952=6 R A 272=55 All. 985=146 I C 183=34 Cr L J 1211.

—O. 39. R. 1.

——O. 39, R. 1; O. 41, R. 5 — Effect of application and notice to opposite party.

The presentation of an application for stay or for a temporary injunction and the giving of the notice of the same to the opposite party itself does not operate as a stay order or a temporary injunction till the hearing of the application. (Shinde C. J., Dixit and Chaturvedi JJ.) Malojirao Shitole v. C. G. Matkar,

A I R 1953 Madh B 245=1953 Cr L J 1675 (FB).

——No formal order drawn—Breach.

Where in accordance with the practice of the High Court no formal order of injunction is drawn up a party to the order cannot plead ignorance of the terms of the order but other persons who are not in a position to know the exact terms cannot be said to have committed a breach of the order. (Reuben and Das JJ.) Subodh Gopal Bose v. Dalmia Jain & Co. Ltd.,

A I R 1951 Pat. 266.

——Party to order of injunction — Breach — Plea of different capacities.

A party to an order of injunction cannot with impunity, disobey the order by assuming, or taking on, a different capacity in respect of the act or acts which constitute a breach of the order of injunction. (Reuben and Das JJ.) Subodh Gopal Bose v. Dalmia Jain & Co., Ltd.,

A I R 1951 Pat. 266.

——Land—Prima facie title.

There cannot be an order of injunction with regard to a piece of land unless there is a finding that the party which seeks the order of injunction has satisfied the Court about his prima facie title to, and possession of, the land. (Reuben and Das JJ.) Subodh Gopal Bose v. Dalmia Jain & Co. Ltd.,

A I R 1951 Pat. 266.

——Erroneous order of injunction—Breach.

The party against whom an order of injunction is made cannot disregard the order on the ground that it is erroneous in any particular. Right or wrong, the injunction order binds him, and he disregards it at his peril. (Reuben and Das JJ.) Subodh Gopal Bose v. Dalmia Jain & Co. Ltd.,

A I R 1951 Pat. 266.

——When granted — Proceedings under S. 145, Criminal P. C., against A and B — A declared to be in possession—Suit by B against A for declaration of his title and injunction restraining A from interfering with suit property—Finding of Criminal Court that A was in possession cannot be questioned — A must be held to be in possession at date of suit — B not being in possession, held not entitled to injunction.

Proceedings under S. 145, Criminal P. C., were started against A and B, in connection with a dispute between them about a Dera. A was declared to be in possession of the property X of the Dera. B then brought a suit for declaration that he was the lawful mahant of the Dera and as such entitled to be in possession of and manage its property X and asked for recovery of possession of that property. He also mentioned property Y in the plan attached to the plaint as appertaining to the Dera but did not ask for any relief with regard to it in the plaint.

CIVIL P. C. (V of 1908), O. 39, R. 1

B also prayed for an injunction restraining A from interfering with the properties X and Y of the Dera during pendency of the suit. B urged that he was entitled to show in the suit that he was in possession at the date when the order under S. 145, Criminal P. C., declaring A to be in possession was made :

Held that (1) the finding of the Criminal Court that A was in possession of property X on the date on which breach of peace was likely to occur or within two months of that date could not be questioned in civil Court and A must be held to be continuing in possession until he was evicted in due course of law. B was not therefore, entitled to show that he was in possession of X property on the date of the order under S. 145 and A must be assumed to be in possession at the date of the suit ;

(2) as B was not, at the date of suit, in possession of the property X of which he sought to recover possession, no injunction could be granted in his favour against A as prayed for ;

(3) nor could an injunction be granted in respect of property Y which did not form subject-matter of the plaint. (Abdul Rahman J.) Sewa Das v. Ram Parkash,

A I R 1947 Lah. 173=226 I C 292.

—O. 39, R. 2.

——Injunction cannot be granted for not pursuing remedy in Criminal Court under Criminal P. C., S. 488.

A Civil Court has no jurisdiction to restrain a party by an injunction from pursuing her remedy under S. 488, Criminal P. C., in a Criminal Court. (Panckridge, J.) Krishna Gobinda Chatterji v. Mt. Kishoribala Debi,

A I R 1930 Cal 753=32 Cr L J 232.

——O. 39, R. 2 (3) — In suit for permanent injunction plaintiff granted interim injunction on his under-taking not to dig channel — Breach of undertaking by plaintiff makes him liable to punishment under O. 39, R. 2 (3).

In a suit for a permanent injunction restraining the defendants from interfering with the plaintiff's right to take water to his lands, the plaintiff applied for an interim injunction against the defendants and this was granted on an undertaking given by the plaintiff that during the pendency of the suit, he would not dig a channel in the defendants' land. It was however discovered that the plaintiff had dug a channel in contravention of the undertaking:

Held, that it did not matter whether the undertaking given by the plaintiff was regarded as an injunction issued by the Court restraining him from digging a channel or whether his undertaking should be regarded as a part of the interim injunction issued against the defendants. In either view, there would be an injunction a breach of which was punishable under O. 39, R. 2 (3). (Happell J.) Narasappa v. Chinnareppa,

A I R 1947 Mad 98=59 M L W 412=1946-2 M L J 115=1946 M W N 505=230 I C 261.

——O. 39, Rr. 2 (3) and 1 — Injunction issued under R. 1 disobeyed—R. 2 (3) applies—S. 36 or O. 21, R. 32 has no application.

Order 39, Rr. 1 and 2 must be read together. Hence R. 2 (3) applies to disobedience generally if an injunction is granted by the Court. The words "in case of disobedience" of that clause are wide enough to cover breaches of injunctions issued under O. 39, R. 1. Neither S. 36 nor O. 21, R. 32 applies: A I R 1936 Pat 23, Foll.; A I R 1941 All 140, Disting. (Manohar Lall and Das JJ.) Sita Ram Sahu v. Lachmi Narain,

A I R 1946 Pat 47 = 24 Pat 606=1946 P W N 20= 227 I C 619=13 B R 103=1947 Pat Rul 48.

——O. 39, R. 2 (3) — Injunction—Aggrieved party must obey till it is set aside by that Court or suspended by another Court.

CIVIL P. C. (V of 1908), O. 39, R. 2

When an injunction order has been issued, whether it is right or wrong, it must be obeyed. The only remedy of the aggrieved party is to come up in appeal to a superior Court to have the order vacated. So long as the order stands and its operation has not been suspended by another Court or by the Court which passed the order itself, it will not be tolerated that the litigants would disobey that order. (Manohar Lall and Das JJ.) Sita Ram Sahu v. Lachmi Narain,

A I R 1946 Pat 47 = 24 Pat 606 = 1946 P W N 20= 227 I C 619=13 B R 103=1947 Pat Rul 48.

—O. 40, R. 1.

——Criminal prosecution — Receiver committing offence with respect to property in his possession — He can be prosecuted without leave being obtained from Court by which he is appointed: A I R 1944 Mad 259, .Approved, Case law discussed. (Gentle C. J. and Rajamannar J.) Shyamlambal Ammal v. Ramamurthi,

A I R 1948 Mad 318=1948-1 M L J 2=I L R (1948) Mad 639=61 M L W 13=1948 M W N 57.

—O. 41, R. 5.

——Application and notice for temporary injunction does not operate as stay order or temporary injunction till hearing of application—See ibid, O. 39, R. 1

A I R 1953 All 715=1953 Cr L J 1675.

—O. 41, R. 11.

——Motion for admission — Powers of Judge sitting alone —Power to dismiss appeal summarily — See Allahabad Rules of High Court 1952, Vol. 1, Chap. 5, R. 2 (1):

A I R 1953 All 211=1953 Cr L J 571.

—O. 45, R. 15.

——Privy Council appeal—Review—Power of High Court or executing Court to stay execution pending application for review.

The mandamus of O. 45, R. 15, is clear and mandatory and neither the executing Court nor the High Court has power to stay the execution of a decree of the Privy Council on the ground that an application for review has been made to the Privy Council. (Courtney-Terrell C. J. and Mahomed Noor J.) Rajendra Prasad v. Gopal Prasad,

A I R 1931 Pat 203=12 P L T 145=Ind Rul (1931) Pat 279 (1)=132 I C 359.

CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES

—R. 48.

——R. 48 (2) — Rules under—Bombay Civil Services Conduct, Discipline and Appeal Rules, R. 21 — Trade, meaning of—See Penal Code (1860), S. 168

A I R 1951 Bom 233.

—R. 49.

——(framed under S. 96B (2), Government of India Act, 1935).

——Rr. 49 and 14—Bombay Civil Services Conduct Discipline and Appeal Rules, R. 21 breach of — Prosecution under S. 168, Penal Code is permissible — Penal Code (1860), S. 168. (Gajendragadkar and Vyas JJ.) Mulshankar v. Govt. of Bombay,

A I R 1951 Bom 233=52 Bom L R 648=ILR (1950) Bom 706=21 Bom Cr C 1.

CLAIM

—False, to property to prevent seizure — See Penal Code (45 of 1860), S. 207.

—For jury on order for removal of nuisance—See Criminal P. C. (5 of 1898), Ss. 135-139 and 141.

—Making falsely in Court—See Penal Code (45 of 1860), S. 209.

CLAIM

—To attached property—See Criminal P. C. (5 of 1898), S. 88 (6A).

—Classes of Criminal Courts—See Criminal P. C. (5 of 1898), S. 6.

CLERK

—Property in possession of—See Penal Code (45 of 1860), S. 27.

—Of barrister, pleader, attorney, etc., S. 126 applied to — See Evidence Act (1 of 1872), S. 127.

CO-ACCUSED

See also (1) Criminal P. C., S. 239.
(2) Evidence Act, Ss. 30, 114 (Illus. B) and 133.

—Confession of—Admissibility against accused—See Evidence Act, S. 30.

COCHIN CRIMINAL LAW AMENDMENT ACT (XXVII of 1124 M. E.)

—S. 3.

——Validity—See Constitution of India, Art. 19 (1) (c), A I R 1952 Trav-Co 217=1952 Cr L J 1066 (FB).

——Notification under—Prosecution after repeal of Act.

(Koshi and Govinda Pillai JJ. in the order of reference) The omission of the word 'notification' in S. 73 (2) of the Travancore-Cochin Public Safety Measures Act (5 of 1950) is of no moment in view of S. 23 of the Travancore-Cochin Interpretation and General Clauses Act (1125). Hence, where the notification declaring the Communist party unlawful under S. 3 of the Cochin Criminal Law Amendment Act (27 of 1124) was in force when the meeting of the Communist party was held but the Act was repealed by Act V of 1950 when the action was taken under S. 4 against the accused it cannot be said that the prosecution was started under a defunct notification. By transgressing the law as enacted in S. 4 (1) and (2) of the Cochin Criminal Law Amendment Act (27 of 1124) the accused persons had incurred a liability in the sense of S. 73 (3) of the Public Safety Measures Act and Cl. (c) expressly authorises the institution of an investigation or a legal proceeding in respect thereof notwithstanding the repeal of the law under which the liability was incurred. (Koshi, Govinda Pillai and Vithayathil JJ.) George Chadayammury v. State,

A I R 1952 Trav-Co 217=1952 Ker L T 178=I L R (1952) T-C 1=1952 Cr L J 1066 (F B).

——Ss. 3, 31, 33 and 40 — Declaration under S. 3 — Finality.

Subject to the Order of the High Court on application, if any, made under S. 31 a declaration under S. 3 is final and conclusive for all purposes and a person prosecuted under S. 4 being a member of an association declared to be unlawful or for other activities in connection therewith could not question its validity. To make an order under S. 3 is an executive act and it cannot be canvassed directly or indirectly in Court except as the law makes provision in that behalf. Apart from the language of S. 3, subss. (2) and (3) of S. 33 also make that point clear. To hold otherwise would be to hold that even when the High Court refuses to set aside the order a subordinate Criminal Court can examine its validity if and when a prosecution happens to be launched under S. 4. Section 40 does not justify an inference to the contrary. (Koshi, Govinda Pillai and Vithayathil JJ.) George Chadayammury v. State,

A I R 1952 Trav-Co 217=1952 Ker L T 178=I L R 1952 T-C 1=1952 Cr L J 1066 (FB).

COCHIN CRIMINAL LAW AMENDMENT ACT (XXVII of 1124 M E)

—S. 31.

——Application under — Declaration made under S. 3 — Finality—See ibid, S. 3,
A I R 1952 Trav-Co 217=1952 Cr L J 1066 (FB).

—S. 33.

——Scope—See ibid, S. 3,
A I R 1952 Trav-Co 217=1952 Cr L J 1066 (FB).

—S. 40.

——Scope—See ibid, S. 3,
A I R 1952 Trav-Co 217=1952 Cr L J 1066 (FB).

COCHIN CRIMINAL PROCEDURE CODE (II OF 1086 M. E.)

—S. 92.

——Proceedings under — Petitioner imprisoned for his failure to give security — Subsequent trial for same acts not barred—See Criminal P. C. (1898), S. 403,
A I R 1952 Trav-Co 556=1953 Cr L J 49.

—S. 201.

——S. 201, Illus. (c) — Charge of cheating — Particulars not mentioned—Accused fully understanding charge—No prejudice — Defect cured — See Criminal P. C. (1898), Ss. 223, 225, 537,
A I R 1952 Trav-Co 11=1952 Cr L J 157.

—S. 259.

——Non-compliance with.— Effect — See Criminal P. C. (1898), S. 342,
A I R 1953 Trav-C 280=1953 Cr L J 1334.

——Examination of accused — Nature of—See Criminal P. C. (1898), S. 342,
AIR 1952 Trav-C 11=1952 Cr L J 157.

—S. 317.

——Security proceedings — Order for imprisonment for failure to give security — Subsequent trial for same acts for which security was taken not barred — See Criminal P. C. (1898), S. 403,
A I R 1952 Trav-C 556=1953 Cr L J 49.

—S. 397.

——S. 397 (1)—Scope—See Criminal P. C. (1898), S. 497 (1),
A I R 1952 Trav-C 227=1952 Cr L J 1087.

—S. 434.

——Charge of cheating—Particulars not mentioned — Accused fully undertanding charge—No prejudice—Defect cured—See Criminal P. C. (1898), Ss. 223, 225, 257,
A I R 1952 Trav-C 11=1952 Cr L J 157.

COCHIN PENAL CODE (I of 1059 M. E.)

—S. 342.

——Consent—Necessity of—See Penal Code (1860), S. 362,
A I R 1952 Trav-C 379=1952 Cr L J 1387.

—S. 346.

——Intention of accused—See Penal Code (1860), S. 362,
A I R 1952 Trav-C 379=1952 Cr L J 1387.

COCHIN PREVENTION OF FOOD ADULTERATION ACT (XIV of 1109 M. E.)

—S. 4.

—— Ss. 4 (a) and 13 (2)—Sale of article under S. 13 (2)—No offence under S. 4 (a) is committed.

Even though the delivering of an article of food to the Local Food Inspector or to his subordinate under S. 13 is a sale such sale will not constitute an offence under the Act. It is only when the purchaser demands an article of a particular nature, substance or quality and an article of a diffrent nature, substance or quality is sold to him that an offence is committed under the Act. (Vithayathil J.) V. K. Mohammad v. State,

A I R 1952 Trav-C 327 = 1952 Ker L T 106 = 1952 Cr L J 1380.

COCHIN PREVENTION OF FOOD ADULTERATION ACT (XIV of 1909 M. E.)

—S. 13.

——S. 13 (2) — Delivering of an article under if a sale—Offence when committed—See ibid, S. 4 (a),

A I R 1952 Trav-C 327=1952 Cr L J 1380.

——Ss. 13 (2) and 17 — Purchaser — Sanitary Inspector purchasing 'ghee' under S. 13 (2).

There is nothing in S. 17 to indicate that the word "purchaser" used in that section is limited to the case of a purchaser under a voluntary sale. The delivering of an article for price even when the seller is compelled to deliver the same under S. 13 (2) to a Sanitary Inspector is sale and therefore the Sanitary Inspector is a purchaser within the purview of S. 17. (Vithayathil J.) V. K. Mohammed v. State,

A I R 1952 Trav-C 327 = 1952 Ker L T 106 = 1952 Cr L J 1380.

—S. 17.

——'Purchaser', meaning of — Sanitary Inspector, if included—See ibid, S. 13 (2)

A I R 1952 Trav-Co 327=1952 Cr L J 1380.

CODE OF CRIMINAL PROCEDURE (BOMBAY AMENDMENT) ACT (XXX of 1946)

—S. 3.

——Validity — See Criminal Procedure Code (Bombay Amendment) Act, S. 3

A I R 1948 Bom 163=49 Cr L J 196.

COGNIZABLE

—Case—Investigation into.

See Criminal P. C. (5 of 1898), Ss. 154, 156 and 159.

COGNIZABLE OFFENCE

See Criminal P. C., S. 4 (1) (f).

—Prevention of — See Criminal Procedure Code (5 of 1898), S. 149.

COGNIZANCE

—Of criminal conspiracy—See Criminal Procedure Code (5 of (1898), S. 196A.

—Of offence of adultery — See Criminal Procedure Code (5 of 1898), S. 199.

—Of offence of enticing married woman—See Criminal Procedure Code (5 of 1898), S. 199.

—Of offences—See Criminal Procedure Code (5 of 1898), Ss. 28, 30, 190.

—Of offences against State — See Criminal Procedure Code (5 of 1898), S. 196.

—Of offences relating to marriage—See Criminal Procedure Code (5 of 1898), S. 198.

—Of offences under Penal Code and other laws — See Criminal Procedure Code (5 of 1898), Ss. 28, 29.

CO-HABITATION

See Penal Code, Ss. 493 to 498.

—With woman by deceiving her to be her husband—See Penal Code (45 of 1860), S. 493.

COIN

See (1) Penal Code (1860), S. 230.
(2) Public Gambling Act (3 of 1867), S. 1.

—Counterfeit, import and export—See Penal Code (5 of 1860), S. 237.

—Counterfeiting — See Penal Code (45 of 1860), Ss. 231 to 293.

—Defined—See Penal Code (45 of 1860), S. 230.

COIN

—Delivery of, knowing it to be altered—See Penal Code (45 of 1860), S. 250.

—Delivery with knowledge of counterfeit nature — See Penal Code (45 of 1860), S. 239.

—Making or selling instruments for counterfeiting — See Penal Code (45 of 1860), S. 233.

—Offences relating to — See Penal Code (45 of 1860), S. 254.

COLLECTION

—Of arms to wage war — See Penal Code (45 of 1860), S. 122.

COLLUSION

See Penal Code, Ss. 421-424.

—In obtaining judgment—See Evidence Act (1 of 1872), S. 44.

COLOURABLE

—Imitation—See Penal Code, Ss. 482 to 489.

COMBINES INVESTIGATION ACT (CANADA) 1927.

—Cl. 26.

——If ultra vires,

Section 498, Criminal Code (Canada) and the greater part of the provisions of the Combines Investigation Act fall within the power of the Dominion Parliament to legislate as to matters falling within the class of subjects, "The Criminal Law including the procedure in criminal matters."

The Combines Investigation Act, 1927, Cl. 26 is not ultra vires of the Parliament of Canada either in whole or in part. (Lords Blanesburgh, Merrivale, Atkin, Russell of Killowen and Macmillan) Proprietary Articles Trade Association v. Attorney-General of Canada

A I R 1931 P C 94=Ind Rul (1931) P C 177=132 I C 593=32 Cr L J 899 (PC).

COMMENCEMENT

—Of Act—See Evidence Act (1 of 1872), S. 2.

—Of period of security — See Criminal Procedure Code (5 of 1898), S. 120.

—Of proceedings before Magistrates — See Criminal Procedure Code (5 of 1898), Ss. 204, 205.

—Of proceedings in Court of Sessions — See Criminal Procedure Code (5 of 1898), Ss. 271-273.

—Of prosecutions — See Criminal Procedure Code (5 of 1898), Ss. 200-205.

—Of right of defence of property—See Penal Code (45 of 1860), S. 105.

—Of right of private defence — See Penal Code (45 of 1860), S. 102.

COMMISSION

—Application for — See Criminal Procedure Code (5 of 1898), S. 506.

—Issue of — See Criminal Procedure Code (5 of 1898), Ss. 503, 504.

—Return of — See Criminal Procedure Code (5 of 1898), S. 507.

—Right of parties to forward interrogatories — See Criminal Procedure Code (5 of 1898), S. 505.

—To examine witnesses — See Criminal Procedure Code (5 of 1898), Ss. 503-508.

COMMISSIONER OF POLICE

See Criminal Procedure Code (1898), S. 4 (1) (g).

COMMITMENT.

See Criminal Procedure Code (5 of 1898), Ss. 206-213, 215, 347 and 437.

—For trial illegally—See Penal Code (45 of 1860), S. 220.

—Inquiry preliminary to—See Criminal Procedure Code (5 of 1898), S. 207.

—Irregularity in — See Criminal Procedure Code (5 of 1898), S. 532.

—On evidence recorded by another Magistrate — See Criminal Procedure Code (5 of 1898), S. 350.

—Proceedings—See Criminal Procedure Code (5 of 1898), Ss. 206-220.

—Quashing of—See Criminal Procedure Code (5 of 1898), Ss. 215, 532.

—To Sessions of High Court — See Criminal Procedure Code (5 of 1898), Ss. 206-220, 436.

—Without charge — See Criminal Procedure Code (5 of 1898), S. 226.

COMMON INTENTION OR OBJECT

See Penal Code, Ss. 34, 99, 120A, 141.

COMMUNAL CONSIDERATIONS

See Criminal P. C., S. 517.

COMMUNICATION

—Confidential with legal advisors — See Evidence Act (1 of 1872), S. 129

—For benefit—See Penal Code (45 of 1860), S. 93.

—In furtherance of any illegal purpose — See Evidence Act (1 of 1872), S. 126.

—Matrimonial—See Evidence Act (1 of 1872), S. 122.

—Official—See Evidence Act (1 of 1872), S. 124.

—Professional—See Evidence Act (1 of 1872), S. 125.

COMMUTATION

—Of death sentence—See Penal Code (45 of 1860), S. 54.

—Commutation of sentence — See Criminal Procedure Code (5 of 1898), Ss. 220, 402.

—Of sentence of transportation for life—See Penal Code (45 of 1860), S. 55.

COMPANIES ACT (VI of 1882)

—S. 74.

——A complaint under S. 74 of the Indian Companies Act for wilful default in filing a balance-sheet, not brought by the Registrar as prescribed by the regulations framed by the Local Government under S. 220 of the Act but by a Clerk of his office and countersigned by the Public Prosecutor, is bad in law and not entertainable by a Criminal Court. The proceedings of the Magistrate based on such a complaint relating to that offence, are ultra vires and liable to be set aside on revision by the High Court at any time during the pendency of the case. (Williams J.) Emperor v. Shib Das,

35 P W R 1910 Cr=8 I C 190=11 Cr L J 577.

COMPANIES ACT (VII of 1913)

—S. 2.

——S. 2 (1) (3) — 'The Court,' meaning explained — See Companies Act (2 of 1913), S. 278 (2).

52 C W N 590.

——Legal proceedings—Costs.

Where one of the parties to proceedings under S. 145, Criminal P. C., are some managers of a certain limited company though the company is real contestant, costs awarded against them should be realised either from managers or company itself. (Madan J.) Udhab Chandra Pal v. Sidheshwar Prasad Singh,

AIR 1937 Pat 559= 18 P L T 714 = 10 R P 224 = 4 B R 43=177 I C 604=38 Cr L J 1099.

COMPANIES ACT (VII of 1913), S. 2

——Ss. 2 (9) and 87—Manager meaning of.

Unless a person is in charge of the entire business of a company, he cannot be deemed to be a manager thereof. A mere branch manager does not come within S. 87 of the Companies Act. (Scott Smith and Shadilal JJ.) Basant Lal v. Emperor,

AIR 1918 Lah 170= 47 P R Cr (1917)=43 I C 791= 19 Cr L J 215.

—S. 3.

——Words "under this Act"— Effect of on jurisdiction of Magistrate—See ibid, S. 282-A.

AIR 1953 All 715=1953 Cr L J 1635.

——'Court,' meaning explained — See Companies Act (2 of 1913), S. 278 (2),

52 C W N 590.

——Scope — Whether it means that High Court is the only Court to try as a Court of first instance offence due to breaches of provisions in Companies Act.

The jurisdiction of the High Court referred to in S. 3 is obviously the jurisdiction exercised by virtue of the specific provisions of the Act and not a jurisdiction which may be invoked where merely a criminal offence is declared. It is very difficult to say that S. 3 has specifically mentioned that the High Court should be the Court which should as a Court of first instance try persons who have been guilty of an offence committed on account of breaches of the provisions of the sections of the Act, e. g., contravention of the provisions of S. 85. (Sulaiman C. J., Thom and Rachhpal Singh JJ.) Harish Chandra v. Kavindra Narain Sinha,

AIR 1936 All 830=(1936) A L J 1105= 1936 A W R (H C) 964=9 R A 349=ILR (1937) All 220=166 I C 53 =38 Cr L J 111 (FB).

—S. 4.

——S. 4 (2), (5)—Company — Offence in contravention of section.

Where a company of more than 20 persons formed in 1922-1923 (when the punitive S. 4 (5), did not exist) is unregistered, the members thereof, though they cannot be punished for originally forming themselves into such a company in contravention of S. 4 (2), can be punished under S. 4 (5), (which was enacted in 1936) for continuing to be members of such company. (Horwill J.) Muthuveran v. Mottayan Chettiar,

A I R 1942 Mad 283 = (1942) 1 M L J 230 = 1942 M W N 121=15 R M 470=202 I C 28= 43 Cr L J 785.

——Complaint by private person — Cognizability — Criminal Procedure Code, S. 190—Applicability.

As there are no provisions to the contrary in the Companies Act, taking cognizance of an offence under this Act must be governed, as in the cases of an offence under the I. P. C., by S. 190 of the Criminal P. C., and one of the methods of taking cognizance of an offence is by receiving a complaint of the facts which constitute subject of an offence without any restriction with regard to the person who may lay a complaint.

Notifications of Govt. No. 518 dated June 6, 1916 and G. O. Ms. No. 3070 dated August 23, 1932, published in the Fort St. George Gazette which permits the Registrar or the Assistant Registrar to institute prosecutions under the Act for defaults on the part of companies or persons in furnishing returns, documents or notice or for any other non-compliance with the provisions of the Act does not purport to restrict the Magistrate in the exercise of his powers under S. 190, Criminal P. C. (Horwill J.) Muthuveeran Chettiar v. Mottayan Chettiar,

A I R 1942 Mad 283 = (1942) 1 M L J 230 = 1942 M W N 121=15 R M 470=202 I C 28= 43 Cr L J 785

COMPANIES ACT (VII of 1913), S. 4

——S. 4 (2)—Scope—Existence.

In order to constitute an association within the meaning of S. 4, the existence of the legal relation between more than twenty persons giving rise to joint rights or obligations or mutual rights and duties is absolutely necessary.

But where the object is to form a company, it does not and there is no need to show the existence of a legal relation between the persons forming the company. (Spargo J.) D. D. Dawson v. King,

AIR 1939 Rang 273 =12 R Rang 79 = 183 I C 497= 40 Cr L J 799 (2).

——S. 4 (2) — Unregistered company started for carrying on business for gain— Money collected from subscribers — Subscribers become share-holders.

Where a person, with the object of carrying on business for the acquisition of gain, starts an unregistered company and collects money from its subscribers who number more than twenty, then as soon as the money is collected, the bargain is clinched and turned into an actual contract by acceptance and the subscribers become the share-holders as such as they must be deemed to have paid the money for the very object of the company and the mere fact that share certificates are not issued does not make them any less share-holders and hence the case comes under Sub-s. (2) of S. 4. (Spargo J.) D. D. Dawson v. King,

AIR 1939 Rang 273= 12 R Rang 79= 183 I C 497 = 40 Cr L J 799 (2).

——Ss. 4 (5), 283 — Offences under Ss. 4 (5) and 283 — Investigation—Trial by Magistrate.

It is true that the offences under Ss. 4 (5) and 283, Companies Act, are non-cognizable and cannot be investigated under Chap. XIV, Criminal P. C. But the mere fact that the offences were wrongly investigated and sent up by the Police is not obstacle to their being tried by the Magistrate. (Spargo J.) D. D. Dawson v. King,

AIR 1939 Rang 273=12 R Rang 79=183 I C 497=40 Cr L J 799 (2).

—S. 13.

——Ss. 13 (1) and 133 (3)— Failure to place balance sheet before general body meeting within time — Managing director pleading his own default — Plea of innocence by directors.

Where a complaint under S. 13 (1) read with S. 133 (3) was filed against the managing director and the directors of a company for their failure to place the balance sheet before the general body meeting of the company as required by the Act and it was contended on behalf of the managing director that no offence was made out against him because, inasmuch as no general body meeting was held within the period prescribed, no question of placing the balance sheet arose and the plea of the directors was that it was impossible for them to hold a general body meeting and place the balance sheet and especially so when it was the managing director who was entitled to call this meeting and get the balance sheet placed before it.

Held, that this was a clear case where the managing director was relying on his own default in order to establish his innocence and this he could not be permitted to do. 49 Cri L J 515, Dissent. from.

Held, further that the pleas put forward by the directors also could not be accepted as they had ample opportunities and time to apply to the Registrar for extension and they did not do so; and secondly they had got their own responsibility and could not plead innocence on the ground of helplessness and throw the entire blame on the

COMPANIES ACT (VII of 1913), S. 13

managing director. (Ramaswami J.) Gangipati Appayya In re,

A I R 1952 Mad 800 = 1952-22 Com Cas 78 = 1952 M W N 266=1952 M W N (Cr 66)= 1952-1 M L J 608 =1953 Cr L J 19.

—S. 22.

——Registration of Life Insurance Company—Effect.

Where a company has been registered under the Companies Act, it is subject to all the provisions of the Act and where it carries on life insurance business, it is in addition subject to the provisions of the Life Insurance Companies Act of 1912. (Costello J.) Ajit Kumar v. Emperor,

AIR 1934 Cal 63=37 C W N 1159=6 R C 373 = 147 I C 848=35 Cr L J 492.

—S. 32.

——Ss. 32 and 134—Conviction under—Sentence.

It is not correct to say that a director who is guilty of committing a default under Ss. 32 and 134 should be punished with a nominal sentence in the absence of any allegation of dishonesty or fraud on his part. The provisions of the Companies Act have been deliberately enacted to protect share-holders and in some cases to protect the general public and they impose a definite duty upon directors which should be properly carried out by them. Consequently it is necessary, that when the directors fail to do their duty the penalties provided for in the Act should be imposed and the directors should be substantially penalised. (Lodge J.) Bhagirath Chandra Das v. Emperor,

AIR 1948 Cal 42=229 I C 109=48 Cr L J 236.

——Ss. 32 (5) and 134 (4)—Directors—Failure of, to carry out duties—Presumption.

It is the duty of all the directors of a Company to see that the particular returns, namely, a list of share-holders and a summary under S. 32 and the copies of the balance sheet and profits and loss account are submitted under S. 134. If the directors who are responsible for the management of company and who presumably know the duties imposed upon them by law make no attempt to see that these duties are carried out there is justification for holding that they have wilfully and knowingly permitted the company to fail to carry out those duties and therefore, would be guilty of offences under Ss. 32 (5) and 134 (4) of the Act. The contention that the directors were merely figureheads having no active part in the control of the company would be of no avail in such a case. (Lodge J.) Bhagirath Chandra Das v. Emperor,

AIR 1948 Cal 42=229 I C 109=48 Cr L J 236.

——Ss. 32 (5) and 134 (4) — Prosecution against director —Complaint of Registrar—Necessity.

There is nothing in the Companies Act to suggest that the complaint of the Registrar, Joint Stock Companies, is necessary before a prosecution of a company, or of a director, can be entertained. (Lodge J.) Bhagirath Chandra Das v. Emperor,

AIR 1948 Cal 42=229 I C 109=48 Cr L J 236.

——Conviction—Necessary finding.

In the absence of a finding that the conduct of the accused amounted to knowingly or wilfully authorising or permitting the default, his conviction under S. 32 cannot be sustained. (Henderson J) Surendra Nath v. Emperor,

AIR 1942 Cal 225=74 C L J 367 = 14 R C 533 = 45 C W N 1130=199 I C 94=43 Cr L J 466.

——Conviction of director under S. 76—Conviction under S. 32 to be dropped. (Henderson J.) Surendra Nath v. Emperor,

AIR 1942 Cal 225 = 74 C L J 367 = 14 R C 533=45 C W N 1130=199 I C 94=43 Cr L J 466.

COMPANIES ACT (VII of 1913), S. 32

——S. 32 (5)—"Knowingly" and "wilfully", meaning of.

The words "knowingly" and "wilfully" are used in S. 32, with reference only to the officers of the company and not to the company itself. The company is always liable where the return is not sent in; but the officers of the company are liable only if they knowingly or wilfully authorise or permit the default. (Horwill J.) Public Prosecutor v. B. V. A. Lury Co.

AIR 1942 Mad 75=54 M L W 726=(1941) 2 M L J 487=1941 M W N 846=14 R M 355=197 I C 265=43 Cr L J 138.

——Ss. 32, 77 (10), 134 (4)—Conviction of officer of company under—Essentials to be proved—Proof of authorisation, if necessary.

In order that a conviction under Ss. 32 (4), 77 (6) and 134 (4), of an officer of the company may be sustained, the only thing the prosecution has to prove is that the particular officer knowingly and wilfully authorised or permitted these defaults. These sections speak also of authorization of those defaults, but it is not necessary to prove that, as the offence is also complete, if the officer of the company knew of the defaults and permitted the defaults. (Mitter J.) Ballav Dass v. Mohan Lal Sadhu,

AIR 1936 Cal 237=39 C W N 1152=8 R C 586=162 I C 282=37 Cr L J 552.

——S. 32 (4)—Conviction, when legal charge for inconsistent returns—Necessity of proving correctness of previous returns.

An officer of a company cannot be convicted under S. 32 (4), unless it is found that he knowingly and wilfully authorised or permitted the default.

Where in a charge under S. 32 (4) the lower Court found that certain entries did not agree with the figures in papers filed previously and there was no evidence that the previous returns were correct :

Held, that the whole charge failed in the absence of evidence of the correctness of the previous returns. (Walsh J.) Lakshmana Mudaliar v. Emperor,

AIR 1932 Mad 497=35 M L W 661=Ind Rul (1932) Mad 553=(1932) M W N 1157=138 I C 317=33 Cr L J 589.

——S. 32 — (1882) Ss. 48 and 50—Liability of Manager.

Person who acts as Director or Manager of a company cannot refuse an answer to a penalty that he was legally a Director or Manager. The obligation of a company and its directors and managers to forward to the Registrar, the summary and list specified in S. 48 of the Company's Act does not come to an end on the date on which by default on their part, the penalty begins to accrue. Under the Punjab Government Notification No. 3, dated the 23rd February, 1910 the Registrar of the Joint Stock Company can authorize any person to institute complaints of offences. Therefore a complaint instituted against the accused by a clerk acting under the instructions of the Registrar is good in law. 8 I C 190 distinguished. (Rattigan J.) Tota Ram v. Emperor,

AIR 1916 Lah 397=14 P R Cr. 1916=34 I C 962=38 P W R (Cr) 1916=17 Cr L J 242.

—S. 48.

——Ss. 48 and 50—Liability under S. 50 — Affected by resignation of the Chief Secretary or managing Director—Plea of ignorance of law.

When two persons in their respective capacity as chief secretary or managing director were prosecuted for having knowingly or wilfully authorised or permitted a default in complying with provisions of S. 48 of the Act, but the accused pleaded that they had resigned their posts as paid Chief Secretary or Managing Director before the prosecution was started. Held that as they had not resigned their

COMPANIES ACT (VII of 1913), S. 48

posts as Directors, their liability continued, and the plea of ignorance could not be accepted, and they were liable to be convicted unde. S. 50. (Kensington and Rattigan JJ.) Chhabil Das v. Emperor,

A I R 1914 Lah 125 = 164 P L R 1914=17 P R 1914 (Cr)=23 I C 508 (2)=38 P W R 1914 (Cr)=15 Cr L J 300.

—S. 73.

——Object of — Construction —Burden to establish infringement of law —"Outside the office", meaning of.

Section 73 being a penal provision has to be construed strictly, and therefore the burden is very strongly on the prosecution, to show that there really has been an infringement of the law and that in circumstances in the case, a meaning must be given to the section which is not the literal one. By S. 73 the Legislature desired to make the company itself continually bring to the notice of those who dealt or might deal with it the fact that it was limited. The section has nothing to do with advertising the whereabouts of a company or affording facilities to members of the public in finding its place of business. The requirements of the Act would be satisfied by a board of the necessary conspicuousness and legibility outside the office room inside the building in which it is situated. It cannot be held that when an office is situated within a compound, the law requires the name of the company to be painted or affixed outside the compound as well as outside the office. The words "outside the office" in S. 73 (a) do not mean outside the premises. (Broofield and Wassoodew JJ.) Batliwalla Sons & Co. Ltd. v. Emperor,

A I R 1941 Bom 97=43 Bom L R 105=13 R B 335= ILR (1941) Bom 186=193 I C 620=42 Cr L J 452.

—S. 76.

——Ss. 76 and 131 — Failure to hold general meeting if good defence for offence under S. 131.

In a prosecution under Ss. 76 and 131 it is not open to the accused Director to plead his own default by saying that as the general body meeting could not be held no question of placing the balance sheet arose and therefore no offence under S. 131 was committed. (Ramaswami J.) B. N. Viswanathan v. The Assistant Registrar of Joint Stock Companies, Madras,

AIR 1953 Mad 558= 66 M L W 152 = 1953-23 Com Cas 63=1953-1 M L J 408 = 1953 M W N 583 = 1953 Cr L J 1062.

——Ss. 76 and 133—Distinct offences—(Penal Code (1860), S. 71).

Sections 76 and 133 create two distinct offences viz., one for not holding general body meeting and another for not laying the balance sheet before the general meeting. The former offence may give rise to the latter offence or even independently of it. Hence, there is no case of the accused being prosecuted twice for the same offence and put in double jeopardy. (Ramaswami J.) B. N. Viswanathan v. Assistant Registrar of Joint Stock Companies, Madras,

A I R 1953 Mad 558=66 M L W 152 = 1953-23 Com Cas 63=1953-1 M L J 408 = 1953 M W N 583 = 1953 Cr L J 1062.

——Default in holding meeting held not wilful.

Where almost all the shares of the company were held by the accused and the only other share-holder was his brother, default of the accused in holding the general meeting of the company as required by S. 76 (1), due to the serious illness of his daughter, was held not wilful. (Conviction under S. 76 (2) was set aside). (Atma Charan J. C.) Kastoor Mal v. State.

A I R 1951 Ajmer 39 (2) = 1951 A M L J 31 = 52 Cr L J 237.

——Ss. 76, 32—Conviction of director under S. 76 —Conviction under S. 32, may be dropped.

Where the director of a company is convicted under S. 76, for being wilfully a party to a default by which no general meeting was held as required by S. 76, his further conviction under S. 32 may very well be dropped. (Henderson J.) Surendra Nath v. Emperor,

AIR 1942 Cal 225=74 C L J 367=45 C W N 1130=14 R C 533=199 I C 94=43 Cr L J 466.

——S. 76 (2)—Default — Conviction.

An ordinary director of a company who is not knowingly and wilfully a party to the default under S. 76 (2), cannot be convicted. (Lakshmana Rao J.) Perianan Chettiar, In re,

197 I C 729=1941 M W N 959=56 M L W 18 (2) = 14 R M 398=43 Cr L J 295.

——S. 76 (1)—Where the evidence does not warrant the conclusion that the person who was one of the managing directors eo nomine was intentionally and wilfully a party to default under S. 76 (1), his conviction cannot be sustained (Lakshmana Rao J.) V. K, R. St. Kasi Viswanatha Chettiar, In re,

196 I C 126=1941 M W N 381 = (1941) 1 M L J 702 =53 M L W 680=14 R M 306=42 Cr L J 854.

——Ss. 76 (2), 131—Condoning delay.

Where the Registrar has condoned the delay in holding a meeting, he must also be deemed to have condoned the delay in filing a balance sheet before the general body at its meeting. (Horwill, J.) Ramanujan Appalaswamy, In re

AIR 1941 Mad 504= 1941 M W N 225 = (1941) 1 M L J 419=53 M L W 660=14 R M 139 = 195 I C 140= 43 Cr L J 683.

——Meeting.

Section 76 demands that there shall be a general meeting held once at least in every year, i.e., one meeting per year, and as many meetings as there are years. It does not mean that the same meeting can go on being held once in each year. The section requires that a separate and distinct meeting should be held. (Burn, J.) Meenakshi Mills Co. Ltd. v. Assistant Registrar of Joint Stock Companies, Madura,

AIR 1938 Mad 640=47 M L W 635=(1938) 1 M L J 856=(1838) M W N 608=11 R M 358 (1)=177 I C 600 =39 Cr L J 907 (1)

——Scope and nature —Persons responsible for failure to call general meeting—Whether can be excused— Balance-sheet, preparation of.

The object of S. 76, is to enable a member of a company where there has been default on the part of those whose duty it is to summon the meeting to apply to the Court to direct the calling of a meeting. It is not intended to enable the Court to make an order which will excuse the persons responsible from the consequences of their omission. The terms of the section are mandatory and the section makes no reference to the balance sheet. (Buckland J.) Brahmanbaria Loan Co. Ltd., In re,

A I R 1934 Cal 624=61 Cal 408=7 R C 159 (2)=151 I C 693.

— No distinction between extraordinary general meeting and general meeting.

There is nothing in S. 76 which differentiates an extraordinary general meeting and a general meeting, and therefore directors holding an extraordinary general meeting within 15 months of the last general meeting are not liable to pay a fine under S. 76. (Ryves J.) Lachhmi Narain v. Emperor,

1 U P L R (HC) 171=54 I C 494 (2)=L R 1 A (Cr) 13.

——Ss. 76 and 134 (4)—Conviction of Officer—Validity.

Before an officer of a limited company can be convicted under S. 134 (4) for default in submitting the balance-

sheet laid before the company at its general meeting as a general meeting was not held, it must be shown with reference to S. 76 that the Officer was a party to the default in holding the general meeting. (Teunon and Chaudhri JJ.) Raj Kumar Kusari v. Registrar of Joint Stock Companies; Bengal,

A I R 1918 Cal 190=21 C W N 840=38 I C 437=18 Cr L J 325.

——Ss. 76, 131 —(1882), S. 74—Definition of Manager—Firm managing a company describing itself managing agents.

Under S. 74 (1882) the word 'manager' includes every person or body of persons who conducts or conduct the affairs of the company and to whom its management, subject to the control of the Directors is entrusted and a firm is capable of managing a company as an individual and if it does so it surely cannot escape liability for its misfeasance or nonfeasance merely by calling itself. Managing Agents' instead of manager. (Rattigan J.) Tota Ram v. Emperor,

AIR 1916 Lah 199 = 18 P R 1916 (Cr) = 143 P L R 1916=35 I C 482=17 Cr L J 306.

——Ss. 76 and 131 — (1882), S. 74 — Failure to comply.

A magistrate has jurisdiction to entertain an application against the director of company for failure to comply with the provisions of S. 74 and for misappropriation and falsification of accounts. This power however should generally be used only in consultation with the Registrar, Joint Stock Companies. (Chamier J.) Sidheswar v. Emperor

8 A L J 1260 = 12 I C 972 = 12 Cr L J 596.

—S. 77.

——S. 77 (6) — Conviction, essentials to be proved.

In order that a conviction under S. 77, of an officer of the company may be sustained, the only thing the prosecution has to prove is that the particular officer knowingly and wilfully authorised or permitted the default. (R. C Mitter J.) Ballav Dass v. Mohan Lal Sadhu

AIR 1936 Cal 237 = 8 R C 586 = 39 C W N 1152 = 162 I C 282 = 37 Cr L J 552

——S. 77— (1882), S. 75—Offence punishable under the Act—Repeal of Act — Effect of.

An offence punishable under an Act and committed while the Act is in force cannot be punished after the Act is repealed. (Chevis J.) Ram Rachpal v. Emperor

AIR 1917 Lah 280 = 41 I C 1008 = 41 P W R 1917 (Cr)=18 Cr L J 896.

—S. 87.

——S. 87 (4) and (2)—"Who", "knowingly and wilfully," meaning of— Prosecution of company for omission to inform change—Prosecution, duty of.

The word "who" in S. 87 (4), refers only to an officer of the company and not to the company : and the words "knowingly and wilfully" only relate to a person and not to a company. So, in a case against the company it is unnecessary for the prosecution to prove that anybody connected with the company had knowledge of the change. (Horwill J.) Public Prosecutor v. Coimbatore National Bank Ltd.

AIR 1943 Mad 214 = 1942 M W N 761 =56 M L W 80=(1943) 1 M L J 119 =15 R M 862 = 205 I C 324 = 44 Cr L J 380.

——S. 87 (2)—Duty of company—Discharge.

Where a statutory duty is cast upon a company to do something, it must take steps to see that it is aware of all the changes that it has to notify to the Registrar, and if it fails to do so, then the company becomes liable for the default. The scheme of penalties in the Act makes the company liable for every default without proof of negligence. No distinction can therefore, be made between facts which are available from the records of the company and

COMPANIES ACT (VII of 1913), S. 87

facts which are not. (Horwill J.) Public Prosecutor v. Coimbatore National Bank, Ltd.

AIR 1943 Mad 214 = 1942 M W N 761= 56 M L W 80= (1943) 1 M L J 119 = 15 R M 862=205 I C 324 = 44 Cr L J 380.

——S. 87 (1) (b) — Scope and object — Attachment of managing agent's remuneration.

The restriction by S. 87 (1) (b), is against a managing agent making a voluntary charge or assignment of his remuneration and the object is undoubtedly to prevent him from doing so to the detriment of the company. It is an entirely different matter when a creditor of a firm of managing agents seeks to recover his debt by attaching the remuneration to which the managing agent is entitled. A restraint on voluntary alienation does not bar a compulsory sale at the instance of a creditor. (McNair J.) Pursotamdas v. Baijnath Prosad

AIR 1941 Cal 240 = 14 R C 41 = 195 I C 69.

——S. 87 (2)—Notice of change of directors, absence of—Offence.

The provision in the foot-note of Form No. 26, Appendix A, Companies Act, requiring a notice of the change among directors to be given within 30 days from the date of occurrence, is not mandatory and no offence is committed by a Company by not filing such notice. (Walsh J.) Lakshmana Mudaliar v. Emperor

AIR 1932 Mad 497=35 M L W 661=Ind Rul (1932) Mad 533 = (1932) M W N 1157 = 138 I C 317 = 33 Cr L J 589.

——Change of director — Failure to give notice— Conviction—Time for giving notice.

Where one of the directors of a company resigned on the 6th February and notice of this resignation and of the name of the new director was given to the Registrar only on the 8th May and the managing director and the secretary of the company were convicted under S. 87, Companies Act, for not giving notice to the Registrar in proper time :

Held, that inasmuch as no period is prescribed by law within which such notice should be given, the accused could not be convicted under S. 87. (Cuming J.) Kumud Chandra v. Emperor

AIR 1931 Cal 265 (1) = 35 C W N 227 = Ind Rul (1931) Cal 480 = 58 Cal 882=131 I C 592 = 32 Cr L J 778.

—S. 87A.

——Managing Agents — Expenses of management —Criminal intention, if can be presumed.

No Judge or lawyer without an intimate knowledge of business can estimate how much or how little is required to be spent on management, advertisement, and commission agency, in order to ensure success for a newly launched business. It depends upon innumerable fortuitous factors of trade, business, market, and particular social conditions. The management, advertisement, and commission agency expenses of all insurance Companies are notoriously heavy. Their business depends upon their success in persuading members of the public to engage in a gamble, because all insurance is in a sense a gamble, either with misfortune or with death. To suggest that the success or failure of a business of this kind is something which can be naturally or probably predicted is to lose all sense of direction. Such matters cannot be enclosed within the straight jacket of a legal principle as to presume the existence of a criminal intention against an accused, of which there is not a tittle of evidence. (Lort-Williams and Jack JJ.) Abinash Chandra Sarkar v. Emperor

161 I C 280 = 63 Cal 18 = 8 R C 502=37 Cr L J 439

COMPANIES ACT (VII of 1913) —S. 87-D.

——Scope—Penal provision—Construction—See Interpretation of Statutes

AIR 1953 M B 26 = 1953 Cr L J 253.

——Guaranteeing of loan—Meaning of — (Indore Companies Act, S. 87 D)—(Contract Act (1872), S. 126).

The word "guarantee" has acquired a technical meaning and the legislature was aware of it. The essence of guarantee is that a guarantor agrees to discharge his liability only in one event, i. e., when the principal debtor fails in his duty. In other words, a guarantee pre-supposes the existence of a principal debtor and if in any contract there never was at any time another person who can be properly described as "the principal debtor" in respect of whose default a guarantee can be given, there cannot be said to have been any "guarantee" either in its technical meaning or in its ordinary meaning. So a promissory note executed jointly by a Company and its Managing Agents does not come within the purview of section 87D. (Mehta and Chaturvedi JJ.) State of Madhya Bharat v. Hiralalji

AIR 1953 M B 26 = 1953 Com Cas 201 = 1953 Cr L J 253.

——S. 87 D (3) — Liability under — (Indore Companies Act, S. 87 D).

Under sub-section (3) of S. 87D, the only person who can be punished is the Director of the Company who is a party to the making of the loan or giving of the guarantee. Where the pro-note was executed by the managing director and not by the other director the latter cannot be held guilty. (Mehta and Chaturvedi JJ.) State of Madhya Bharat v. Hiralalji

AIR 1953 M B 26 = 1953-23 Com Cas 201= 1953 Cr L J 253.

—S. 92.

——Ss. 92 (5), 93—Offence — Prospectus filed in English —Subsequent issue of incomplete prospectus in Bengali—Such prospectus not filed before Registrar — Offence not technical.

The accused filed a prospectus in English in the office of the Registrar, Joint Stock Companies. This prospectus fulfilled all the requirements of law. Subsequently they issued a prospectus in Bengali, substantially identical with the English prospectus, but which did not contain certain particulars required by S. 93 of the Companies Act. A copy of this document was forwarded by a private person, to whom it had been sent, to the Registrar, who thereupon filed a complaint under S. 92 (5) of the Act before the Chief Presidency Magistrate on the ground that the Bengali prospectus had been issued without having been filed before him. The Magistrate held that in effect the Bengali copy had been filed, that the offence was purely technical and that the omission was not culpable and acquitted the accused :

Held, that the issue of the Bengali prospectus which did not in fact contain certain particulars specified in the English prospectus and required by law under S. 93 to be included in every prospectus issued on behalf of a company, was in contravention of S. 92 and the accused were liable to be convicted under S. 92 (5).

Held, also that as the question involved was one of great importance in view of the scope of the Act under consideration and of the necessity, in the interests of the community, of the strictest observance of its provisions, the Court should not give effect to the argument that the proceedings were initiated by a private individual, and refuse to interfere as there was a contravention of law. (Guha and Bartley JJ.) Emperor v. Bengal Salt Co. Ltd.

A I R 1936 Cal 33=40 C W N 320=8 R C 453 = 63 C L J 188=160 I C 829=37 Cr L J 379.

COMPANIES ACT (VII of 1913)

—S. 104.

——Return as to allotment of shares—Duty of Directors and Managers.

It is the duty of the Directors and Managers of a company to furnish the return of allotments of shares required by S. 101 of the Companies Act. 18 P. R. 1916, Ref. Ignorance of law is no excuse. (Chevis and Broadway JJ.) Emperor v. Nathu Ram,

A I R 1919 Lah 361=26 P R 1919 (Cr)=52 I C 885=20 Cr L J 725.

—S. 130.

——Ss. 130, 132—"Assets and liabilities", meaning of.

Per Lokur J.—The words "assets and liabilities" must be taken in the same sense in both Ss. 130 and 132, Companies Act. (Beaumont C. J. Lokur and Rajadhyaksha JJ.) Shamdasani P. D. v. Central Bank of India Ltd. (No. 1),

A I R 1944 Bom 107=46 Bom L R 70=16 R B 358=I L R (1944) Bom 302 = 212 I C 396 = 45 Cr L J 612 (FB).

—S. 131.

—— Offence under — Failure to hold general meeting if good defence—See ibid, S. 76,

A I R 1953 Mad 558=1953 Cr L J 1062.

——S. 131 (3)—False statement in balance sheet — Complaint for—Jurisdiction — Company situated in Narayanganj Sub-division, having its registered office at Dacca—Complainant receiving his copy of balance sheet under S. 131 (3) in place under jurisdiction of Narayanganj Court — Balance sheet alleged to be signed in Calcutta — Narayanganj Court held had jurisdiction to deal with complaint—See ibid, S. 282,

52 C W N 889 (Dacca)

——Condoning delay.

Where the Registrar has condoned delay in holding a general meeting, he must be deemed to have condoned the delay in filing a balance sheet before the general body of its meeting. (Horwill J.) Ramanujam Appalaswamy, In re,

A I R 1941 Mad 504=1941 M W N 225=53 M L W 660=(1941) 1 M L J 419=14 R M 139 = 195 I C 140=42 Cr L J 683.

——Ss. 131, 134 — Scope of — Charge in respect of same years against same persons—Legality of.

In respect of the same years, the same persons cannot be charged with offences punishable both under Ss. 131 and 134, because S. 134, clearly contemplates the sending of a copy of the balance sheet only after it has been placed or laid before the company at a general meeting under S. 131. Where there has been no such placing of the balance sheet before the company at a general meeting, the offence under S. 134 cannot possibly have been committed. (Pandrang Row J.) Narasimha Rao, In re,

A I R 1937 Mad 341=(1937) M W N 90=45 M L W 242=9 R M 681=169 I C 100=38 Cr L J 695.

——Liability of directors.

Persons cannot be held liable in respect of the default made in preparing a balance sheet or placing it before a general meeting of the Company which took place long before they ever became directors or officers of the Company, and indeed before they were even share-holders. (Pandrang Row J.) Narasimha Rao, In re,

AIR 1937 Mad 341=45 M L W 242=(1937) M W N 90=9 R M 681=169 I C 100=38 Cr L J 695.

——Ss. 131, 134 — Failure to balance accounts, prepare balance sheet and make list of members — Conviction under S. 131 — Propriety of accounts called by Courts — Whether sufficient excuse.

COMPANIES ACT (VII of 1913), S. 131

The provisions of Ss. 32, 131 and 134, Companies Act, are mandatory as regards the company and a company which makes default in compliance with them renders itself liable to the penalties imposed by those sections. Failure to get the company's accounts balanced and the balance sheet prepared and the list of members made, entails a conviction under S. 131 rather than under S. 134 (4) and the fact that the accounts had been called by various Criminal Courts is no defence. (Costello J.) Ajit Kumar v. Emperor,

A I R 1934 Cal 63=37 C W N 1159=6 R C 373=147 I C 848=35 Cr L J 492.

——S. 131 (2)—False balance-sheet.

Where the directors of a Bank showed in the balance-sheet, a cash profit for a particular year by adding a sum which was due to the Bank but was never paid and was never likely to be paid :

Held, that there was a false statement and a very material one in the balance-sheet. (Wild J. C.) Official Liquidators, Karachi Bank v. Directors, Manager and Auditors of Karachi Bank,

A I R 1932 Sind 4 = 25 S L R 297=Ind Rul (1931) Sind 145=134 I C 993.

——S. 131—(1882), S. 74 — Filing balance-sheet within one year — Director resigning before the year — Whether liable for failure.

A company is not by law obliged to file a balance-sheet within one year from its registration and a Director resigning within that year cannot be fined under S. 74 of the Act for failing to file the balance-sheet. (Kensington and Rattigan JJ.) Chandraban v. Emperor,

A I R 1914 Lah 222=39 P W R 1914 Cr=23 I C 748=250 P L R 1914=15 Cr L J 380.

——S. 131—(1882), S. 74—Penalty of Rs. 1,000 — Whether a lesser fine can be imposed.

Under S. 74 the fine of Rs. 1,000 being a fixed one, a lesser fine cannot be imposed where the offence is proved; if it were less, the Chief Court has power to enhance it in revision. (Johnstone J.) Emperor v. Harikishen Lal,

A I R 1914 Lah 321 (1)=37 P L R 1914=16 P W R Cr 1914=19 P R Cr 1914=23 I C 468 = 15 Cr L J 260.

——S. 131—(1882), S. 74—Summary trial — Jurisdiction —Cr P. C., Ss. 5, 260, 262.

A Magistrate of the First Class can try an offence under S. 74 of the Companies Act in a summary way but he cannot inflict a lesser punishment than a fine of Rs. 1,000. The Magistrate should exercise a wise discretion in trying a case summarily and ordinarily he ought to restrict such trials to simple cases. (Tudball J.) Dina Nath v. Emperor,

35 All 173=11 A L J 196=18 I C 665=14 Cr L J 105.

—S. 132.

——Balance sheet of banking company doing banking business — According to notification of Government of India, dated 16-1-1937 (now incorporated in Form F, Sch. II by Act 30 of 1943) it is not necessary that balance sheet should disclose nature of bad and doubtful debts. (Govinda Menon J.) In re G. Natesan,

AIR 1949 Mad 657=1949 M W N 175 = 1949-1 M L J 438=1949-19 Com Cas 159=50 Cr L J 917.

——Directors of Banking Company taking loans from company and paying off during same year—Such loans need not be specifically and separately mentioned in balance sheet — It is not necessary to show volume of business transacted with directors in course of year. (Govinda Menon J.) In re G. Natesan,

AIR 1949 Mad 657 = 1949 M W N 175 = 1949-1 M L J 438=1949-19 Com Cas 159=50 Cr L J 917.

COMPANIES ACT (VII of 1913)

—S. 133.

——Offence under, is distinct from one under S. 76 — See ibid, S. 76,

AIR 1953 Mad 558=1953 Cr L J 1062.

——S. 133 (3)—Scope—See ibid, S. 13 (1),

AIR 1952 Mad 800=1953 Cr L J 19.

——S. 133 (3), R. 107—Offence.

Per Full Bench. — Non-fulfilment of the requirements of R. 107 of Sch. I cannot constitute an offence under S. 133 (3) of the Companies Act. (Beaumont C. J., Lokur and Rajadhyaksha JJ.) Shamdasani P. D. v. Central Bank of India, Ltd., (No. 1),

AIR 1944 Bom 107=16 R B 358=I L R (1944) Bom 302 = 46 Bom L R 70 = 212 I C 396 = 45 Cr L J 612 (F B).

—S. 134.

——S. 134 (4) — Failure to call general meeting and lay balance sheet and profit and loss account before it—Failure to file balance-sheet and accounts with Registrar —No offence under S. 134 (4) is committed.

What is made penal by S. 131 (4) is default in complying with the requirements of the section and under S. 134 (1) there is no obligation cast upon the company to file three copies of the balance sheet and the profit and loss account if no general meeting has been called. Where, therefore, no general meeting of the company was called and no balance-sheet and profit and loss account laid before it, the company and its directors have made no default in complying with S. 134 by their failure to file copies of the balance-sheet and the profit and loss account with the Registrar of the Companies and they are not guilty under S. 134 (4) although they might have committed an offence either under S. 76 (2) or under S. 133 (3) : AIR 1917 Cal 1, Dissent. (Chagla A. C. J. and Gajendragadkar J.) Emperor v. Pioneer Clay and Industrial Works Ltd.,

AIR 1948 Bom 357=I L R (1948) Bom 86 = 50 Bom L R 156=49 Cr L J 515.

——S. 134 (4)—Prosecution against director—Plea open.

A director who is prosecuted under S. 134 (4) for knowingly and wilfully permitting a company to default in respect of filing the balance sheet and profit and loss account with the Registrar cannot plead the impossibility of doing so when that impossibility is due to his own previous default in placing the balance sheet before the annual general meeting of the share-holders as required by S. 134 (1) : 39 C W N 1152, Rel. on. (Lodge J.) Bhagirath Chandra Das v. Emperor.

AIR 1948 Cal 42=229 I C 109=48 Cr L J 236.

——Private limited company issuing patron bonds to public — Bonds held to be debentures — Company held liable to penalty under S. 134.

The India Patron Bank Ltd., was a private limited company incorporated under the Companies Act, its main business being to sell what were called "Patron Bonds," to invest money realised by the sale of those bonds and to take steps to carry out the terms of the scheme of those bonds. The form of the Patron Bond bore a serial number and its title at the top was "The India Patron Bank Limited" and below it "Patron Bond Rupees Ten only." The bond acknowledged a debt; it was one of a series; it bore the company's seal; it provided for the payment of interest by determining the lucky numbers and it indirectly created a charge of the amount payable on the reserve fund of the company :

Held, that the prize bonds were debentures and by issuing them to the public the company had ceased to be a private company and was bound to file its balance-sheet and the profit and loss account with the Registrar

COMPANIES ACT (VII of 1913), S. 134

of Companies and that the default of the company in complying with that requirement rendered the company and its directors liable to the penalty under S. 134 (4), Companies Act (Lokur and Weston JJ.) Laxman Bharmaji v. Emperor,

AIR 1946 Bom 18 = 47 Bom L R 660=223 Ind Cas 110=I L R (1945) Bom 863=47 Cr L J 361.

——S. 134 (4)—Conviction—Essentials to be proved.

In order that a conviction under S. 134 (4) may be sustained the only thing the prosecution has to prove is that the particular officer knowingly and wilfully authorised or permitted the default. (R. C. Mitter J.) Ballav Dass v. Mohan Lal Sadhu,

AIR 1936 Cal 237=39 C W N 1152=8 R C 586=162 I C 282=37 Cr L J 552.

——Failure to balance accounts, prepare balance sheet and make list of members entails a conviction under S. 131 rather than under S. 134. (Costello J.) Ajit Kumar v. Emperor.

AIR 1934 Cal 63=37 C W N 1159=6 R C 373 = 147 I C 848=35 Cr L J 492.

——Ss. 134, 131—Conviction under both sections.

In respect of the same years the same persons cannot be charged with offences punishable both under Ss. 131 and 134. (Pandrang Row J.) Narasimha Rao, In re,

AIR 1937 Mad 341 = 9 R M 681=(1937) M W N 90 =45 M L W 242=169 I C 100=33 Cr L J 695.

——S. 134 (4) — Non-filing of balance-sheet — Balance-sheet not due to be filed—How far a defence.

A charge under S. 134 (4), of non-filing of the balance-sheet before the Registrar receives a complete reply if the accused can show that the balance-sheet was not due to be filed before the Registrar. It is immaterial whether the balance-sheet was prepared or not. (Walsh J.) Lakshmana Mudaliar v. Emperor.

AIR 1932 Mad 497=35 M L W 661=Ind Rul (1932) Mad 553 = (1932) M W N 1157 = 138 I C 317=33 Cr L J 589.

——S. 134 (4) — Balance sheet not filed by Director — Offence — Plea of no meeting being held — Territorial jurisdiction.

The Director of a Company cannot plead that no meeting was held and that no balance sheet was laid before the meeting and that it was impossible to comply with the section. The Presidency Magistrate in Calcutta could try a charge under the section, even when the company is situate outside Calcutta, as the balance sheet was to be filed in the office of the Registrar which was in Calcutta. (Teunon and Richardson JJ.) Debendranath Das Gupta v. Registrar Joint Stock Companies, Bengal.

AIR 1917 Cal 1=45 Cal 486 and 490 = 22 C W N 96 =41 I C 307=27 C L J 85=18 Cr L J 787.

—S. 136.

——S. 136 (4)—Scope.

Where there is nothing in the order of the Magistrate or in the summons to show that a particular person was summoned as representing the company, or that any proceedings were being taken against the company as such, the procedure in issuing a summons to such a person is clearly incorrect. Sub-s. (4) of S. 136, Companies Act, provides for a penalty against the company and there is nothing to prevent the issue of a summons against the company itself. (Reuben J.) Sudhir Ranjan Roy v. N. K. Mazumdar,

AIR 1944 Pat 210=216 I C 312=17 R Pat 164=11 B R 136=46 Cr L J 168.

—S. 137.

——S. 137 (6)—Scope of.

The intention of S. 137 is to facilitate the investigation of the affairs of the company and it has no reference to

COMPANIES ACT (VII of 1913), S. 137

actual proceedings in Court. (Henderson and Akram JJ.) Surendra Nath Sarkar v. Kali Pada Das,

AIR 1940 Cal 232=44 C W N 454=13 R C 14=ILR (1940) 1 Cal 575=188 I C 537=41 Cr L J 625.

—S. 140.

——S. 140 (3)—Refusal to produce books and documents —Conviction.

Where the appointment of an Inspector is invalid by reason of the provisions of Para. 8 (2), India and Burma (Transitory Provision) Order, 1937, conviction under S. 140 (3), for refusal to produce the books and documents of the company before such Inspector cannot be sustained (Lakshmana Rao J.) Karumutha Thiagarajan, In re,

AIR 1939 Mad 589=49 M L W 651 = 1939 M W N 743=(1939) 2 M L J 97=12 R M 371 (1).= 183 I C 762 =40 Cr L J 835.

—S. 141A.

——"Of any offence in relation to the company for which he is criminally liable"—Meaning of.

The words "of any offence in relation to the company for which he is criminally liable" in S. 141-A mean, not only criminally liable under the Act but criminally liable under the I. P. C. as well. (Davis C. J.) Emperor v. Vishwanath B. Patel,

AIR 1942 Sind 9=14 R S 134=198 I C 95=43 Cr L J 304.

——Ss. 141-A, 237—Offences against director or officers of company—Company being wound up — Complaint by private person—Offence under Special Act—Procedure.

A private person can make a complaint to a Court of offences under the Companies Act or the I. P. C., against directors or officers of the company in relation to the company even if the company is being wound up.

Obiter : — Where Special Act makes a special offence and a special procedure for the prosecution of offences under that Act, prosecutions not in accordance with that special procedure are barred. (Davis C. J.) Emperor v. Vishwanath B. Patel,

AIR 1942 Sind 9=14 R S 134=198 IC 95=43 Cr L J 304.

——Prosecution by private person.

There is nothing in the actual terms of S. 141-A, to justify an inference that the intention of the Legislature was that prosecutions by private persons should not be allowed. That section casts a duty upon the Advocate-General or the Public Prosecutor to cause proceedings to be instituted in certain circumstances. It also casts a duty upon the officers of the company to render assistance in connection with any such prosecution. The terms of the section are quite different from those, for example, of Ss. 196 and 198, Criminal P. C., by which a bar is placed upon the jurisdiction of Criminal Courts. It is impossible to read into sub-s. (6) of S. 137 any prohibition of private prosecution. It is not merely that there are no words containing any such prohibition. The subject-matter of S. 137 is an investigation rather than a prosecution. (Henderson and Akram JJ.) Surendra Nath v. Kali Pada Das,

A I R 1940 Cal 232 = 44 C W N 454 = 13 R C 14= ILR (1940) 1 Cal 575=188 I C 537=41 Cr L J 625.

—S. 145.

——Duties of auditor—He must state true financial position of company—He must see whether account books show true position—He must act as reasonable and careful man—In matter of suspicion, he must probe into matter—He is not, however, bound to be suspicious as distinguished from reasonably careful — His duty is of verification and not of detection—He can rely on tried servants of company—He has nothing to do with prudence

COMPANIES ACT (VII of 1913), S. 145

or imprudence of making loans with or without security: (1895) 2 Ch 673; (1935) 1 Ch 407 and (1896) 2 Ch 279, Rel. on. (Govinda Menon J.) In re G. Natesan,

A I R 1949 Mad 657 = 1949 M W N 175=1949-1 M L J 438=1949-19 Com Cas 159=50 Cr L J 917.

—S. 151.

——Ss. 151, 130, 132 — Notification of January 6, 1937 directing alteration in Form F, Sch. III, is ultra vires.

Per Full Bench. — Notification No. 24 (25) Tr. (C. L.) published in Gazette of India 1937 Part. I, p. 83, dated 16th January 1937, directing alterations in Form No. F in Sch. III of Companies Act, in pursuance of S. 151 (2) and (3) is ultra vires.

Per Beaumont C. J. — The Central Government although it may alter or add to Form No. F, is not entitled to introduce a new form, nor is it entitled to amend the substantive provisions of the Companies Act: and directly the Central Government distinguishes between one company and another, it is in effect introducing a new form, and is altering the provisions of S. 132.

Per Lokur J. — Sections 131 and 132 make no distinction between a banking company and other companies, and by S. 132 (2) a form is prescribed for all companies alike. The balance sheets of all companies must conform to Form No. F in Sch. III as nearly as circumstances permit. The Central Government is empowered by S. 151 (2) to "alter or add to the forms in Sch. III," but the form as altered or added to will be applicable to all companies under S. 132 (2). To differentiate between one class of companies and another would be amending that section itself and the power of legislating is not conferred upon the Central Government by S. 151. So long as S. 132 (2) stands as it is, prescribing only one form of balance sheet for all companies, the Central Government cannot usurp the power of the Legislature by issuing a notification that there will be a different form for banking companies. Section 151 (2) does not confer any such power upon it. Section 151 (2) empowers the Central Government to alter or add to an existing form in Sch. III, but not to add one more new form to the schedule. Section 151 (3) requires the altered form to be published in the Official Gazette, but not any new form that is added to Sch. III. (Beaumont C. J., Lokur and Rajadhyaksha JJ.) P. D. Shamdasani v. Central Bank of India Ltd.,

A I R 1944 Bom 107=46 Bom L R 70 = 16 R B 358 =ILR (1944) Bom 302 = 212 I C 396 = 45 Cr L J 612 (FB).

——S. 151 (3), Per Full Bench (Beaumont C. J. dissenting).—Where the notification instead of giving the altered form has merely stated that the Form F in Sch. III shall be amended in the manner specified therein, there is substantial compliance with S. 151 (3) and the notification is not defective on that account. (Beaumont C. J., Lokur and Rajadhyaksha JJ.) P. D. Shamdasani v. Central Bank of India Ltd. (No. 1),

A I R 1944 Bom 107=46 Bom L R 70 = 16 R B 358 =I L R (1944) Bom 302=212 I C 396 = 45 Cr L J 612 (FB).

—S. 152.

——False statement—Balance sheet—Loan and deposit—Consolidation of the two amounts to suppression of the truth — Loan to depositor shown as overdraft—Whether amounts to concealment.

A loan and a deposit are items differing completely in principle from the balance sheet point of view. Strictly speaking, they ought to appear on different sides, for one is an asset and the other is a liability. Consolidating the two and presenting them as one item to the readers, is a striking case of non-disclosure, amounting to a suppression of the truth.

COMPANIES ACT (VII of 1913), S. 152

A company giving a loan to one of its depositors and showing it to be an overdraft to him conceals the true statement of facts. (Cunliffe and Henderson JJ.) Superintendent and Remembrancer of Legal Affairs Bengal v. Akhil Bandu,

A I R 1936 Cal 680 = 40 C W N 1341=9 R C 478= I L R (1937) 1 Cal 328=166 I C 163=38 Cr L J 151.

—S. 153.

——Section 153 (5)—Application under S. 153 by Bank—Stay order passed — Subsequent complaint for criminal breach of trust against director by customer in respect of certain shares—Shares alleged to have been purchased by Bank on his behalf with his money in Bank and held in safe custody but not returned — Case held should be stayed if during trial it was found to be one of fraudulent operation of banking account.

A Bank applied under S. 153 and obtained a stay order under S. 153 (5). Subsequently, a customer of the Bank filed a complaint to a Magistrate charging the managing director of the Bank with an offence of criminal breach of trust in respect of certain shares which he alleged were purchased by the Bank on his behalf with his money in the Bank under the arrangement between him and the Bank and were held by the Bank in safe custody. It was alleged that the shares were liable to be delivered to the complainant on demand but were not delivered to him and therefore the accused had been guilty of fraudulent conversion in complete violation of the trust and responsibility imposed upon him as banker and agent. The question was whether this proceeding was covered by stay order under S. 153 (5) :

Held, that an application under S. 153 raised questions only between a company and its creditors and members. If the proceedings before the Magistrate were in respect of a criminal breach of trust the complainant not being a creditor of the Bank in respect of the shares, those proceedings were outside the stay order. But if during the trial it was found that the case was not one of a criminal breach of trust but a case of fraudulent operation of banking account the case would fall within the ambit of the stay order and should then be stayed. The Magistrate could therefore proceed with the case till he could decide these points. (Chakravartti J.) Chitta Ranjan v. M. Ameen

AIR 1948 Cal 242= 52 C W N 708=49 Cr L J 397.

—S. 162.

——Company for raising of funds for charitable purposes —Offer of cash bonuses to donors by drawing lots — Winding up :

Held, that as a very substantial part of the business carried on by the company was illegal, there was sufficient ground for ordering the compulsory winding up of the company. The fact that the company was formed for benefiting charities and the lottery was merely annexed to the original business, did not make the business of the company a legal one. (Beasley C. J. and Cornish J.) Universal Mutual Aid and Poor House Association Limited, Madras v. Thoppa.

AIR 1933 Mad 16 = (1932) M W N 904 = 63 M L J 554 = Ind Rul (1932) Mad 759 = 36 M L W 610 = 56 Mad 26=139 I C 644=33 Cr L J 792.

—S. 169.

——Criminal proceedings against manager of Company—Revival.

Where in pursuance of an order passed by the company Judge in the company matter, that there should be a stay of all proceedings against the company till the disposal of the application for the sanction of the scheme of amalgamation, criminal proceedings pending against the manager of the company's branch are stayed the proceedings would be revived as soon as the stay order has spent its force by reason of the disposal of the application for the sanction of the scheme of amalgamation by the company Judge. The complainant need not obtain an order for vacating the stay order. (Sen J.) Sunil Chandra Banerjee v. Krishna Chandra Nath

AIR 1949 Cal 689=1949-19 Com Cas 46=ILR (1949) 2 Cal 293.

COMPANIES ACT (VII of 1913), S. 169

—S. 171.

——Criminal proceedings against manager of company's branch office.

Where the criminal proceedings for cheating are not against the company but against the manager of the company's branch office the proceedings cannot be said to be against the company, though the accused was acting as the manager at the time he made the alleged representation amounting to an offence of cheating. (Sen J.) Sunil Chandra Banerjee v. Krishna Chandra Nath

AIR 1949 Cal 689=1949-19 Com Cas 46=ILR (1949) 2 Cal 293.

——Proceedings against directors—Applicability of section.

Section 171 does not require the leave of the Court for institution of proceeding against directors as such and there is no bar whatever in that section to proceeding with the case against the directors and officers of the company for defaults made by them. Consequently, a prosecution under Ss. 32 and 134 started against the directors of a company cannot be dropped by virtue of S. 171 merely because it was started after the company had gone into liquidation. (Lodge J.) Bhagirath Chandra Das v. Emperor

AIR 1948 Cal 42=229 I C 109=48 Cr L J 236.

——Scope — Winding up order — No bar to proceedings against servant of company.

Under S. 171, when a winding up order has been made no suit or other legal proceedings shall be proceeded with or commenced against the company except by leave of the Court. There is nothing in this section which precludes action being taken against servants of the company. The servants of the company are not the company itself. (Bennett J.) Raghubar Singh v. Emperor

AIR 1944 Oudh 147 = 19 Luck 385 = 1943 O W N (C C) 339=16 R O 222=211 I C 220=45 Cr L J 333.

——Criminal Procedure Code, S. 145—Proceedings against Liquidator under S. 145—Necessity of leave of Court.

Section 171 does not prohibit a Magistrate from drawing up proceedings under S. 145, Criminal P. C., against the Liquidator of a company, without obtaining the leave of the Court especially where the Liquidator is also responsible for the proceedings being initiated. (Pearson and Patterson JJ.) Mukerjee S. N. v. Krishna Dassi

AIR 1933 Cal 433 (2) = Ind Rul (1933) Cal 484 = 37 C W N 932=143 I C 795=34 Cr L J 640 (2).

—S. 177.

——Ss. 177, 282A—Form of complaint.

Even if the proceedings are not in the name and on behalf of the company, they must be deemed to be by the company through its liquidators when the Official Liquidators have taken the proceedings in the matter of the company in liquidation. (Govinda Menon and Basheer Ahmed Sayeed JJ.) J. Loomchand Sait v. The Official Liquidators.

AIR 1953 Mad 595=1953-1 M L J 514=1953-23 Com Cas 142=1953 Cr L J 1142.

—S. 177A.

——S. 177A (1)—Company originally dissolved by voluntary liquidation and its name struck off registers — Company restored under orders of Court — Court directing winding up after restoration — Company is wound up by order of Court.

COMPANIES ACT (VII of 1913), S. 177A

Where a company is originally dissolved by voluntary liquidation and its name is struck off the registers, but under the orders of the Court the company is restored and the Court directs the winding up after such restoration, it is a case of company wound up by order of Court and not by voluntary liquidation. (Kuppuswami Aiyar J.) In re Kalyanasundara

AIR 1947 Mad 247=1946-2 M L J 241=59 M L W 527 = 1946 M W N 618 = 228 I C 12 = 1947 A W R (Sup) 22 (2)=1947 O A Sup 22 (2)=48 Cr L J 14.

——S. 177A (2) — "Subject to the direction of the Court" explained—Official Liquidators are officers of company and are liable to give necessary information—Direction of Court to call for accounts is not necessary.

Official Liquidators are officers of the company and, therefore, they are the persons who ought to give necessary information as required by S. 177A (2) (a) and against whom proceedings should be taken if they fail to submit the account. The words "subject to the direction of the Court" in sub-cl. (2) cannot be taken to indicate that such persons are liable to submit the accounts only when they are called upon by the Court or the Court directs them to furnish such a statement : A I R 1942 Mad 702, Foll. (Kuppuswami Aiyar J.) In re Kalyanasundara

AIR 1947 Mad 247=1946-2 M L J 241 = 59 M L W 527 = 1946 M W N 618 = 228 I C 12 = 1947 A W R (Sup) 22 (2)=1947 O A Sup 22 (2)=48 Cr L J 14.

—S. 179.

——Sanction of Court.

In the absence of specific terms that sanction should be previously obtained, sanction required by the Official Liquidators could be given by the concerned authority at any time, even after the proceedings have actually been instituted or even in the course of the proceedings. (Govinda Menon and Basheer Ahmed Sayeed JJ.) J. Loomchand Sait v. The Official Liquidators,

A I R 1953 Mad 595 = 1953-1 M L J 514 = 1953-23 Com Cas 142=1953 Cr L J 1142.

——Ss. 179 and 237 — Prosecution of officers of bank — Direction by Company Judge is not always necessary.

Where the Court gives unrestricted power to the official liquidator under S. 179 (a), then the liquidator is entitled, without any further reference to the Court, to institute any prosecution such as one under S. 409, Penal Code against the officers of the Bank. Neither in S. 179 nor in S. 237 is there anything to indicate that if the liquidator takes action without a direction of the Court, this action would be in any way illegal or invalid. Neither section in express terms limits the liquidator's power which he has in common with any other citizen, to file in Court a complaint that another person has committed a criminal offence. (Roxburgh J.) Mrityunjoy Chakravartti v. Provat Kumar Pal,

A I R 1953 Cal 153 = 56 C W N 18 = 1952-22 Com Cas 353=1953 Cr L J 389.

—S. 195.

——Company Judge conducting proceedings under S. 195, Companies Act, is a Court within the meaning of S. 476, Criminal P. C. (Young, C. J. and Sale J.) Mohd. Tahir v. Emperor,

A I R 1941 Lah 52 = I L R (1940) Lah 669=13 R L 443=193 I C 170=42 Cr L J 351.

—S. 202.

——Orders passed under S. 237 directing the Official Liquidator to prosecute the directors and the Secretary of a company for offences under the penal provisions of the Act are appealable under S. 202: 30 Mad 22 and A I R 1944 Mad 87, Rel. on. (Wadsworth and Govindarajachari JJ.) Subramania v. Podanur Bank,

A I R 1947 Mad 343=1947-1 M L J 54=1947 M W N 109=60 M L W 159.

COMPANIES ACT (VIII of 1913), S. 202

—S. 208.

——Liquidator — Validity of appointment disputed — Duties of Liquidator.

When a person is appointed liquidator of a company, however imperfect he may consider his appointment to be if he is nominally a liquidator and acts as such, he must carry out the duties or exercise the rights of a liquidator, and included in those duties is making a return of his appointment. On acceptance of the appointment as liquidator he must give notice of it according to law; if he does not do so then unless there is some bona fide excuse he will be liable to a penalty. The penalty in the case was reduced to one anna. (Walsh, J.) Satos Chandra v. Emperor,

A I R 1917 All 93 (2)=39 All 412 = 15 A L J 346 = 39 I C 478=18 Cr L J 510.

—S. 236.

——Ss. 236, 208, 208-A (2) — Applicability — Director, status of, after liquidation.

The Liquidator of the company which had gone into voluntary liquidation, who was prosecuted under S. 236, was also a contributory. It was argued that though the accused was once a director of the company he ceased to be so when once liquidation proceedings had begun :

Held, that the wording of S. 208-A (2), indicated that although the director lost most of his powers, on his appointment as a Liquidator, he did not cease to be a director.

Held, also that the Liquidator was an officer of the company.

Held, further that whether as director, officer or contributory S. 236 applied. (Horwill, J.) Rangai Goundan, In re,

A I R 1942 Mad 702=55 M L W 410=(1942) 2 M L J 140=1942 M W N 433 = 15 R M 976=206 I C 362=44 Cr L J 503.

——Ss. 236, 208, 208-A (2), 282—Falsification of books—False statement—Offences.

A company went into voluntary liquidation on June 15, 1934, and appointed the accused who was its secretary as the Liquidator. He performed the duties of the Liquidator and in accordance with these duties he had to send in periodical returns of the position of the company as required by S. 244, Companies Act. He showed the assets of the company as Rs. 53,010-12-0 and liabilities as Rs. 36,465-2-2 in all of his returns. On June 19, 1935, he made certain entries in the accounts which rendered the subsequent periodical statements incorrect. He owed to the company a sum of Rs. 33,600, on a promissory note and in 1935 had written off against his own debt of Rs. 33,000, as many individual items of share and debts as he could think of and wrote off the balance as bad debts:

Held, that since the writing off his own debts by the accused was false and dishonest the accussed was properly convicted under S. 236, Companies Act:

Held, also that if other entries showing individual items of shares and debts against the accused's own debt of Rs. 33,600 were true then the accused was also guilty of an offence under S. 282, Companies Act. (Horwill J.) Rangai Goundan, In re

A I R 1942 Mad 702 = 55 M L W 410 = (1942) 2 M L J 140=1942 M W N 433 = 15 R M 978 = 206 I C 362=44 Cr L J 503.

—S. 237.

——Scope — Section 237 is not restricted only to offences punishable under Companies Act. (Roxburgh J.) Mrityunjoy Chakravartti v. Provat Kumar Pal,

A I R 1953 Cal 153 = 56 C W N 18 = 1952-22 Com Cas 353=1953 Cr L J 389.

——Prosecution of officers of bank—Direction by Company Judge is not always necessary—See ibid, S. 179,

A I R 1953 Cal 153=1953 Cr L J 389.

——Section 237 does not require Court to set forth reasons for order directing prosecution — Order directing prosecution in fact justified by materials before Court—It cannot be set aside in appeal on ground that it does not itself set forth reasons causing Court to pass it in spite of the very wide right of appeal given by S. 202. (Wadsworth and Govindarajachari JJ.) Subramania v. Podanur Bank,

A I R 1947 Mad 343=1947-1 M L J 54=1947 M W N 109=60 M L W 159.

——The Court can, and in a proper case, ought to direct prosecution of a delinquent director of a company without the assent and even notwithstanding the dissent of the class or many of the class at whose expense the prosecution would be instituted. The Court has a discretion to ignore the opposition of creditors to the prosecution if in its opinion the object of the opposition was not so much to save the Company's funds as to save the guilty director. (1885) 51 L T 570 and (1903) 1 Ch 728, Rel. on; (1883) 31 W R (Eng) 546, Expl. (Wadsworth and Govindarajachari JJ.) Subramania v. Podanur Bank,

A I R 1947 Mad 343=1947-1 M L J 54=1947 M W N 109=60 M L W 159.

——The section contemplates action by Court not merely at the instance of third parties but also on its own motion. It cannot therefore be laid down as an absolute rule that the Court must call upon the persons concerned to show cause before it directs prosecution. Order for prosecution cannot be set aside merely because it is ex parte. (Wadsworth and Govindarajachari JJ.) Subramania v. Podanur Bank,

A I R 1947 Mad 343=1947-1 M L J 54=1947 M W N 109=60 M L W 159.

——Applicability and scope.

The whole scheme of S. 237 appears to be enabling rather than mandatory or exclusive. The Court may order the Liquidator to prosecute or refer the matter to the Registrar. The Registrar may refuse to prosecute and the Liquidator with the previous sanction of the Court may prosecute, but the section is not limited to the criminal liability of directors under the Companies Act, so that the section is not limited to special offences created under the Act. (Davis C. J.) Emperor v. Vishwanath B. Patel,

A I R 1942 Sind 9=14 R S 134 = 198 I C 95=43 Cr L J 304.

——Ss. 237, 278 — A penal enactment in a special Act, e.g., Companies Act, S. 236, is no bar to a prosecution under the Penal Code. The Companies Act nowhere lays down that there can be no prosecution on a criminal charge otherwise than upon a direction by the Company Judge or Judges. (Collister and Bajpai JJ.) Emperor v. Bishan Sahai Vidyarthi,

A I R 1937 All. 714 = 10 R A 350 = (1937) A L J 1073=1937 A W R (H C) 748=I L R (1937) All. 779=171 I C 994=39 Cr L J 38.

——Order under S. 237, directing the Official Liquidator to prosecute a person for a criminal offence is more of a criminal than of a civil nature and S. 109 (c), Civil P. C., is not applicable and an appeal to Privy Council is not

competent. (Wild J. C.) Shewaram Dewanmal v. Charles M. Lobo,

A I R 1931 Sind 120 = Ind Rul (1931) Sind 90=132 I C 474.

——Ss. 237 and 238—Person in two capacities—Manager and share-holder.

The fact that one of the members of a firm acting as managing agents of a company was punished in his individual capacity as a Director of the company is no ground for not punishing him in his capacity as a member of the managing firm. (Rattigan J.) In re, Tota Ram,

A I R 1916 Lah. 199 = 71 P W R Cr 1916 = 18 P R Cr 1916=143 P L R 1916=35 I C 482=17 Cr L J 306.

—S. 238-A.

——S. 238-A (1) (b) applicability and scope.

Under S. 238-A (1) (b) the prosecution has to prove that the accused had in his custody or under his control the articles when the company was being wound up. (Kuppuswami Ayyar J.) Veerappan, In re,

A I R 1944 Mad. 424=17 R Mad. 319=1944-1 M L J 390=57 M L W 276=1944 M W N 272=1944 M W N Cr 68=217 I C 306=46 Cr L J 347.

—S. 248.

——S. 248 (2) — Regulations under — Regulation 14 (a) and (b)—Offence under Act—Complaint—Who can make.

With regard to the offences under the Companies Act there is no provision that any offence should not be taken cognizance of unless the complaint is filed by any of the persons mentioned in the Act. In the absence of such a provision, the normal rule namely that any person may set the criminal law in motion will apply. Clauses (a) and (b) of Reg. 14 do not take away the right of any citizen to file a complaint under the Companies Act. Hence, a complaint either by any citizen or a member of the company or by the Assistant Registrar will be a valid complaint. (Somasundaram J.) Public Prosecutor v. Ustepalle Swami Chetty,

A I R 1953 Mad. 196=65 M L W 696=1952-22 Com Cas 173 = 1952-2 M L J 184 = 1952 M W N 841 (2)=1952 M W N (Cr) 229 (2)=1953 Cr L J 436.

—S. 277-K.

——S. 277-K (3)—Operation, start of.

As regards a banking company incorporated before 15th January 1937, i. e., the date of the commencement of the Companies Amendment Act of 1936, S. 277-K (3) came into operation on 15th January 1939. (Byers J.) Public Prosecutor v. Ananthakrishna Iyer,

A I R 1943 Mad. 629=1943 M W N 338=56 M L W 342=1943-2 M L J 19 = 16 R M 551 =211 I C 412=45 Cr L J 391.

——S. 277-K (3), proviso—Applicability.

The proviso at the foot of Cl. (3) of S. 277-K is a subsidiary clause to Cl. (3) and applies only to Sub-cl. (3). The mandatory provisions of S. 277-K regarding investment of the reserve fund apply to a reserve fund which was already in existence on 15th January 1937. The use of the word "maintain" in Cl. (1) of S. 277-K means "maintain intact" and necessarily prohibits the utilization of the reserve fund in any way other than in accordance with Cl. (3) of the section. (Byers J.) Public Prosecutor v. Ananthakrishna Iyer,

A I R 1943 Mad. 629=1943 M W N 338=56 M L W 342=(1943) 2 M L J 19=16 R M 551=211 I C 412=45 Cr L J 391.

—S. 277-L.

——S. 277-L—Offence.

Where the evidence does not warrant the conclusion that he was knowingly and wilfully a party to the default

COMPANIES ACT (VII of 1913), S. 277-L

to maintain the cash reserve, an ordinary director of a company cannot be convicted under S. 277-L of the Companies Act. (Lakshmana Rao J.) Neelakantan v. Emperor,

(1940) 1 M L J 478 (1) = 51 M L W 434 (1)=(1940) M W N 537.

—S. 278.

——Court by which offences against Companies Act are to be tried—See ibid, S. 282A,

A I R 1953 All. 715=53 Cr L J 1635.

——Ss. 278 (2), 2 (1) (3) and 3 — "Court", meaning explained.

In ascertaining the meaning of any particular section in which the expression "the Court" is used, S. 2 (3) read with S. 3 has to be applied and for the compressed word "Court" has to be substituted the words, "the High Court having jurisdiction in the place at which the registered office of the Company is situate", unless there be anything repugnant in the subject or context. Thus the words "the Court" in the penal sections mean the High Court having jurisdiction in the place at which the registered office of the Company is situate or the notified District Court, under the proviso to S. 3 of the Act : A. I. R. 1944 Bom. 129, Ref. (Das J.) In the matter of Murarka Paint & Varnish Works Ltd.,

52 C W N 590.

——S. 278 (2) — Summary trial — Offence under Act punishable with imprisonment and fine — Presidency Magistrate, summary trial by.

Section 278 (2), enables the Presidency Magistrate to try in a summary manner any offence punishable with fine only and does not restrict the powers of the Presidency Magistrate given by the Criminal P. C., to try summarily offences punishable with fine only. Hence in any case of an offence under the Companies Act which is punishable with fine and imprisonment, the Presidency Magistrate may try the case summarily and apply the procedure laid down by S. 362, Criminal P. C., unless he imposes an appealable sentence. (Macklin, Sen and Lokur JJ.) Shamdasani P. D. v. H. P. Mody,

A I R 1944 Bom. 129 = 46 Bom. L R 204 = 16 R B 384=I L R (1944) Bom. 382 = 212 I C 409=45 Cr L J 631 (FB).

——Conviction of company—Appeal by Managing Director —Competency of.

When a Company is convicted and not its Managing Director, the appeal against the conviction should be by the Company acting through a properly authorized agent and it cannot be deemed to be properly instituted when the appeal is filed by the Managing Director. (Costello J.) Ajit Kumar v. Emperor,

A I R 1934 Cal. 63 = 37 C W N 1159 = 6 R C 373= 147 I C 848=35 Cr L J 492.

—S. 282.

——Mens rea is gist of offence — Prosecution of directors for making false balance sheet — Prosecution must show mala fides or want of good faith on part of directors—So far as working of company is concerned, directors are entitled to depend upon and trust the permanent officials and the managing director of the company : Case law referred. (Govinda Menon J.) In re, G. Natesan,

A I R 1949 Mad. 657 = 1949 M W N 175 = 1949-1 M L J 438=1949-19 Com Cas 159=50 Cr L J 917.

——Charge under, against directors — Unsecured loan alleged to have been mentioned in balance sheet as secured against produce—Prosecution must establish non-existence of produce on date of loan. (Govinda Menon J.) In re, G. Natesan,

A I R 1949 Mad. 657 = 1949 M W N 175 = 1949-1 M L J 438=1949-19 Com Cas 159=50 Cr L J 917.

COMPANIES ACT (VII of 1913), S. 282

——Balance sheet not showing what exactly would be accrued interest in particular year—Note that accrued interest has not been taken into consideration — Fact known to share-holders and public — There is no wilful concealment of material fact. (1906) 2 Ch 387, Rel. on. (Govinda Menon J.) In re G. Natesan,

A I R 1949 Mad 657=(1949) M W N 175=1949-1 M L J 438=1949-19 Com Cas 159=50 Cr L J 917.

——Section does import element of mens rea — Balance sheet showing debt owed by company as secured by first mortgage on properties—Agreement to execute mortgage existing but mortgage not actually executed—Accused held could not be said to have knowingly made false statement.

The language used by S. 282 itself does import an element of mens rea when it speaks of the relevant statement being known to be false : AIR 1947 P C 135, Ref.

A firm B of which A was a member took over the managing agency of a company from another firm D. A had lent to the company various sums of money and in respect of those advances an agreement had been entered into between the company, the then Managing Agents and A by which the company undertook to execute in favour of A, a mortgage within a certain period. A clause provided that if the company failed or neglected to apply for or to secure the sanction of the Local Government to create a mortgage within the time stipulated, the mortgagee would be entitled to call for immediate repayment of the whole amount. In fact however no application was made to the Government for sanction, nor was any mortgage ever executed. In 1944 a balance sheet was published which contained an entry to the following effect : "Loans secured on first mortgage of all the properties and undertakings. Rs. 73,000." A was prosecuted under S. 282 for making a false statement :

Held that the loan was of an intermediate variety which could not be properly and correctly described either as a secured loan or as an unsecured loan. It was therefore, a case in which it was wholly impossible to conform strictly to Form "F" as set out in the Companies Act. Thus having regard to the anomalous character of the loan A could not be said to have known the description to be false. It was not therefore established that A made a statement which was false and known to be so. He was therefore not guilty under S. 282. (Roxburgh and Chakravartti JJ.) Pulin Chandra Daw v. Emperor,

AIR 1948 Ca 190=82 C L J 296=1948 A W R Sup 97=49 Cr L J 311.

——Prosecution under — Regulation of 1910 of Punjab Government — Prosecution by private individual against officer of Company—Validity.

The modifications brought about in existing Indian laws by Government of India (Adaptation of Indian Laws) Order, 1937, do not render invalid any Regulation duly made or issued before the commencement ot that Order and any Regulation so made or issued continues intact until actually revoked. The Regulation of 1910 issued by the Punjab Government under S. 220 of the Companies Act as it then stood has never been revoked either by the Central or Provincial Government and the powers vested thereby in the Registrar to institute prosecutions are entirely valid at the present time. Hence a prosecution under S. 282, Companies Act, against an officer of a company by a private complainant who has no status in the company is invalid : A I R 1942 Mad 283, Disting. (Marten J.) Ganpat Rai v. Emperor,

AIR 1948 Lah 30=49 P L R 187=48 Cr L J 971.

——False statement in balance sheet — Complaint for — Jurisdiction — Company situated in Narayanganj Sub-

COMPANIES ACT (VII of 1913), S. 282

division, having its registered office at Dacca — Complainant receiving his copy of balance sheet under S. 131 (3) in place under jurisdiction of Narayanganj Court — Balance sheet alleged to be signed in Calcutta—Narayanganj Court held had jurisdiction to deal with complaint.

A share-holder in a Mill filed a complaint for a false statement in the balance sheet in Narayanganj Court. The registered address of the company was at Dacca and the Mills were situated in Narayanganj Sub-division. The complainant received his copy of the balance sheet under S. 131 (3), Companies Act, at a place under the jurisdiction of the Narayanganj Court.

Held that under S. 182, Criminal P. C. the Narayanganj Court had jurisdiction to deal with the complaint, even if the balance sheet was signed in Calcutta. (Ellis, and Amin Ahmed JJ.) Abdul Gafur v. Surja Kumar Bose

52 C W N 889 (Dacca)

——Applicability.

Section 282 applies to a de facto Liquidator : A person who accepts an appointment as Liquidator of a company and who has acted in accordance with the powers granted to him, must be deemed to have accepted the duties and responsibilities of that office and so any wrongful act done by him is a wrongful act done by him as Liquidator even though his appointment was irregular such as by reason of want of a proper quorum at the general meeting at which a resolution appointing him was passed. (Horwill J.) Rangai Goundan, In re,

AIR 1942 Mad 702=55 M L W 410=(1940) 2 M L J 140=1942 M W N 433=15 R M 978=206 I C 362=44 Cr L J 503.

——Private complaint — Competency of.

Section 137 has no relation to a prosecution for an offence under S. 282, nor does S. 138 or S. 141-A bar a prosecution upon a private complaint of an offence under S. 282. (Davis, C. J.), Emperor v. Vishwanath B. Patel,

A I R 1942 Sind 9 = 14 R S 134 = 198 I C 95 = 43 Cr L J 304.

——'Wilfully,' meaning of.

The expression 'wilfully' used in the Companies Acts, both in this country and in the United Kingdom, means nothing more nor less than the spontaneous action of a person who is a free agent. (Cunliffe and Henderson JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Akhil Bandu,

A I R 1936 Cal 680 = 40 C W N 1341=9 R C 478= I L R (1937) 1 Cal 338=166 I C 163=38 Cr L J 151.

——Balance-sheet—False statement—What is.

A balance-sheet need not be, in fact it must not be, a mere inventory. It is supposed to be a pictorial representation of the trading position of the company easily appreciated not by ignorant people but by persons who are reasonably able to understand commercial expressions and commercial conditions; it is the effect upon the ordidary investor reading the statements in an ordinarily careful manner in which an investor would do which has to be considered, when one is making up one's mind as to whether the breach of S. 282 has been committed. (Cunliffe and Henderson JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Akhil Bandu,

A I.R 1936 Cal 680 = 9 R C 478=40 C W N 1341= I L R (1937) 1 Cal 328=166 I C 163=38 Cr L J 151.

——Directors—Duties—False balance-sheet.

It is of paramount importance that the investing public should have the utmost confidence in those persons who are managing Indian concerns. Directors of joint stock companies stand in a fiduciary capacity with regard to capital under their control. They are in the position of trustees, and being entrusted with the money of the

COMPANIES ACT (VII of 1913), S. 282

public, are bound to deal with it as trustees and cannot be allowed with impunity to publish false balance-sheets in order to conceal their own improper conduct. (Cunliffe and Henderson JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Akhil Bandu,

A I R 1936 Cal 680=9 R C 478 = 40 C W N 1341 = ILR (1937) 1 Cal 328=166 I C 163=38 Cr L J 151.

——Balance-sheets — Current expenditure not debited in revenue accounts but debited to organization expenses.

After the company had begun to earn revenue, current expenditure had been debited to organization expenses when it ought to have been debited in revenue accounts in the balance-sheet :

Held, that there was a technical offence under S. 282, inasmuch as in the balance-sheet there was a wilful false statement as regards expenditure and that it was not necessary that the statement should be such as to deceive any one or that it should even be dishonestly made. (Lort-Williams and Jack JJ.) Baidya Nath v. Emperor,

A I R 1935 Cal 741 = 8 R C 322 = 159 I C 523 = 37 Cr L J 115.

——False statement—Offence— Essentials — Mens rea— Bad and doubtful debts—Auditor, if responsible for determination of—Profit, meaning of—Directors, conduct of.

In the case of an offence relating to the preparation and presentation of the balance-sheet of a company, what the law makes punishable is a false statement that is, an untrue or incorrect statement known to the framers of the balance-sheet to be false, if there is reasonable likelihood of an honest difference of opinion, based on notions of right and wrong, correct and incorrect mens rea cannot be attributed by the holder of one view to the holder of the opposite view. Where the points involved are really complicated matters of correct or incorrect accounting, they do not normally fall within a criminal charge under S. 282 at any rate where no dishonesty or motive for dishonesty is shown and generally speaking the Police Court is not the proper forum to fight out disputed questions of finance in big companies or Banks. If a statement is demonstrably false, and nobody can reasonably be expected to put it forward as true, then and then only the party responsible for such a statement may be held criminally liable.

Auditors and Managers should not be made responsible for the determination of bad and doubtful debts, the directors having the sole right to determine the same. If interest is considered to be bad or doubtful it might be shown on the credit side under the heading of 'Book Debts'.

The proper ascertainment of profits in the case of a company is of great importance only in order to avoid the possibility of payment of dividend wholly or partially out of capital which is strictly forbidden. Where that is guarded against and there is no idea of declaring a dividend showing of profit on paper may not be so vitally misstating the position of the Bank after all. (Mehta A. J. C.) Official Liquidators of Karachi Bank Ltd. v. Mst. Shewaram Dewanmal,

A I R 1933 Sind 12=26 S L R 211=Ind Rul (1932) Sind 163=140 I C 31=33 Cr L J 891.

——False balance-sheet— Liability of manager, auditor and dormant director.

Where a person signs a balance-sheet containing false statements as manager he renders himself liable to prosecution under S. 282, even though it was not necessary for him to sign the balance-sheet and he signed merely because the directors wished him to do so.

Where a balance-sheet contains false statements auditors who sign the report or note to the balance-sheet to the effect that the balance-sheet is drawn up in conformity

COMPANIES ACT (VII of 1913), S. 282

with the law and exhibits a true and correct view of the company's affairs are guilty of making a false statement in their report and render themselves liable for prosecution under S. 282.

If persons join a Board of Directors and allow their names to be used as a bait to induce the public to deal with the concern of which they are directors, they must take the consequences if they do not exercise due care and attention in signing a false balance-sheet. (Wild, J. C.) Official Liquidators, Karachi Bank Ltd. v. Directors, Manager and Auditors of Karachi Bank, Ltd.,

A I R 1932 Sind 4=25 S L R 297=Ind Rul (1931) Sind 145=134 I C 993,

——Scope—Offence falling under provisions of this section as well as S. 477A, Penal Code—Prosecution may choose the provision under which to prosecute. (Jai Lal J.) Ramchand Gurvala v. King-Emperor,

AIR 1926 Lah 385=98 I C 599=27 Cr L J 1383.

—S. 282-A.

——Ss. 282A, 278 and 3—Jurisdiction of first Class Magistrate to take cognisance of case under S. 282A and try—(Criminal P. C. (1898), Ss. 5 and 99).

Proceedings relating to trial of offences under S. 282A are not proceedings under Act but are proceedings under Criminal Procedure Code.

Though S. 278 does not clearly specify Court by which offences against Companies Act are to be tried yet sub-ss. (1) and (2) indicate that legislature contemplated their trial by Court of a Presidency Magistrate or a Magistrate of the First Class.

The effect of S. 3 of the Act, by the use of the words "under this Act", is not to make this jurisdiction of the Magistrate to take cognizance and try the case, conditioned upon any necessary direction or sanction given by the High Court.

This view is supported by a reference to the provisions of S. 5, Criminal P. C. and also from the fact that S. 29 of that Code does not give power to the High Court to take cognizance of offences under a law other than Penal Code and try the accused itself without following the procedure laid down in the Code (Beg J.) Hindustan Biologicals Ltd. v. Jagat Narain,

A I R 1953 All 715 = 1953 A L J 168=1953-23 Com Cas 58=1953 A W R (HC) 327=1953 Cr L J 1635.

——Fraudulent intention.

To render the accused liable to the penalties imposed by S. 282 A there should be proof of fraudulent intention. (Govinda Menon and Basheer Ahmed Sayeed JJ.) J. Loomchand Sait v. The Official Liquidators,

AIR 1953 Mad 595=1953-1 M L J 514=1953-23 Com Cas 142=1953 Cr L J 1142.

——Scope — Does not provide double punishment— See Constitution of India Art. 20 (2),

AIR 1953 Mad 595=1953 Cr L J 1142.

——Form of complaint—See ibid, S. 177,

AIR 1953 Mad 595=1953 Cr L J 1142.

——Wrongfully withholding possession.

Where a director obtains a decree for arrears of pay against the company, making the same a first charge on certain movables in his possession belonging to the company, his action in retaining with himself these movables for non-payment of his dues is not wrongful. (Govinda Menon J.) In re K. Sundaresa Aiyer,

AIR 1950 Mad 657=1953-1 M L J 314=1950 M W N 290=1950 M W N (Cri) 70.

——Applicability and scope.

Where the accused has the articles in his possession and they are wrongfully withheld by him by not handing them over to the Liquidator, he is guilty under S. 282-A. (Kuppuswami Ayyar J.) In re Veerappan,

A I R 1944 Mad 424=1944 M W N 272=(1944) 1 M L J 390=57 M L W 276=217 I C 308=46 Cr L J 347.

—S. 282-B.

——Provident fund not invested in authorized securities —Responsibility of Bank.

Where amounts of provident fund lying in deposit in a bank to the credit of the company has not been invested in the authorised securities as provided by S. 282-B the company is guilty of breach of trust and the bank with knowledge of this must be held to have participated in the breach of trust. (Venkataramana Rao J.) Desikachari v. James Voce Pirric and Cyril Gill,

AIR 1940 Mad 184=1939 M W N 1068.

COMPENSATION

——Frivolous and vexatious accusation.

See Criminal P. C., S. 250.

——To complainant and his relatives.

See Criminal P. C., Ss. 250, 545.

COMPETENT PERSONS TO DEPOSE AS WITNESSES.

See Evidence Act, S. 118.

COMPLAINANT.

—Absence of in summons cases—See Criminal Procedure Code (5 of 1898), S. 247.

—Absence of, in warrant cases—See Criminal Procedure Code (5 of 1898), S. 259.

—Defined — See Criminal Procedure Code (5 of 1898), Section 444.

—Examination of — See Criminal Procedure Code (5 of 1898), S. 200.

—Expenses of—See Criminal Procedure Code (5 of 1898), Ss. 544, 546A.

—Minor — See Criminal Procedure Code (5 of 1898), Ss. 198, 199.

—Purdha woman — See Criminal Procedure Code (5 of 1898), S. 198.

COMPLAINT.

—By Court or public servant — See Criminal P. C., S. 195.

—Defined — See Criminal Procedure Code (5 of 1898), Ss. 4 (1) (h), 199 to 203.

—Dismissal of—See Criminal Procedure Code (5 of 1898), Ss. 203, 208.

—False and frivolous—See Criminal Procedure Code (5 of 1898), S. 250.

—Offence against wife—complaint by husband — See Criminal P. C., S. 199.

— To Magistrate not competent to take cognisance— See Criminal Procedure Code (5 of 1898), S. 201.

—To Magistrates — See Criminal Procedure Code (5 of 1898), Ss. 200, 203.

—Withdrawal of — See Criminal Procedure Code (5 of 1898), S. 248.

COMPOSITION OF COIN

—Difference in—See Penal Code (45 of 1860), Ss. 244, 246

COMPOUNDING OFFENCES

See Criminal Procedure Code (5 of 1898), S. 345.

COMPULSION

—To answer question, to be decided by the Court — See Evidence Act (1 of 1872), S. 148.

CONCEALMENT
—Concealing deserters from Army and Navy — See Penal Code (45 of 1860), S. 137.
—Concealing design to commit offence punishable with death—See Penal Code (45 of 1860), S. 118.
—Concealing design to commit offence punishable with imprisonment—See Penal Code (45 of 1860), S. 120.
—Concealing stolen property—See Penal Code (45 of 1860), S. 414.
—Of birth —See Penal Code (45 of 1860), S. 318.
—Of property—See Penal Code (45 of 1860), S. 424.
—Of property to defraud creditors—See Penal Code (45 of 1860), S. 421.
—Of property to prevent its seizure— See Penal Code (45 of 1860), S. 206.

"CONCLUSIVE PROOF" DEFINED
See Evidence Act (1 of 1872), S. 3.

CONCUBINE
See (2) Criminal P. C., S. 488.

CONDUCT.
See Evidence Act, Ss. 8, 115.

CONFESSION.
See (1) Criminal P. C., Ss. 24, 29, 162, 298, 342 and 364.
(2) Evidence Act, Ss. 24-30, 114 (B) and 133.
—Admissibility of—See Criminal P. C. (1898), S. 164.
—After removal of impression caused by inducement, threat, etc., relevancy of — See Evidence Act (1 of 1872), S. 28.
—By one of the accused jointly tried, to be considered by the Court—See Evidence Act (1 of 1872), S. 30.
—Caused by inducement, threat, etc., when and where irrelevant—See Evidence Act (1 of 1872), S. 24.
—Co-accused — Admissibility against accused — See Evidence Act, S. 30.
—Discovery in consequence of— Evidentiary value — See Evidence Act, S. 27.
—Grievous hurt to extort—See Penal Code (45 of 1860), S. 331.
—Hurt to extort—See Penal Code (45 of 1860), S. 330.
—Made in police custody—See Evidence Act (1 of 1872), S. 26.
—Otherwise relevant not to become irrelevant because of promise of secrecy—See Evidence Act (1 of 1872), S. 29.
—Recorded by Magistrate of Native State— Admissibility in British Indian Courts — See Evidence Act (1872), S. 26.
—Recording of—See Criminal P. C., 1898, S. 164.
—Retracted.
See (1) Criminal P. C. (1898), S. 164.
(2) Evidence Act (1872), Ss. 24 and 30.
—To Police Officer, relevancy of—See Evidence Act (1 of 1872), S. 25.

CONFIDENCE
See Evidence Act, Ss. 126—129.

CONFIDENTIAL COMMUNICATIONS
See Evidence Act, Ss. 126 to 129.

CONFINEMENT
—Illegal.
See (1) Constitution of India, Art. 226.
(2) Criminal P. C. (1898), S. 491.
(3) Penal Code (45 of 1860), S. 220.
—Of youthful offenders in reformatories—See Criminal Procedure Code (5 of 1898), S. 399.

CONFIRMATION OF SENTENCE
See Criminal Procedure Code (5 of 1898), Ss. 376-380.
—Signature on — See Criminal Procedure Code (5 of 1898), Ss. 376, 377.
—Wrongful defined—See Penal Code (45 of 1860), S. 340.

CONFISCATION
See (1) Criminal P. C., S. 517.
(2) Defence of India Rules, R. 81.
(3) Penal Code, Ss. 121, 122 and 124A.

CONFLICT OF LAWS
See International Law (Private).

CONJUGAL RIGHTS
See Criminal P. C., S. 488.

CONNIVANCE
See (1) Evidence Act, S. 115.
(2) Penal Code, Ss. 34, 109, 114.

CONSENT
See Evidence Act, S. 115.
—As excuse for an offence, meaning of—See Penal Code (45 of 1860), S. 90.
—Effect—See Penal Code (45 of 1860), Ss. 87, 90, 91.
—Impossibility to obtain one, effect —See Penal Code (45 of 1860), S. 92.
—Not a sufficient excuse — See Penal Code (45 of 1860), S. 91.

CONSPIRACY
See (1) Evidence Act, S. 10.
(2) Penal Code, Ss. 109 to 114 and 120-A and 120-B, 121-A.

CONSTITUTIONAL LAW
—Interpretation of Constitutional law — See under (1) Constitution of India, Preamble; (2) Interpretation of Statutes.

——Ruler of former Indian State —Power of, to enact extra-territorial laws — (Penal Code (1860), S. 4).

The Rulers of the former Indian States had prior to 1947, the authority to pass extra-territorial laws relating to offences committed by their own subjects and vesting in their own Courts the power to try them, except where the contrary is made out by evidence in the case of any individual State. (Patanjali Sastri C. J., B. K. Mukherjea, Bose, Ghulam Hasan and Jagannadhadas JJ.) Rao Shiv Bahadur Singh v. State of Vindhya Pradesh,

AIR 1953 S C 394 = 1953 S C A 803 = 1953 S C J 563=1953 S C R 1188=1953 Cr L J 1480.

——Rulers of State— Crown — Prerogative — Non-maintainability of Civil or Criminal Proceedings.

The Ruler of Travancore is a Sovereign in the sense in which the term is used in Jurisprudence; and the prerogative right of the Crown which prevents the maintainability against the Sovereign in person of any proceedings civil or criminal, in His own Courts, has not been surrendered in Travancore any more than in British India. Case law discussed. (T. M. Krishnaswami Aiyar C. J., S. Krishna Pillay & S. I. Sathyanesan JJ.) Sirkar Subramonia Iyen,

36 T L J 575 (FB).

——Powers of executive — War is no excuse for abuse of power by executive—Court can enquire into such allegation.

The necessities of war will not be a sufficient excuse of excesses or an abuse of power committed by the executive.

Therefore, the Courts must enquire into such allegations if they are made. (Pollock and Bose JJ.) Prabhakar Kesheo v. Emperor,

AIR 1943 Nag 26=15 R N 178=1943 N L J 1=ILR (1943) Nag 154=205 I C 5=44 Cr L J 345.

——Liberty of subject — Right to liberty and property—Power of executive to modify.

The Legislature, or such power as takes its place in emergencies, or when it is not functioning, has the right to modify the rights of the subject or even to suspend or take them away altogether, and this in times of peace no less than war; for under the Constitution the Legislature is supreme. But it is the Legislature which is supreme, not the Executive, and so, before the Executive can claim the power to override those rights, it must show that the legislature has empowered it to do so, and under the Constitution the Legislature can only act in particular ways. All empowering must, therefore, be done properly and formally and deliberately, in the manner laid down by the Constitution. The Executive cannot suddenly step in and claim the right to wield absolute and arbitrary power not even in war time. Such fundamental rights, safeguarded under the Constitution with elaborate and anxious care and upheld time and again by the highest tribunals of the realm in language of the utmost vigour cannot be swept by implication or removed by some sweeping generality. No one doubts the right and the power of the proper authority to remove, but the removal must be express and unmistakable; and this applies whatever Government be in power, and whether the country is at peace or at war. (Pollock and Bose JJ.) Prabhakar Kesheo v. Emperor,

AIR 1943 Nag 26=1943 N L J 1 = ILR (1943) Nag 154=15 R N 178=205 I C 5=44 Cr L J 345.

CONSTITUTION OF CRIMINAL COURTS

See Criminal Procedure Code (5 of 1898), Ss. 6-27.

CONSTITUTION OF INDIA (1950)

—Preamble.

——Interpretation of Constitution.

See also under Interpretation of Statutes.

——Interpretation of Constitution.

If the language of an Article of the Constitution is plain and unambiguous and admits of only one meaning then the duty of the Court is to adopt that meaning irrespective of the inconvenience that such a construction may produce. If, however, two constructions are possible then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well-established provisions of existing law nugatory. (Patanjali Sastri C. J., B. K. Mukherjea, S. R. Das, Vivian Bose and Ghulam Hasan JJ.) State of Punjab v. Ajaib Singh,

AIR 1953 S C 10=1952 S C J 664=1952 S C A 791=1953 S C R 254 = 1953 M W N 355 = I L R (1953) Punjab 121=1953 Cr L J 180 (S C).

——Interpretation of Constitution—Principles of construction.

Statutes made for the public good such as the Constitution of India ought to be liberally construed; 'Statua pro publico commodo late interpretantur.' In doing so another principle should not be lost sight of, namely, that safety of the people is the supreme law; 'salus populiest suprema lex.' But the application of these doctrines does not mean that the exact meaning of the words can be departed from or that in order to give effect to what is considered, to be the underlying principle it is open to the Court to add by implication, intentions and objects to

a statute : which cannot be properly construed from a clear reading of the written words (sentus verborum est anima legis') : "the meaning of the words is the spirit of the law." (Govinda Menon and Krishnaswami Nayudu JJ.) M. R. Venkataraman v. Commissioner of Police, Madras,

AIR 1951 Mad 1015=1952 Cr L J 170.

——Interpretation of Constitution — Object and intention to be considered.

The object and intention of the Constitution of India have first to be gathered and that interpretation which fulfils such an object should be followed remembering that it is a Constitution newly made for the welfare of the people whose safety is the supreme law. In other words, what has to be adapted is to find out what the existing law was and to consider the reason for the change bearing in mind the object which was intended to be fulfilled. In doing so, the historical aspect and perspective have also to be placed in the forefront. (Govinda Menon and Krishnaswami Nayudu JJ.) M. R. Venkataraman v. Commissioner of Police, Madras,

AIR 1951 Mad 1015=1952 Cr L J 170.

——Interpretation of Constitution.

Reference to judicial interpretation placed on analogous words in American Constitution — Permissibility — See Interpretation of Statutes,

AIR 1951 Punjab 18=52 Cr L J 261 (SB).

——Interpretation of Constitution.

Per Mukherjea J. — When the same words are not used, it is against the ordinary canons of construction to interpret a provision in the Constitution of India in accordance with the interpretation put upon a somewhat analogous provision in the Constitution of another country. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

AIR 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127=1950 2 M L J 42=63 M L W 638=1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

——Nature and scope—Constitutional law—Legislatures.

Per Ray C. J. — The Constitution is the fundamental of basic law to which all other laws must conform. It is superior to the will of the Legislature, the validity of whose Acts is to be determined by its provisions and it is the sole charter by which the rights of the Union as well as State Governments are to be determined. It antedated all other laws and all of them must, whether by adaptation or modification, be brought into line with and be placed on a footing as if the laws made under the Constitution. (Ray C. J., Jagannadhadas, Panigrahi and Narasimham JJ.) Prahalad Jena v. State,

AIR 1950 Orissa 157 = I L R (1950) Cut 222=51 Cr L J 1189 (F B).

—Art. 5.

——Date when it came into operation — Effect — See Influx from Pakistan (Control) Act (1949), S. 5,

AIR 1952 Cal 838=1952 Cr L J 1686.

——Citizenship—Domicile—Meaning.

Domicile is the place where a man has his home or a person's regular place of abode or generally speaking, the place where he has his permanent home. That place is properly the domicile of a person in which he has voluntarily fixed his abode not for a mere special or temporary purpose, but with a present intention of making it his permanent home.

Where it is not proved that a person has his domicile in India, the fact that he has been ordinarily resident in the territory of India for not less than 5 years immediately preceding the commencement of this Constitution,

does not help him to claim be a citizen of India. (Sathaye J. C.) Choudhary v. State of Bhopal,
AIR 1951 Bhopal 1=52 Cr L J 1239.

—Art. 6.

——Date when it came into operation — Effect—See Influx from Pakistan (Control) Act (1949), S. 5,
AIR 1952 Cal 838=1952 Cr L J 1686.

—Art. 7.

——Migration, meaning of—Evidence of.

Migration implies change of domicile and by Art. 7 of the Constitution it puts an end to the citizenship of India.

Where a person, domiciled in Kutch, went to Pakistan, visited Kutch on a temporary permit and went back to Pakistan :

Held, that this was sufficient evidence of migration. (Vakil J. C.) Bafan Juma v. State,
AIR 1952 Kutch 91=1952 Cr L J 1759.

——Date when it came into operation — Effect — See Influx from Pakistan (Control) Act (1949), S. 5,
AIR 1952 Cal 838=1952 Cr L J 1686.

——Migration—Meaning of—Temporary visit to another country.

The expression "migrated from the territory of India to the territory now included in Pakistan" seems to have been used in Art. 7 in the sense of departure from one country to another with the intention of residence or settlement in the other country. A temporary visit to another country on business or otherwise cannot amount to migration. Whether a person had migrated from one country to another or has gone there on a temporary visit is a question of fact, which will have to be decided on the circumstances of each case.

The applicant was born and brought up in the district of Bijnor in the Uttar Pradesh within the territory of India. He was carrying on cloth business. He sent some of his goods to Lahore (Pakistan) and in order to dispose of them, he went to Lahore for two months. Before his departure from Bombay to Pakistan and within the period of his temporary visit to Pakistan, he expressed his intention that he was going there on a temporary visit and would return home after finishing his business. After finishing his business, he did return to India :

Held, that in the circumstances it was not possible to hold that a temporary visit to Pakistan of the kind undertaken by the applicant amounted to migration from India to Pakistan. Hence the applicant could not be deemed to have lost the citizenship of India; Case law discussed. (Raghubar Dayal and P. L. Bhargava JJ.) Shabbir Husain v. State of U. P.,
AIR 1952 All 257=I L R (1952) 1 All 513 = 1952 Cr L J 553.

——Migration—Meaning—Held on facts that accused had migrated to Pakistan and was not citizen of India.

The expression 'migration' in Art. 7 of the Constitution embraces in its scope two conceptions : (1) Going from one place to another and (2) the intention to make the destination a place of abode or residence in future. In the context of the Constitution, it has the notion of transference of allegiance from the country of departure to the country of adoption. Where therefore the facts proved are that 'A' left his home for Pakistan after 1-3-1947, that while in Pakistan he took up service which he lost later, that 'A' came to India on a temporary visit about thirteen months after his departure, that the purpose for which he avowedly came to India was remarriage and taking away his family to Pakistan, that 'A' wanted to return to Pakistan, but his wife did not agree to accompany him, and that his application for re-conferment of the status of an Indian citizen on him was rejected, it follows that 'A' had migrated to Pakistan in 1948 and was not a citizen of India. (Misra J.) Badruzzaman v. The State,
AIR 1951 All 16 = 1951 All Cr R 7 = 1951 A W R (H C) 50=1952 Cr L J 338.

——Arts. 7, 13, 19 — Departure from India to West Pakistan—Effect.

Migration within the meaning of Art. 7 has no reference to domicile. It merely means departure from India to Pakistan for the purpose of residence, employment or labour. Where, therefore, a person went to Pakistan for a living he has migrated into Pakistan and cannot question the validity of the Influx from West Pakistan (Control) Act as being inconsistent with his fundamental right under Art. 19 (1) (d) and therefore void under Art. 13. (Baxi J. C.) Mandhara Jakab v. Kutch Govt.,
AIR 1951 Kutch 38=52 Cr L J 585.

—Art. 10.

——Scope.—See Constitution of India, Art. 19 (c).
A I R 1951 Pat 434.

—Art. 11.

——Power to place restrictions on rights of citizen to enter India—Influx from Pakistan (Control) Act (1949), S. 7.

The provisions of the Influx from Pakistan (Control) Act would apply to the citizens of India equally with those who are not citizens of India. So wide and extensive a power as given by Art. 11 includes the lesser power to place restrictions even on citizens in the matter of entering the territory of India. Thus Parliament has the power to place restrictions on the right of a citizen to enter India after having left it and having entered India, to observe the conditions subject to which he was allowed to enter. The provisions of S. 7, Influx from Pakistan (Control) Act cannot be regarded as unconstitutional or as having become void after the inauguration of the Constitution. (Mangalmurti and Mudholkar JJ.) Atau Raheman v. State of Madhya Pradesh
A I R 1951 Nag 43 = I L R (1951) Nag 552 = 1952 Cr L J 580.

—Art. 12.

——Arts. 12 to 35, Part III — Fundamental rights — Encroachment by Legislature—Principles to be considered.

While the Court must always be vigilant to prevent any encroachment by the Legislature upon fundamental rights which have been guaranteed, it must also remember that it is not a third chamber sitting in judgment on the policy laid down by the Legislature and which has been embodied in the legislation which it is considering. However repugnant any legislation may be to the conception which the Court has of what is right and wrong and, however drastic the provisions of such legislation may be, if it does not in fact contravene any of the articles of the Constitution which lay down fundamental rights, then it would be the duty of the Court to uphold such legislation. The line to be drawn between the powers of the Legislature and the powers of the Court may sometimes be indistinct and uncertain, but that a line exists must never be forgotten. The powers conferred upon the Courts of law by the Constitution are immense, but the very immensity of those powers must require of a Court a wise and unfailing restraint. (Chagla C. J., Gajendragadkar and Tendolkar JJ.) Fram Nusserwanji v. State of Bombay
A I R 1953 Bom 210=52 Bom L R 799=I L R (1951) Bom 17=52 Cr L J 80 (FB).

—Art. 13.

SYNOPSIS

1. Scope of the article.
2. "Inconsistency" and "contravention".
3. This article and Art. 372.

CONSTITUTION OF INDIA (1950), Art. 13

4. This article and Art. 254.
5. Meaning of "law" and "laws in force" — Cl. (3).
6. Retrospective effect.
7. Part of law void—Effect.
8. Court declaring Act void—Effect.
9. "Void", meaning of.
10. Laws affected by this article.
11. Judicial review of legislation — Principles.

1. Scope of the article.

——Power of Courts to declare statute unconstitutional.

The Court's duty is to enforce the provisions of the Constitution. If, therefore, a Court finds that a statute is in accordance with the Constitution it must pronounce it valid. If the Court finds that it is in contravention of the Constitution or transgresses the authority vested in the Legislature, the Coort must pronounce it a nullity. Laws may be unwise though constitutional. If a law is unconstitutional it is the duty of the Courts to declare it void. But if a law is unwise an appeal for its removal lies not to the Court but to the electorate in a democratic form of Government. (Naik C. J., Sripatrao and M. A. Ansari JJ.) Abdur Rahim v. Joseph A. Pinto

A I R 1901 Hyd 11=I L R (1951) Hyd 1=52 Cr L J 1333 (FB).

——Fundamental right—Duty of Court.

Per Bose J.—The fundamental rights conferred by the Constitution are not absolute. They are limited. In some cases the limitations are imposed by the Constitution itself. In others, Parliament has been given the power to impose further restrictions and in doing so to confer authority on the executive to carry its purpose into effect. But in every case it is the rights which are fundamental, not the limitations ; and it is the duty of the Supreme Court and of all Courts in the land to guard and defend these rights jealously. It is the duty and privilege of the Supreme Court to see that rights which were intended to be fundamental are kept fundamental and to see that neither the Parliament nor the executive exceed the bounds within which they are confined by the Constitution when given the power to impose a restricted set of fetters on these freedoms ; and in the case of the executive to see further that it does not travel beyond the powers conferred by Parliament. (Kania C. J., Patanjali Sastri, Mahajan, S. R. Das and Bose JJ.) Ram Singh v. The State of Delhi

A I R 1951 S C 270=1951 S C J 374=1951 A L J 111 = 1951 M W N 765 = 1951 M W N (Cr) 233 = 1951 S C R 451=52 Cr L J 904 (SC).

——Art. 13 (1)—Interpretation—Spirit of Constitution — Interpretation of Statutes—Civil P. C. (1908), Pre.

Per Kania C. J., Patanjali Sastri, Das and Chandrasekhara Ayyar JJ.—A Court of law has to gather the spirit of the Constitution from the language of the Constitution. What one may believe or think to be the spirit of the Constitution cannot prevail if the language of the Constitution does not support that view. The idea of the preservation of past inchoate rights or liabilities and pending proceedings to enforce the same is not foreign or abhorrent to the Constitution of India. The Court should construe the language of Art. 13 (1) according to the established rules of interpretation and arrive at its true meaning uninfluenced by any assumed spirit of the Constitution. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea, S. R. Das and Chandrasekhara Ayyar JJ.) Keshavan v. State of Bombay

A I R 1951 S C 128=1951 S C J 182 = 1951 M W N (Cr) 60=1951 M W N 232 = 1951-1 M L J 370 = 1951 A L J (S C) 23=64 M L W 382=1951 S C R 228 = 21 Bom Cr C 155=53 Bom L R 458 = I L R (1951) Hyd 294=52 Cr L J 860 (SC).

CONSTITUTION OF INDIA (1950), Art. 13 —

1. Scope of the article

——Who can question the validity of Act — See ibid, Art. 7.

A I R 1951 Kutch 38=52 Cr L J 585.

——Arts. 13 (1) and (2) — Inclusion of cls. (1) and (2) of Art. 13.

Per Kania C. J. — The existence of Art. 13 (1) and (2) in the Constitution of India is not material for the decision of the question what fundamental right is given and to what extent it is permitted to be abridged by the Constitution itself. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras

AIR 1950 S C 27=1950 S C R 88=1950 M W N (Cr) 127=1950-2 M L J 42=63 M L W 638=1950 S C J 174 =1950 M W N 495=51 Cr L J 1383 (SC).

——Art. 13 (1)—Object of.

Per Narasimham J. — The object of Art. 13 (1) is to invalidate those existing laws which continue in force by virtue of Art. 372 (1) which are inconsistent with any of the provisions of Part III dealing with the fundamental rights even though those provisions may expressly refer to the rights of persons and not the laws of the State. (Ray C. J., Jagannadhadas, Panigrahi and Narasimham JJ.) Prahalad Jena v. State

AIR 1950 Orissa 157=I L R 1950 Cut 222=51 Cr L J 1189 (FB).

——Powers of Parliament and State Legislatures — Comparison with powers of Parliament in England.

In England Parliament is supreme and it can pass any law however unreasonable it may seem, and to whatever extent it may curtail the liberty of the subject. There is no power in the Courts in that country to declare the law to be void or invalid. In the Republic of India, Parliament and the State Legislature are not supreme to the extent that Parliament in England is supreme. If it makes any law taking away fundamental rights guaranteed to citizens by the written constitution, except in the manner and to the extent provided then the law is void to the extent of its inconsistency.

Under the Constitution the power to decide whether piece of legislation is void or not is given to the Courts i. e. the Judiciary and nobody else. The power of the judiciary is supreme in this respect. (Sen, Chunder and Lahiri JJ.) Sunil Kumar Bose v. The Chief Secretary to the Govt. of West Bengal,

A I R 1950 Cal 274=54 C W N 394=51 Cr L J 1110 (S B).

——Arts. 13 and 22 (7)—Scope.

Article 22 (7) was never intended to be a means of avoiding the operation of Art. 13 (1). It is a provision for action not before, but after the Constitution has come into force, and it was intended for prospective, and not retrospective operation. (Meredith C. J. and Sarjoo Prasad J.) Brahmeshwar Prasad v. The State of Bihar,

A I R 1950 Pat 265=29 Pat 335=51 Cr L J 1081.

2. "Inconsistency" and "contravention".

——Act when said to be inconsistent with another — See ibid, Art. 22.

A I R 1952 Punj 309=1952 Cr L J 1313 (F B).

——Legislation—Ultra vires—Legislation offending against Constitution — Act is ultra vires though administered as not to so offend.

When an Act gives powers which may and can offend against a provision or provisions of the Constitution such an Act is ultra vires though it could be administered so as not to offend against the Constitution. (Harries C. J.; Chakravartti, Das, Banerjee and S. R. Das Gupta JJ.) Anwar Ali Sarkar v. State of West Bengal,

A I R 1952 Cal 150=1952 Cr L J 450 (F B).

CONSTITUTION OF INDIA (1950), Art. 13 —

2. "Inconsistency" and "contravention"

——"Inconsistent with the provisions of this Part."

Inconsistency or repugnancy does not depend upon the exercise of the power by virtue of the provisions in the Act (in this instance, Madras Act XXIII [23] of 1949), but by nature of the provisions themselves. If a particular provision in the Act, if enforced in strict accordance with the letter of the law as laid down would contravene the provisions of Part III of the Constitution, then certainly it could not be said that it is consistent, but can only be repugnant. It is the provisions in the Act that must be looked into and not the manner in which the power in pursuance of the provision is exercised. (Govinda Menon and Krishnaswami Nayudu, JJ.) M. R. Venkataraman v. Commissioner of Police, Madras,

A I R 1951 Mad 1015=1952 Cr L J 170.

3. This article and Art. 372.

——Continuance in force of an Act, provided for by Art. 372 is subject to Arts. 13 and 14—See ibid, Art. 372,

A I R 1953 Mad 729=1953 Cr L J 1364.

——Arts. 13 (3) and 372 (1)—Interpretation.

Article 372 cannot have been intended to preserve laws or portions of laws which Art. 13 (1) renders void. There is no inconsistency between Art. 13 (1) and Art. 372 (1) if Art. 372 is regarded as applying to only such cases as do not come within the mischief of Art. 13 (1). (Meredith C. J. and Sarjoo Prosad J.) Brahmeshwar Prasad v. The State of Bihar,

A I R 1950 Pat 265=29 Pat 335=51 Cr L J 1081.

4. This article and Art. 254.

——Arts. 13 and 254—Applicability.

Per Sarjoo Prosad J. — Section 254 can only apply if there is a legislation by Parliament in regard to some of those matters enumerated in List I or in List III of Sch. 7. Where the repugnancy complained of is against the Constitution of India itself the relevant provision applicable is not Art. 254 but Art. 13. (Meredith C. J. and Sarjoo Prosad J.) Brahmeshwar Prasad v. The State of Bihar,

A I R 1950 Pat 265=29 Pat 335=51 Cr L J 1081.

5. Meaning of "law" and "laws in force"—Cl. (3).

——Art. 13 (1)—"Laws in force."

Personal law is not included in the expression "Laws in force" used in Art. 13 (1). (Chagla C. J., and Gajendragadkar J.) State of Bombay v. Narasu Appa Mali,

A I R 1952 Bom 84=53 Bom L R 779=21 Bom Cr C 244=I L R (1951) Bom 775=1952 Cr L J 354.

——Arts. 13, 366 (10) — "Law", "laws in force" and "existing law"—Meaning and import of.

Of the three terms used in the Constitution of India, namely, "law", "laws in force" and "existing law" the expression "law" is intended to connote prospective laws made subsequent to the coming into operation of the Constitution, whereas the term "laws in force" is intended to include laws passed by Legislature or other competent authority before the commencement of the Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be in operation either wholly or in part at the commencement of the Constitution either throughout the whole of the territory of India or in particular areas. The "existing law" is much wider in scope and import because it includes such things as Ordinances, Orders, bye-laws, rules, or regulations made not only by a competent legislative authority but by other bodies and persons empowered or authorised to make or promulgate such things. It is, therefore, seen that a "law in force" must have been a law passed, or made, by a Legislature or other competent authority whereas an "existing law" includes even an order or a bye-law made by a person having power to make such an Ordinance or order. Both the expressions

CONSTITUTION OF INDIA (1950), Art. 13 —

5. Meaning of "law" and "laws in force"—Cl. (3)

"existing law" and "law in force" refer to positive legal Acts which were in existence at the time of the Constitution whereas the word "law" in clause (3) (a) to Art. 13, denotes those that have to be passed hereafter. (Govinda Menon and Krishnaswami Nayudu, JJ.) M. R. Venkataraman v. Commissioner of Police, Madras,

A I R 1951 Mad 1015=1952 Cr L J 170.

6. Retrospective effect.

——Cognizance by Special Tribunal under Hyderabad Special Tribunals Reg. 5 of 1358F, long before the advent of Constitution—See Hyderabad Special Tribunals Regulation (5 of 1358 F), S. 3.

A I R 1953 S C 156=1953 Cr L J 862 (S C).

——Arts. 13, 14 — Trial under Hyderabad Special Tribunals Regulation (5 of 1358-F).

(Per Majority; Bose and Ghulam Hasan JJ., Contra.) — Trial commenced under Special Tribunals Regulation (5 of 1358F) before coming into force of the Constitution— Proceedings before commencement of Constitution cannot be challenged on ground of discrimination — Validity of subsequent proceedings depends on question as to whether accused has been deprived of equal protection in matters of procedure and it is incumbent upon Court to consider, firstly, whether the discriminatory or unequal provisions of law could be separated from the rest and even without them a fair measure of equality in the matter of procedure could be secured to the accused. In the second place, it has got to consider whether the procedure actually followed did or did not proceed upon the basis of the discriminatory provision — A mere threat or possibility of unequal treatment is not sufficient — Held that although there were deviations in certain particulars, the accused had substantially the benefit of a normal trial in this case. (Patanjali Sastri C. J., B. K. Mukherjea, Chandrasekhara Aiyar, Bose and Ghulam Hasan JJ.) Syed Qasim Razvi v. State of Hyderabad,

A I R 1953 S C 156 = 1953 S C J 151=I L R (1953) Hyd 211=1953 S C A 742=1953 S C R 589 = 1953 Cr L J 862 (SC).

——Art. 13 (1) — Continuance of proceedings pending at the date of Constitution — See Criminal Law Amendment Ordinance (29 of 1943) as amended by Ordinance 6 of 1946, S. 5,

A I R 1953 Cal 263=1953 Cr L J 673.

——Art. 13 (1)—Validity of special procedure after coming into force of Constitution — See Bombay Public Security Measures Act (6 of 1947), S. 12.

A I R 1952 S C 235=1952 Cr L J 1167 (S C).

——Art. 13 (1)—Retrospective effect.

If the charge under S. 4 of Cochin Criminal Law Amendment Act included in its scope a count regarding membership of the Cochin Communist Party (declared unlawful) prior to 26-1-1950 a prosecutinn can be proceeded with even if it is assumed that S. 3 of the Cochin Criminal Law Amendment Act is rendered void by Art. 13 (1) of the Constitution. (Koshi, Govinda Pillai and Joseph Vithayathil JJ.) George Chadayammury v. State,

A I R 1952 Trav-C 217 = 1952 K L T 178 = I L R (1952) Trav-C 1=1952 Cr L J 1056 (FB).

——Art. 13 (1)—Retrospective operation—Act constituting offence according to law in force prior to Constitution —Law even if declared void under Art. 13 (1) does not affect trial of offence.

Article 13 (1) has no retrospective effect but is wholly prospective in its operation. If the act which was an offence at the time, was done before the commencement of the Constitution, in contravention of the provisions of any law, which after the Constitution became void with

CONSTITUTION OF INDIA (1950), Art. 13 — 6. Retrospective effect

respect to the exercise of fundamental rights, the inconsistent law is not wiped out retrospectively so as to make the act not an offence. There is no fundamental right that a person shall not be prosecuted and punished for an offence committed before the Constitution came into force. (Satyanarayana Rao and Rajagopalan JJ.) Srinivasa Aiyar v. Saraswathi Ammal,

A I R 1952 Mad 193=1952-2 M L J 649=1951 M W N 846=1951 M W N (Cr) 266=ILR (1953) Mad 78 = 1952 Cr L J 434.

——Art. 13 (1)—Retrospective operation — Pending proceedings under Press (Emergency Powers) Act (1941).

Per Kania C. J., Patanjali Sastri, Mahajan, Das and Chandrasekhara Aiyar JJ.; (Fazl Ali & Mukherjea JJ. Contra.)—Before the Constitution came into force, there was no such thing as fundamental right. As the fundamental rights became operative only and from the date of the Constitution the question of the inconsistency of the existing laws with those rights must necessarily arise on and from the date those rights come into being. Therefore Art. 13 (1) can have no retrospective operation but is wholly prospective. If an act was done before the commencement of the Constitution in contravention of the provisions of any law which, after the Constitution, becomes void, with respect to the exercise of any of the Fundamental Rights, the inconsistent law is not wiped out so far as the past act is concerned. Hence proceedings under S. 18 (1), Press (Emergency Powers) Act (1931), pending at the date of the Constitution are not affected.

Per Fazl Ali and Mukherjea JJ. — Article 13 (1) will have no retrospective operation, and transactions which are past and closed and rights which have already vested will remain untouched. But with regard to inchoate matters which were still not determined when the Constitution came into force, and as regards proceedings whether not yet begun or pending at the time of the enforcement of the Constitution and not yet prosecuted to a final judgment, a law which has been declared by the Constitution to be completely ineffectual can no longer be applied. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) Keshavan v. State of Bombay,

A I R 1951 S C 128 = 1951 S C J 182=1951 M W N (Cr) 60=1951 M W N 232 = 1951-1 M L J 370 = 1951 A L J 23=64 M L W 382=1951 S C R 228 = 21 Bom Cr C 155=53 Bom L R 458=ILR (1951) Hyd 294=52 Cr L J 860 (SC).

——Arts. 13, 19 (1) (2) — Retrospective operation—Press (Emergency Powers) Act (1931), S. 19.

Where the Order under S. 19, Press (Emergency Powers) Act was notified in the Bihar Gazette before the Constitution of India came into force the validity of the order cannot be called into question with reference to a higher right granted to a citizen of the Indian Union by the Constitution. (Sinha, Sarjoo Prosad and Rai JJ.) Chanderdeo Sharma v. State of Bihar,

A I R 1951 Pat 75=52 Cr L J 799.

——Retrospectivity — See Mysore Food (Restrictions of Service of Meals by Catering Establishments and others) Order, Cl. 3,

A I R 1951 Mys 26=52 Cr L J 251.

——Art. 13 (1)—Prosecution started under S. 18 (1), Press (Emergency Powers) Act prior to the commencement of the Constitution cannot be affected by the result of S. 18 (1) being declared to be void under Art. 13 (1) of the Constitution—See General Clauses Act (1897), S. 6.

A I R 1951 Bom 188=52 Cr L J 30.

CONSTITUTION OF INDIA (1950), Art. 13 — 7. Part of law void—Effect.

——Invalidity of Statute as being repugnant to the Constitution — Extent of invalidity — See Interpretation of Statutes,

A I R 1953 Mad 729=1953 Cr L J 1364.

——Art. 13 (1)—Scope.

Article 13 (1) does not necessarily make the whole statute invalid even after the advent of the Constitution. It invalidates only those provisions which are inconsistent with the fundamental rights guaranteed under Part III of the Constitution. (Patanjali Sastri C. J., B. K. Mukherjea, S. R. Das, Ghulam Hasan and Bhagwati JJ.) Habeeb Mohamed v. State,

A I R 1953 S C 287=1953 S C J 361 = I L R (1953) Hyd 345 = 1952 S C A 789=1952 S L R 661=1953 Cr L J 1158 (SC).

——Art. 13 (1) — Severability of void portions of Statute from the rest if can be considered under Article—See Bombay Prohibition Act, S. 1,

A I R 1951 Bom 210=52 Cr L J 80 (FB).

8. Court declaring Act void—Effect

——Law declared void — Effect on pending proceedings—'Void' and 'repeal,' distinction — See Interpretation of Statutes.

AIR 1951 Mys 72=52 Cr L J 992 (FB).

9. "Void," meaning of

——'Void' is not synonymous with 'repealed' : 52 Cri L J 30 (FB), Dissented from—(General Clauses Act (1897), S. 6) (Chakravartti and Sinha JJ.) Edward Ezra v. State,

AIR 1953 Cal 263=56 C W N 875=1953 Cr L J 673.

——Retrospective effect.

Per Balakrishnaiya J.—The words "shall be void' are to be interpreted to mean that such laws will 'become void' from the date of the commencement of the Constitution and not from the very inception. Art. 13 (1) of the Constitution is not retrospective but prospective. (Venkata Ramaiya, Balakrishnaiya and Mallappa JJ.) Abdul Khader v. State of Mysore,

AIR 1951 Mys 72=ILR (1951) Mys 284 = 52 Cr L J 992 (FB).

10. Laws affected by this article.

——Validity of Abducted Persons (Recovery and Restoration) Act, 1949, Ss. 4 and 7 —See Constitution of India, Art. 22.

AIR 1952 Punj 309=1952 Cr L J 1313 (FB).

——Validity of S. 14, Fugitive Offenders Act (1881), S. 14 —Equal protection of laws — Denial to — See Fugitive Offenders Act (1881), S. 14.

AIR 1953 Mad 729=1953 Cr L J 1364.

——Restrictions imposed by the Influx from Pakistan (Control) Ordinance and by the Act, being in the interest of the general public and reasonable were not inconsistent with Art. 19 (1) of the Constitution — See Influx from Pakistan (Control) Act 1949), S. 7.

AIR 1951 Nag 185=52 Cr L J 74.

——Arts. 13 & 19 (d) (e)— Influx from Pakistan (Control) Act (1949)—Validity.

(Per Raghubar Dayal J.) — The provision requiring a person entering the territory of India from Pakistan to have a proper permit with him is a reasonable restriction on the exercise of rights under Art. 19. But the condition that after entering the territory of India he has to move in a certain manner and should leave the country after the period mentioned in the permit cannot be said to be a reasonable restriction on the exercise of the aforesaid rights of the citizen. A law allowing the removal from the territory of India of any citizen would be in contravention of Art. 19 sub-s. (1) cls. (d) and (c) of the Constitution and will therefore be void in view of Art. 13 sub-s. (1) of the Constitution. Such provisions of Influx from Pakistan

CONSTITUTION OF INDIA (1950), Art. 13 — 10. Laws affected by this article

(Control) Act (XXIII of 1949) and the rules framed thereunder as lead to the infringement of these rights would be void in view of Art. 13 of the Constitution in their application to the citizens of India. In fact, a person domiciled in India, as every citizen of India must be, is not to be given a conditional permit under these Rules and that therefore none of those rules or the provisions of the Influx from Pakistan (Control) Act, XXIII of 1949 is void.

(Per Bhargava J.) — Rule 19, Permit System Rules, 1949, and S. 7 of the Act XXIII of 1949 and the order of the Central Government issued thereunder, in so far as they are applicable to the citizens of India and are inconsistent with the fundamental rights guaranteed to them under Art. 19 (1) (d) and (e) of the Constitution have, after the commencement of the Constitution become void in view of the provisions contained in Art. 13 (1) of the Constitution. As the Influx from West Pakistan (Control) Act, 1949, was passed before the commencement of the Constitution, the aid of Art. 11 of the Constitution cannot be invoked to validate the impugned provisions of law and the order made thereunder. (Raghubar Dayal and P. L. Bhargava JJ.) Shabbir Husain v. State of U. P.

AIR 1952 All 257 = ILR (1952) 1 All 513 = 1952 Cr L J 553.

——S. 4, Influx from Pakistan Control Act, 1949 is not ultra vires and unconstitutional—See Influx from Pakistan (Control) Act (1949), S. 4.

AIR 1952 Kutch 91=1952 Cr L J 1759.

——Arts. 13, 19 (1) (d) — Influx from Pakistan (Control) Act (1949)—Validity—Influx from Pakistan (Control) Act (1949), S. 5.

Article 19 (1) (d) is subject to Art. 19 (5). The Influx from Pakistan (Control) Act (1949) does not absolutely bar the right of freedom of movement. It merely imposes a restriction on that right which is both reasonable and in the interest of the public generally consequent upon the partition of the country. The provisions of the Act are, therefore, not inconsistent with the rights under Art. 19 (1) (d). (Baxi J. C.) Mandhara Jakab v. Kutch Government,

AIR 1951 Kutch 38=52 Cri L J 585.

——Art. 13 (1).

Section 7, Press (Emergency Powers) Act (1931) is repugnant to Art. 19 (1) (a) and has become void under Art. 13 (1) since 26-1-1950—See Press (Emergency Powers) Act (1931), S. 7 (1).

AIR 1952 Sau 57=1952 Cr L J 937.

——S. 4 (1) (h) of the Press (Emergency Powers) Act, 1931, being a restriction on freedom of speech and expression guaranteed by Art. 19 (1) (a) and falling outside the scope of Art. 19 (2), is ultra vires and void under Art. 13 (1)—See Press (Emergency Powers) Act, S. 4 (1) (h).

AIR 1951 Punjab 18=52 Cr L J 261 (SB).

——Provisions of S. 4 (1) (a) and (b), Press (Emergency Powers) Act (1931) are inconsistent with fundamental right given under Art. 19 (1) (a) and as such void by virtue of Art. 13(1)—See Press (Emergency Powers) Act (1931), S. 4 (1) (a) (b).

AIR 1951 Pat 12=52 Cr L J 309.

——The Preventive Detention (Extension of Duration) Order of 1950 is of no effect. The order does not comply with the provisions of Art. 22 (7) (a) and (b) of the Constitution. The order is also void because the Bengal Criminal Law Amendment Act, 1930, is not an Act providing for preventive detention — See Preventive Detention (Extension of Duration) Order (1950).

AIR 1950 Cal 274=51 Cr L J 1110 (SB).

CONSTITUTION OF INDIA (1950), Art. 13 — 10. Laws affected by this article

——Validity of S. 2 (1) (b), Bihar Maintenance of Public Order Act, 1950 —See Bihar Maintenance of Public Order Act (3 of 1950), S. 2 (1) (b).

AIR 1951 Pat 322=52 Cr L J 610.

——Detention provisions in Bihar Maintenance of Public Order Act (3 of 1950)— Validity—See Bihar Maintenance of Public Order Act (III [3] of 1950).

AIR 1950 Pat 265=51 Cr L I 1081.

——Validity of S. 27 (7) of the City of Bombay Police Act, 1902 — Section, if imposes unreasonable restriction on fundamental rights under Art. 19 (1) (d) and (e)—See City of Bombay Police Act (IV of 1902), S. 27 (7).

AIR 1951 Bom 432=52 Cr L J 1442.

——Art. 13 (1)— S. 27 (2A), City of Bombay Police Act is repugnant to Art. 15 (1) of the Constitution and as such is void under Art. 13 (1)—See City of Bombay Police Act, S. 27 (2-A).

AIR 1951 Bom 285=52 Cr L J 458 (2).

——Validity of S. 46 (3), Bombay District Police Act (1890).

Section 46 (3), Bombay District Police Act has not been rendered void by Art. 13 of the Constitution on the ground that it contravenes the fundamental right under Art. 19 (1) (d) and (e). (Chagla C. J., Bavdekar and Shah JJ.) Abdul Rahiman v. Emperor,

A I R 1950 Bom. 374 = 52 Bom. L R 558 = I L R (1950) Bom. 564 = 20 Bom. Cr C 202=52 Cr L J 1059 (FB).

——Bombay Prevention of Prostitution Act, 1923, S. 9 (1) being an unreasonable restriction on fundamental rights under Art. 19 (1) (d) and (e), is void, since it does not give reasonable opportunity to person affected thereby to be heard in his defence—See Bombay Prevention of Prostitution Act (XI of 1923), S. 9 (1).

A I R 1951 Bom. 337=52 Cr L J 897.

——Validity of S. 2 (1) (b), Bombay Public Security Measures Act.

Chagla C. J. and Bavdekar J. — The Bombay Public Security Measures Act to the extent that it empowers the Government to issue an externment order under S. 2 (1) (b), is void under Art. 13 (1) of the Constitution as it imposes a restriction on the fundamental rights of a citizen under Art. 19 (1) (d) and (e).

Shah J. C. (Contra). — The provisions of S. 2 (1) (b), Public Security Measures Act are not inconsistent with the provisions of Part 3 of the Constitution and therefore is not void. (Chagla C. J., Bavdekar and Shah JJ.) Jeshingbhai v. Emperor,

A I R 1950 Bom. 363 = 52 Bom. L R 544 = I L R (1950) Bom. 539 = 20 Bom. Cr C 188=52 Cr L J 120 (FB).

——Validity of Hyderabad Legal Practitioners Act (6 of 1318F), S. 3—See Hyderabad Legal Practitioners Act (6 of 1318F), S. 3.

A I R 1951 Hyd. 140.

——Validity of S. 14, Madhya Pradesh Public Security Measures Act, 1950 — Discrimination in criminal trial — Art. 14, contravention of — See Madhya Pradesh Public Security Measures Act (23 of 1950), S. 14.

A I R 1952 Nag. 118=52 Cr L J 646.

——Mysore Special Criminal Courts Act (24 of 1942)— Setting up Special Criminal Courts—Executive authorities given discretion to determine cases for trial before them —Special procedure prescribed — Validity — See Mysore Special Criminal Courts Act (24 of 1942),

A I R 1951 Mys. 72=52 Cr L J 992 (FB).

——Art. 13 (2)—Provisions of S. 2 (1), Orissa Maintenance of Public Order Act (10 of 1950), if void under Arts. 13 (2)

CONSTITUTION OF INDIA (1950), Art. 13 —

10. Laws affected by this article

and 21—See Orissa Maintenance of Public Order Act (X of 1950), S. 2 (1).

A I R 1951 Orissa 86.

——Provisions of S. 2 (1) (b) of Orissa Maintenance of Public Order Act (10 of 1950) are unreasonable restrictions on fundamental rights under Art. 19 (1) (d) and (e)—See Orissa Maintenance of Public Order Act (10 of 1950), S. 2 (1) (b).

A I R 1951 Orissa 86.

——Orissa Maintenance of Public Order Act (4 of 1948 as amended in 1949)—Validity of provisions dealing with preventive detention — See Orissa Maintenance of Public Order Act (4 of 1948 as amended in 1949), S. 2.

A I R 1950 Orissa 157=51 Cr L J 1189 (FB).

——Definition of "liquor" in S. 3 (14), Punjab Excise Act if contravenes Art. 13—See Punjab Excise Act (1 of 1914), S. 3 (14).

A I R 1953 Punj. 77=1953 Cr L J 549.

——Validity of Rajasthan Food Grains Control Order (1949), Cl. 25 — Whether unreasonable restriction on fundamental rights conferred by Art. 19 (1) (g) — See Rajasthan Food Grains Control Order (1949), Cl. 25.

A I R 1952 Raj. 74=52 Cr L J 732.

——U. P. Removal of Social Disabilities Act (14 of 1947) —Validity—See Constitution of India, Art. 35.

A I R 1953 All. 483=1953 Cr L J 1103.

——Art. 13 (1)—Whether Criminal P. C., S. 123A (U. P.) is void being inconsistent with Art. 22 (1) and (2) — See Criminal P. C. (1898), S. 123A (U. P.).

A I R 1950 All. 562=52 Cr L J 1282.

——Validity of West Bengal Special Courts Act (1950), S. 5 (1) — See West Bengal Special Courts Act (1950), S. 5 (1).

A I R 1952 Cal. 150=52 Cr L J 450 (FB).

——Validity of S. 5 (1), West Bengal Special Courts Act (10 of 1950) — Discrimination in criminal trials—Provisions, if offend, Art. 14 — See West Bengal Special Courts Act (10 of 1950), S. 5 (1).

A I R 1952 S C 75=1952 Cr L J 570 (SC).

——The Bengal Criminal Law Amendment Act (6 of 1930) even if it is an Act providing for preventive detention is void under Art. 13 (1) of the Constitution because it is inconsistent with the provisions of Part III of the Constitution. (Sen, K. C. Chunder and Lahiri JJ.) Sunil Kumar v. West Bengal Government,

A I R 1950 Cal. 274=54 C W N 394=51 Cr L J 1110 (SB).

——Validity of Criminal Law Amendment Ordinance (29 of 1943 as amended by West Bengal Ordinance 1 of 1950), S. 5 — See Criminal Law Amendment Ordinance (29 of 1943) as amended by West Bengal Ordinance (1 of 1950), S. 5.

A I R 1953 Cal. 263=1953 Cr L J 673.

——Validity of—West Bengal Security Ordinance (1949), S. 22.

The West Bengal Criminal Law Amendment Act (1930) and the West Bengal Security Ordinance (1949) became void as soon as the Constitution came into force (i. e. at midnight on 25th January 1950) by reason of Art. 13 (1). (Sen, K. C. Chunder and Lahiri JJ.) Sunil Kumar v. West Bengal Government,

A I R 1950 Cal. 274=54 C W N 394=51 Cr L J 1110 (SB).

——Art. 13 (1) — Industrial Disputes (Madras Amendment) Act (12 of 1949), S. 6—Inconsistency with Art. 14 of the Constitution—It has become void under Art. 13 (1) after 26-1-1950—See Industrial Disputes (Madras Amendment) Act (12 of 1949), S. 6.

A I R 1951 Mad. 191=52 Cr L J 744.

CONSTITUTION OF INDIA (1950), Art. 13

11. Judicial review of legislation—Principles.

——Constitutionality of statute — Power of Court to examine.

The Constitution of India contains express provisions for judicial review of legislation as to its conformity with the Constitution, unlike in America where the Supreme Court has assumed extensive powers of reviewing legislative acts under cover of the widely interpreted "due process" clause in the Fifth and Fourteenth Amendments. If, then, the Courts in India face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the "fundamental rights" as to which the Supreme Court has been assigned the role of a sentinel on the 'qui vive'. While the Court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute. (Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) State of Madras v. Row V. G.,

A I R 1952 S C 196=65 M L W 420=1952 S C J 253 =1952 M W N 397 = 1952 M W N (Cr) 101 = 1952-2 M L J 135 = 1952 S C R 597 = 90 C L J 218 = 1952 S C A 399=1952 Cr L J 966 (SC).

——Power to declare an enactment void — Interpretation of statutes—Civil P. C. (1908), Preamble.

A law passed by a competent Legislature should not be declared to be void except in a clear case. Every possible presumption regarding the validity of that law should be drawn until the contrary is shown beyond reasonable doubt. (Mangalmurti and Mudholkar JJ.) Atau Raheman v. State of Madhya Pradesh,

A I R 1951 Nag 43 = I L R (1951) Nag 552 = 1952 Cr L J 580.

—Art. 14.

SYNOPSIS

1. Concept of equality before law and equal protection of law — Principle of reasonable classification.
   (a) Vesting of discretionary power in executive.
2. Mode of construing article.
3. Mode of construing an Act to test its constitutionality.
4. Retrospective effect of the article.
5. Presumption as to constitutionality. (See also under Art. 13).
6. "Any person".
7. Taxation laws.
8. Personal law, inequality in matters relating to.
9. Special Courts and special procedure.
10. Power of State Government to order trial by jury.
11. Denial of right of suit or of other remedy.
12. Prohibition laws.
13. Labour laws.
14. Discrimination as to sex.
15. Illustrative examples—Miscellaneous.
    (a) Abducted persons.
    (b) Bihar Agriculturists Levy Order, 1950.
    (c) Central Legislation.
    (d) Criminal P. C.
    (e) Difference of sentence for same offence.
    (f) Fugitive Offenders Act (1881).
    (g) Habitual criminals.
    (h) Legislation affecting single person.
    (i) Part C States Laws Act (1950), S. 4.
    (j) Prescribing different age of majority for certain persons.
    (k) Public safety legislation.

See Note 1 (a) — Vesting of discretionary power in executive.

CONSTITUTION OF INDIA (1950), Art. 14

1. Concept of equality before law and equal protection of law—Principle of reasonable classification.

——Art. 14 does not insist that classification should be scientifically perfect and logically complete — Meaning of equal protection of laws guaranteed by Art. 14, considered—See West Bengal Criminal Law Amendment (Special Courts) Act (21 of 1949), S. 1,

A I R 1953 S C 404 = 1953 Cr L J 1621 (SC).

——Classification under—(Penal Code (1860), S. 354).

Article 14 in effect means that every law that the State makes shall operate alike upon all persons and property under the same conditions and circumstances. It does not mean that all persons, property or occupation must be treated alike by the State. Further, a reasonable classification of groups for purposes of legislation is permissible and what is prohibited is discrimination between persons who are included in the group to which the law applies.

If, therefore, the Legislature has in its wisdom thought it fit to treat men differently from women in regard to modesty and to make an assault or use of criminal force with intent to outrage the modesty punishable under S. 354 when committed only with respect to women, the provisions contained in S. 354, Penal Code cannot be condemned as repugnant to Art. 14 of the Constitution. (Dixit J.) Girdhar Gopal v. State,

A I R 1953 Madh B 147 = 1953 Cr L J 964.

——Reasonable classification not barred.

The fundamental right as to the equal protection of the laws and equality before the law only means that there should be equal operation of law in respect of all persons similarly circumstanced. The Legislature may make special laws applicable to particular classes provided there is a reasonable basis for the classification. (J. P. Mitter and Sen JJ.) Badri Prasad Missir v. State,

AIR 1953 Cal 394=57 C W N 350=1953 Cr L J 899.

——Principles of classification—See **A I R 1953 Mad 105 =1953 Cr L J 277.**

——Classification — When permissible.

(Majority view) : While Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the Act. What is necessary is that there must be a nexus between the basis of classification and the object of the Act. (Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) Lachmandas Kewalram v. State of Bombay

A I R 1952 S C 235 = 1952 S C J 339=1952 M W N 752 = 1952 M W N (Cr) 200 = 1952 S C R 710 = 54 Bom L R 854=1952 S C A 352=1952 Cr L J 1167 (SC).

——Arts. 14, 15, 16 and 21—Scope—Discriminate against, meaning of.

Per Patanjali Sastri C. J. — All legislative differentiation is not necessarily discriminatory. In fact, the word "discrimination" does not occur in Art. 14. The expression "discriminate against" is used in Art. 15 (1) and Art. 16 (2), and it means, according to the Oxford Dictionary, "to make an adverse distinction with regard to ; to distinguish unfavourably from others." Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context. If such bias is disclosed and is based on any of the grounds mentioned in Arts. 15 and 16, it may well be that the statute will, without more, incur condemnation as violating a specific constitutional prohibition unless it is saved by one or other of the provisos to those articles. But the position under Art. 14 is different. Equal protection claims under that article are examined with the presumption that the State action is reasonable and justified. This presumption of constitutionality stems from the wide power of classification which the Legislature must, of necessity, possess in making laws operating differently as regards different groups of persons in order to give effect to its policies. The power of the State to regulate criminal trials by constituting different Courts with different procedures according to the needs of different parts of its territory is an essential part of its police power. Though the differing procedures might involve disparity in the treatment of the persons tried under them, such disparity is not by itself sufficient to outweigh the presumption and establish discrimination unless the degree of disparity goes beyond what the reason for its existence demands as for instance, when it amounts to a denial of a fair and impartial trial. It is, therefore, not correct to say that Art. 14 provides no further constitutional protection to personal liberty than what is afforded by Art. 21. Notwithstanding that its wide general language is greatly qualified in its practical application by a due recognition of the State's necessarily wide powers of legislative classification, Art. 14 remains an important bulwark against discriminatory procedural laws. (Patanjali Sastri C. J., Fazl Ali, Mahajan, B. K. Mukherjea, S. R. Das, Chandrasekhara Aiyar and Bose JJ.) Kathi Raning Rawat v. State of Saurashtra

A I R 1952 S C 123 = 1952 S C J 168 = 1952 S C R 435=1952 M W N 762=1952 M W N (Cr) 210 = 1952 S C A 245=1952 Cr L J 805 (SC).

——Scope—Equal protection of laws.

Per Mukherjea J. — A Legislature for the purpose of dealing with the complex problems that arise out of an infinite variety of human relations, cannot but proceed upon some sort of selection or classification of persons upon whom the legislation is to operate. The consequence of such classification would undoubtedly be to differentiate the persons belonging to that class from others, but that by itself would not make the legislation obnoxious to the equal protection clause. Equality prescribed by the Constitution would not be violated if the statute operates equally on all persons who are included in the group and the classification is not arbitrary or capricious, but bears a reasonable relation to the objective which the legislation has in view. The Legislature is given the utmost latitude in making the classification and it is only when there is a palpable abuse of power and the differences made have no rational relation to the objectives of the regulation, that necessity of judicial interference arises.

If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. The discretion that is conferred on official agencies in such circumstances is not an unguided discretion; it has to be exercised in conformity with the policy, to effectuate which the direction is given and it is in relation to that objective that the propriety of the

CONSTITUTION OF INDIA (1950), Art. 14—1. Concept of equality before law and equal protection of law—Principle of reasonable classification.

classification would have to be tested. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the Legislature, its action can certainly be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory irrespective of the way in which it is applied.

Das J. — While Art. 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. What is necessary is that there must be a nexus between the basis of classification and the object of the Act. (Patanjali Sastri C. J., Fazl Ali, Mahajan, B. K. Mukherjea, S. R. Das, Chandrasekhara Aiyar and Bose JJ.) Kathi Raning Rawat v. State of Saurashtra

A I R 1952 S C 123 = 1952 S C J 168 = 1952 S C R 435=1952 M W N 762=1952 M W N (Cr) 210 = 1952 S C A 245=1952 Cr L J 805 (SC).

——Equal protection.

The guarantee of equal protection under Art. 14 is not absolute. It cannot also be the purpose of Art. 14 to take away from the Legislature the right or the power to classify the subjects of legislation. It is true that classification must be reasonable but a Legislature has a wide discretion and an Act will not be held invalid unless the classification is clearly unreasonable and arbitrary. What classification is reasonable rests in the discretion of the legislative body in the first instance. The question is not whether the Court considers the classification reasonable to its satisfaction or whether in its opinion the Government could have devised a more equitable scheme. The question must be posed on the other hand—is the statute so clearly arbitrary that legislators acting reasonably could not have believed it to be necessary in the public interest ? To put it in other words, the question is whether there was 'any' rational basis for legislative action. (Shearer, Ramaswami and Sarjoo Prosad JJ.) Mohammad Anzar Husnain v. State of Bihar

A I R 1952 Pat 220=31 Pat 203=1952 Cr L J 710 (FB).

——Equality before the law—Meaning.

The equality before the law which is guaranteed by Art. 14 is not offended if the classification which an Act makes is based on reasonable and rational considerations. It is not obligatory for the State Legislature always and in every case to provide for social welfare and reform by one step. So long as the State Legislature in taking gradual steps for social welfare and reform does not introduce distinctions or classifications which are unreasonable, irrational or oppressive, it cannot be said that the equality before law is offended. (Chagla C. J. and Gajendragadkar J.) State of Bombay v. Narasu Appa Mali

A I R 1952 Bom 84=53 Bom L R 779=21 Bom Cr C 244=I L R (1951) Bom 775=1952 Cr L J 354.

——Equality before the law and equal protection of the laws—Meaning.

The guarantee of equality before the law or the equal protection of the laws, contained in Art. 14 of the Constitution means substantial equality of treatment under the laws. Equal treatment does not necessarily mean

CONSTITUTION OF INDIA (1950), Art. 14—1. Concept of equality before law and equal protection of law—Principle of reasonable classification

identical treatment. In fact, identical treatment in unequal circumstances amounts to inequality. In other words, in different circumstances the variation in legal procedure is not only permissible but necessary. Equal protection of laws does not mean protection by identical laws. Sometimes, it is necessary to abridge the ordinary procedure in the interests of justice itself. Of course, no abridgement of legal procedure which curtails the essential safeguards can be permitted. A detail procedure in normal times and in ordinary cases may become harmful in abnormal times or in extraordinary and special cases. (Naik C. J., Sripatrao and M. A. Ansari JJ.) Abdur Rahim v. Joseph A. Pinto

A I R 1951 Hyd 11=I L R (1951) Hyd 1=52 Cr L J 1333 (FB).

——"Equal protection of the laws"—Meaning.

What the equal protection clause means is simply this that the same law should govern those similarly circumstanced; it cannot and does not prohibit different laws for those differently circumstanced. The Legislature has full freedom to classify people according to circumstances and enact different laws for different classes; but it must treat equally all similarly circumstanced or falling in one class and the difference in treatment must have some intelligible or rational connection with the difference in circumstances and not be arbitrary. Discrimination among persons in one class or similarly circumstanced, whether apparent on the face of the statute or resulting in practice, is all that is prohibited under the clause. It is competent for the Legislature to leave it to the discretion of an authority to apply different laws to people in different circumstances but always provided that it lays down a rational standard to guide its discretion or such a standard can be presumed to exist; it cannot leave it to its arbitray or naked discretion. A statute is presumed to be within the power of the Legislature and the onus of showing that it is not is on the assailant. But a statute enacted before the Constitution cannot be presumed to be constitutional under it. (Dayal and Desai JJ.) Deodat Rai v. State

AIR 1951 All 718=ILR (1951) 2 All 745=52 Cr L J 1251.

——'Equality before the law' and 'equal protection of laws'—Meaning—Reasonable classification by law is not forbidden.

While both the expressions namely' 'Equality before the law' and 'Equal protection of the laws' aim at establishing what may be regarded as equality of legal status for all, there is some difference between these expressions. The former expression is somewhat a negative concept implying the absence of any special privilege in favour of an individual while the latter is a more positive concept implying equality of treatment in equal circumstances. There is, however, one dominant idea common to both the expressions, that is, equal justice. At the same time, equality before the law does not mean absolute equality of men, which is a physical impossibility. Nor does it mean that things which are different shall be treated as though they were the same. What it does mean is the denial of any special privilege by reason of birth, creed or the like, and also equal subjection of all individuals and classes to the ordinary law of the land.

Further, reasonable classification by law is not a denial of equal protection. What the constitutional guarantee forbids is class legislation but not classification which rests upon reasonable grounds of distinction. The classification permissible by the State extends to all kinds of activities and the State has wide discretion in the matter. It is only where there is no reasonable basis for a classi-

CONSTITUTION OF INDIA (1950), Art. 14—1. Concept of equality before law and equal protection of law—Principle of reasonable classification

fication that legislation making such classification may be declared discriminatory.

Apart from the above, laws creating classifications have been upheld in several other cases on the ground that they were intended for the protection of individuals or a class or classes of persons or for the promotion of the public good. Where a law grants protection to a class which needs it, it has the effect of placing that class if not on a par with the rest of the community, at least as nearly so as is practicable. It would therefore be correct to say that the whole object of classification is to minimise and not to accentuate inequality.

But it clearly follows that a classification which allows some to do what all are not, in the public interest allowed to do, will not be upheld. (Hidayatullah, Mangalmurti and Mudholkar JJ.) Sheoshankar v. State Govt. of M. P.

AIR 1951 Nag 58=I L R (1951) Nag 646=52 Cr L J 1140 (FB).

——Equality before law—Meaning.

Equality before the law does not require mathematical equality of all persons in all circumstances. From the very nature of Society, there should be different laws in different places and the Legislature controls the policy and enacts laws in the best interests of the safety and security of the State. (Venkata Ramaiya, Balakrishnaiya and Mallappa JJ.) Abdur Khader v. State of Mysore

AIR 1951 Mys 72=I L R (1951) Mys 284=52 Cr L J 992 (FB).

——"Equality before law" and 'equal protection of law', meaning of.

"Equality before law" does not mean an absolute equality of men but it postulates that there shall not be any special privilege by reason of birth or creed or the like in favour of an individual. "Equal protection" must mean that there will not be arbitrary discrimination made by the laws themselves in their administration. (Bavdekar and Dixit JJ.) Raja Kulkarni v. State of Bombay

AIR 1951 Bom 105=53 Bom L R 333=21 Bom Cr C 112=ILR (1951) Bom 318=52 Cr L J 779.

——"Equal protection of the laws"—Interpretation of.

Article 14 providing the equal protection of the laws embodies a prohibition against discrimination, discrimination in favour of any person or class as much as discrimination against any person or class. Equal protection of the laws is a pledge of the protection of equal laws. It requires that persons subjected to a piece of legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed. It prevents any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. (Rajamannar C. J., Satyanarayana Rao and Viswanatha Sastri JJ.) Row v. State of Madras

AIR 1951 Mad 147 = 1951-1 M L J 628 = 52 Cr L J 515 (FB).

——"Equality before the law"—Interpretation of.

The principle of equality before the law is not violated by the existence of special laws providing for particular groups in the State, e. g., soldiers, doctors, or lawyers. Such laws may not affect the rest of the people but apply only to the members of a particular calling. But in the enforcement of these laws, as well as in the enforcement of the general law, no distinction is made between man and man. The principle of equality before the law does not come into play in any controversy as to the legality of a law enacted by the State. It comes into play really

CONSTITUTION OF INDIA (1950), Art. 14—1. Concept of equality before law and equal protection of law—Principle of reasonable classification

in the sphere of its enforcement. (Rajamannar C. J., Satyanarayana Rao and Viswanatha Sastri JJ.) Row v. State of Madras

AIR 1951 Mad 147 = 1951-1 M L J 628 = 52 Cr L J 515 (FB).

——Exclusion of class from operation of law—Reasonable basis — Bombay Foreign Liquor Rules, R. 67—Discrimination in, if justified.

Whenever a class is excluded from the operation of the law, it must be possible for the Court to say that there could be some reasonable basis for the exclusion of that class.

There is no justification for discrimination made in R. 67 for the issue of tourist permits to foreigners only and not to Indian visitors from other Provinces. (Chagla C. J., Gajendragadkar and Tendolkar JJ.) Fram Nusserwanji v. State of Bombay

AIR 1951 Bom 210=52 Bom L R 799=I L R (1951) Bom 17=52 Cr L J 80 (FB).

——Meaning of the concept of equal treatment and equal protection of laws, in respect of substantive rights as well as procedure for enforcement thereof discussed. (M. C. Shah C. J. and S. J. Chhatpar J.) Rana Kanubha Sensabhai v. State

4 Sau L R 234.

1. (a) Vesting of discretionary power in executive.

——An Act cannot be said to be discriminatory merely because it leaves to the discretion of Government or the Magistrate to take action in respect of same class of persons viz., habitual offenders either under S. 110, Cr. P. C. or under the Act (Madras Restriction of Habitual Offenders Act.)—See Madras Restriction of Habitual Offenders Act (6 of 1948), S. 2 (4)

AIR 1953 Mad 664=1953 Cr L J 1174.

——Preventive Detention (Amendment) Act (1952), S. 3—Classification made by section is reasonable and fair——It is not hit by equality clause in Art. 14—See Preventive Detention (Amendment) Act (1952), S. 3

AIR 1952 S C 324=1952 Cr L J 1503 (SC).

——Bombay Public Security Measures Act (6 of 1947), S. 12—Validity—Classification held arbitrary.

Although the first part of S. 12 of the Bombay Act may indicate and imply a process of classification, the section, in so far as it authorises the Government to direct particular "cases" to be tried by the Special Court does not purport to proceed upon the basis of any classification at all. Further, the supposed basis of the alleged classification, namely, the fact of reference to the Special Court before the Constitution came into effect has no reasonable relation to the objects sought to be achieved by the Act. If the consideration of the security of the State or the maintenance of public order requires the application of the special procedure, there is no obvious reason why it should be applied to "cases" already referred and not to cases not yet referred at the date of the Constitution. The same consideration applies equally to both categories of cases. It is, therefore, clear that there is no nexus which connects the basis on which the supposed classification is founded with the objects of the Act, for the object of the Act is wide enough to cover both categories of "cases" and hence it is not a permissible classification. (Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) Lachmandas Kewalram v. State of Bombay,

AIR 1952 S C 235 = 1952 S C J 339 = 1952 M W N 752=1952 M W N (Cr) 200=1952 S C A 352=1952 Cr L J 1167 (SC).

CONSTITUTION OF INDIA (1950), Art. 14—1. Concept of equality before law and equal protection of law —Principle of reasonable classification—(a) Vesting of discretionary power in executive

——If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law it cannot be condemned as a piece of discriminatory legislation. The discretion that is conferred on official agencies is not an unguided one; it has to be exercised in conformity with the policy, to effectuate which the direction is given and it is in relation to that objective that the propriety of the classification would have to be tested. (Patanjali Sastri C. J., Fazl Ali, Mahajan, B. K. Mukherjea, S. R. Das, Chandrasekhara Aiyar and Bose JJ.) Kathi Raning Rawat v. State of Saurashtra,

AIR 1952 S C 123=1952 S C J 168=1952 S C R 435 =1952 M W N 762=1952 M W N (Cr) 210=1952 S C A 245=1952 Cr L J 805.

——U. P. Prevention of Crimes (Special Powers) (Temporary) Act (5 of 1949), S. 3 (1) (a) (i), (b) and (c), is discriminatory and therefore ultra vires—See U. P. Prevention of Crimes (Special Powers) (Temporary) Act (5 of 1949), S. 3 (1) (a) (i), (b) and (c) and S. 3 (2).

AIR 1951 All 718=52 Cr L J 1251.

——Per Mangalmurti and Mudholkar JJ.—The Court will not pronounce the law itself as discriminatory even though it lends itself to the practice of discrimination unless it is clear that in the guise of conferral of discretion upon an authority, arbitrary power is given to it with the sole or dominant intention that it be used for favouring or oppressing a particular class, community, race or other group—321 U. S. 1, Relied on. (Hidayatullah, Mangalmurti and Mudholkar JJ.) Sheoshankar v. State Govt. of Madhya Pradesh,

AIR 1951 Nag 58=ILR (1951) Nag 646=52 Cr L J 1140 (FB).

——Mysore Criminal Courts Act (24 of 1942) setting up Special Criminal Courts—Executive authorities given discretion to determine cases for trial before them—Special procedure prescribed—Validity—See Mysore Special Criminal Courts Act (24 of 1942).

AIR 1951 Mys 72=52 Cr L J 992 (FB).

2. Mode of construing article.

——Application of — Doctrinaire approach should be avoided.

In applying the dangerously wide and vague language of the equality clause to the concrete facts of life, a doctrinaire approach should be avoided. (Patanjali Sastri C. J., Mahajan, B. K. Mukherjee, S. R. Das and Chandrasekhara Aiyar JJ.) Lachmandas Kewalram v. State of Bombay,

AIR 1952 S C 235 = 1952 S C J 339 = 1952 M W N 752=1952 M W N (Cr) 200=1952 S C R 710=54 Bom L R 854=1952 S C A 352=1952 Cr L J 1167 (SC).

3. Mode of construing an Act to test its constitutionality.

——Whether enactment is discriminatory—Duty of Court to construe enactment—Mode of construction—See West Bengal Criminal Law Amendment (Special Courts) Act (21 of 1949), S. 4.

AIR 1953 S C 404=1953 Cr L J 1621 (SC).

——Principle of classification.

The principle that the classification should be deducible from the terms of the Act itself including the preamble is applicable only in respect of Special Acts seeking for the purpose of a particular class of cases to supersede the ordinary criminal law of the country as contained in the Criminal Procedure Code and substitute therefor a procedure less advantageous to the accused. The rule does not affect the question of validity of the ordinary criminal

CONSTITUTION OF INDIA (1950), Art. 14—3. Mode of construing an Act to test its constitutionality

law of the land as contained in the Criminal Procedure Code. (J. P. Mitter and Sen JJ.) Badri Prasad Missir v. State,

AIR 1953 Cal 394=57 C W N 350=1953 Cr L J 899.

4. Retrospective effect of the article.

——Right of appeal against convictions and sentences barred before Constitution came into force — Right could not be revived after Constitution — See Mysore Special Criminal Courts Act (24 of 1942), S. 7

AIR 1953 S C 355=1953 Cr L J 1439 (SC).

——Earlier adoptation of Act under Art. 372 (2) cannot confer validity to the Act nor ensure its continuance after commencement of the Constitution if the Act offends Art. 14—Continuance in force of an Act, provided for by Art. 372 is subject to Arts. 13 and 14. (Rajagopalan and Chandra Reddy JJ.) In re C. G. Menon,

AIR 1953 Mad 729=1953-2 M L J 61=1953 Cr L J 1364.

——The Constitution has no retrospective effect and even if the law is in any sense discriminatory, it must be held to be valid for all past transactione and for enforcement of rights and liabilities accrued before the coming into force of the Constitution. (Patanjali Sastri C. J., B. K. Mukherjea, S. R. Das, Ghulam Hasan and Bhagwati JJ.) Habeeb Mohamed v. State,

A I R 1953 S C 287=1953 S C J 361=I L R (1953) Hyd 345=1953 S C A 789=1953 S C R 661=1953 Cr L J 1158 (SC).

——Cognizance by special tribunal under Hyderabad Special Tribunals Regulation, long before the advent of the Constitution—No exception can be taken—See Hyderabad Special Tribunals Regulation (5 of 1358 F), S. 3,

A I R 1953 S C 156=1953 Cr L J 862 (SC).

——Retrospective effect — There can be no question of infringement of fundamental right under Art. 14 before the coming into force of the Constitution as the provisions of the Constitution relating to fundamental rights have no retrospective operation. (Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) Lachmandas Kewalram v. State of Bombay,

A I R 1952 S C 235=1952 S C J 339=1952 M W N 752=1952 M W N (Cr) 200=1952 S C R 710=54 Bom L R 854=1952 S C A 352=1952 Cr L J 1167 (SC).

——Bombay Public Security Measures Act (1947), S. 12 —Cases referred to Special Judge before Constitution—Validity of Special Procedure after coming into force of Constitution—See Bombay Public Security Measures Act (6 of 1947), S. 12,

A I R 1952 S C 235=1952 Cr L J 1167 (SC).

5. Presumption as to constitutionality

—(See also under Art. 13.)

——Scope of, discussed. (Patanjali Sastri C. J., Fazl Ali, Mahajan, B. K. Mukherjea, S. R. Das, Chandrasekhara Aiyar and Bose JJ.) Kathi Raning Rawat v. State of Saurashtra,

A I R 1952 S C 123=1952 S C J 168=1952 S C R 435=1952 M W N 762=1952 M W N (Cr) 210=1952 S C A 245=1952 Cr L J 805 (SC).

6. "Any person"

——Article is not limited to citizens of India — (Obiter), (Rajagopalan and Chandra Reddy JJ.) In re C. G. Menon,

A I R 1953 Mad 729=1953-2 M L J 61 = 1953 Cr L J 1364.

7. Taxation laws.

——Taxing statutes must also satisfy test of equal protection and are liable to be struck down if they do not—Legislature, however, has considerable latitude in making classification. It can select persons or things as it chooses for purposes of taxation. The power of classification can be exercised not only by the legislature but also

CONSTITUTION OF INDIA (1950), Art. 14 —

7. Taxation laws

by the administrative bodies acting under the Act. (Rajamannar C. J. and Venkatarama Ayyar J.) V. M. S. Md. & Co. v. State of Madras,

A I R 1953 Mad 105=1952-3 S T C 367=65 M L W 1035=1952-2 M L J 598=1952 M W N 847=1952 M W N (Cr) 235=1953 Cr L J 277.

——Madras Turnover and Assessment Rules (1939)—Rule 16 (2)—Rule is not repugnant to Art. 14 — Classification of merchants taking out licenses and those not taking out licenses has rational basis — See Madras Turnover and Assessment Rules (1939), R. 16 (2),

A I R 1953 Mad 105=1953 Cr L J 277.

——Madras General Sales Tax Act (1939) and Rules framed under it, do not offend Art. 14 — See Madras General Sales Tax Act (9 of 1939), Pre.

A I R 1953 Mad 105=1953 Cr L J 277.

8. Personal law, inequality in matters relating to.

——State may rightly decide to bring about social reform by stages and the stages may be territorial or Community-wise — If there is discrimination against the Hindus in the applicability of the Bombay Prevention of Hindu Bigamous Marriages Act, that discrimination is not based only upon ground of religion. Equally so, if the law with regard to bigamous marriages is not uniform, the difference and distinction is not arbitrary or capricious but is based upon reasonable grounds. (Chagla C. J., and Gajendragadkar J.) State of Bombay v. Narasu Appa,

A I R 1952 Bom 84=53 Bom L R 779=21 Bom Cr C 244=I L R (1951) Bom 775=1952 Cr L J 354.

——West Bengal Hindu Social Disabilities Removal Act (37 of 1948) not ultra vires, Art. 14—Act does not discriminate but penalises and abolishes tendencies in Hindu Society to discriminate and does not offend either Art. 14 or Art. 15 — See West Bengal Hindu Social Disabilities Removal Act (XXXVII of 1948), Pre. and S. 3 (c)

A I R 1951 Cal 167=52 Cr L J 1399.

9. Special Courts and special procedure.

——Power of State to regulate criminal trials by constituting different Courts with different procedures—It is essential part of police power—Apparent disparity is not in itself sufficient to outway presumption of constitutionality of statute. (Patanjali Sastri C. J., Fazl Ali, Mahajan, B. K. Mukherjea, S. R. Das, Chandrasekhara Aiyar and Bose JJ.) Kathi Raning Rawat v. State of Saurashtra,

A I R 1952 S C 123=1952 S C J 168=1952 S C R 435=1952 M W N 762=1952 M W N (Cr) 210=1952 S C A 245=1952 Cr L J 805 (SC).

——S. 5 of Criminal Law Amendment Ordinance (29 of 1949) as amended by Ordinance 6 of 1946 (Central) is repugnant to Art. 14 and has become void under Art. 13 (1) on the Constitution coming into force—See Criminal Law Amendment Ordinance (29 of 1943) as amended by Ordinance 6 of 1946 (Central), S. 5,

A I R 1953 Cal 263=1953 Cr L J 673.

——West Bengal Special Courts Act (10 of 1950), S. 5 (1)—Validity—Discrimination in criminal trials—Classification based on speedier trial of offences—Applicability of Art. 14 to rule of procedure—Provision offends Art. 14 and is ultra vires—See West Bengal Special Courts Act (10 of 1950), S. 5 (1),

A I R 1952 S C 75=1952 Cr L J 510 (SC).

——Provision of S. 5 (1) West Bengal Special Courts Act (1950) is discriminatory between persons and offends against Art. 14 in so far as it empowers State to direct trial of any case by special Judge and therefore is ultra vires—See West Bengal Special Courts Act (10 of 1950), S. 5 (1),

A I R 1952 Cal 150=1952 Cr L J 450 (FB).

CONSTITUTION OF INDIA (1950), Art. 14 —

9. Special Courts, and special procedure

——S. 4, West Bengal Criminal Law Amendment (Special Courts) Act (21 of 1949) does not violate Art. 14 and is constitutional — What the courts have to consider in order to see whether S. 4 is discriminatory or not indicated — See West Bengal Criminal Law Amendment (Special Courts) Act (21 of 1949), S. 4

A I R 1953 S C 404=1953 Cr L J 1621 (SC).

——S. 4, West Bengal Criminal Law Amendments (Special Courts) Act (1949) gives discretionary powers to Government and is therefore ultra vires — See West Bengal Criminal Law Amendment (Special Courts) Act (1949), S. 4 (1)

A I R 1952 Cal 644=1952 Cr L J 1447 (F B).

——Madhya Pradesh Public Security Measures Act (23 of 1950), S. 14—Discrimination in criminal trials — Provision contravenes Art. 14 in so far as it empowers State to direct trial of any case by special Judge and is ultra vires — See Madhya Pradesh Public Security Measures Act (23 of 1950), S. 14

A I R 1952 Nag 118=1952 Cr L J 646.

——S. 12, Bombay Public Security Measures Act, is unconstitutional as contravening Art. 14 — See Bombay Public Security Measures Act (6 of 1947), S. 12

A I R 1952 S C 235=1952 Cr L J 1167 (SC).

——City of Bombay Police Act (IV of 1902), S. 27 (1) — Discrimination in procedure based on reasonable classification — See City of Bombay Police Act (IV of 1902), S. 27 (1)

A I R 1952 S C 221=1952 Cr L J 1147 (SC).

——Constitution of Special Courts under S. 10, Saurashtra State Public Safety Measures (Third Amendment) Ordinance (66 of 1949) is not in contravention of Art. 14 — See Saurashtra State Public Safety Measures (Third Amendment) Ordinance (66 of 1949), S. 10

A I R 1951 Sau 69=52 Cr L J 1300.

——Mysore Criminal Courts Act (24 of 1942)—Setting up Special Criminal Courts—Executive authorities given discretion to determine cases for trial before them — Special procedure prescribed — Validity — See Mysore Special Criminal Courts Act (24 of 1942)

A I R 1951 Mys 72=52 Cr L J 992 (F B).

——The question of confirmation of sentence was not at all relevant when the sentence passed on the accused did not require any confirmation under the Hyderabad Criminal P. C. Therefore absence of the provision regarding this matter in Hyderabad Special Tribunals Regulation (5 of 1358F) cannot be made the grievance of, by the accused — See Hyderabad Special Tribunals Regulation (5 of 1358F), S. 7

A I R 1950 S C 156=1953 Cr L I 862 (SC).

——Right of second appeal — Deprivation of, by Hyderabad Special Tribunals Regulation (5 of 1358F), S. 7—See Hyderabad Special Tribunals Regulation (5 of 1358F), S. 7

A I R 1953 S C 156=1953 Cr L J 862 (SC).

——Warrant procedure substituted by Hyderabad Special Tribunals Regulation for Sessions procedure — Whether substantial difference in normal procedure — See Hyderabad Special Tribunals Regulation (5 of 1358F), S. 4 (7)

A I R 1953 S C 156=1953 Cr L J 862 (SC).

——Equality protection in matters of procedure — Elimination of committal proceedings by Hyderabad Special Tribunals Regulation is not by itself substantial departure from normal procedure—See Hyderabad Special Tribunals Regulation (5 of 1358F), S. 4 (1)

A I R 1953 S C 156=1953 Cr L J 862 (SC).

——Provision in Hyderabad Special Tribunals Regulation (5 of 1358F) relating to the conduct of proceedings in

CONSTITUTION OF INDIA (1950), Art. 14 — 9. Special Courts and special procedure

English if the Tribunal so desires, does not per se violate the equal protection clause. (Patanjali Sastri C. J., B. K. Mukherjea, Chandrasekhara Aiyar, Bose and Ghulam Hasan JJ.) Qasim Razvi v. State of Hyderabad

A I R 1953 S C 156=1953 Cr L J 862 (SC).

——Summary trial under Hyderabad Special Tribunals Regulation (5 of 1358F) — See Hyderabad Special Tribunals Regulation (5 of 1358F), S. 4

A I R 1953 S C 156=1953 Cr L J 862 (SC).

——Creation of Special Court is not by itself an inequality in the eye of law — See Hyderabad Special Tribunals Regulation (5 of 1358F), S. 2

A I R 1953 S C 156=1953 Cr L J 862 (SC).

——Validity of trial subsequent to the Constitution, under the Hyderabad Special Tribunals Regulation depends on question whether accused has been deprived of equal protection in matters of procedure — Mere threat or possibility of unequal treatment is not sufficient — See Hyderabad Special Tribunals Regulation (5 of 1358F), S. 7

A I R 1953 S C 156=1953 Cr L J 862 (SC).

——Hyderabad Special Tribunals Regulation (5 of 1358F) is not unconstitutional—See Hyderabad Special Tribunals Regulation (5 of 1358F)

A I R 1953 Hyd 145=1953 Cr L J 785.

——Hyderabad Special Tribunals (Termination) and Special Judges (Appointment) Regulation (10 of 1359F) —Discriminatory procedure — Regulation is ultra vires Art. 14—See Hyderabad Special Tribunals (Termination) and Special Judges (Appointment) Regulation (10 of 1359F)

A I R 1953 Hyd 33=1953 Cr L J 454.

——Special Tribunals Regulation (Hyderabad No 5 of 1358F) is intra vires the Constitution with the exception of S. 4 (2) and (4) and S. 7 (2-A) and (3) and certain portions of S. 4 (2A), (7) and S. 7 (2), which offend Art. 14—Severability of these provisions considered—See Hyderabad Special Tribunals Regulation (5 of 1358F), S. 1

A I R 1951 Hyd 11=52 Cr L J 1333 (F B).

——S. 8 of Hyderabad Special Tribunals (Termination) and Special Judges (Appointment) Regulation (10 of 1339F) taking away provision relating to confirmation of sentences—S. 8 is invalid to that extent—See Hyderabad Special Tribunals (Termination) and Special Judges (Appointment) Regulation (10 of 1359F), S. 8

A I R 1953 S C 287=1953 Cr L J 1158.

——Absence of committal proceedings in Hyderabad Special Tribunals (Termination) and Special Judges (Appointment) Regulation (10 of 1359F) — Provision if falls within mischief of Art. 14 — See Hyderabad Special Tribunals (Termination) and Special Judges (Appointment) Regulation (10 of 1359F), S. 5

A I R 1953 S C 217=1953 Cr L J 1158 (SC).

——Validity of S. 5 (b) of Hyderabad Special Tribunals (Termination) and Special Judges (Appointment) Regulation (10 of 1359F) — See Hyderabad Special Tribunals (Termination) and Judges (Appointment) Regulation (10 of 1359F), S. 5 (b)

A I R 1953 S C 287=1953 Cr L J 1158 (SC).

——Appointment of Special Judge under Hyderabad Special Tribunals (Termination) and Special Judges (Appointment) Regulation (10 of 1359F) — It is not in itself an inequality in the eye of the law—See Hyderabad Special Tribunals (Termination) and Special Judges (Appointment) Regulation (10 of 1359F), S. 4

A I R 1953 S C 287=1953 Cr L J 1158 (SC).

CONSTITUTION OF INDIA (1950), Art. 14 — 9. Special Courts and special procedure

——Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance (41 of 1949), S. 29 (2) — Validity.

No person had any vested right in any particular procedure. It was for the State to legislate about the forum and procedure of seeking remedies for infringement of substantial rights and such forum and procedure were bound to vary. Equal treatment did not necessarily mean identical treatment. Identical treatment in unequal circumstances amounted to inequality. Equal protection of laws did not mean protection by identical laws. The conditions which apply to a landlord both in respect of his substantive rights as well as legal procedure for enforcement thereof cannot necessarily be the same as would apply to a tenant for the simple reason that both of them do not stand on the same footing. Though landlord is debarred from taking possession except under an order of the Mamlatdar even when his tenant is willing to surrender possession to him, this discrimination between the rights of tenants and landlords does not amount to denying equality before the law and the equal protection of the law, and therefore S. 29 of the Ordinance is not void under Art. 13 of the Constitution being repugnant to Art. 14 which guarantees equality before the law. A I R 1951 Hyd 11, Ref.; 52 Cr L J 779, Rel. on. (Shah C. J. and Chhatpar J.) Rana Kanubha Sensabhai v. State.

('51) 4 Sau L R 234.

——C. P. and Berar Panchayats Act (1 of 1947) — Validity.

Provisions of items 1 and 2 of List II and items 1 and 2 of List III of the 7th Schedule to the Government of India Act 1935 leave no manner of doubt that the Provincial Legislature had power to pass an enactment providing for Courts in addition to those provided by the Criminal Procedure Code, to prescribe their jurisdiction over offences punishable under the Penal Code and their procedure. The C. P. and Berar Panchayats Act was thus valid and was in force on the date the Constitution came into force. The provisions of the Act relating to the constitution of criminal Courts, their procedure, etc. are not inconsistent with Article 14 of the Constitution. (Hemeon and Deo JJ.) Shrikisan Jaskaram v. Dattu Shiwaram

A I R 1953 Nag 14=1952 N L J 503 = I L R (1953) Nag 936=1953 Cr L J 251.

10. Power of State Government to order trial by Jury.

——Criminal P. C. (1898), S. 269.

The notification under S. 269 for trial by jury being in respect of classes of offence there is no contravention of Art. 14 (J. P. Mitter and Sen JJ.) Radha Nath Dhara v. State,

AIR 1953 Cal 602=58 C W N 243=1953 Cr L J 1377

——S. 269 (1), Criminal P. C. does not contravene Art. 14 —See Criminal P. C. (1898), S. 269 (1).

AIR 1953 Cal 394=1953 Cr L J 899.

——Notification under S. 269, Criminal P. C. — Trial by jury in some districts and for certain offences—Discrimination — Classification made by notification held based on reasonable consideration—Notification held valid—See Criminal P. C. (1898), S. 269.

AIR 1953 All 123=1953 Cr L J 356.

11. Denial of right of suit or of other remedy.

——Loss of right of appeal.

CONSTITUTION OF INDIA (1950), Art. 14 —

11. Denial of right of suit or of other remedy

A right of appeal is not a fundamental right. Where a notification is issued by the Secretary, Home Dept. under S. 495, Hyderabad Criminal P. C., transferring a case from the file of the Special Magistrate to that of the Chief City Magistrate and by reason of such transfer out of the right of two appeals the party is given only one such right of appeal it would not necessarily be discriminatory offending the principle of 'equality before the law.' In order to make out a case of discrimination it would be essential to show that the party had been deliberately singled out in the exercise of the power vested in the Government under Section 495. (Shripat Rao, Mahomed Ahmed Ansari & Srinivasa Chari JJ.) Gesulal v. State of Hyderabad,

A I R 1951 Hyd 89 = I L R (1951) Hyd 274 = 52 Cr L J 901.

——Personal liberty—Invasion of—Right of person affected, to be heard in his defence even in time of war — Equal protection to every man—See Constitution of India, Article 19.

AIR 1943 Nag 36=44 Cr L J 237.

12. Prohibition laws.

——Section 39, Bombay Prohibition Act (25 of 1949). in so far as it affects the military and naval messes and canteens, warships and troopships, cannot be held to be invalid on the ground that it contravenes Art. 14 — See Bombay Prohibition Act (25 of 1949), S. 39.

AIR 1951 S C 318=52 Cr L J 1361 (SC).

——C. P. and Berar Foreign Liquor Rules, 1938, R. 7— Classification of persons used to drink on basis of wealth or social position is infringement of Art. 14 — See C. P. and Berar Foregin Liquor Rules, 1938, R. 7.

AIR 1951 Nag 58=52 Cr L J 1140 (FB).

——Discrimination—Mere conferring of power of exemption if creates inequality—Validity of—C.P. & Berar Prohibition Act (7 of 1938), Ss. 6 (1), Proviso, 29 (2) and 32 (a) —See C. P. and Berar Prohibition Act (VII [7] of 1938), S. 6 (1), proviso.

AIR 1951 Nag 58=52 Cr L J 1140 (FB).

——There is no justification for discrimination made in R. 67, Bombay Foreign Liquors Rules, for issue of tourist permits to foreigners only and not to Indian visitors from other provinces. (Chagla C. J., Gajendragadkar and Tendolkar JJ.) Fram Nusserwanji v. State of Bombay,

AIR 1951 Bom 210=52 Bom L R 799=I L R (1951) Bom 17=52 Cr L J 80 (FB).

13. Labour laws.

——Validity of Bombay Industrial Relations Act (11 of 1947), Ss. 27A and 30— Classification is on rational basis —Provisions of these sections, in so far as they make a distinction between a union and a union or between employers and employees for purposes of representation before an Industrial Court, do not contravene Art. 14— See Bombay Industrial Relations Act (XI [11] of 1947), Section 27A,

AIR 1951 Bom 105=52 Cr L J 779.

——Industrial Disputes (Madras Amendment) Act (12 of 1949), S. 6 — After the Constitution provisions are void, being in contravention of Art. 14—See Industrial Disputes (Madras Amendment) Act (XII [12] of 1949), S. 6.

AIR 1951 Mad 191=52 Cr L J 744.

14. Discrimination as to sex.

——S. 354, I. P. C. operates equally against man as well as a woman. Women are not exempt from punishment under the section. That the Penal Code gives no protection to a man against "assault or use of criminal force with

CONSTITUTION OF INDIA (1950), Art. 14 —

14. Discrimination as to sex.

intent to outrage his modesty" is really an objection as to the policy of law in not creating a particular offence. It is not an objection as to the infringement of Art. 14 of the Constitution.

If the legislature has in its wisdom thought it fit to treat men differently from women in regard to modesty and to make an assault or use of criminal force with intent to outrage the modesty punishable under S. 354, I. P. C., when committed only with respect to women the provisions contained in S. 354 cannot be condemned as repugnant to Art. 14 of the Constitution. (Dixit J.), Girdhar Gopal v. State,

AIR 1953 Madh B 147=1953 Cr L J 964.

——S. 497, Penal Code—Validity.

Article 14 in substance means that every law that the State passes shall operate equally upon all persons. Once the nature of the offence of adultery is understood and appreciated, it is clear that there could be no question of the law operating unequally, because the law was not intended to operate upon women at all. The mischief aimed at under S. 497 is only against men and not against women. Again, the law has so provided that for the purpose of this section the wife shall not be deemed to be an abettor at all. Thus, in the definition of who is an abettor an exception is carved out and that exception is in favour of women. It is impossible to contend that as the section stands it does not operate equally upon all persons. (Chagla C. J. and Gajendragadkar J.) Yusuf Adbul Aziz v. State,

AIR 1951 Bom 470=53 Bom L R 736=21 Bom Cr C 229=ILR (1952) Bom 449=1952 Cr L J 23.

15. Illustrative examples—Miscellaneous

(a) Abducted persons.

——Abducted Persons (Recovery and Restoration) Act 1949, is not discriminatory — See Abducted Persons (Recovery and Restoration) Act (1949), Pre.

A I R 1953 S C 10=1953 Cr L J 180 (SC).

——Abducted Persons (Recovery and Restoration) Act, 1949, S. 2 (1) (a)—Validity—(Abducted Persons (Recovery and Restoration) Act (1949), S. 2 (1) (a).)

The classification resulting from the definition of an abducted person cannot, in any way, be said to be arbitrary or unreasonable. No one can question the propriety of restoring abducted persons to their relatives. It cannot be said that "abducted persons" as defined by the Abducted Persons (Recovery and Restoration) Act are a subclass chosen arbitrarily from the main class of persons in detention. The classification is reasonable and fully justified. Every person who falls within this class is to be treated alike and the Act, therefore, does not, in any way, contravene the provisions of Art. 14. It cannot be said that an "abducted person" defined by the Act is in the same circumstances as any other person taken into custody by the police, say, a person arrested on a criminal charge or a person detained under preventive legislation. (Bhandari, Khosla and Harnam Singh JJ.) Ajaib Singh v. The State of Punjab,

A I R 1952 Punjab 309 = 54 Pun L R 260 = I L R (1952) Punjab 381=1952 Cr L J 1313 (FB).

(b) Bihar Agriculturists Levy Order, 1950.

——The Bihar Agriculturists Levy Order, 1950, may divide large producers into a number of artificial subclasses. But it cannot fairly, or indeed at all, be said that the object of the Ministry in making this order was to benefit one sub-class of producers at the expense of any

CONSTITUTION OF INDIA (1950), Art. 14 — 15. Illustrative examples — Miscellaneous — (b) Bihar Agriculturists Levy Order, 1950

other sub-class. There is, clearly, nothing objectionable in the levy being a progressive one, that is, in any comparatively large producer being required to deliver to the State a proportionately greater quantity of his grain than a smaller producer. The Bihar Agriculturists Levy Order considered as a whole and notwithstanding certain anomalies, does not violate the guarantee under Art. 14 of the Constitution. (Shearer, Ramaswami and Sarjoo Prosad JJ.) Mohammad Anzar Husnain v. State of Bihar,

AIR 1952 Pat 220=31 Pat 203=1952 Cr L J 710 (FB).

(c) Central legislation.

——Cl. (3) (vii) of U. P. Food Grains Movement Control Order (1949) does not make an arbitrary and unreasonable distiction between carriage by rail or motor vehicle and carriage by other means. It is therefore, not unconstitutional. (Desai and Beg JJ.) Har Murat v. State,

A I R 1953 All 545=1953 A W R (H C) 225 = 1953 A L J 283=1953 Cr L J 1269.

——S. 12 (1), West Bengal Black Marketing Act (32 of 1948) is discriminatory and therefore, ultra vires — See West Bengal Black Marketing Act (32 of 1948), S. 12 (1)

A I R 1952 Cal 639=1952 Cr L J 1441 (SB).

——Rajasthan Food Grains Control Order (1949), Cl. 25 is not void as contravening Art. 14—See Rajasthan Food Grains Control Order (1949), Cl. 25.

A I R 1952 Raj 74=1952 Cr L J 732.

(d) Criminal P. C.

——S. 488, Criminal P. C. applies to all women in similar circumstances and is not ultra vires—See Criminal P. C. (1898), S. 488.

A I R 1952 Mad 529=1952 Cr L J 1143.

——Arts. 14, 19 (f), 31, 132 (1) — Ss. 523, 524, Criminal P. C.—Validity—Criminal P. C. (1898), Ss. 523, 524.

It cannot be said that the provisions contained in Ss. 523 and 524, Criminal P. C., deny to any person equality before the law or the equal protection of law, or infringe the fundamental right of citizens to acquire, hold and dispose of property, or are inconsistent with Art. 31. (Dixit J.) Madan v. State,

A I R 1951 Madn B 159=52 Cr L J 1533.

(e) Difference of sentence for same offence.

——Equality — Meaning—Graded punishment if offends rule of equality—Penal Code (1860), S. 53.

Equality intended under Art. 14 is not to be judged by equality of sentence. Punishments, graded according to age, gravity of the offence in the context of facts and attending circumstances that lend colour to the perversity involved in the crime and other circumstances, do not offend the rule of equality that law assumes as to members of the society. The object of punishment is to reform the society by holding out deterrents as precedents. Punishment must be such as would be felt as punishment by the offender. It must be commensurate with the degree of shock that it causes to the conscience of the society.

Where the High Court in restoring a sentence of imprisonment passed on a Marwari merchant by the trial Court which was commuted to a fine of Rs. 200 in appeal, observed in the judgment that the accused being a Marwari merchant, a fine of Rs. 200 would amount to absolutely no punishment whatsoever, and that he had to be sentenced with imprisonment and it was urged that it was a departure from the rule of natural justice :

Held that the implications of the impugned observation in the judgment were that the accused being a

CONSTITUTION OF INDIA (1950), Art. 14 — 15. Illustrative examples — Miscellaneous — (e) Difference of sentence for same offence

monied man of substance, a fine of Rs. 200 would not prove appropriately deterrent so as to prevent him and others from repeating the offence. There was no discrimination on the ground that he was a Marwari or that he was a merchant and the finding did not detract from maintaining equality between man and man in the administration of law. (Ray C. J. and Narasimham J.) Siba Prasad v. State of Orissa,

A I R 1951 Orissa 259 = ILR (1951) Cut 98=17 Cut L T 215=52 Cr L J 700.

(f) Fugitive Offenders Act (1881).

——S. 14, Fugitive Offenders Act offends Art. 14 and is void under Art. 13 (1) — Basis and unreasonableness of classification indicated—See Fugitive Offenders Act (1881), S. 14,

A I R 1953 Mad 729=1953 Cr L J 1364.

(g) Habitual criminals.

——Provisions of Madras Restriction of Habitual offenders Act, 1948 do not offend Art. 14 and as such are not invalid—See Madras Restriction of Habitual Offenders Act, (6 of 1948), S. 2 (4)

AIR 1953 Mad 664=1953 Cr L J 1174.

(h) Legislation affecting single person.

——Trial of individual case by order of military Governor under Hyderabad Special Tribunals Regulation (5 of 1358F), S. 3—See Hyderabad Special Tribunals Regulation (5 of 1358F), S. 3

AIR 1953 S C 156 = 1953 Cr L J 862 (SC).

(i) Part C States Laws Act (1950), S. 4.

——Saving clause in S. 4, Part C States (Laws) Act, 1950 is not discriminatory and hence not unconstitutional. Pending proceedings can be treated as a class by themselves having regard to the exigencies of the situation, so long as no scope is left for any further discrimination "inter se" as between persons affected by pending matters —See Part C States (Laws) Act (1950), S. 4

AIR 1953 S C 394 = 1953 Cr L J 1480 (SC).

(j) Prescribing different age of majority for certain persons.

——Discrimination in age—Discrimination made between two classes of persons by S. 3 Majority Act does not violate Art. 14 — See Majority Act (9 of 1875), S. 3

AIR 1951 Pat 570.

(k) Public safety legislation—See Note 1 (a)—Vesting of discretionary power in executive.

—Art. 15.

——Art. 15 (1) — Scope—Word 'only'—Import of — See Penal Code (1860), S. 354

AIR 1953 M B 147 = 1953 Cr L J 964.

——Art. 15 (1)—Provisions offending against—See Nawanagar Pass Hazari Dhara Act of St. 2003 (1947AD)

AIR 1952 Sau 124 = 1953 Cr L J 21.

——Abducted Persons (Recovery and Restoration) Act (1949), S. 2 (1) (a) — Validity — (Abducted Persons (Recovery and Restoration) Act (1949), S. 2 (1) (a).)

Article 15 deals with discrimination on grounds only of religion, race, etc. The word "only" is important and it is clear that what Art. 15 says is that a person shall not suffer merely because he belongs to a particular religion, race or caste 'vis-a-vis' another person similarly circumstanced. The persons who come under the mischief of the Abducted Persons (Recovery and Restoration) Act have

CONSTITUTION OF INDIA (1950), Art. 15

other qualifications besides the qualification of religion. Religion alone is not the ground upon which the distinction is based. The abducted person may not even be a Muslim at the time of his or her being taken into custody. He must have been separated from his family between the 1st of March 1947 and the 1st of January 1949 and he must be living under the control of any other individual or family. These additional factors are a necessary incidence to the definition of an abducted person and thus there is no discrimination on grounds only of religion. (Bhandari, Khosla and Harnam Singh JJ.) Ajaib Singh Lehna Singh v. The State of Punjab

AIR 1952 Punj 309 = 54 Pun L R 260 = ILR (1952) Punj 381=1952 Cr L J 1313 (FB).

——'Discriminate against', meaning of—See ibid, Art. 14

AIR 1952 S C 123 = 1952 Cr L J 805 (SC).

——No contravention —See Madras Hindu (Bigamy Prevention and Divorce) Act (6 of 1949)

AIR 1952 Mad 193 = 1952 Cr L J 434.

——Art. 15 (1)—Discrimination against sex—See Bombay Prevention of Hindu Bigamous Marriages Act (25 of 1946)

AIR 1952 Bom 84 = 1952 Cr L J 354.

——Scope — Social reform — See Bombay Prevention of Hindu Bigamous Marriages Act (25 of 1946)

AIR 1952 Bom 84 = 1952 Cr L J 354.

——Art. 15 (1) — S. 497, Penal Code—Validity.

Art. 15 (1) speaks of discrimination on grounds only of religion, race, caste, sex, place of birth or any of them. If religion, race, caste, sex, place of birth is merely one of the factors which the Legislature has taken into consideration then it would not be discrimination only on ground of that fact, but if the Legislature has discriminated only on one of these grounds and no other factor could possibly have been present, then undoubtedly the law would offend against Art. 15 (1).

What led to discrimination in S. 497 in this country is not the fact that women had a sex different from that of men, but that women in this country were so situated that special legislation was required in order to protect them, and it was from this point of view that one finds in S. 497 a position in law which takes a sympathetic and charitable view of the weakness of women in this country. Therefore S. 497 does not contravene Art. 15 (1). (Chagla C. J. and Gajendragadkar J.) Yusuf Abdul Aziz v. State

AIR 1951 Bom 470 = 53 Bom L R 736 = 21 Bom Cr C 229 = ILR (1950) Bom 449 = 1952 Cr L J 23.

——Art. 15 (1) — Right of non-citizen.

A person who is not a citizen cannot come to the High Court for assistance, invoking his right under Art. 15 (1). But even a non-citizen may rely on any of the fundamental rights, not indeed for the purpose of enforcing those rights, but merely in order to point out to the Court that a particular law being in violation of any of these fundamental rights is bad, inoperative and no penal consequence can follow from the breach of such a law. (Chagla C. J. and Gajendragadkar J.) Yusuf Abdul Aziz v. State

AIR 1951 Bom 470 = 53 Bom L R 736 =21 Bom Cr C 229 = ILR (1952) Bom 449 = 1952 Cr L J 23.

——Scope—Article held not offended — See West Bengal Hindu Social Disabilities Removal Act (XXXVII of 1948), Pre and S. 3 (c)

AIR 1951 Cal 167 = 52 Cr L J 1399.

——Art. 15 (1) — Discrimination on ground of place of birth—See City of Bombay Police Act, S. 27 (2A)

AIR 1951 Bom 285 = 52 Cr L J 458 (2).

—Art. 16.

——'Discriminate against,' meaning of—See ibid, Art. 14

A I R 1952 S C 123=1952 Cr L J 805 (SC).

CONSTITUTION OF INDIA (1950) —Art. 17.

——Disability arising out of untouchability — See ibid, Art. 35.

A I R 1953 All 483=1953 Cr L J 1103.

——'Law'—Meaning of.

It is not necessary that the law which punishes the offence must be framed after the Constitution came into effect; a law existing at the time when the Constitution came into effect would be a law within the meaning of Art. 17. There is nothing in the Article to render the U. P. Removal of Social Disabilities Act invalid. The Article is only an enabling Article. (Desai J.) State v. Banwari,

A I R 1951 All 615=1951 A L J 282 = 1951 A W R (H C) 305=1951 All Cr R 59=52 Cr L J 899.

—Art. 19.

SYNOPSIS

1. Scope and applicability of article.
2. Analogous law — Personal liberty, etc., under Government of India Act.
3. Article 19 and Art. 21.
4. Article 19 and Art. 31.
5. Who can raise question of unconstitutionality.
6. Retrospective effect.
7. Onus.
8. Restrictions on the fundamental rights.
   (a) Introductory.
   (b) Court's power to inquire into reasonableness of.
   (c) Tests of reasonableness.
9. "Interests of the general public."
10. "Public order."
11. "Existing law."
12. Clause (1) (a) — Freedom of speech and expression.
13. Freedom of the press.
14. Pre-censorship.
15. Security of State.
16. Sedition.
17. Promoting enmity between classes.
18. Contempt of Court.
19. Incitement to offence.
20. Picketing, prohibition of.
21. Clause (1) (b) — Right to assemble peaceably and without arms.
22. Right to take procession along highway.
23. Clause (1) (c)—Right to form associations or unions.
24. Labour and trade unions.
25. Clause (1) (d)—Freedom of movement.
26. "Throughout the territory of India."
27. Externment and internment orders.
28. Restrictions on entry into India.
29. Clause (1) (e)—Freedom of residence and settlement.
30. Clause (1) (f)—Right to acquire, hold and dispose of property.
31. "Property."
32. "Hold."
33. Prohibition law.
34. Clause (1) (g)—Right to practise any profession or to carry on any occupation, etc.
35. Legal profession—Restrictions as to.
36. Licence, requirement of.
37. Trade restrictions.
38. Industrial Disputes Act.
39. Right to strike.
40. Preventive detention.

CONSTITUTION OF INDIA (1950), Art. 19

1. Scope and applicability of article.

——Legislation not directly abridging rights under Art. 19 (1).

If a legislation is not directly of any of the subjects mentioned in Art. 19 (1) but as a result of the operation of other legislation, the right under any of the sub-clauses under Art. 19 (1) is abridged, the question of applicability of Art. 19 does not arise. The question of reasonableness of the Statute, therefore, becomes immaterial. (Bose J.) Shew Pujan Rai Indrasan Rai Ltd. v. Collector of Customs,

A I R 1952 Cal 789=1952 Cr L J 1651.

——Preventive detention — Applicability of Art. 19 to— See Constitution of India, Art. 19—Preventive detention.

A I R 1950 S C 27=51 Cr L J 1383 (SC).

——Interpretation of.

Per Kania C. J. — If there is a legislation directly attempting to control a citizen's freedom of speech or expression, or his right to assemble peaceably and without arms, etc., the question whether that legislation is saved by the relevant saving clause of Article 19 will arise. If, however, the legislation is not directly in respect of any of these subjects, but as a result of the operation of other legislation, for instance, for punitive or preventive detention his right under any of the sub-clauses of Art. 19 is abridged, the question of the application of Art. 19 does not arise. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras:

A I R 1950 S C 27 = 1950-2 M L J 42 = 63 M L W 638=1950 S C J 174=1950 M W N 495 = 1950 S C R 88=1950 M W N (Cr) 127=51 Cr L J 1383 (SC).

——Arts. 19, 20 to 22—Interpretation of.

Per Mukherjea J.—Article 19 gives a list of individual liberties and prescribes in the various clauses the restraints that may be placed upon them by law. On the other hand, Arts. 20, 21 and 22 are primarily concerned with penal enactments or other laws under which personal safety or liberty of persons could be taken away in the interests of the society. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

——Interpretation of.

Per Patanjali Sastri J. — Article 19 guarantees to the citizens the enjoyment of certain civil liberties while they are free, while Arts. 20-22 secure to all persons—citizens and non-citizens—certain constitutional guarantees in regard to punishment and prevention of crime.

Per Das J. — Article 19 does not deal with the freedom of the person as such. A citizen who loses the freedom of his person by being lawfully detained, whether as a result of a conviction for an offence or as a result of preventive detention has none of the rights which sub-clauses (a) to (e) and (g) may protect. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

——Interpretation of.

Per Das J. — None of the seven rights enumerated in clause (1) is an absolute right, for each of these rights is liable to be curtailed by laws made or to be made by the State to the extent mentioned in the several cls. (2) to (6). (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K.

CONSTITUTION OF INDIA (1950), Art. 19 —

1. Scope and applicability of article

Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

2. Analogous law—Personal liberty, etc., under Government of India Act.

——Arts. 19, 20 and 14—Personal liberty—Invasion of— Right of person affected, to be heard in his defence even in time of war—Equal protection to every man.

Per Niyogi J.—The fact that there is no express provision anywhere in the Government of India Act affecting the personal liberty of the subject does not mean that, that liberty can be invaded otherwise than by the authority of law. The rights of personal freedom, protection of one's life and limb and of one's good name are as well-recognised (though nowhere defined) in India as in England. On the same principle a person who is threatened with legal proceedings which are calculated to affect his person or property has an absolute right to be heard in his defence. It is a right which is implied by natural justice which prevails during peace time as well as during time of war. It is a powerful principle of justice in all judicial proceedings.

The criminal law of India is so framed as to respect such rights. In India as in England the law gives equal protection to every man. No man is above the law and no man is punishable or can be lawfully made to suffer in body or goods except for the distinct breach of law established in the ordinary legal manner before the ordinary Courts. There is unquestionably the rule of law in India in the sense in which Dicey interprets that expression in his well-known "Law of the Constitution." (Grille C. J. on difference between Niyogi and Digby JJ.) Sitao v. v. Emperor,

A I R 1943 Nag. 36 = I L R (1943) Nag. 73 = 1943 N L J 16=15 R N 187 = 205 I C 161 = 44 Cr L J 237.

3. Article 19 and Article 21.

——Arts. 19, 21 & 22 — Scope of — Detention of persons for preventing them from making speeches prejudicial to maintenance of public order — Legality — Preventive Detention Act (1950), S. 3.

Although personal liberty has a content sufficiently comprehensive to include the freedoms enumerated in Art. 19 (1), and its deprivation would result in the extinction of those freedoms, the Constitution has treated these civil liberties as distinct fundamental rights and made separate provisions in Art. 19 and Arts. 21 and 22 as to the limitations and conditions subject to which alone they could be taken away or abridged. A law which authorises deprivation of personal liberty does not fall within the purview of Art. 19 and its validity is not to be judged by the criteria indicated in that article but depends on its compliance with the requirements of Arts. 21 and 22.

Article 19 clearly means that the legislation to be examined must be directly in respect of one of the rights mentioned in the sub-clauses. If there is a legislation directly attempting to control a citizen's freedom of speech or expression, or his right to assemble peaceably and without arms, etc., the question whether that legislation is saved by the relevant saving clause of Art. 19 will arise. If, however, the legislation is not directly in respect of any of these subjects, but as a result of the operation of other legislation, for instance, for punitive or preventive detention, his right under any of these sub-clauses is abridged, the question of the application of Art. 19 does not arise. The true approach is only to consider the directness of the legislation and not what will

CONSTITUTION OF INDIA (1950), Art. 19 — 3..Art. 19 & Art. 21

be the result of the detention otherwise valid, on the mode of the detenu's life.

It therefore clearly follows that the order of detention under S. 3 of the Preventive Detention Act, 1950, preventing certain person from making speeches prejudicial to the maintenance of the public order is valid even though it has the result of abridging his right under Art. 19 (1) (a) by such detention. (Kania C. J., Patanjali Sastri, Mahajan, S. R. Das and Bose JJ.) Ram Singh v. The State of Delhi,

A I R 1951 S C 270 = 1951 S C J 374 = 1951 A L J 111=1951 M W N 765 = 1951 M W N (Cr) 233=1951 S C R 451=52 Cr L J 904 (SC).

——Arts. 19 and 21—Art. 19 is separate complete Article.

Per Kania C. J.—It is improper to read Art. 19 as dealing with the same subject as Art. 21. Article 19 should be read as a separate complete Article. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

——Arts. 19 and 21—Articles are not complementary.

Per B. K. Mukherjea J.—Article 19 cannot be said to deal with substantive law merely, nor Art. 21 with mere matters of procedure. The provisions of Art. 19 (1) (d) read with cl. (5) and Art. 21 are not complementary to each other. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

——Arts. 19, 21 and 22—Recognition of personal liberties.

Per Das J.—The Constitution has recognised personal liberties as fundamental rights. It has by providing for preventive detention, recognised that individual liberty may be subordinated to the larger social interests. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

——Arts. 19 and 21—"Personal liberty".

Per Das J. — "Personal liberty" does not mean only liberty of the person but it means liberty or the rights attached to the person (jus personarum). In any case the right to life cannot be read into Art. 19. Article 19 protects some of the important attributes of personal liberty as independent rights and the expression 'personal liberty' has been used in Art. 21 as a compendious term including within its meaning all the varieties of rights which go to make up the personal liberties of men. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

——Arts. 19, 21 and 22—Articles whether supplemental or exclusive.

Per Kania C. J.—Article 21 has to be read as supplemented by Art. 22 to the extent the procedure is prescribed by Art. 22 the same is to be observed; otherwise Art. 21 will apply.

Per Fazl Ali J. — Article 22 must prevail in so far as there are specific provisions therein regarding preventive detention, but where there are no such provisions in that Article, the operation of Arts. 19 and 21 cannot be excluded.

CONSTITUTION OF INDIA (1950), Art. 19 — 3. Art. 19 & Art. 21

Per Mahajan J.—Article 22 is self-contained in respect of the laws on the subject of preventive detention. If a law conforms to the conditions laid down in Art. 22 (7), it would be a good law and it could not have been intended that that law validly made should also conform itself to the provision of Art. 19 (5). (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

——Art. 19 (1) (d), Art. 19 (5) and Art. 21 — Deprivation of movement whether includes restriction on movement.

Per Kania C. J. (Per Fazl Ali J. Contra)—Deprivation (total loss) of personal liberty, which is sought to be protected by the expression "personal liberty" in Art. 21, is quite different from restriction (which is only a partial control) of the right to move freely as safeguarded by Art. 19 (1) (d). Article 19 (5) cannot apply to a substantive law depriving a citizen of personal liberty. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

——Scope.

Per Meredith C. J. — Article 19 is not concerned with personal liberty at all which is separately laid down for every person in Art. 21. It describes the rights of citizens who are legally at liberty, and not of those who may be imprisoned under a procedure established by law. The limitation set out in Art. 21 in the powers to deprive personal liberty is in respect of laws, which should be validly enacted and not merely such laws as the Courts decide to be, in their opinion, reasonable. (Sinha J. on a difference of opinion between Meredith C. J. and Sarjoo Prosad J.) Ratan Ray v. State of Bihar,

AIR 1950 Pat 332=29 Pat 410=51 Cr L J 1251.

4. Article 19 and Article 31.

——Arts. 19 (1) (f) and 31—Art. 19 (1) (f) has no application in a case where Art. 31 is also invoked for challenging a particular law as void. (Wanchoo C. J. and Bapna J.) Nathmal v. Commissioner Civil Supplies, Rajasthan

AIR 1952 Raj 74 = 1951 Raj L W 467=ILR (1951) 1 Raj 674=1952 Cr L J 732.

5. Who can raise question of unconstitutionality.

——Art. 19 (1) (d)—Who can raise question of unconstitutionality.

Where a person goes to Pakistan for a living, he migrates into Pakistan and hence cannot question the validity of the Influx from Pakistan (Control) Act as being inconsistent with his fundamental right under Art. 19 (1) (d). (Baxi J. C.) Mandhara Jakab v. Kutch Govt.

AIR 1951 Kutch 38=52 Cr L J 585.

6. Retrospective effect.

——Retrospective effect — Order under S. 99A, Criminal P. C.—Criminal P. C. (1898), S. 99A.

When the order of proscription under S. 99A, Criminal P. C., was made long before the Constitution came into force it cannot be interfered with by virtue of Art. 19 of the Constitution. (Nawal Kishore C. J., Ranawat and Sharma JJ.) Premi Khem Raj v. Chief Secretary,

AIR 1951 Raj 113=1951 Raj L W 86=52 Cr L J 600 (SB).

7. Onus.

——Art. 19 (5)—Reasonable restrictions—Reasonableness—Onus of proof.

Per Meredith C. J. — Where there has been a prima facie infringement of a fundamental right, and prima facie

CONSTITUTION OF INDIA (1950), Art. 19—7. Onus

no State law can infringe that right, the burden is cn the State to bring that law within the exception contained in Art. 19, cl. (5) which alone can save it. (Meredith C. J. Shearer and Dass JJ.) Brajnandan Sharma v. State of Bihar,

AIR 1950 Pat 322=29 Pat 461=52 Cr L J 610 (FB).

8. Restrictions on the fundamental rights—
(a) Introductory

——Reasonableness of restrictions—Test.

The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable. (Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) State of Madras v. Row, V. G.

AIR 1952 S C 196=65 M L W 420 = 1952 S C J 253 =1952 M W N 397=1952 M W N (Cr) 101=1952-2 M L J 135=1952 S C R 597=90 C L J 218=1952 S C A 399=1952 Cr L J 966 (SC).

——Art. 19 (5)—'Reasonable restrictions' — Expression refers to law and not to order passed under it—Order cannot be considered on merits.

The wording of Art. 19 (5) makes it quite clear that the words "reasonable restrictions" refer to the law itself, and not to orders passed under the law. The clause speaks of any existing law in so far as it imposes reasonable restriction, and the making of a law imposing reasonable restrictions. The Courts, of course, on general principles, can always upset an order on the ground of mala fides. But when Art. 19 (5) prevents the Courts from going into the merits of the order it is for all practical purposes impossible to consider whether the order is in fact bona fide or mala fide. On the other hand, if the restrictive provisions in the Act are void, quite obviously the order made thereunder is void. (Meredith C. J., Shearer and Das JJ.) Brajnandan Sharma v. State of Bihar,

AIR 1950 Pat 322=29 Pat 461=52 Cr L J 610 (FB).

(b) Court's power to enquire into reasonableness of.

——Restrictions on the right of free movement—Justiciability — Assam Opium Prohibition Act XXIII of 1947, S. 17.

The validity of the legislation permitting restrictions on the right to move freely throughout the territory of India is justiciable. It is open to the Courts to consider the reasonableness of the restrictions. It is also open to the Court to examine the procedure to be followed before any restrictions on the right to move freely throughout the territory of India can be imposed. (Thadani C. J. and Ram Labhaya J.) Israil Khan v. State,

CONSTITUTION OF INDIA (1950), Art. 19—8. Restrictions on the fundamental rights — (b) Court's power to enquire into reasonableness of

AIR 1951 Assam 105=ILR (1951) 3 Assam 181=52 Cr L J 966.

——Art. 19 (3) to (6)—Power of Court to question whether Law is reasonable—General rule and exceptions to it —See C. P. and Berar Accommodation (Requisition) Act (63 of 1948), S. 3.

AIR 1951 Nag 33.

——Art. 19 (5)—Reasonable restrictions—Tests of reasonableness—Subjective and objective tests explained.

The Courts do not apply any subjective test. There can be an objective test of reasonableness, and that is what the Courts apply. They do not ask themselves, whether they as individuals feel satisfied that the restrictions are reasonable. But, would that fictitious individual, "the reasonable man," that is to say, the normal average man, regard them as reasonable. That is a well-recognised legal means of examining the question of reasonableness, and it is essentially an objective test. (Meredith C. J., Shearer and Das JJ.) Braijnandan Sharma v. State of Bihar,

AIR 1950 Pat 322=29 Pat 461=52 Cr L J 610 (FB).

——Art. 19 (5)— Reasonableness of restriction—Power of Court to decide.

(Per Meredith C. J., Shearer J. Contra) — When the Constitution says that the restrictions must be reasonable, obviously, it is for the Court to decide whether restrictive provisions are reasonable or not. The argument that the Legislature itself is the sole judge of reasonableness and that if it makes a provision the Courts must accept it as reasonable, if accepted, renders the word 'reasonable' in cl. (5) completely nugatory.

Shearer J. — The criterion to be adopted by Courts to decide the validity of a legislation is whether the restrictions are reasonably necessary in the interests of the general public or in other words "Is the extent to which the rights of individuals are, or are liable to be, interfered with no more than is reasonably necessary for the protection of the public?" If that is the criterion to be adopted, then it is immaterial that there may be ancillary provisions in the statute which may lead to hardship in individual cases. Whether such provisions are reasonable or not is a matter for the Legislature to determine, and the judiciary cannot now sit in review over what the Legislature has done. (Meredith C. J., Shearer and Das JJ.) Brajnandan Sharma v. State of Bihar,

AIR 1950 Pat 322=29 Pat 461=52 Cr L J 610 (FB).

——Art. 19 (5)—Restrictions on rights — Reasonableness of — Objective standard — Bihar Maintenance of Public Order Act, 1950, S. 2 (1) (b)—Restrictions not reasonable —See Bihar Maintenance of Public Order Act (3 of 1950), S. 2 (1) (b),

AIR 1951 Pat 322=52 Cr L J 610.

——Art. 19 (1) (d) — Reasonable restrictions — Court's power.

Whether a particular restriction imposed by the Legislature is reasonable or not in the interests of the general public has to be considered by the Court. The Court is not precluded from considering the reasonableness of the substantive as well as the procedural part of the law imposing the restrictions. (R. P. Mukherjea and Guha JJ.) Tozammal v. Govt. of West Bengal,

AIR 1951 Cal 322=55 C W N 94=52 Cr L J 327.

——Art. 19 (5) Proviso — Rights conferred under Art. 19 (1) (d) and (e)—Restrictions on—Power of Court to scrutinize restrictions—Reasonableness—Test.

CONSTITUTION OF INDIA (1950), Art. 19—

8. Restrictions on the fundamental rights —

(b) Court's power to enquire into reasonableness of

Per Chagla C. J. — The Legislature has been given the power under the Proviso to sub-cl. (5) of Art. 19 to impose restrictions on the exercise of the rights conferred under Art. 19 (1), sub-cls. (d) and (e); but those restrictions have to be reasonable restrictions. It is not for the Legislature to determine whether the restrictions are reasonable or not. It is for the Court of law to consider the reasonableness of the restrictions imposed upon the rights. "Reasonable" is an objective expression and its objectivity is to be determined judicially by the Court of law. There is no limit placed upon the power of the Court to consider the nature of restrictions. The Court must look upon the restrictions from every point of view. It being the duty of the Court to safeguard fundamental rights the greater is the obligation upon the Court to scrutinize the restrictions placed by the Legislature as carefully as possible.

In order to decide whether a restriction is reasonable or not the Court must look at the nature of the restriction, the manner in which it is imposed, its extent both territorial and temporal, and if after considering all this the Court comes to the conclusion that the restriction is unreasonable, then the restriction is not justified and the Court will not uphold that restriction. The Court must lean in favour of fundamental rights and must place the restrictions imposed upon the Legislature in as narrow an ambit as possible.

"Interest of general public" is a very wide expression, much wider indeed than any of the expressions used in sub-cls. (2), (3) and (4). "Interests of general public" embraces public security, public order and public morality, and therefore much wider power is given to the Legislature under sub-cl. (5) to restrict the right given under the Constitution under Art. 19 (1), sub-cls. (d) and (e).

Per Shah J. — The question whether the restrictions contemplated to be imposed by an impugned statute are "reasonable" within the meaning of Art. 19 (5) of the Constitution of India will have to be judged with reference not to any individual cases which may arise or any hardship which may be caused by reason of the application of the provision of the statute, but by reference solely to two considerations : (1) whether the restriction is a restriction on the exercise of the right which has been conferred by Art. 19 and (2) whether the restriction itself is reasonable having regard to the interests of the general public.

The scheme of Art. 19 is to provide a balance between the security of the State and the interest of general public on the one hand and the fundamental rights guaranteed to the citizens on the other. The article provides for the enumeration of the fundamental rights which would normally be exercised by the citizen but which in the larger interest of the State and the general public may be curtailed or restricted. If the Court is satisfied that the restriction is imposed in the interest of the general public and the restriction is not unreasonable, the Court has no jurisdiction to enquire whether the manner in which the restriction is likely to be imposed by the officer charged with the duty of enforcing it may possibly act unreasonably. The possibility of an abuse of provision enacted in the interest of the security of the State or in the interests of the general public cannot be a ground for holding the provision as void. The remedy lies with the Legislature to remove the lacuna, if any, which permits that abuse. (Chagla C. J. Bavdekar and Shah JJ.) Jeshing Bhai v. Emperor,

AIR 1950 Bom 363=52 Bom L R 544=I L R (1950) Bom 539=20 Bom Cr C 188=52 Cr L J 120 (FB).

CONSTITUTION OF INDIA (1950), Art. 19 —

8. Restrictions on the fundamental rights

(c) Tests of reasonableness.

——Art. 19—Tests of reasonableness — Both substantive as well as procedural part of law to be considered — See Assam Maintenance of Public Order Act (5 of 1947), S. 2 (1)

A I R 1953 Assam 209 = 1953 Cr L J 1740.

——Art. 19 (6)—"Reasonable."

What is reasonable within the meaning of cl. (6) of Art. 19 of the Constitution of India has to be decided by a Court of law and in doing so the Court has got to see both the substantive as well as the procedural aspect of the question. (Ranawat and Dave JJ.) Madanlal Kapur v. State of Rajasthan,

A I R 1953 Raj 162=1953 R L W 311 = 1953 Cr L J 1283.

——Art. 19 (5)—'Reasonable' meaning of.

The expression "reasonable" is so wide and elastic that a Court should not ordinarily strike down any restrictive provision as void as being not reasonable, unless it appears to the Court that a different view could not be taken with any justification. (Rajamannar C. J. and Venkatarama Aiyar J.) P. Arumugham v. State of Madras,

A I R 1953 Mad 664=66 M L W 197=1953 M W N 224 = 1953-1 M L J 561=I L R (1953) Mad 937=1953 Cr L J 1174.

——Art. 19 (1) (d) (e) and (5) — U. P. Goondas Act, 1932, S. 5 — Procedure unjustifiable on basis of reasonableness — See U. P. Goondas Act (1 of 1932) (as modified and extended to the State of Delhi),

A I R 1953 Punj 52=1953 Cr L J 421.

——Art. 19 (5) — Twofold test under — See also ibid, Art. 19 (1) (d),

A I R 1952 Pat 376=1952 Cr L J 1361.

——Art. 19 (5)—Reasonableness of restrictions upon right of free movement.

The determination of the question as to whether the restrictions imposed by a legislative enactment upon the fundamental rights of a citizen enunciated in Art. 19 (1) (d) of the Constitution are reasonable or not within the meaning of Cl. 5 of the Article would depend as much upon the procedural part of the law as upon the substantive part, and the Court has got to look in each case to the circumstances under which and the manner in which the restrictions have been imposed. (Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) Gurbachan Singh v. State of Bombay,

A I R 1952 S C 221 = 1952 S C J 321 = 1952 S C R 737 = 54 Bom L R 849 = 1952 S C A 452 = 1952 Cr L J 1147 (SC).

——Art. 19 (1) (c) and (4) — Reasonableness — Test.

As for the test of reasonableness, it is well settled that the Court is to be the judge of reasonableness. In deciding on the reasonableness or otherwise of the restrictions imposed by a law the substantive as well as the procedural provisions of the law should be examined. (Koshi, Govinda Pillai and Joseph Vithayathil JJ.) George Chadayammury v. State,

A I R 1952 Trav-Co 217=1952 Ker L T 178=I L R (1952) Trac-Co 1=1952 Cr L J 1066 (FB).

——Restrictions on rights — Provision excluding judicial enquiry—Provision preventing High Court from enforcing fundamental rights — See City of Bombay Police Act (IV of 1902), S. 27 (7),

A I R 1951 Bom 432 = 52 Cr L J 1442.

——Restrictions on rights — Reasonableness of—Tests of reasonableness — Reasonableness is to be determined on basis of existing conditions — See Assam Opium Prohibition Act, XXIII of 1947, S. 16.

A I R 1951 Assam 106=52 Cr L J 966.

CONSTITUTION OF INDIA (1950), Art. 19—8. Restrictions on the fundamental rights—(c) Tests of reasonableness

——Art. 19 (1) (d) and (c)—Restrictions on rights—Right to be heard—S. 9 (1) of Bombay Prevention of Prostitution Act restricts rights under Art. 19 (1) (d) and (c) — No opportunity is given to person affected to be heard in defence—See Bombay Prevention of Prostitution Act (XI of 1923), S. 9 (1),

A I R 1951 Bom 337=52 Cr L J 897.

——Art. 19 (5) — Reasonable restrictions — Meaning — Power of Court.

Per Kania C. J. — Clause (5) of Art. 19 must be given its full meaning. The question which the Court has to consider is whether the restrictions put by the impugned legislation on the exercise of the right are reasonable or not. The question whether the provisions of the Act provide reasonable safeguards against the abuse of the power given to the executive authority to administer the law is not relevant for the true interpretation of the clause. The Court on either interpretation, will be entitled to consider whether the restrictions on the right to move throughout India, i. e., both as regards the territory and the duration, are reasonable or not. The law providing reasonable restrictions on the exercise of the right conferred by Art. 19 may contain substantive provisions as well as procedural provisions. While the reasonableness of the restrictions has to be considered with regard to the exercise of the right, it does not necessarily exclude from the consideration of the Court the question of reasonableness of the procedural part of the law. It is obvious that if the law prescribes five years externment or ten years externment, the question whether such period of externment is reasonable, being the substantive part, is necessarily for the consideration of the Court under cl. (5). Similarly, if the law provides the procedure under which the exercise of the right may be restricted, the same is also for the consideration of the Court as it has to determine if the exercise of the right has been reasonably restricted. By this interpretation the scope and ambit of the word "reasonable" as applied to restrictions on the exercise of the right, is not in any way unjustifiably enlarged. It seems that the narrow construction sought to be put on the expression, to restrict the Court's power to consider only the substantive law on the point, is not correct.

Per B. K. Mukherjea J.—Though in cl. (5) the adjective 'reasonable' is predicated of the restrictions that are imposed by law and not of the law itself, that does not mean that in deciding the reasonableness or otherwise of the restrictions, the Courts have to confine themselves to an examination of the restrictions in the abstract with reference merely to their duration or territorial extent, and that it is beyond their province to look up to the circumstances under which or the manner in which the restrictions have been imposed. It is not possible to formulate an effective test which would enable the Courts to pronounce any particular restriction to be reasonable or unreasonable per se. All the attendant circumstances must be taken into consideration and one cannot dissociate the actual contents of the restrictions from the manner of their imposition or the mode of putting them into practice. The question of reasonableness of the restrictions imposed by a law may arise as much from the substantive part of the law as from its procedural portion. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan and B. K. Mukherjea JJ.) Dr. N. B. Khare v. State of Delhi,

A I R 1950 S C 211=1950 M W N 440=86 C L J 83 =1950 A L J 506=1950 S C J 328=1950 A W R (HC) 514 = 1950 M W N (Cr) 120 = 1950 S C R 519 = 52 Cr L J 550 (SC).

CONSTITUTION OF INDIA (1950), Art. 19—8. Restrictions on the fundamental rights—(c) Tests of reasonableness

——Art. 19 (4)—"Reasonable restrictions" — How to be determined.

What restrictions are reasonable is for the Court to decide. There can be no absolute standard of reasonableness. In deciding on the reasonableness of the restrictions, it is not possible to think only in the abstract. Several circumstances must be taken into consideration, in particular, the purpose of the Act, the conditions prevailing in the country at the time, the duration of the restriction, its extent and nature. Further, in deciding on the reasonableness or otherwise of the restrictions imposed by law, the substantive as well as the procedural provisions of the law should be examined. (Rajamannar C. J., Satyanarayana Rao and Viswanatha Sastri JJ.) Row v. State of Madras,

A I R 1951 Mad 147 = 1951-1 M L J 628=52 Cr L J 515 (FB).

——Art. 19 (5) Proviso — Rights conferred under Art. 19 (1) (d) and (e)—Restrictions on—Reasonableness.

Per Chagla C. J. — In order to decide whether a restriction is reasonable or not, the Court must look at the nature of the restriction, the manner in which it is imposed, its extent both territorial and temporal. The Court must lean in favour of fundamental rights and must place the restrictions imposed upon the Legislature in as narrow an ambit as possible. "Interests of general public" embraces public security, public order and public morality, and therefore much wider power is given to the Legislature under cl. 5 to restrict the right given under the Constitution under Art. 19 (1), subcls. (d) and (e).

Per Shah J. — The question whether the restrictions contemplated to be imposed by an impugned statute are "reasonable" will have to be judged with reference solely to two considerations; (1) whether the restriction is a restriction on the exercise of the right which has been conferred by Art. 19, and (2) whether the restriction itself is reasonable having regard to the interests of the general public.

The possibility of an abuse of provision enacted in the interest of the security of the State or in the interests of the general public cannot be a ground for holding the provision as void. The remedy lies with the Legislature to remove the lacuna, if any, which permits that abuse. (Chagla C. J., Bavdekar and Shah JJ.) Emperor v. Jeshinghhai Ishwarlal

AIR 1950 Bom 363=52 Bom L R 544=I L R (1950) Bom 539=20 Bom Cr C 188=52 Cr L J 120.

——Art. 19 (1) (d), (e) and (5)—Reasonableness of restrictions — Fundamental principles of natural justice—Disregard of — See Orissa Maintenance of Public Order Act (X of 1950), S. 2 (1)

AIR 1951 Orissa 86.

——Art. 19 (5) — Reasonable restrictions — If matter of substance or of procedure.

Per Ray C. J.—Consideration of reasonable restrictions in the interest of the public necessarily gives rise to a question whether the social control delimiting personal liberty as provided in a particular legislation is reasonable. Reasonable restriction is more a matter of substance than of procedure in the background of the Constitution of India. The restrictions must be so scaled as to ensure that the execution of the law will not generally entail greater restrictions than are required for protection of the general public. In this respect the Act should be more or less self-contained so that the person restricted may avail of it, granted that he is also provided with a procedure of being apprised of the cause against him and having an opportunity to be heard in an impartial tribunal in

CONSTITUTION OF INDIA (1950), Art. 19—8. Restrictions on the fundamental rights — (c) Tests of reasonableness

answering the charge against him. (Ray C. J. and Narasimham J.) Ismail v. State of Orissa

AIR 1951 Orissa 86=16 Cut L T 209.

9. "Interests of the general public."

——Art. 19 (6) — Entry in India from Pakistan — Conditions in permit—Reasonableness — See Influx from Pakistan (Control) Act (1949), S. 4 (a)

AIR 1952 Cal 837=1952 Cr L J 1683.

——Art. 19 (1) (d) and (e) and (5)—Reasonable restrictions in the interests of general public—(Bihar Maintenance of Public Order Act, 1949 (III of 1950), S. 2—Validity.)

The test under Art. 19 (5) is a two-fold test : firstly, the restrictions imposed must be reasonable; secondly, they must be in the interests of the general public. The reasonableness of the restrictions has to be considered both with regard to substantive and procedural provisions. In the Bihar Maintenance of Public Order Act, there are provisions for communicating the grounds of the order to the externee. The externee has a right to make a representation and the representation has to be considered by an Advisory Board. These are all safeguards which fulfil the test of reasonableness. The existence of a provision which prevents externment of a person from his usual place of residence is not an essential criterion for fulfilling the test of reasonableness. There may be good and valid grounds for keeping a person out from his usual place of residence as he may be doing greater mischief at that place than elsewhere. The expression "in the interests of the general public" is wide enough to cover serious and aggravated forms of public disorder which are calculated to endanger the security of the State as also other breaches of the peace of a purely local significance which endanger the public order. Public order is not excluded from the purview of cl. (5) of Art. 19. Thus, the provisions of the Bihar Maintenance of Public Order Act, so far as they permit the passing of an order of externment, impose reasonable restrictions in the interests of the general public on the exercise of the rights conferred by cls. (d) and (e) of Art. 19 (1) of the Constitution. (Das and Sinha JJ.) Bodi Alam v. State of Bihar

AIR 1952 Pat 376=1952 Cr L J 1361.

——Art. 19 (3), (4) and (5) — "In the interests of public order" and "in the interests of the general public."

The words "in the interests of the general public" used in cl. (5) are of much wider import than the words "in the interests of public order" used in cls. (3) and (4). The restriction, therefore, on the right to move freely throughout the territory of India may be not merely for the purpose of maintaining public order but may be in the interests of the general public. The words "in the interests of the general public" used in cl. (5) of Art. 19 have been advisedly used and in contradistinction with the words "in the interests of public order" used in the earlier clauses must be given their full meaning. It is probable that the Constitution used these particular words in order to enable the State to adjust the rights given by the Constitution and to reconcile them in the interest of the general public, whether the interests of the public order were immediately affected or not by such restrictions. (Rajadhyaksha and Vyas JJ.) Damodar Ganesh v. State

AIR 1951 Bom 459=53 Bom L R 739=21 Bom Cr C 232=1952 Cr L J 37.

——"Interests of the general public" — W. B. Hindu Social Disabilities Removal Act, 1948, S. 3 (c)—Carrying on profession of barber—Restrictions in the interests of the general public — See West Bengal Hindu Social Disabilities Removal Act (XXXVII of 1948), S. 3 (c)

AIR 1951 Cal 167=52 Cr L J 1399.

CONSTITUTION OF INDIA (1950), Art. 19

10. "Public order"

——Art. 19 (1) (a), (2) — Order under S. 144, Criminal P. C.—(Criminal P. C. (1898), S. 144).

The question whether there was apprehension of the breach of the peace must be left to the Magistrate. Unless the order passed by a Magistrate under S. 144, Criminal P. C., is on the face of it absurd or is mala fide there is no reason for the High Court to interfere. (Malik C. J. and Hari Shankar J.) V. G. Deshpandey v. City Magistrate, Lucknow

AIR 1953 All 577 = 1953 A L J 419 = 1953 A W R (H C) 499=1953 Cr L J 1258.

——Art. 19 (1) (c) and (4) — Public order—Criminal Law Amendment Act, 1908, as amended in Madras — Original Act and Act as amended are void — See Criminal Law Amendment Act (1908), S. 1

AIR 1951 Mad 147=52 Cr L J 515 (FB).

11. "Existing law."

——Art. 19 (2) — Existing law—Penal Code, Ss. 499 and 500 whether existing law—See Penal Code (1860), Ss. 499 and 500.

A I R 1951 Cal 176=52 Cr L J 1422.

12. Clause (1) (a)—Freedom of speech and expression.

——S. 7 (1), Press (E. P.) Act, is void—See Press (Emergency Powers) Act (1931), S. 7 (1)

A I R 1952 Sau 57=1952 Cr L J 937 (FB).

——S. 4 (1) (d) of Press (E. P.) Act is inconsistent with right of freedom of speech—See Press (Emergency Powers) Act (1931), S. 4 (1) (d), (f)

A I R 1952 Sau 25=1952 Cr L J 506.

——Freedom of speech and expression.

Freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by the freedom of circulation. Writing on the black board set up in a public place in the town criticisms of Government and their officers including ministers would be protected by the right of freedom of speech and expression. (Shah C. J. and Chatpar J.) State v. Shukla Hariprasad Jethalal

A I R 1952 Sau 25=1952 Cr L J 506.

——Art. 19 (2) (as amended in 1951)—Retrospective effect.

The amendment of Art. 19 (2) by S. 3 (a) of the Constitution (First Amendment) Act, 1951, is not retrospective in its effect. (Harries C. J.) Suresh Chandra v. Punit Goala

A I R 1951 Cal 176=55 C W N 745=52 Cr L J 1422.

——Art. 19 (2) — Freedom of speech and expression — Press (E. P.) Act, 1931, S. 7 (1)—Restrictions covered by Art. 19 (2) — Section not ultra vires — See Press (Emergency Powers) Act (1931), S. 7 (1)

A I R 1951 Cal 36=52 Cr L J 458 (1).

——Freedom of speech and expression — Unreasonable restrictions on freedom of speech — See East Punjab Public Safety Act (V of 1949), S. 24

A I R 1951 Punj 27=52 Cr L J 449.

——Art. 19 (1) (a) — Scope — Exercise of right should not infringe upon rights of others—Article by student held infringed rules of discipline of college and also was against law of country — Rustication from college for one year held justified—Penal Code (1860), Ss. 499, 500.

Apart from the qualifications enumerated in cls. 2 to 6 of Art. 19, the rights guaranteed by cl. (1) are also subject to the qualification that the exercise of these rights by a citizen should not infringe the rights of others. The relationship between a pupil and teacher has always been held to be sacred in India, and it is in the interests of students as well as of the entire body of citizens that discipline amongst students is insisted upon. Where a student of a college issued a handbill and therein tried to make out that the authorities were not only antinationalists, but selfish, evil-minded, morally degenerate and given to intrigue,

CONSTITUTION OF INDIA (1950), Art. 19 —

12. Clause (1)(a)—Freedom of speech and expression

subversive and heinous activities and victimization of innocent students, etc., etc., the writing not only offended against the discipline of the college but against the ordinary law of the land. The fact that the allegations were correct, could not be a defence in a case of this kind ; because if the student believed, that he had a genuine grievance, the proper course for him was to approach the higher educational authorities and the Government rather than to bring out a handbill. His rustication from college for one year therefore was justified. (Teja Singh C. J.) Jang Bahadur v. Principal, Mohindra College

A I R 1951 Pepsu 59 = 2 Pepsu L R 506 = 52 Cr L J 403.

——Infringement of, by S. 4 (1) (a) and (b), Press (Emergency Powers) Act (1931)—See Press (Emergency Powers) Act, See S. 4

A I R 1951 Pat 12=52 Cr L J 309 (SB).

——S. 4 (1) (h) of the Press (Emergency Powers) Act, 1931 restricts freedom of speech and is ultra vires — See Press (Emergency Powers) Act, (1931), S. 4 (1)

A I R 1951 Punjab 18=52 Cr L J 261 (SB).

——Sections 23 (a) and (b) and S. 53, Proviso of Bombay Prohibition Act — Validity of — See Bombay Prohibition Act (XXV of 1949), Ss. 23 (a) and (b), S. 53, Proviso

A I R 1951 Bom 210=52 Cr L J 80.

——Art. 19 (1) (a) and (g) and (2)—Press (E. P.) Act, 1931, S. 3 (1)—Inconsistency with Art. 19 (1) (a) and (g) — See Press (Emergency Powers) Act (1931), S. 3 (1)

A I R 1951 Mad 950.

——Art. 19 (1) (a) and (2)—Freedom of speech and expression—Curtailment of—See Press (Emergency Powers) Act (1931), S. 3 (3)

A I R 1951 Mad 70.

——Art. 19 (1) (a) and (2)—Freedom of speech and expression—Imposition of pre-censorship on journal—Restriction of liberty of press — See East Punjab Public Safety Act S. 7 (i) (c)

A I R 1950 S C 129=51 Cr L J 1525 (SC).

——Curtailment of rights to freedom of speech and expression, when justified.

Nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression, while the right of peaceable Assembly (sub-cl. (b)) and the right of association (sub-cl. (c)) may be restricted under cls. (3) and (4) of Art. 19 in the interest of "public order", which in those clauses include the security of the State. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) Romesh Thappar v. The State of Madras

A I R 1950 S C 124=1950 S C R 594=1950 M W N (Cr) 115 = 1950 M W N 435 = 1950 A L J 485=1950 S C J 418 = 1950-2 M L J 390 = 63 M L W 929 = 51 Cr L J 1514 (SC).

——Freedom of speech and expression.

Freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S R Das JJ.) Romesh Thappar v. The State of Madras

A I R 1950 S C 124=1950 S C R 594=1950 M W N (Cr) 115=1950 M W N 435 = 1950 A L J 485 = 1950 S C J 418 = 1950-2 M L J 390 = 63 M L W 929 = 51 Cr L J 1514 (SC).

13. Freedom of the press

——Art. 19 (1) (a)—Freedom of press if included.

The term "freedom of speech and expression" would include the liberty to propagate not only one's own views but also the right to print matters which are not one's own but have either been borrowed from someone else or printed under the direction of that person. The freedom of the press is a guaranteed right, under Art. 19 (1) (a), of a citizen who keeps a printing press, or is an editor, or a publisher. (Govinda Menon, Panchapagesa Sastri and Basheer Ahmed Sayeed JJ.) Srinivasa Bhat v. State of Madras,

AIR 1951 Mad 70=64 M L W 82=1951-1 M L J 115.

CONSTITUTION OF INDIA (1950), Art. 19 —

13. Freedom of the press

——Art. 19 (2)—Criticism of Government.

Criticism of Government exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security or tend to overthrow the State (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) Romesh Thappar v. The State of Madras,

AIR 1950 S C 124= 1950 S C R 594 = 1950 M W N (Cr) 115 = 1950 M W N 495 = 1950 A L J 485 = 1950 S C J 418=1950-2 M L J 390 = 63 M L W 929= 51 Cr L J 1514 (SC).

14. Pre-censorship

——19 (1) (a)—Pre-censorship— E. P. Public Safety Act, 1949, S. 7 (i) (c)— Pre-censorship order under — Validity of — See East Punjab Public Safety Act (V of 1949), S. 7 (i) (c).

AIR 1951 Ajmer 100=52 Cr L J 1530.

——Art. 19 (2)—Security of State— Pre-censorship order —Validity—See Saurashtra State Public Safety Measures Ordinance (9 of 1948 (as modified by ordinance XXXVIII of 1948 and by the Act VII of 1950), S. 6A.

AIR 1951 Sau 9.

15. Security of State

——Art. 19 (2)—Restriction imposed is of nature permitted by Art. 19 (2)—See T-C Public Safety Measures Act (5 of 1950), S. 31.

AIR 1953 Trav-Co 540=1953 Cr L J 1786.

——Art. 19 (2) — Restrictions imposed by S. 4 (1) (a), Press (E. P.) Act, 1931 are within ambit of Art. 19 (2) — See Press (Emergency Powers) Act (1931) S. 4 (1) (a).

AIR 1952 S C 329=1952 Cr L J 1373.

——Art. 19 (2) — Invalidity of Madras Maintenance of Public Order Act 1949 (Mad. Act 23 of 1949), S. 9 (1A).

Section 9 (1-A), Madras Maintenance of Public Order Act, 1949, which authorises imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order falls outside the scope of authorised restrictions under Cl. (2), and is therefore void and unconstitutional. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukerjea and S. R. Das JJ.) Romesh Thappar v. The State of Madras,

AIR 1950 S C 124= 1950 S C R 594 = 1950 M W N (Cr) 115= 1950 M W N 435 = 1950 A L J 485 = 1950 S C J 418=1950-2 M L J 390=63 M L W 929 = 51 Cr L J 1514.

16. Sedition

——Scope of S. 124A, Penal Code—Validity.

Section 124A, Penal Code, has become void as contravening the right of freedom of speech and expression guaranteed by Art. 19 (1). The section is not saved by Art. 19 (2) as the limitations placed by Art. 19 (2) upon interference with freedom of speech are real and substantial. The offence under S. 124A consists in exciting or attempting to excite in others certain bad feelings towards the Government. In some instances at least the unsuccessful attempt to excite will not undermine or tend to overthrow the State. (Weston C. J. and Khosla J.) Tara Chand v. State,

AIR 1951 Punjab 27 = 53 P L R 22 = I L R (1951) Punjab 193=52 Cr L J 449.

CONSTITUTION OF INDIA (1950), Art. 19

17. Promoting enmity between classes

——Scope of S. 153A, Penal Code—Validity.

The gist of the offence under S. 153A is the promotion or attempt to promote feelings of enmity or hatred between different classes of citizens of India. Though many acts falling under S. 153A will be acts undermining or tending to overthrow the State, there can equally be many acts made punishable by S. 153A which will not in any way undermine the security of or tend to overthrow the State. Section 153A has become void as providing an unwarranted restriction on the freedom of speech and expression. (Weston C. J. and Khosla J.) Tara Singh v. State,

AIR 1951 Punjab 27 = 53 P L R 22 = ILR (1951) Punjab 193=52 Cr L J 449.

18. Contempt of Court

——Arts. 19 (1) (a), (2), 515—Power to deal with contempt of Court.

Article 19 of the Constitution does not curtail the right of the High Court to deal with contempt of Courts. (Panigrahi C. J. & Mohapatra J.) Bijoyanda Patnaik v. Balakrushna Kar,

AIR 1953 Orissa 249= ILR (1955) Cut 283=1953 Cr L J 1491.

——Art. 19 (2) — Power of High Court to deal with contempt of Court—See ibid, Art. 19 (1) (a).

AIR 1953 Orissa 249=1953 Cr L J 1491.

——Art. 19 (2) (as amended in 1951)—Reasonable restrictions.

The language of the Constitution after the amendment of Art. 19 requires the High Court to see whether the restrictions are "reasonable." The law of contempt as laid down by British and Indian Courts imposes nothing but reasonable restrictions on the exercise of the right of freedom of speech and expression and, therefore, the previous law continues in force even after the amendment of Art. 19. (Raghubar Dayal and Agarwala JJ.) Lakhan Singh v. Balbir Singh,

AIR 1953 All 342 = 1953 A W R (H C) 170 = 1953 A L J 376=1953 Cr L J 733.

——Arts. 19 (2), 366 (10) and 215 — "Existing law" relating to contempt of Court — Existing law relating to contempt of Court saved by Art. 19 (2) must include not only statutory law but entire case-law.

'Per Narasimham J.' — The definition of 'existing law' in Clause (10) of Article 366 should not be applied in construing that expression occurring in clause (2) of Article 19 in so far as it relates to the law of contempt of Court because 'the context otherwise requires.' The existing law in so far as it relates to contempt of Court saved by clause (2) of Art. 19 must include not only statutory law but the entire law of contempt as was recognised in India prior to the advent of the Constitution, based on the English common law and the case law as laid down by the High Courts and Privy Council. The Constitution has not in any way enlarged the freedom of the Press in this respect.

If the definition of the expression 'existing law' as given in clause (10) of Article 366 is applied in construing that expression occurring in Art. 19 (2) the result would be that the power of the High Court as a Court of Record under Art. 215 would become nugatory and the Contempt of Courts Act would become unworkable. (Jagannadhadas C. J. and Narasimham J.) State v. Editors and Publishers, Eastern Times and Prajatantra,

AIR 1952 Orissa 318= I L R (1950) Cut 1 = 1952 Cr L J 1605.

——Art. 19 (2)—Contempt of Court—Jurisdiction of High Court in contempt cases how far preserved by Art. 19 (2) —See Contempt of Courts Act (1926), S. 2 (1).

AIR 1951 All 556=52 Cr L J 1062 (FB).

CONSTITUTION OF INDIA (1950), Art. 19 —

18. Contempt of Court

Court in contempt cases how far preserved by Art. 19 (2) —See Contempt of Courts Act (1926), S. 2 (1).

AIR 1951 All 556=52 Cr L J 1062 (FB).

19. Incitement to offence.

——Art. 19 (2) — Amendment made by the Constitution (First Amendment) Act is not repugnant to Art. 20.

The contention that the amendment made in Art. 19 (2) of the Constitution by the Constitution (First Amendment) Act with retrospective operation is repugnant to Art. 20 of the Constitution inasmuch as it declares a certain act an offence which was not an offence at the time when that act was committed, is untenable. Thus to the case of a person who is alleged to have violated the provisions of S. 4 (1) (a), Press (Emergency Powers) Act, which was a law in force in the year 1949 when the offending pamphlet was published and who has not been convicted of any offence and is not being again convicted for the same by reason of the amendment in Art. 19 (2), Article 20 has no application. (M. Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das and Bose JJ.) State of Bihar v. Shailabala Devi,

A I R 1952 S C 329=1952 M W N 545=1952 S C J 465=1952-2 M L J 323=1952 M W N (Cr) 169=1952 S C R 654=31 Pat 544=1953 S C A 152=1952 Cr L J 1373 (SC).

20. Picketing, prohibition of.

——Right of person to dissuade customers from purchasing from a shop — Interpretation of statutes — Criminal Law Amendment Act (1932), S. 7.

A shop-keeper, who is a citizen of India, has a fundamental right to carry on his trade in any part of the Indian Union subject to the controls, licenses and restrictions orders legitimately imposed by the State. A citizen has therefore a right to expect from the State protection in the exercise of his business from persons, who assemble outside his shop and seek to dissuade customers from purchasing goods from him on the ground that he is a North Indian. Under Art. 19 (2), the right to freedom of speech and expression would not affect the operation of any existing law so far as it relates to libel, slander, defamation, contempt of Court or any matter which offends against decency or morality or which undermines the security or tends to overthrow the State. The conduct of such persons would if carried to logical and extreme conclusions come within the category of something, which would tend to undermine the security of the State, the objective being to create disaffection which may ultimately lead to hatred and strife in the South between South Indians and North Indians residing in and doing business in the south. This is also a case in which one fundamental right claimed of freedom of speech and expression comes into conflict with other fundamental rights of all citizens viz., to reside and settle in any part of the Indian Union and to carry on their occupation, trade or business. When two fundamental rights come into conflict and one is sought to be extended to extreme and logical conclusions at the expense of the other, a Court will be slow to recognise and uphold such an extension of a fundamental right which infringes and violates another fundamental right. The conduct of such persons therefore cannot be justified under Art. 19 (1) (a) of the Constitution nor can S. 7 of the Criminal Law Amendment Act in such context be declared ultra vires. (Mack J.) Vengan In re,

A I R 1952 Mad 95=1951 M W N 697=1951 M W N (Cr) 201=1951-2 M L J 241 =ILR (1952) Mad 553.

——Art. 19 (1) — Picketing, prohibition of — Peaceful picketing in mill area — Restriction placed by S. 7 (1), Criminal Law Amendment Act—S. 7 whether void—See Criminal Law Amendment Act (1932), S. 7 (1),

A I R 1951 Bom 459=1952 Cr L J 37.

CONSTITUTION OF INDIA (1950), Art. 19

21. Clause (1) (b)—Right to assemble peaceably and without arms.

——Art. 19 (1) (b)—Arms Act, Ss. 14 and 16 — Sections are not unconstitutional and void on ground that they infringe fundamental rights—See Arms Act (1878), S. 14,

A I R 1953 Madh B 236=1953 Cr L J 1409.

22. Right to take procession along highway.

——Art. 19 (1) (b), (3) — Unreasonable restrictions — Bihar Maintenance of Public Order Act (III of 1950) S. 9.

The restriction imposed by the Bihar Maintenance of Public Order Act so far as it related to public processions etc., was not unreasonable (Das and Sinha JJ.) Inderdeo Singh v. The State,

A I R 1951 Pat 242.

23. Clause (1) (c)—Right to form associations or unions

——Art. 19 (4) — Cochin Communist Party declared unlawful — No provision for judicial review — Restrictions not reasonable — See Travancore-Cochin Public Safety Measures Act (5 of 1950), S. 23,

A I R 1953 Trav-C 174=1953 Cr L J 915.

——Art. 19 (1) (c) — Provisions of Criminal Law Amendment Act, 1908, Ss. 15 and 16 do not offend Art. 19 (1) (c) —See Criminal Law Amendment Act (1908), S. 15.

A I R 1952 Assam 167=1952 Cr L J 1659.

——Art. 19 (1) (c) and (4)—Cochin Criminal Law Amendment Act (27 of 1124), S. 3 and notification under—Validity.

Section 3 of the impugned Act enacts a provision directly affecting one of the seven fundamental rights guaranteed by Art. 19 (1) viz., that recognised by Art. 19 (1) (c) to form associations or Unions. Legislation seeking to prevent activities of associations falling within the category of those mentioned in the impugned section is certainly legislation in the interests of public order or morality. Section 3, however, oversteps the bounds of permissible legislation and it has, therefore, to be declared to have become void when the Constitution came into force. When a law became void obviously a notification issued under that law would also become void. Once a prosecution is launched against an association declared to be unlawful the criminal Court cannot question the validity of the notification and it cannot therefore be said that the law gives persons hit by it an opportunity for a fair trial. Serious inroads are made regarding the right to property also. There is no time limit prescribed for the duration of a notification issued under S. 3. Government alone have authority to decide how long an association declared to be unlawful should continue to remain under the ban imposed by them. The cumulative effect of the absence of a provision for proper notice or sufficient publicity and the imposition of a time limit to seek a review of the Government order by the High Court is to make the law overstep the bounds of permissible legislation in such a manner that Cl. (4) of Art. 19 could not save it. In other words it offends Cl. (4) of Art. 19 as an unreasonable restriction on the exercise of the right conferred by Art. 19 (1) (c). (Koshi, Govinda Pillai and Joseph Vithayathil JJ.) George Chandayammury v. State,

A I R 1952 Trav-C 217 = 1952 K L T 178 = I L R (1952) Trav-C 1=1952 Cr L J 1066 (FB).

——Art. 19 (1) (c) and (4) — Right to form association — Criminal Law Amendment Act, 1908, S. 15 (2) (b) as amended in Madras — Restrictions on right to form associations or unions — Restrictions beyond scope of Art. 19 (4) — See Criminal Law Amendment Act (1908), S. 15 (2) (b),

A I R 1952 S C 196=1952 Cr L J 966 (SC).

CONSTITUTION OF INDIA (1950), Art. 19

23. Clause (1) (c)—Right to form associations or unions

——Reasonable restrictions—Elements to be taken into account in judging reasonableness — See Criminal Law Amendment Act (1908), S. 15 (2) (b),

A I R 1952 S C 196=1952 Cr L J 966 (SC).

——'Form'—Meaning of.

The word "form" in Art. 19 (1) (c) refers not only to the initial commencement of the association but also to the continuation of the association as such. (Rajamannar C. J. Satyanarayana Rao and Viswanatha Sastri JJ.) Row v. State of Madras,

A I R 1951 Mad 147=1951-1 M L J 628 = 52 Cr L J 515 (FB).

24. Labour and trade unions.

——Bombay Industrial Relations Act, 1947, Ss. 27A and 30 — No abridgment of right guaranteed by Art. 19 (1) (c) — See Bombay Industrial Relations Act (XI of 1947),

AIR 1951 Bom 105=52 Cr L J 779.

25. Clause (1) (d)—Freedom of movement.

——Art. 19 (1) (d) — Abducted Persons (Recovery and Restoration) Act is not inconsistent with Art. 19 (1) (d) —See Abducted Persons (Recovery and Restoration) Act (1949), Pre.

AIR 1953 All 613=1953 Cr L J 1384.

——Art. 19 (1) (d) (5) — Restrictions on right of free movement of habitual offenders—Restrictions are reasonable — See Madras Restriction of Habitual Offenders Act, S. 5,

AIR 1953 Mad 664=1953 Cr L J 1174.

——Art. 19 (5) — Restrictions imposed on a citizen's movement held not unreasonable — See Assam Maintenance of Public Order Act (5 of 1947) as amended by Assam Act (21 of 1950), S. 2,

AIR 1953 Assam 77=1953 Cr L J 657.

——Art. 19 (1) (d) and (e) — Nawanagar Pass Hazari Dhara Act, 2003 — Act is in contravention of Arts. 19 (1) (d) and (e) — See Nawanagar Pass Hazari Dhara Act of St. 2003 (1947AD),

AIR 1952 Sau 124=1953 Cr L J 21.

——Art. 19 (1) (d) and (5) — Freedom of movement—Restrictions by S. 27 (1), City of Bombay Police Act, 1902 are reasonable — See City of Bombay Police Act (4 of 1902), S. 27 (1),

AIR 1952 S C 221=1952 Cr L J 1147 (SC).

——Art. 19 (1) (d) and (e) and (5) — Freedom of movement — Interference by Government with practically every sphere of activity of citizens if preventive measure — See United State of Gwalior, Indore and Malwa (Madhya Bharat) Maintenance of Public Order Act (7 of 1949), Ss. 3, 5 and 11,

AIR 1952 M B 114=1952 Cr L J 1058.

——Restrictions on rights — Reasonableness of—Restrictions imposed under the U. P. Act 5 of 1949 on free movement and the right to reside and settle anywhere in India are not unreasonable — See U. P. Prevention of Crimes (Special Powers) (Temporary) Act (V [5] of 1949), S. 3 (2),

AIR 1951 All 718=52 Cr L J 1251.

——When the Legislature deprives a person of the right to move about and reside in any part of the Union of India, it is undoubtedly a restriction of his liberty and of his fundamental right — See Bombay District Police Act (IV of 1890), S. 46 (3),

AIR 1950 Bom 374=52 Cr L J 1059 (FB).

——Art. 19 (1) (d), (e)—Protection under, who can claim.

(Per Thadani C. J.) : A citizen, who has committed an offence or who is a delinquent in the eye of the law and whose crime or delinquency has rendered him liable to certain penalties or disabilities which can be and have been imposed upon him according to the procedure esta-

CONSTITUTION OF INDIA (1950), Art. 19 — 25. Clause (1) (d)—Freedom of movement

blished by law, cannot claim the protection of right stated in Arts. 19 (1) (d) and (e) of the Constitution if, as a result of such penalty or disability, he has been deprived wholly or partially of those rights — rights which are given to a citizen, and not to a citizen who has committed a crime or is a delinquent in the eye of law. (Thadani C. J. and Ram Labhaya J.) Israil Khan v. State,

AIR 1951 Assam 106 = I L R (1951) 3 Assam 181= 52 Cr L J 966.

——Art. 19 (1) (d) and (5) — Freedom of movement — Bihar Maintenance of Public Order Act, 1950—Restrictions on freedom of movement — Validity of Act—See Bihar Maintenance of Public Order Act (III of 1950), S. 2 (1) (b),

AIR 1951 Pat 322=52 Cr L J 610.

——Art. 19 (1) (d) and (5) — Right of free movement throughout India—Extent of — Act restricting the right —Validity — East Punjab Public Safety Act (V of 1949), S. 4 (1) (c).

Per Mukherjea J. — What Art. 19 (1) (d) of the Constitution guarantees is the free right of all citizens to go wherever they like in the Indian territory without any kind of restriction whatsoever whether it be from one State to another or from one place to another within the same State. Hence the provisions of Clause (c) of S. 4 (1), East Punjab Public Safety Act, 1949, represent an interference with fundamental right guaranteed by Art. 19 (1) (d) of the Constitution. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan and B. K. Mukherjea JJ.) Dr. N. B. Khare v. State of Delhi,

AIR 1950 S C 211 = 1950 M W N (Cr) 120 = 1950 S C R 519 = 86 C L J 83 = 1950 M W N 440 = 1950 A L J 506 = 1950 S C J 328 = 1950 A W R 514 = 52 Cr L J 550 (SC).

——Art. 19 (1) (d) and (e) — Freedom of movement— West Bengal Security Act, 1950, Ss. 21 and 22—Restrictions on rights conferred by Art. 19 (1) (d) and (e) — Sections ultra vires — See West Bengal Security Act, S. 21,

AIR 1951 Cal 322=52 Cr L J 327.

——Art. 19 (5) — Reasonableness—Restrictions on movements—See ibid, Art. 19 (1) (d),

AIR 1950 S C 27=51 Cr L J 1383.

——The detention which may be imposed upon a citizen by the Bengal Criminal Law Amendment Act (6 of 1930) amounts to restriction of free movement guaranteed as one of the fundamental rights by Art. 19 (1) (d). (Sen, K. C. Chunder and Lahiri JJ.) Sunil Kumar v. West Bengal Government,

AIR 1950 Cal 274=54 C W N 394=51 Cr L J 1110.

26. "Throughout the territory of India".

——Art. 19 (1) (d) and (5)—Right of free movement throughout India — Extent of right, whether means absence of inter-State restrictions — Act restricting the right — Validity — East Punjab Public Safety Act (V of 1949), S. 4 (1) (c).

Per 'Mukherjea J.' — The contention that the right of free movement throughout the Indian territory as enunciated in Art. 19 (1) (d) of the Constitution contemplates nothing else but absence of inter-State restriction, which might prevent citizens of the Indian Union from moving from one State to another and that a law which does not impose barriers of this kind cannot be said to be inconsistent with the fundamental right secured by this clause is not tenable, as such a restricted interpretation is not at all warranted by the language of the sub-clause. What Art. 19 (1) (d) of the Constitution guarantees is the free right of all citizens to go wherever they like in the Indian

CONSTITUTION OF INDIA (1950), Art. 19 — 26. "Throughout the territory of India"

territory without any kind of restriction whatsoever. They can move not merely from one State to another but from one place to another within the same State and what the Constitution lays stress upon is that the entire Indian teritory is one unit so far as the citizens are concerned. Clause (c) of S. 4 (1), East Punjab Public Safety Act, 1949 authorises the Provincial Government or the District Magistrate to direct any person to remove himself from any area and prohibit him from entering the same. On the face of it, such provision represents an interference with fundamental right guaranteed by Art. 19 (1) (d) of the Constitution. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan and B. K. Mukherjea JJ.) Dr. N. B. Khare v. State of Delhi

AIR 1950 S C 211=1950 M W N 440=86 C L J 83= 1950 A L J 506 = 1950 S C J 328 = 1950 A W R (HC) 514 = 1950 M W N (Cr) 120 = 1950 S C R 519 = 52 Cr L J 550 (SC).

——Free movement of Indian citizen throughout Indian Union — Constitution of India, Sch. VII, List I, Entry 81,

Per 'Kania C. J., Mukherjea J. and Das J. (Per Fazl Ali J. Contra) — The words "throughout the territory of India' in Art. 19 (1) (d) indicate that free movement from one State to another within the Union is protected so that Parliament may not by a law made under Entry 81 in List I of Sch. VII curtail it beyond the limits prescribed by Cl. (5) of Art. 19. It is a protection against provincialism. It has nothing to do with the freedom of the person as such. (Kania C. J., Fazl Ali, Patanjali Sastri Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras

AIR 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2M L J 42 = 63 M L W 638 = 1950 S C J 174 = 1950 M W N 495 = 51 Cr L J 1383.

——Words "throughout the territory of India" — Meaning.

The words "throughout the territory of India" in Art. 19 (1) (d) were used because the Constitution is not guaranteeing to the citizen any right of free movement outside its territories. It was saving passport restrictions. Further, those words were used to indicate that the Act was not giving a citizen any absolute right to enter the territory of India from outside. (Sen, K. C. Chunder and Lahiri JJ.) Sunil Kumar Bose v. The Chief Secretary to the Government of the West Bengal

AIR 1950 Cal 274 = 54 C W N 394=51 Cr L J 1110,

27. Externment and internment orders.

——No question of deportation of Indian citizen under Abducted Persons (Recovery and Restoration) Act— See Abducted Persons (Recovery and Restoration) Act (1949), Pre.

AIR 1953 All 613 = 1953 Cr L J 1384.

——Arts. 19 (5) and 226 — Long-standing custom in Garo Hills that it is in interest of people there that no Nepali or foreigner should be allowed to live in Garo village without Deputy Commissioners' permission — Deputy Commissioner after due inquiry coming to conclusion that petitioner's living in such village was not in interest of people of the village —Expulsion order passed against petitioner — Order held reasonable and covered by cl. (5) of Art. 19. (Deka J.) Dhan Bahadur Ghorti v. State

AIR 1953 Assam 61 = ILR (1952) 4 Assam 320 = 1953 Cr L J 495.

——Art. 19 (1) (d), (e), (f), (g) and (6)—Section 7 of Abducted Persons (Recovery and Restoration) Act (1949) —Validity — (Abducted Persons (Recovery and Restoration) Act (1949), S. 7) — (Constitution of India, Arts. 51, 245, 253 and Sch. VII, List I, Entries 18 and 19.)

CONSTITUTION OF INDIA (1950), Art. 19 — 27. Externment and internment orders

(Per 'Bhandari J.): As sub-clauses (d) and (e) of Art. 19, were enacted solely with the object of preventing provincialism and as sub-clause (f) was also presumably enacted for achieving the same object, it is obvious that the provisions of the Abducted Persons (Recovery and Restoration) Act of 1949 cannot be said to be in conflict with the provisions of any of these sub-clauses, for the Act of 1949 does not promote or have the effect of promoting provincialism in any shape or form.

It is fundamental right of a citizen of India to stay within the territory of India, for clause (g) of Art. 19 (1) declares in express terms that he has a right to practise any profession or to carry on any occupation, trade or business. This right would be meaningless if it does not include a right to stay in the country, for a person cannot exercise this right in a country where he cannot live. If the Constitution has stated expressly or by necessary implication that a citizen shall not be expelled from India it would not be open to Parliament to frame a statute so as entirely to defeat the object of the Constitution by directing that he shall be expelled under escort of the police. Nor is it open to Government to state that the taking away of a citizen from India to Pakistan is no worse than taking a prisoner from one prison to another. It is a well-known legal maxim that whatever is prohibited by law to be done directly cannot legally be effected by an indirect and circuitous contrivance. For all practical purposes, a person who is "conveyed out" of India under the provisions of Section 7 is deprived of the rights guaranteed to her by Art. 19 (1) (g) of the Constitution. It is true that Entries 18 and 19 of the Union Legislative List empower Parliament to make laws in regard to "extradiction' and "admission into and emigration and expulsion from India", but these laws must be made in conformity with the provisions of Part III and must not be inconsistent with or repugnant to the fundamental rights guaranteed by the said Part. It is not open to a Legislature to authorise expulsion of a person on the ground only that power to expel has been conferred by one or other of the three Legislative Lists. The Abducted Persons (Recovery and Restoration) Act of 1949 cannot be deemed to be valid on the ground that it was enacted in pursuance of an agreement between the Government of India and Pakistan. There is no provision in the Constitution of India which declares that all treaties to which the Government of India is a party shall be vested with statutory authority. Neither of Arts. 51 and 253 empowers Parliament to make a law which can deprive a citizen of India of the fundamental rights conferred upon him. In so far as the Act of 1949, authorises the deportation of abducted persons to Pakistan it cannot be said to impose "reasonable restrictions" on the rights conferred by Art. 19. Even extraordinary conditions do not create or enlarge constitutional powers and cannot justify governmental action outside the sphere of constitutional authority. Deportation of citizen to a place outside the territory of India temporarily or permanently is tantamount to deprivation of the rights guaranteed by Art. 19 (1) (g). As the provisions of section 7 authorise the deportation of a citizen from India, these provisions must be deemed to be inconsistent with the provisions of Art. 19 (1) (g) of the Constitution. (Bhandari, Khosla and Harnam Singh JJ.) Ajaib Singh Lehna Singh v. The State of Punjab

AIR 1952 Punj 309 = 54 P L R 260 = I L R (1952) Punj 381 = 1952 Cr L J 1313 (FB).

——Arts. 19, 21—Externment Order—Validity — Assam Opium Prohibition Act, XXIII of 1947, S. 17.

Even if externment may be regarded as amounting to deprivation of personal liberty inasmuch as it prevents the individual externed from moving freely throughout the territory of India, the individual concerned, if he happens to be a citizen of India, has got an additional right where his freedom to move freely throughout the territory of India is taken away. Assuming then that the case of externment under S. 17 of the Assam Opium Prohibition Act can be brought within the scope of Art. 21, it would be open to a citizen to claim that the impugned legislation should be examined in the light of tests laid down by Cl. (5) of Art. 19. (Thadani C. J. and Ram Labhaya J.) Israil Khan v. The State

A I R 1951 Assam 106=I L R (1951) 3 Assam 181= 52 Cr L J 966.

CONSTITUTION OF INDIA (1950), Art. 19 — 27. Externment and internment orders

——Art. 19 (5) — East Punjab Public Safety Act (V of 1949), S. 4 (3)—Order of externment for three months—Period whether unreasonable — Possibility of abuse of power—Whether ground for impugning an Act.

(Majority view; Mukherjea and Mahajan JJ. dissenting) —The period of three months for which an order of externment may be passed by a District Magistrate under S. 4 (3), East Punjab Public Safety Act, 1949, is not prima facie unreasonable even though the externee has no remedy during that time. The further extension of the externment order beyond three months may be for an indefinite period but in that connection the fact that the whole Act is to remain in force only up to 14th August 1951 cannot be overlooked. Moreover, this whole argument is based on the assumption that the Provincial Government when making the order will not perform its duty and may abuse the provisions of the section. It is improper to start with such an assumption and decide the legality of an Act on that basis. Abuse of the power given by a law sometimes occurs; but the validity of the law cannot be contested because of such an apprehension.

Per Mukherjea J.—There is absolutely no limit under S. 4 (3) as to the period of time during which an externment order would remain in force if the order is made by the Provincial Government. The Provincial Government has been given unlimited authority in this respect and they can keep the order in force as long as they choose to do so. As regards orders made by a District Magistrate, the period indeed has been fixed at three months but even here the Provincial Government is competent to extend it to any length of time by means of a special order. The law does not fix any maximum period beyond which the order cannot continue; and the fact that the Act itself would expire in August 1951 is not a relevant matter for consideration in this connection at all. The provision of sub-s. (3) of S. 4 is therefore manifestly unreasonable and cannot be supported on any just ground. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan and B. K. Mukherjea JJ.) Khare, N. B. v. State of Delhi

A I R 1950 S C 211=1950 M W N 440=86 C L J 83 =1950 A L J 506=1950 S C J 328=1950 A W R (H C) 514 = 1950 M W N (Cr) 120 = 1950 S C R 519 = 52 Cr L J 550 (SC).

——Art. 19 (5) — East Punjab Public Safety Act (V of 1949), S. 4 (1) (c) — Power to order externment given to District Magistrate — Delegation whether amounts to unreasonable restriction within Art. 19 (5).

Per Kania C. J. — The contention that S. 4, East Punjab Act, 1949, which gives the power to make an order of externment to the District Magistrate whose satisfaction is final and not open to review by the Court, contained an unreasonable restriction on the exercise of the citizens' right within the meaning of Art. 19 (5) of the Constitution and is therefore invalid is not sound as it is not legislative delegation. The desirability of passing an individual order of externment against a citizen has

CONSTITUTION OF INDIA (1950), Art. 19—27. Externment and internment orders

to be left to an officer. In the Act such a provision cannot be made. The satisfaction of the officer thus does not impose an unreasonable restriction on the exercise of the citizens' right.

Per B. K. Mukherjea J. — Under Cl. (5) of Art. 19 the reasonableness of a challenged legislation has to be determined by a Court and the Court decides such matters by applying some objective standard which is said to be the standard of an average prudent man. Judged by such standard which is sometimes described as an external yard stick, the vesting of authority in particular officers to take prompt action under emergent circumstances, entirely on their own responsibility or personal satisfaction, is not necessarily unreasonable. One has to take into account the whole scheme of the legislation and the circumstance under which the restrictive orders could be made. Preventive orders by their very nature cannot be made after any judicial enquiry or trial. The provision of S. 4 (1) (c), East Punjab Public Safety Act, cannot therefore be pronounced to be unreasonable, simply because the order could be passed by the Provincial Government or the District Magistrate on their own personal satisfaction and not on materials which satisfy certain objective tests. (Kania C. J., Patanjali Sastri, Mahajan and Mukherjea JJ.) Dr. N. B. Khare v. State of Delhi

A I R 1950 S C 211=1950 M W N 440=1950 A L J 506=86 C L J 83=1950 S C J 328=1950 A W R (H C) 514 = 1950 M W N (Cr) 120 = 1950 S C R 519 = 52 Cr L J 550 (SC).

——Art. 19 (1) (d), (e) and (5) — Externment order — Bombay Public Security Measures Act, 1947, S. 2 (1) (b) —Power to issue externment order under—Validity of—See Bombay Public Security Measures Act (VI of 1947), S. 2 (1) (b).

A I R 1950 Bom 363=52 Cr L J 120 (F B).

——Restrictions on rights — Reasonableness of—S. 2 (1) (b), Bombay Public Security Measures Act.

Chagla C. J. — The Constitution has made the Courts the custodian of the fundamental rights of citizens and it is in that spirit and in that capacity that the Court must look upon the nature of the restriction. Even though the absence of a particular safeguard may not be the violation of a fundamental right as such even so the absence of that safeguard may result in the restriction not being a reasonable restriction. The Bombay Public Security Measures Act does not prescribe the period for which an externment order under S. 2 (1) (b) can be passed. The person against whom such an order is to be passed has no right to be heard before the order is passed. The authority is under no obligation to tell him what he is charged with or the grounds which make it necessary for the Government to ask him to leave his home town. The restriction imposed on the fundamental right is not a reasonable restriction.

Bavdekar J. — If an existing law which restricts the freedom referred to in Art. 19 (1) must be reasonable it is obvious that it must provide that the person whose right is restricted must be given an opportunity, may be after an interim order restricting his right is passed ex parte, of showing cause as to why an order under the Act should not be passed. The right of hearing before condemnation is admittedly a component of the rights which taken together constitute rights of natural justice and in case legislation which restricts the fundamental rights has got to be pronounced to be reasonable it must give the person whose freedom is restricted an opportunity to be heard. The manner in which he is to be heard is a different matter.

Shah J. (Contra). — There is nothing in the Constitution of India which enables the Court to declare a piece

CONSTITUTION OF INDIA (1950), Art. 19—27. Externment and internment orders

of legislation as void merely because the Legislature thought it expedient to provide that the satisfaction of an executive officer instead of a Court should be a condition precedent to the issue of an order intended to protect either the security of the State or the interest of the general public. In terms the order passed under S. 2 (1) (b) of the Bombay Public Security Measures Act may be unlimited in duration but it is not necessary that the executive officer who passes the order must necessarily pass an order of unlimited duration, nor can the order really be said to be of unlimited duration in view of the fact that the parent Act under which the orders are passed is necessarily of a temporary character passed in order to meet an emergency and the effectiveness of the order would remain so long as the statute under which the orders are passed would remain operative. The sole ground of absence of a provision for being heard either before or after the passing of the order of externment which is less drastic than an order of detention cannot render the provision of S. 2 (1) (b) void or inoperative from 26-1-1950. The Constitution has not provided for a right of being heard before any restriction on any fundamental right is placed and in the absence of such a provision made expressly or by necessary implication a provision which enables an externment order to be passed cannot be deemed to be void merely on the ground that it may be regarded as contrary to the rules of natural justice. (Chagla C. J., Bavdekar and Shah JJ.) Teshingbhai v. Emperor

A I R 1950 Bom 363=52 Bom L R 544=I L R (1950) Bom 539=1950 Bom Cr C 188=52 Cr L J 120 (F B).

——Externment order — Endangering "communal harmony"—Order of externment passed is illegal—See West Bengal Security Act XIX of 1950, S. 2 (9) (a) (i).

A I R 1951 Cal 424.

——Art. 19 (5) — Externment order — Power of Government — Delegation of power — Validity of — See West Bengal Security Act (XIX of 1950), S. 38.

A I R 1951 Cal 3.

——Art. 19 (1) (d) and (e) — Externment order—Unreasonable restrictions — See Orissa Maintenance of Public Order Act (X of 1950), S. 2 (1) (b).

A I R 1951 Orissa 86.

28. Restrictions on entry into India.

——Section 4, Influx from Pakistan Control Act is not unconstitutional—See Influx from Pakistan Control Act (1949), S. 4.

A I R 1952 Kutch 91=1952 Cr L J 1759.

——Art. 19 (1) (d) — Entry in India from Pakistan—Conditions in permit — Reasonableness—See Influx from Pakistan (Control) Act (1949), S. 4 (a).

A I R 1952 Cal 837=1952 Cr L J 1683.

——Art. 19 (1) (d) and (e) — Restrictions on entry into India—Influx from Pakistan (Control) Act, 1949—Validity —See ibid, Art. 13.

A I R 1952 All 257=1952 Cr L J 553.

——Art. 19 (1) (d) — Restrictions on entry into India—Influx from Pakistan (Control) Act — Validity of — See ibid, Art. 13.

A I R 1951 Kutch 38=52 Cr L J 585.

——Restrictions on entry into India — Restrictions imposed by the Influx from Pakistan (Control) Ordinance and by the Act are not inconsistent with Art. 19—See Influx from Pakistan (Control) Act (1949), S. 7.

A I R 1951 Nag 185=52 Cr L J 74.

29. Clause (1) (e)—Freedom of residence and settlement.

——Art. 19 (1) (e)—Abducted Persons (Recovery and Restoration) Act is not inconsistent with Art. 19 (1) (e)— See

CONSTITUTION OF INDIA (1950), Art. 19 — 29. Clause (1) (e)—Freedom of residence and settlement

Abducted Persons (Recovery and Restoration) Act (1949), Pre.

A I R 1953 All 613=1953 Cr L J 1384.

——Art. 19 (1) (e) — Object of — Prevention of provincialism—See ibid, Art. 19 (1) (d).

A I R 1952 Punj 309=1952 Cr L J 1313 (F B).

——Arts. 19, 21 and Sch. VII, List I, Items 19 and 14—Abducted Persons (Recovery and Restoration) Act (1949) —Validity.

(Per Khosla and Harnam Singh JJ.) — The right conferred by Sub-clauses (a), (d) and (e) of Art. 19 (1) of the Constitution is a very limited right and the question of personal liberty is dealt with in Art. 21. The right under sub-cl. (e) is also a restricted one and this right will not be affected by depriving a citizen of his total liberty. Therefore, imprisonment, detention or confinement will not be treated as having taken away any of the seven rights enumerated in Cl. (1) of Art. 19. All that the Abducted Persons (Recovery and Restoration) Act does is to deprive the abducted person of his personal liberty from the moment he is taken into custody and taken to the camp up to the time when he is allowed to go away or is conveyed outside India. The law, therefore, does not directly take away any of the fundamental rights, but even if it were conceded that the abducted person is deprived of the right of free residence the Act will not be declared invalid because the right of residence conferred by sub-cl. (e) is a very narrow right. Since the Act does not come within the ambit of Art. 19 (1), the question whether the restrictions imposed are reasonable or if they are in the interests of general public does not arise. There is no provision in the Constitution against a citizen being sent out of India. Indeed, item 19 read with item 14 of List I of the Seventh Schedule would appear to indicate that the Union Parliament is competent to pass Laws whereby the citizens of India may be expelled from the country in accordance with treaties and agreements with foreign countries. There is nothing in the Constitution whereby a citizen cannot be deprived of his rights as a citizen or be deported from India. There is nothing in the Constitution which forbids an abducted person from being conveyed out of India in accordance with the provisions of the Act. (Bhandari, Khosla and Harnam Singh JJ.) Ajaib Singh Lehna Singh v. The State of Punjab,

A I R 1952 Punj 309 = 54 P L R 260 = I L R (1952) Punj 381=1952 Cr L J 1313 (FB).

——Art. 19 (1) (d) and (e) — Freedom of residence and settlement.

The fundamental right which is claimed under the Article is the right to claim free movement throughout the territory of India and to reside and settle in any part of the territory of India. Therefore the restriction within the meaning of Clause (5) of the Article would apply to movements within the State and not outside it is obviously fallacious. (Chagla C. J., Bavdekar and Shah JJ.) Abdul Rahiman v. Emperor,

A I R 1950 Bom 374=52 Bom L R 558=I L R (1950) Bom 564 = 20 Bom Cr C 202 = 52 Cr L J 1059 (F B).

——Arts. 19 (1) (e), 10 and 226—Married woman—Order for deportation — Right to relief—Bihar Administration of Evacuee Property Ordinance (III of 1949), S. 11.

Where an order for deportation is served on a person that person, if he can make out a prima facie case that he is a citizen and not an alien, is entitled to a writ of certiorari and on the return to that writ being made, to a judicial determination of the question of his status.

A woman born in India and married to a citizen in India taking up temporary residence in Pakistan for medical treatment would neither fall under cl. (i) of the definition of "evacuee" contained in cl. (c) of S. 2, Bihar Administration of Evacuee Property Ordinance, 1949, nor under cl. (ii) as the word "resident" occurring there must be construed as meaning a person who has taken up his or her residence in Pakistan permanently.

Even if that person comes within the definition of "evacuee" in the Ordinance, nevertheless, she is also a citizen of India and as such, is entitled to remain in India. If, while in Pakistan, her conduct was such as to create suspicions as to her loyalty to the Indian Union, she may, on her return to India be subjected to such restrictions on her movements as Parliament may consider advisable and not be deported.

Per Sarjoo Prosad J.—A woman acknowledged by her husband as his wife can claim her husband's domicile, though it is not clear in what form that marriage was solemnised. (Shearer and Sarjoo Prasad JJ.) Sayeedah Khatoon v. State of Bihar,

A I R 1951 Pat 434=30 Pat 21.

30. Clause (1) (f)—Right to acquire, hold and dispose of property.

——Art. 19 (1) (f)—Essential Supplies (Temporary Powers) Act, 1946, S. 3 (2) (f)—Whether invalid—See Essential Supplies (Temporary Powers) Act (1946), S. 3 (2) (f)

AIR 1953 Orissa 277=1953 Cr L J 1601.

——Art. 19 (1) (f) — Arms Act, Ss. 14 and 16 are not unconstitutional and void on ground that they infringe fundamental rights—See Arms Act (1878), S. 14

AIR 1953 Madh B 236=1953 Cr L J 1409.

——Art. 19 (5)—Regulating possession and sale of liquor in the general public interest — See Punjab Intoxicating Spirituous Preparations, Import, Export, Transport, Possession and Sale Rules (1952)

AIR 1953 Punj 77=1953 Cr L J 549.

——Art. 19 (6)—Transport of rice—Permit to be obtained for—Reasonable restriction—See ibid, Art. 19 (1) (f)

AIR 1953 Orissa 53=1953 Cr L J 544.

——Art. 19 (1) (f) (g) and (6)—Explosives Act (1884), not ultra vires.

Explosives should not be manufactured and explosive substances should not be stocked except under conditions which would not be detrimental to the public safety, health, and convenience. Therefore, the restriction imposed on the acquisition, holding and disposal of property, that is to say, explosives and explosive substances and the right to practise one's profession, trade, etc., in manufacturing explosives are restrictions permissible under cl. (6) of Art. 19 of of the Constitution. Consequently, the Explosives Act is not ultra vires of the Constitution and can be justified under the proviso in Art. 19 (6) of the Constitution. The Explosives Act does not constitute a violation of the freedom guaranteed under clauses (f) and (g) of Art. 19 (1) of the Constitution. (Ramaswami J.) Sundara Nadar, In re

AIR 1953 Mad 142=1952-2 M L J 748=1952 M W N 906=1952 M W N (Cr) 262=1953 Cr L J 333.

——Art. 19 (1) (f)—Object of—Prevention of provincialism —See ibid, Art. 19 (1) (d)

AIR 1952 Punj 309=1952 Cr L J 1313 (FB).

——Arts. 19 (1) (f) and (g) and (5) — Bihar Agriculturists Levy Order (1950)—Validity.

The substantive provision in the Bihar Agriculturists Levy Order 1950 which imposes on a person a restriction in the exercise of his fundamental right to acquire, hold and dispose of property is contained in Cl. (5) of the Order, which requires him to deliver, on demand, such quantity of foodgrains as may be specified in the order making the demand. It cannot, however, be said that

CONSTITUTION OF INDIA (1950), Art. 19 — 30. Clause (1) (f) — Right to acquire, hold and dispose of property

this was an unreasonable restriction, or a restriction which was not imposed in the interests of the general public. It cannot be said that if under this order arbitrary and unreasonable action may conceivably be taken, the order must, on that ground, be held to be an invalid order. There is some risk of abuse when wide power is committed to a large body of men, but the constitutional validity of a law cannot be contested on the ground of such apprehension. It is, therefore, impossible to hold that either the substantive or procedural part of the Bihar Agriculturists Levy Order is unreasonable, that is, not necessary or appropriate for the accomplishment of the object aimed at. (Shearer, Ramaswami and Sarjoo Prosad JJ.) Mohammad Anzar Hussain v. State of Bihar

AIR 1952 Pat 220=31 Pat 203=1952 Cr L J 710.

——Art. 19 (1) (f)—Foodgrains (Disposal and Acquisition) Order, 1947, S. 3 (1) — No imposition of unreasonable restrictions — See Essential Supplies (Temporary Powers) Act, S. 3 (1)

AIR 1952 Cal 502.

——Criminal P. C., Ss. 523 and 524 — Denial by, to acquire, etc.—See Art. 14

AIR 1951 Madh B 159=52 Cr L J 1533.

31. "Property".

——Art. 19 (1) (f) — "Property" includes "gun"—What constitutes "property" explained. (Subba Rao J.) P. Narasimha Reddy v. District Magistrate, Cuddapah

AIR 1953 Mad 476=1953 M W N 168=1953-1 MLJ 418=1953 Cr L J 917.

——Art. 19 (1) (f) — "Property" — Intoxicating liquor whether "property"—Consumption of intoxicating liquor not in public interest— See C. P. and Berar Prohibition Act (VII of 1938), S. 1

AIR 1951 Nag 58=52 Cr L J 1140 (FB).

32. "Hold."

——Art. 19 (1) (f)—"Hold," meaning of—Act of requisitioning by Govt. whether violates Art. 19 (1) (f) — C. P. and Berar Accommodation (Requisition) Act (63 of 1948), S. 3—Words and Phrases.

The word "hold" in Art. 19 (1) (f) can have no other meaning than "own" or "be the owner of." By the act of requisitioning of premises by the Govt. under powers given by the provisions of the C. P. and Berar Accommodation (Requisition) Act the ownerships of the owner is not affected. For, despite requisitioning, the owner still continues to have the power to deal with his property in any manner he likes, except letting it out or be in possession thereof. Such an abridgement of his rights does not, however, amount to a violation of Art. 19 (1) (f). (Mangalmurti and Mudholkar JJ.) Manohar v. G. G. Desai

AIR 1951 Nag 33 = 1951 N L J 346 = I L R (1951) Nag 791.

33. Prohibition Law.

——Art. 19 (1) (f) — Distinction between prohibition and regulation of intoxicating preparations — See Punjab Intoxicating Spirituous Preparations, Import, Export, Transport, Possession and Sale Rules (1952)

AIR 1953 Punj 77=1953 Cr L J 549.

——Art. 19 (1) (d), (e) and (g)—Restrictions on rights—Reasonableness of — Clauses (b) and (c) and cl. (2) of S. 136 of Bombay Prohibition Act (25 of 1949) — See Bombay Prohibition Act (XXV of 1949), S. 136 (2).

AIR 1951 Bom 210=52 Cr L J 80 (FB).

34. Clause (1) (g) — Right to practise any profession or to carry on any occupation, etc.

——Art. 19 (1) (g)—Abducted Persons (Recovery and Restoration) Act is not inconsistent with Art. 19 (1) (g)—See

CONSTITUTION OF INDIA (1950), Art. 19 — 34. Clause (1) (g)—Right to practise any profession or to carry on any occupation, etc.

Abducted Persons (Recovery and Restoration) Act (1949), Preamble

AIR 1953 All 613=1953 Cr L J 1384.

——Art. 19 (6) — Rajastan Dramatic Performance and Entertainments Ordinance, 1949, Ss. 3, 4, 6 and 8 — No reasonable procedure prescribed — Unreasonable restrictions—See Rajastan Dramatic Performances and Entertainments Ordinance (29 of 1949), S. 3

AIR 1953 Raj 162=1953 Cr L J 1283.

——Art. 19 (1) (g) — Bye-law regulating offensive and obnoxious trades and practices—See U. P. District Boards Act (10 of 1922), S. 174

AIR 1953 All 95=1953 Cr L J 332.

——Art. 19 (1) (g) — Abducted Persons (Recovery and Restoration) Act, 1949, S. 7 — Person "conveyed out" of India — Deprivation right guaranteed under Art. 19 (1) (g)—See ibid, Art. 19 (1) (d)

AIR 1952 Punj 309=1952 Cr L J 1313 (FB).

——Arts. 19 and 21 — Detention under S. 4 of Abducted Persons (Recovery and Restoration) Act (1949)—(Abducted Persons (Recovery and Restoration) Act (1949), S. 4).

The provisions of Article 19 are subject to the provisions of Art. 21; the provisions of Art. 19 (1) (d), (e) and (f) are subject also to the provisions of Art. 19 (5) and the provisions of Art. 19 (1) (g) are subject also to the provisions of Art. 19 (6). In other words, the rights conferred by sub-clauses (d), (e), (f) and (g) can be interfered with 'partially' if the appropriate legislature decides to impose "reasonable restrictions" in the interests of the general public and 'totally' if the person on whom the right is conferred is arrested and put in confinement according to procedure established by law.

It was within the competence of the Central Legislature in the year 1949 to enact the Abducted Persons (Recovery and Restoration) Act, and a measure of this kind can doubtless be enacted by Parliament today. This Act does not deal with punitive or preventive detention, but with a new kind of detention which may be called 'protective detention.' The Courts are at liberty to examine the various provisions of this "existing law" with the object of determining whether any of the provisions have encroached on the elementary rights guaranteed by Chapter III of the Constitution. A citizen of India who is detained in a camp under S. 4 cannot complain that he has been deprived of the rights guaranteed by Art. 19. (Bhandari, Khosla and Harnam Singh JJ.) Ajaib Singh Lehna Singh v. The State of Punjab,

AIR 1952 Punjab 309= 54 P L R 260 = ILR (1952) Punjab 381=1952 Cr L J 1313 (FB).

——Art. 19 (1) (g) and (6)—Carry on any occupation, etc. — Rajasthan Food Grains Control Order, 1949, Cl. 25 — Freezing stock of dealer— Paralysing trade or business— Infringement of fundamental right —See Rajasthan Food Grain Control Order (1949), Cl. 25.

AIR 1952 Raj 74=1952 Cr L J 732.

——Art. 19 (1) (g) — Bengal Foodgrains (Disposal and Acquisition) Order 1947, S. 3 (1) — No imposition of unreasonable restriction—See Essential Supplies (Temporary Powers) Act, S. 3 (1).

AIR 1952 Cal 502.

——Art. 19 (1) (g)—Carry on any occupation, etc.—W. B. Hindu Social Disabilities Removal Act, 1948, S. 3 (c) — Carrying on profession of barber—Restrictions in interests of general public—See West Bengal Hindu Social Disabilities Removal Act (XXXVII of 1948), Preamble and S. 3 (c).

AIR 1951 Cal 167=52 Cr L J 1399.

35. Legal profession—Restrictions as to

——Art. 19 (1) (g) and (6) — Any profession etc. — Legal Practitioners Act, 1879, Ss. 13 (e), 22 (d) and 36 (6) con-

CONSTITUTION OF INDIA (1950), Art. 19 —

35. Legal profession — Restrictions as to

cerning toutism — Reasonable restriction in the interests of the general public— See Legal Practitioners Act (1879), Ss. 36 (6), 13 (e).

AIR 1952 All 491=1952 Cr L J 910.

——Art. 19 1) (g)—Practising legal profession—Unreasonable restrictions on — See Hyderabad Legal Practitioners Act (6 of 1318F) S. 3.

AIR 1951 Hyd 140.

36. Licence, requirement of

——Art. 19 (5)— Restrictions created by Rule 43, framed under Arms Act on fundamental rights to hold a gun are reasonable restrictions and in interest of public— Refusal to grant license should not be arbitrary—Discretion should be judicial—Order refusing license held arbitrary —(Arms Act (1878), S. 17 — Rules under, R. 43). (Subba Rao J.) P. Narasimha Reddy v. District Magistrate, Cuddapah,

AIR 1953 Mad 476=1953 M W N 168=1953-1 M L J 418=1953 Cr L J 917.

——Selling or storing for selling cloth — Licence required for benefit of general public— See C. P. and Berar Cotton Trade Regulation Order (1948), cl. 3.

AIR 1953 Nag 141=1953 Cr L J 801.

37. Trade restrictions

——Art. 19 (1) (g) and (6) — Forbidding carriage of some foodgrains from one place to another—Reasonable restrictions— See U. P. Foodgrains Movement Control Order (1949), cl. 3 (vii).

AIR 1953 All 545=1953 Cr L J 1269.

——Art. 19 (1) (f), (6) — Notification No. 41668 S. T. dated 15-11-1950 of the Government of Orissa in the Department of Supply and Transport—Validity.

The object of the notification was to conserve the stock of rice in Sambalpur district so that the procurement policy of the Government may not be jeopardised and rapid depletion may not take place due to unrestricted transport across the border. The notification does not completely prohibit the transport of rice; but merely says that a permit should be obtained from the authority concerned before any such transport can take place. Considering the nature of the evil that was sought to be remedied the restrictions imposed were not unreasonable. (Narasimham J.) Sheonath v. State,

AIR 1955 Orissa 53=1953 Cr L J 544.

——Art. 19 (1) (f) and (g) — Right to dispose of or transport cotton textiles —Requirement of permit—Reasonable restrictions — See Cotton Textile (Control of Movement) Order, Cl. 3.

AIR 1953 Nag 58=1953 Cr L J 481.

——Art. 19 (1) (f) and (g) — Restriction on rights—Reasonableness of—Orissa Kendu Leaves (Control and Distribution) Order, 1949 —Restrictions imposed by Order are reasonable and in public interest — See Orissa Essential Articles Control and Requisitioning (Temporary Powers), Act (1 of 1947), S. 2 (a).

AIR 1952 Orissa 260=1952 Cr L J 1354.

38. Industrial Disputes Act.

——Art. 19 (1) (f), (g) — Award without consent of employers—Industrial Disputes Act (1947), S. 15.

It cannot be said that Act (XIV of 1947), in so far as it makes the employers bound to act in accordance with the terms of an award, which was passed without the employers being consenting parties to the reference, and in spite of the protests of the employers is ultra vires by reason of Art. 19 (1) (f) and (g) of the Constitution. There is no restriction on the carrying on of a trade or business by the cinema employers, as a result of the

CONSTITUTION OF INDIA (1950), Art. 19 —

38. Industrial Disputes Act

Industrial Disputes Act. (Govinda Menon and Basheer Ahmed Sayeed J.) C. P. Sarathy v. State of Madras,

AIR 1951 Mad 191=1951-1 M L J 527=1951 M W N 445=1951 M W N (Cr) 125 = 64 M L W 620 = 52 Cr L J 744.

39. Right to strike

——Art. 19 (1) (a) and (c) — Right to strike— S. 27, Ind. Disp. (A. T.) Act does not place unreasonable restriction on right to strike — See Industrial Disputes (Appellate Tribunal) Act (1950), S. 27.

AIR 1951 Bom 105=52 Cr L J 779.

40. Preventive detention.

——Art. 19 (1) — Applicability to preventive detention legislation.

The principle of reasonable restriction or reasonableness of law imposing restriction upon the liberty of citizens has no application to the laws prescribing preventive detention. (Ray C. J. and Narasimham J.) T. V. Narasimhamurty v. State

A I R 1951 Orissa 251 = 17 Cut L T 109 = I L R (1951) Cut 387=52 Cr L J 679.

——Art. 19 (1) (d) and (5)—Preventive detention—Public Safety enactments — Validity of S. 2 (1) (b), Bihar Maintenance of Public Order Act (3 of 1950) — See Bihar Maintenance of Public Order Act (3 of 1950), S. 2 (1) (b)

A I R 1950 Pat 322=52 Cr L J 610 (FB).

——Per Kania C. J., Mukherjea and Das JJ.—Article 19 has no application to a legislation dealing with preventive or punitive detention as its direct object. (Kania C. J., Fazi Ali Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

——The detention which may be imposed upon a citizen by the Bengal Criminal Law Amendment Act (6 of 1930) amounts to restriction on the right of free movement and the restriction is neither reasonable nor in the interest of the general public considering the fact that the Act is not an emergency measure. The Act gives the Provincial Government the power to detain persons if it forms a certain opinion and neither the Court nor any other authority is entitled to question the reasonableness or the validity of such question. The Act renders a citizen liable to commitment to jail custody even though he has no sinister object or motive and merely because he was at any time a member of an association the objects of which were unknown to him. The Act provides for the commitment to prison of a citizen merely because he is a subject of instigation although he may not have any inclination to do the act instigated. By the Act a person may be kept in custody for an indefinite period. The length of that period is left to the sole discretion of the Government. Although the order of the Government is to be submitted for opinion and report to two judges the Government is not bound to accept that opinion on report. The person detained has no right to place his case before these two judges either in person or through his pleaders nor is he or any one else given the right to know anything about the proceedings before the judges or the report furnished by them. For these reasons the restrictions imposed by the Act are not reasonable and are not in the interest of the public. The Act is also in direct conflict with the provisions of Art. 22 (4). (Sen, K. C. Chunder and Lahiri JJ.) Sunilkumar v. West Bengal Government

A I R 1950 Cal 274=54 C W N 394=51 Cr L J 1110 (SB).

CONSTITUTION OF INDIA (1950)

—Art. 20.

SYNOPSIS

1. Scope and applicability.
2. Ex post facto laws—Clause (1).
3. "Double jeopardy" for same offence — Clause (2).
4. Accused not to be compelled to be witness against himself— Clause (3).

1. Scope and applicability.

——Arts. 20 to 22—Primarily deal with penal and other laws under which personal safety or liberty can be taken away—Art. 19 gives list of individual liberties— See ibid, Art. 19

A I R 1950 S C 37=51 Cr L J 1383 (SC).

2. Ex post facto laws—Clause (1).

——Art. 20 (1) — Greater penalty—Offence committed in 1947 — Sentence of compensatory fine under S. 9 (1), W. B. Criminal Law Amendment (Special Courts) Act (21 of 1949) set aside being in violation of Art. 20 (1)—See West Bengal Criminal Law Amendment (Special Courts) Act (21 of 1949), Ss. 4 and 9 (1)

A I R 1953 S C 404=1953 Cr L J 1621 (SC).

——Art. 20 (1)—Scope and object.

Article 20 (1) in its broad import has been enacted to prohibit conviction and sentences under 'ex post facto' laws. This article must be taken to prohibit all convictions or subjections to penalty after the Constitution in respect of 'ex post facto' laws whether the same was a post-Constitution law or a pre-Constitution law.

(Difference between Art. 20 (1) and Ss. 9 (3) and 10 of Art. 1 of the American Constitution pointed out. (Patanjali Sastri C. J., B. K. Mukherjea; Bose, Ghulam Hasan, and Jagannadhadas JJ.) Rao Shiv Bahadur Singh v. State of Vindhya Pradesh

A I R 1953 S C 394 = 1928 S C A 803 = 1953 S C J 563=1953 S C R 1188=1953 Cr L J 1480 (SC).

——Art. 20 (1)—Scope.

What is prohibited under Art. 20 is only conviction or sentence under an 'ex post facto' law and not the trial thereof. Such trial under a procedure different from what obtained at the time of the commission of the offence or by a Court different from that which had competence at the time cannot 'ipso facto' be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular Court or by a particular procedure, except in so far as any constitutional objection by way of discrimination or the violation of any other fundamental right may be involved. (Patanjali Sastri C. J., B. K. Mukherjea, Bose, Ghulam Hasan and Jagannadhadas JJ.) Rao Shiv Bahadur Singh v. State of Vindhya Pradesh

A I R 1953 S C 394 = 1953 S C A 803 = 1953 S C J 563=1953 S C R 1188=1953 Cr L J 1480 (SC).

——Art. 20 (1) — "Law in force," meaning of — (Words and phrases—"Law in force.")

The phrase "law in force" as used in Art. 20 (1) must be understood in its natural sense as being the law in fact in existence and in operation at the time of the commission of the offence as distinct from the law "deemed" to have become operative by virtue of the power of legislature to pass retrospective laws. (Patanjali Sastri C. J., B. K. Mukherjea, Bose, Ghulam Hasan and Jagannadhadas JJ.) Rao Shiv Bahadur Singh v. State of Vindhya Pradesh

A I R 1953 S C 394 = 1953 S C A 803 = 1953 S C J 563=1953 S C R 1188=1953 Cr L J 1480 (SC).

——Art. 20 (1) — Applicability — Indian Penal Code (Application to Vindhya Pradesh) Ordinance (48 of 1949), Ss. 2 and 3 (1).

CONSTITUTION OF INDIA (1950), Art. 20 —

2. Ex post facto laws—Clause (1)

In determining the constitutionality of any conviction under Vindhya Pradesh Ordinance, 48 of 1949 for an alleged offence committed during the period between 9-8-1948 (the date from which the Penal Code was deemed to have been in force in Vindhya Pradesh) and 11-9-1949 (the date of the enactment of the said Ordinance), what is relevant for the application of Art. 20 (1) is not the result brought about by repeal and the retrospective operation thereof, but the factual state of law as it existed prior to the date (viz., 11-9-1949) when the repeal came into operation. The repeal itself posits the pre-existence of the law, and it is that law which is relevant for that purpose. (Patanjali Sastri C. J., B. K. Mukheajea, Bose, Ghulam Husan and Jagannadhadas JJ.) Rao Shiv Bahadur Singh v. State of Vindhya Pradesh

A I R 1953 S C 394 = 1953 S C A 803 = 1953 S C J 563=1953 S C R 1188=1953 Cr L J 1480 (SC).

——Art. 20 (1) — "Violation of a law...commission of the act" — Person cannot be prosecuted under S. 40, West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), for taking pugree or selami in 1948—See West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 40

A I R 1953 Cal 599=1953 Cr L J 1406.

——Art. 20 (1)—Greater penalty.

Prosecution under Calcutta Municipal Act of 1923 — Greater penalty under new Calcutta Municipal Act is not justified. (K. C. Chunder J.) Mohari Lall v. Corporation of Calcutta

A I R 1953 Cal 561 = 57 C W N 248 = 1953 Cr L J 1347.

——Arts. 20 and 265—Conviction under S. 15 (b), Madras General Sales Tax Act — (Madras General Sales Tax Act (9 of 1939), S. 15 (b)).

The Sales Tax Act existed at the time of the commission of the offence and also at the time of the conviction for the offence in the year 1951.

Any change in the mode of execution is not bad for its being 'ex post facto'; a statute merely regulating procedure and leaving untouched all the substantial protection with which existing law surrounds a person accused of crime is not within the constitutional inhibition of 'ex post facto' laws; even a statute which changes the punishment that may be imposed for a crime theretofore committed would be 'ex post facto' only if it prescribes or permits the imposition of a greater sentence, and not when it reduces the punishment. New provision in S. 15 (b) of the Madras General Sales Tax Act amounts to nothing more than an alteration of procedure which does not make the act which was not an offence to be an offence or imposes a greater penalty than what was the case before. The recovery of the tax as if it were a fine does not impose a greater penalty than the two modes of recovery as an arrear of land revenue or by a suit as on a debt. Therefore Art. 20 does not apply and on this footing the application of Art. 265 does not arise. (Ramaswami J.) Public Prosecutor v. K. C. Ayyappan Pillai,

AIR 1953 Mad 337=1952 M W N 971=1952 M W N (Cr) 283=1953-1 M L J 157=1953 Cr L J 625.

——Art. 20 (1)—Person overstaying period mentioned in permit—Subsequent legislation making overstay ground for removal of such person from India—Liability to removal—See Influx from West Pakistan (Control) Ordinance (17 of 1948), S. 6

AIR 1952 Sau 98=1952 Cr L J 1645 (SB).

——Art. 20 (1)—'Ex post facto' legislation prior to Constitution, creating crime—Validity—If by operation of S. 19, Madras Maintenance of Public Order Act (23 of

CONSTITUTION OF INDIA (1950), Art. 20—2. Ex post facto laws—Clause (1)

1949), all acts done in pursuance of Madras Act 1 of 1947 on or after 12-3-1948 were rendered valid—See Madras Maintenance of Public Order Act (23 of 1949), Ss. 2, 19

A I R 1951 Mad 1015=1952 Cr L J 170.

——Art. 20 (1)—Greater penalty — Art. 20 (1) has reference to penalty to be imposed in respect of offence—It has no application to further detention under S. 11, Preventive Detention Act, as subsequently amended — See Preventive Detention Act (1950), S. 11.

AIR 1952 Bom 1=1952 Cr L J 81.

——Art. 20 (1)—Ex post facto law—Adaptations of S. 4, Penal Code and S. 188, Cr. P. C., by V. P. Ordinance 48 of 1949—Adaptations are not repugnant to existing central law — New law does not create any offence — See [Indian] Penal Code (Application to Vindhya Pradesh) Ordinance 48 of 1949.

AIR 1951 V P 17=52 Cr L J 561.

3. ' Double jeopardy" for same offence—Clause (2).

——Arts. 20 (2) and 21—Action of Jail Superintendent — Procedure established by law — (Punjab Communist Detenus Rules (1950), R. 41).

The scheme of Rule 41 is to constitute the Jail Superintendent only an administrative authority to maintain jail discipline and inflict summary punishment on the detenus for breach of that discipline by committing a jail offence. It is only when the Jail Superintendent considers that the offence is not adequately punishable by him that he can send the case to the Magistrate. If he actually himself punishes he cannot under this rule, refer the case again to the Magistrate. A reference by him after punishment will be wholly unauthorised and without jurisdiction and the prosecution before the Magistrate would be illegal and not in accordance with procedure established by law. (Patanjali Sastri C. J., B. K. Mukherjea, S. R. Das, Ghulam Hasan and Bhagwati JJ.) Maqbool Hussain v. State of Bombay,

AIR 1953 S C 325=1953 S C A 641=1953 S C J 456 =1953-2 M L J 113=1953 A W R (Sup) 84 = 1953 M W N 648=1953 S C R 730 = 56 Bom L R 13=1953 Cr L J 1432 (SC).

——Art. 20 (2)—"Prosecuted and punished" — Gold confiscated under Sea Customs Act (1878), S. 167 (8)—Prosecution under Foreign Exchange Regulation Act (1947), S. 23, not barred—(Criminal P. C. (1898), S. 403.)

The Sea Customs Authorities are not a judicial tribunal and the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Customs Act do not constitute a judgment or order of a Court or judicial tribunal necessary for the purpose of supporting a plea of double jeopardy.

Hence, when the Customs Authorities confiscate the gold brought in India in contravention of a notification of the Government of India neither the proceedings taken before the Sea Customs Authorities constitute a prosecution of the person from whom it is confiscated nor does the order of confiscation constitute a punishment inflicted by a Court or judicial tribunal on that person. Such person cannot be said by reason of these proceedings before the Sea Customs Authorities to have been "prosecuted and punished" for the same offence with which he is later on charged before the Magistrate, in the complaint which is filed against him under S. 23 of the Foreign Exchange Regulation Act, 1947. (Patanjali Sastri C. J., B. K. Mukherjea, S. R. Das, Ghulam Hasan and Bhagwati JJ.) Maqbool Hussain v. State of Bombay,

AIR 1953 S C 325=1953 S C A 641=1953 S C J 456 =1953-2 M L J 113 = 1953 A W R (Sup) 84 = 1953 M W N 648=1953 S C R 730 = 56 Bom L R 13=1953 Cr L J 1432 (SC).

CONSTITUTION OF INDIA (1950), Art. 20 — 3. "Double jeopardy" for same offence—Clause (2)

——Art. 20 (2)—Principle underlying Art. 20 (2) and its scope—(Criminal P. C. (1898), S. 403).

Article 20 (2) incorporates within its scope the plea of "autrefois convict' as known to the British jurisprudence or the plea of double jeopardy as known to the American Constitution but circumscribes it by providing that there should be not only a prosecution but also a punishment in the first instance in order to operate as a bar to a second prosecution and punishment for the same offence.

The words 'before a Court of law or judicial tribunal" are not to be found in Art. 20 (2). But in order to invoke the protection of Art. 20 (2), there must have been a prosecution and punishment in respect of the same offence before a Court of law or a tribunal, required by law to decide the matters in controversy judicially on evidence on oath which it must be authorised by law to administer and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute but not required to proceed on legal evidence given on oath. The Article contemplates proceedings of the nature of criminal proceedings before a Court of law or a judicial tribunal and the prosecution in this context means an initiation or starting of proceedings of a criminal nature before such a Court or tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure. (Patanjali Sastri C. J., B. K. Mukherjea, S. R. Das, Ghulam Hasan and Bhagwati JJ.) Maqbool Hussain v. State of Bombay,

AIR 1953 S C 325=1953 S C A 641=1953 S C J 456 =1953-2 M L J 113=1953 A W R (Sup) 84 = 1953 M W N 648=1953 S C R 730=56 Bom L R 13=1953 Cr L J 1432 (SC).

——Art. 20 (2)—Double jeopardy—Madras Restriction of Habitual Offenders Act (1948) is not ultra vires Art. 20 (2)—Restrictive precautions taken under Act cannot be described as prosecution and punishment—See Madras Restriction of Habitual Offenders Act (1948).

AIR 1953 Mad 664=1953 Cr L J 1174.

——Art. 20 (2) — Double punishment—(Companies Act (1913), S. 282A)—(Criminal P. C. (1898), S. 403).

Section 282-A of the Companies Act cannot be construed as providing for a double punishment. It is only an alternative punishment arising when default is committed. Section 282-A does not offend against Art. 20 (2) of the Constitution. (Govinda Menon and Basheer Ahmed Sayeed JJ.) J. Loomchand Sait v. The Official Liquidators

AIR 1953 Mad 595=1953-1 M L J 514=1953-23 Com Cas 143=1953 Cr L J 1142.

——Art. 20 (2)—"Prosecuted" meaning of.

If there is no punishment for the offence as a result of the prosecution, the sub-cl. (2) of Art. 20 has no application; and secondly, an appeal against an acquittal wherever such is provided by the procedure is in substance a continuation of the prosecution. (Patanjali Sastri C. J., B. K. Mukherjea, Chandrasekhara Aiyar, Bose and Ghulam Hasan JJ.) Kalavati v. State of Himachal Pradesh,

AIR 1953 S C 131 = 1953 M W N 219=1953 S C J 144=1953 A W R (Sup) 52=1953 S C R 546=1953 S C A 660=1953 Cr L J 668 (SC).

——Art. 20 (2)—'Prosecution' and 'offence' — Meaning of —Imposition of fine by Rent Controller for contravention of Rent Control legislation — Subsequent prosecution on same facts before Criminal Court is barred—West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950), S. 34 — (Criminal P. C. (1898). Ss. 4 (1) (o) and 403).

In a proceeding under S. 34 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, a

CONSTITUTION OF INDIA (1950), Art. 20 —

3. "Double jeopardy" for same offence—Clause (2)

landlord was fined by the Rent Controller for his illegal act of not allowing the tenant to use a privy and a water tap. Subsequently, the landlord was prosecuted in a criminal Court under S. 41 of the Act on the same facts and was convicted.

Held that Art. 20 (2), Constitution of India was a bar to the prosecution and punishment of the accused in the criminal Court and, therefore, the conviction was illegal.

When a statute gives the Rent Controller power to impose a penalty, that is, fine a person, it gives him a right to deal with the prosecution of an offence and to punish the commission of such offence.

The words "prosecution" and "offence" as used in the Constitution are not defined and they must be given their ordinary meaning. Going to the Rent Controller and asking him to fine a man for an act is really a prosecution of that man and the act is an offence against the statute and is a criminal offence because it is punishable by a fine which is a punishment of a criminal nature. (Harries C. J. and Sarkar J.), Pulin Krishna Paul v. Sishupati Chakravarty,

A I R 1953 Cal 85=56 C W N 585=1953 Cr L J 294.

——Art. 20 (2)—Proceedings under S. 107, Criminal P.C. —Petitioner imprisoned for his failure to give security— Subsequent trial for same acts not barred — Proceedings do not constitute prosecution for offence. See Criminal P.C. (1898), S. 403,

AIR 1952 Trav.C 556=1953 Cr L J 49.

——Art. 20 (2)—Double jeopardy—S. 417, Criminal P. C. is not ultra vires of Art. 20 (2) and Art. 134 does not conflict with Art. 20 (2) — Appeal against acquittal is not tantamount to prosecution and punishment for same offence. See ibid, Art. 134,

A I R 1952 H P 81=1952 Cr L J 1720.

——Art. 20 (2)—Applicability—.Appeals from acquittal— Interpretation of 'and' in "prosecuted and punished."

(Obiter)—The word 'and' in 'prosecuted and punished' should be interpreted disjunctively so as to mean "or", as otherwise the provision which should be applicable to cases of acquittal also, would become inapplicable to them. (Chowdhry J. C.), Ranjit Singh v. State,

A I R 1952 H P 81=1952 Cr L J 1720.

——Art. 20 (2) — Prosecution without valid sanction — Discharge — Effect.

The principle underlying Art. 20 (2) is the same as underlies S. 403, Criminal P. C., namely, double jeopardy. The word "prosecuted" is said to have been introduced in order to make it clear that the power relates to punishment by a Court of law and not to other kinds of punishment besides a judicial penalty for example departmental action in the case of public servants or proceedings under the Legal Prectitioners Act in the case of lawyers. Cl. (2) uses the conjunction "and" and not the disjunction "or" between the words "prosecuted" and "punished" and this makes it clear that to bar a fresh prosecution for the same offence, the accused should have been both prosecuted and punished. So when an accused is discharged for want of sanction there is no punishment and when a man is punished departmentally, there is no prosecution. Therefore Art. 20 (2) does not take away the right to institute a second prosecution when the first is bound to be a nullity by reason of want of sanction, a prerequisite for the maintaining of the prosecution. (Ramaswami J.), Devanugraham, C., In re,

AI R 1952 Mad 725=65 M L W 329=1952-1 M L J 550=1952 M W N 362 = 1952 M W N (Cr) 74 = 1952 Cr L J 1576.

CONSTITUTION OF INDIA (1950), Art. 20 —

3. "Double jeopardy" for same offence—Clause (2)

——Art. 20 (2) —Word "and" in Cl. 2 cannot be read as "or". (Mangalmurti and Mudholkar JJ.) Gopalkrishna Naidu v. State of Madhya Pradesh,

A I R 1952 Nag 170=1952 N L J 221=I L R (1952) Nag 52=1952 Cr L J 845.

——Art. 20 (2)—Double jeopardy — Principle of does not apply to preventive detention—See Preventive Detention Act (1950) (as amended in 1951), S. 3,

A I R 1952 Cal 26=1952 Cr L J 204.

——Art. 20 (2)—Filing of second complaint on dismissal of first for complainant's absence—Article not contravened.

There is nothing fundamentally wrong in not barring a second prosecution after a discharge or acquittal. A discharge or acquittal can in certain circumstances take place on account of technical reasons and it may be very desirable in the circumstances of particular cases that the person be prosecuted after removing those technical defects in procedure. A second complaint filed after the dismissal of the first complaint for complainant's absence is not therefore, in contravention of Art. 20 (2) of Constitution. (Raghubar Dayal and Desai JJ.), Ram Ghei v. Ram Krishun Das,

A I R 1952 All 642=1951 All Cr R 152=1951 AWR (HC) 620=1951 A L J 725=ILR (1952) 1 All 244.

——Art. 20 (2) — Person already punished by Jail authority.

If a person has already been punished by the Superintendent of the Jail for an alleged offence under Ss. 224 and 224/114, Penal Code, the proceedings for the same offences against the person would be against the provisions of Art. 20 of the Constitution and would be illegal. (Das Gupta and Lahiri JJ,) Prithish Dey v. State,

AIR 1952 Cal 319=55 C W N 140.

4. Accused not to be compelled to be witness against himself—Clause (3)

——Art. 20 (3)—Applicability —(Criminal P. C., S. 164).

Sub-clause (3) of Art. 20 does not apply at all to a case where the confession is made without any inducement, threat or promise. It is true that a retracted confession has only little value as the basis for a conviction, and that the confession of one accused is not evidence against co-accused tried jointly for the same offence, but can only be taken into consideration against him; but this deals with its probative value and has nothing to do with any repugnancy to the Constitution. (Patanjali Sastri C. J., B. K. Mukherjea, Chandrasekhara Aiyar, Bose and Ghulam Hasan JJ.), Kalawati v. State of Himachal Pradseh,

A I R 1953 S C 131=1953 M W N 219=1953 S C J 144 = 1953 A W R (Sup) 52 = 1953 S C R 546=1953 S C A 660=1953 Cr L J 668 (SC).

——Art. 20 (3)—Accused as witness—Section 342, Criminal P. C., is not ultra vires Art. 20 (3) — Accused is not witness when he answers questions put to him under S. 342—See Criminal P. C. (1898), S. 342,

A 1 R 1952 H P 81=1952 Cr L J 1720.

—Article 21.

SYNOPSIS

1. Scope of the Article.
2. Article, it confers fundamental right.
3. This Article and Art. 22.
4. Personal liberty.
5. "Procedure established by law."
   (a) Meaning of the expression.
   (b) Illustrations.
6. Preventive detention.

1. Scope of the Article

——Art. 21 applies to all—Members of Legislature are not exempted—See ibid, Art. 105,

AIR 1952 Cal 632=1952 Cr L J 1454 (SB).

CONSTITUTION OF INDIA (1950), Art. 21—

1. Scope of the Article

——Provisions of Art. 19 are subject to provisions of Art. 21—See ibid, Art. 19,

A I R 1952 Punjab 309=1952 Cr L J 1313 (FB).

——The general principle that personal liberty shall not be deprived except according to the procedure established by law has been clarified and crystallized by Art. 21. (Govinda Menon and Krishnaswami Nayudu JJ.) M. R. Venkataraman v. Commissioner of Police, Madras,

A I R 1951 Mad 1015=1952 Cr L J 170.

——Right to life and personal liberty whether absolute—Limits on fundamental rights provided for in Arts. 19, 21 and 22.

Per Das J. — Article 21 does not recognise the right to life and personal liberty as an absolute right but delimits the ambit and scope of the right itself. The absolute right is by the definition in that Article cut down by the risk of its being taken away in accordance with procedure established by law. It is this circumscribed right which is substantively protected by Art. 21 as against the executive as well as the Legislature. Under the Constitution, the life and personal liberty are balanced by restrictions on the rights of the citizens as laid down in Art. 19 and by the checks put upon the State by Arts. 21 and 22. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127=1950-2 M L J 42=63 M L W 638=1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (S C).

——Provision made in by Constitution — Protection against infringements by executive or individuals.

Per Patanjali Sastri J.—Constitutional safeguards are as a rule directed against the State and its organs. Protection against violation of the rights by individuals must be sought in the ordinary law. Article 21 is not designed to afford protection against infringements by the executive or individuals. The insertion of a declaration of Fundamental Rights in the forefront of the Constitution, coupled with an express prohibition against legislative interference with these rights (Art. 13) and the provision of a constitutional sanction for the enforcement of such non-interference by means of a judicial review (Art. 32) is a clear and emphatic indication that these rights are to be paramount to ordinary State made laws. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (S C).

——Application of.

Per Patanjali Sastri J. — Article 21 is applicable to preventive detention. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127=1950-2 M L J 42=63 M L W 638=1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (S C).

2. Article, if confers fundamental right.

——Arts. 21, 22—Scope — Duty of Court in interpreting the Articles.

Per Bose J.—Arts. 21 & 22 confer a fundamental right and give a fundamental guarantee. It is therefore the duty of the Court to see that the right is kept fundamental and that the fullest scope is given to the guarantee. It is the duty of the Court to ensure that the right and the guarantee are not rendered illusory and meaningless. Therefore, wherever there is scope for difference of opinion on a matter of interpretation in this behalf, the interpretation which favours the subject must always be used because the right has been conferred upon him and it is the right which has been made fundamental, not the fetters and limitations with which it may be circumscribed by legislative action. (Kania C. J.; Patanjali Sastri, Mahajan, S. R. Das and Vivian Bose JJ.) S. Krishnan v. State of Madras,

A I R 1951 S C 301=1951-2 M L J 105=1951 S C J 453 =64 M L W 945=1951 S C R 621=52 Cr L J 1103 (S C).

3. This Article and Art. 22.

——Arts. 21, 22—Scope.

The general principle that personal liberty shall not be deprived except according to the procedure established by law has been clarified and crystallized by Art. 21. Whereas the deprivation of life or personal liberty in future can be done only in accordance with the procedure established by law, that is by legislative enactments, passed either by the Parliament or by the State Legislatures in accordance with the division of functions elaborated in the seventh schedule, in so far as preventive detention is concerned, Art. 22 prescribes what ought to be the procedure established by law. (Govinda Menon and Krishnaswami Nayudu JJ.) M. R. Venkataraman v. Commissioner of Police, Madras,

AIR 1951 Mad 1015=1952 Cr L J 170.

4. Personal liberty.

——It is not correct to say that Article 14 provides no further constitutional protection to personal liberty than what is afforded by Art. 21—See ibid, Art. 14.

AIR 1952 S C 123=1952 Cr L J 805.

——Law authorising deprivation of personal liberty—Its validity depends on its compliance with requirements of Arts. 21 and 22.—See ibid Art. 19.

AIR 1951 S C 270=52 Cr L J 904.

——Meaning of.

Per Fazl Ali J. — The juristic conception of 'personal liberty,' when these words are used in the sense of immunity from arrest, is that it consists in freedom of movement and locomotion.

Per Patanjali Sastri J. — The expression "personal liberty," is used in Art. 21 in a sense which excludes the freedoms dealt with in Art. 19.

Per B. K. Mukherjea J. — In the Indian Constitution, the expression 'personal liberty' has been deliberately used to restrict it to freedom from physical restraint of a person by incarceration or otherwise. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukerjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

AIR 1950 S C 27=1950-2 M L J 42= 63 M L W 638 =1950 S C J 174=1950 M W N 495=1950 S C R 88 = 1950 M W N (Cr) 127=51 Cr L J 1383 (S C).

——Connotation of—See ibid, Art. 19.

AIR 1950 S C 27=51 Cr L J 1383 (S C).

5. Procedure established by law.

(a) Meaning of the expression.

——Procedure—Meaning of.

The "procedure" means procedure laid down by law or the procedure prescribed by Art. 22. (Bhandari, Khosla and Harnam Singh JJ.) Ajaib Singh Lehna Singh v. The State of Punjab,

AIR 1952 Punj 309=54 P L R 260=ILR (1952) Punj 381=1952 Cr L J 1313 (FB).

Per Govinda Menon J. — The expression "according to procedure established by law" means a procedure fixed in accordance with legislative enactment passed by the

CONSTITUTION OF INDIA (1950), Art. 21 —

5. Procedure established by law—(a) Meaning of

Parliament or the State Legislature which does not offend or is revolting to notions and ideas of dignity of the human being and is neither indecent, unconscionable or repugnant to civilized beliefs. (Govinda Menon and Krishnaswami Nayudu JJ.) M. R. Venkataraman v. Commissioner of Police, Madras,

AIR 1951 Mad 1015=1952 Cr L J 170.

——The expression "procedure established by law" means procedure prescribed by law. (Kania C. J., Patanjali Sastri, Mahajan, S. R. Das and Vivian Bose JJ.) S. Krishnan v. State of Madras,

AIR 1951 S C 301=1951-2 M L J 105=1951 SCJ 453 =64 M L W 945=1951 S C R 621=52 Cr L J 1103 (SC).

In Art. 21 in the expression 'procedure established by law' the word 'procedure' is not used in its technical sense indicating a particular law as contained in the Civil or Criminal Procedure Code but is employed in a general sense to mean the steps to be taken in an orderly trial. There is neither vested right to any particular form of trial or procedure, nor to a right of appeal; they being the creation of the Statute should be governed by the Statute with which a particular offender is tried. The expression "procedure established by law" means the law of the land having statutory origin. (Venkataramaiya, Balkrishnaiya and Mallappa JJ.) Abdul Khader v. State of Mysore,

A I R 1951 Mys 72=ILR (1951) Mys 284=52 Cr L J 992 (FB).

——"Law" meaning of.

Per Kania C. J., Patanjali Sastri, B. K. Mukherjea and Das JJ.—The word "law" in Art. 21 has not been used in the sense of "general law" connoting what has been described as the principles of natural justice outside the realm of positive law. "Law" in that article is equivalent to State-made law. (Contra Fazl Ali J.) (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950-2 M L J 42 = 63 M L W 638=1950 S C J 174=1950 M W N 495 = 1950 S C R 88=1950 M W N (Cr) 127=51 Cr L J 1383 (SC).

——"Established" meaning of.

Per Kania C. J.—The word 'established' itself suggests an agency which fixes the limits. This agency can be either the legislature or an agreement between the parties.

Per B. K. Mukherjea J. — The word 'established' ordinarily means 'fixed or laid down' and if 'law' means not any particular piece of law but the indefinite and indefinable principles of natural justice which underlie positive systems of law, it would not at all be appropriate to use the expression 'established.' (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950-2 M L J 42 = 63 M L W 638=1950 S C J 174 = 1950 M W N 495 = 1950 S C R 88=1950 M W N (Cr) 127=51 Cr L J 1383 (SC).

——Per Kania C. J., Patanjali Sastri, Mukherjea and Das JJ.—"Procedure established by law" means procedure prescribed by the law of the State. These words are to be taken to refer to a procedure which has a statutory origin—Contra Fazl Ali J. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950-2 M L J 42 = 63 M L W 638=1950 S C J 174=1950 M W N 495 = 1950 S C R 88=1950 M W N (Cr) 127=51 Cr L J 1383 (SC).

——"Procedure," meaning of.

Per Patanjali Sastri J. — "Process" or "procedure" connotes both the act and the manner of proceeding to take away a man's life or personal liberty.

Per B. K. Mukherjea J. — The expression 'procedure' means the manner and form of enforcing the law.

CONSTITUTION OF INDIA (1950), Art. 21 —

5. Procedure established by law—(a) Meaning of

Per Das J. — The word 'procedure' in Art. 21 must be taken to signify some step or method or manner of proceeding leading up to the deprivation of life or personal liberty. (Kania C. J.; Fazal Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950-2 M L J 42 = 63 M L W 638=1950 S C J 174 = 1950 M W N 495=1950 S C R 88=1950 M W N (Cr) 127=51 Cr L J 1383 (SC).

—(b) Illustrations.

——Action of Jail Superintendent — Reference by him to Magistrate after punishment — Reference not in accordance with procedure established by law — See ibid, Art. 20 (2).

A I R 1953 S C 325=1953 Cr L J 1432 (SC).

——Bengal Suppression of Immoral Traffic Act does not infringe Art. 21 — See Bengal Suppression of Immoral Traffic Act (6 of 1933), S. 13.

A I R 1953 Cal 522=1953 Cr L J 1187.

——Arrest of accused — R. 26 (2) of Ch. 26 of Vol. III of Punjab Police Rules, 1934, not observed—There is violation of statutory right guaranteed by Constitution. (Kapur J.) S. P. Jaiswal v. The State.

A I R 1953 Punj 149 = 1953 A W R (Sup) 133 = 55 P L R 77=1953 Cr L J 1018.

——Trial by Special Tribunal under Hyderabad Special Tribunals Regulation — Art. 21 is not infringed — See Hyderabad Special Tribunals Regulation (5 of 1358 Fasli)

A I R 1953 Hyd 145=1953 Cr L J 785.

——Abducted Persons (Recovery and Restoration) Act, 1949, is not inconsistent with Art. 21. (Patanjali Sastri C. J.; B. K. Mukherjea, S. R. Das, Vivian Bose and Ghulam Husan JJ.) State of Punjab v. Ajaib Singh,

A I R 1953 S C 10=1953 Cr L J 180.

——Arts. 21 and 22 — Abducted Persons (Recovery and Restoration) Act (1949)—Validity.

('Per Khosla, J.')—There is nothing inconsistent in the Abducted Persons (Recovery and Restoration) Act which is contrary to the provisions of Art. 21. The procedure governing the recovery and restoration of abducted women is set out in an Act of Parliament and as long as this procedure is consistent with Art. 22, it must be held to be valid and lawful. The entire procedure under the Abducted Persons (Recovery and Restoration) Act is not unjust or improper. The case is examined by a tribunal consisting of a Superintendent of Police from India and a Superintendent of Police from Pakistan who may be expected to deal with the question of the abducted person's status justly and impartially. There is nothing fundamentally wrong or improper in entrusting the decision of this question to a tribunal of this nature, and the prohibition in regard to interference by Law Courts is not by itself contrary to the principles of natural justice. Apart from the conflict with Art. 22 there is nothing unreasonable in the procedure laid down under the Act for the recovery and restoration of abducted women. (Bhandari, Khosla and Harnam Singh JJ.) Ajaib Singh Lehna Singh v. The State of Punjab,

A I R 1952 Punj 309 = 54 P L R 260=I L R (1950) Punj 381=1952 Cr L J 1313 (F B).

——Detention under S. 123A (U. P), Criminal P. C. — Detention is illegal being in contravention of Arts. 21 and 22—See Criminal P. C. (1898), S. 123A (U. P.).

A I R 1950 All 562=52 Cr L J 1282.

——Compliance with.

When the Nizam had delegated full power to the Military Governor and the validating Regulation passed on 6-10-1949 cured the defect in the proceedings there can be no question of Art. 21 of the Constitution being in-

CONSTITUTION OF INDIA (1950), Art. 21 —

5. Procedure established by Law—(b) Illustrations fringed as the validating Regulation was as much the law as the Regulation appointing the Tribunal. (Naik C. J. and Siddiqi J.) Kasim Razvi v. State of Hyderabad,

A I R 1951 Hyd 97=52 Cr L J 1123.

——Extradition treaty not having force of law — Detention under is invalid — See Criminal P. C. (1898), S. 491.

A I R 1951 Raj 127=52 Cr L J 1021.

——Mysore Special Criminal Courts Act — Validity—See Mysore Special Criminal Courts Act (XXIV of 1942).

A I R 1951 Mys 72=52 Cr L J 992 (F B).

——Internment order under S. 17, Assam Opium Prohibition Act—Validity—See ibid, Art. 19.

A I R 1951 Assam 106=52 Cr L J 966.

6. Preventive detention.

——One of several grounds of detention vague — Detention is not in accordance with procedure established by law—See ibid, Art. 22 (5).

A I R 1953 S C 318=1953 Cr L J 1241 (SC).

——State can justify continuance of detention provided it follows procedure established by law—See Preventive Detention Act (1950), S. 10 (1).

A I R 1953 Sau 51=1953 Cr L J 503.

——Arts. 21 and 22—Detention beyond three months.

The person concerned cannot be detained for a day longer than three months unless upon the report of the Advisory Board, which means unless upon action taken on such a report and that action must necessarily be taken before the expiration of the three months' period allowed under Art. 22 (4) for else the detention of the person beyond the period of three months will be illegal. (Shah C. J. and Baxi J.) Gohel Umed Singh Naubba v. State,

A I R 1953 Sau 51=1953 Cr L J 503.

——Legality of order—Burden of proof — See Preventive Detention Act, S. 3

A I R 1952 Assam 187=1952 Cr L J 1706.

——Procedure prescribed by Ss. 9 (1) and 10 (1) of Preventive Detention Act, 1950, not followed — Detention is not in accordance with procedure established by law — See Preventive Detention Act (1950), S. 9 (1)

A I R 1952 Orissa 208=1952 Cr L J 1113.

——Madhya Pradesh Public Security Measures Act does not contravene Art. 21 — See Madhya Pradesh Public Security Measures Act (33 of 1950), Ss. 12, 15

A I R 1952 Nag 118=1952 Cr L J 646.

——Provisions of Madras Maintenance of Public Order Act relating to preventive detention are repugnant to provisions of Arts. 21 and 22 — See Madras Maintenance of Public Order Act (23 of 1949), S. 2

A I R 1951 Mad 1015=1952 Cr L J 170.

——Art. 21 applies to orders passed under Preventive Detention Act — See Preventive Detention Act (1950), (as amended in 1951), S. 8

A I R 1951 Assam 169=52 Cr L J 1453 (SB).

——Meaning—Procedure under S. 12 of Act 4 of 1951 — Validity—Preventive Detention (Amendment) Act (1951), S. 12.

It is open to Parliament to change the procedure prescribed by S. 12 of Act IV of 1950 by enacting a law and that procedure becomes the procedure established by law within the meaning of that expression in Art. 21 of the Constitution. Thus, where the detention of the petitioners is by virtue of S. 12 of the amended Act, a new detention under the amended Act, the procedure prescribed by the amended Act is the procedure established by law within the meaning of Art. 21. (Kania C. J., Patanjali Sastri, Mahajan, S. R. Das and Vivian Bose JJ.) S. Krishnan v. State of Madras

AIR 1951 S C 301=1951-2 M L J 105=1951 S C J 453=64 M L W 945=1951 S C R 621=52 Cr L J 1103 (SC).

CONSTITUTION OF INDIA (1950), Art. 21 —

6. Preventive detention

——Delay in furnishing detention grounds—Contravention of Art. 21—See Preventive Detention Act, S. 7

A I R 1951 Bom 30=52 Cr L J 366 (FB).

——Procedure prescribed by law — Preventive Detention Act, if fully prescribes procedure by which liberty may be taken away.

Under the Preventive Detention Act the Legislature empowered the authorities to make an order of detention on being satisfied that one of the conditions laid down in S. 3 exists, and it is not necessary that the Legislature should also have gone on to say by what process that satisfaction should have been arrived at. It is entirely at the discretion of the authority making the order to satisfy itself in that behalf by whatever means that may be available to it. All that is required is that the authority making the order of detention should satisfy itself as laid down in S. 3 and it is subsequently that the propriety of that satisfaction in certain respects comes for scrutiny by the procedure laid down by the Act. Thus, the Act prescribes a procedure as contemplated by Art. 21 of the Constitution. (Bhargava J.) Mohd. Athar Rizvi v. State

A I R 1951 All 456=1950 A L J 526 (2).

——Hyderabad Public Safety and Public Interest Regulation, S. 5—Section is void being inconsistent with Art. 21—See Hyderabad Public Safety and Public Interest Regulation (XII [12] of 1358F), S. 5

A I R 1951 Hyd 64.

——Orissa Maintenance of Public Order Act, Ss. 2 (1) (b) and 3—Provisions are void being inconsistent with Art. 21—See Orissa Maintenance of Public Order Act (X of 1950), S. 2 (1)

A I R 1951 Orissa 86.

——Detention under S. 2 (1) (a), Bihar Maintenance of Public Order Act (3 of 1950) — Validity of continuation after 26-1-1950—Bihar Maintenance of Public Order Act becoming void on coming into force of Constitution — Detention under Act—Legality — See Bihar Maintenance of Public Order Act (III of 1950)

A I R 1950 Pat 265=51 Cr L J 1081.

—Art. 22.

SYNOPSIS

1. Scope of the Article.
2. Retrospective effect.
3. "Arrest" — Meaning of.
4. Right to be defended by pleader.
5. Clause (2).
6. Cl. (3) (b).
7. Preventive detention — Legislative competency.
8. Validity of Preventive Detention Act, 1950.
9. Preventive detention —General principles.
10. Preventive detention — Satisfaction of detaining authority.
11. Preventive detention — Advisory Board.
12. Preventive detention — Maximum period of detention.
13. Detention for more than three months without opinion of Advisory Board.
14. President's powers.
15. Clause (5) — General
16. "The grounds on which the order has been made"
17. Vagueness of grounds.
18. Grounds of detention — Consideration by the Court.

CONSTITUTION OF INDIA (1950), Art. 22

19. Supplementary grounds.
20. "As soon as may be'
21. Right to make representation against order of detention.
22. Clause (6).
23. Fresh order of detention.

1. Scope of the Article.

——Applicability — Ss. 110, 118 and 123, Criminal P. C. are not rendered void by Art. 22 — See Criminal P. C. (1898), S. 110

AIR 1953 All 753 = 1953 Cr L J 1759.

——Applicability — Art. 22 does not exempt members of either house of a legislature and applies to all — See ibid, Art. 105

AIR 1952 Cal 632 = 1952 Cr L J 1454 (SB).

——'Procedure established by law', meaning of—See ibid, Art. 21

AIR 1952 Punjab 309 = 1952 Cr L J 1313 (FB).

——Arts. 22 and 13 — Abducted Persons (Recovery and Restoration) Act (1949), Ss. 4 and 7—Validity—(Abducted Persons (Recovery and Restoration) Act (1949), Ss. 4 and 7)—(Words and Phrases—"Arrest" and "apprehension.")

The expression "arrest" appearing in Art. 22 is a comprehensive term which is designed to cover all cases in which a person is apprehended by legal authority and is not confined to cases in which a person is apprehended by or under the orders of a Civil or Criminal Court. It covers not only cases of punitive and preventive detention but also cases of what may, for convenience, be called "protective detention". When a person is apprehended by legal authority, he must be deemed to be arrested within the meaning of Art. 22 even though the word "arrest" or "apprehension" has not been used in the statute or statutory rule under the authority of which he has been taken into custody. An abducted person who is apprehended under the provisions of S. 4, Abducted Persons (Recovery and Restoration) Act (1949) for purposes of being delivered to the custody of an officer in charge of a camp, must also be deemed to be arrested. The fact, that the word "arrest" does not appear in the Act of 1949 and the fact that the police officer is merely empowered to take an abducted person into custody do not alter the fact that the person who is so apprehended and taken into custody has in fact been arrested. An abducted person is entitled to the protection of Art. 22 even though she has committed no offence and is not alleged to have committed one. It cannot also be said that the procedural protection guaranteed by Art. 22 is available only to a person who is being detained to answer a criminal charge.

An Act is said to be inconsistent with another when the two cannot stand together, i. e., when to obey one enactment is to disobey the other. It is impossible to obey the directions contained in Ss. 4 and 7 of the Act of 1949 without disobeying the directions contained in Clauses (1) and (2) of Art. 22. The provisions of Ss. 4 and 7 of the Act of 1949 are inconsistent with the provisions of Art. 13. (Bhandari, Khosla and Harnam Singh JJ.) Ajaib Singh Lehna Singh v. The State of Punjab

AIR 1952 Punj 309 = 54 P L R 260 = ILR (1952) Punj 381 = 1952 Cr L J 1313 (FB).

——Procedure established by law — See ibid, Art. 21

AIR 1951 Mad 1015 = 1952 Cr L J 170.

——Madras Maintenance of Public Order Act (23 of 1949), S. 2 — Provisions relating to preventive detention are ultra vires as being inconsistent with Art. 22 of the Constitution—See Madras Maintenance of Public Order Act (23 of 1949), S. 2

AIR 1951 Mad 1015=1952 Cr L J 170.

CONSTITUTION OF INDIA (1950), Art. 22 —

1. Scope of the Article

——Art. 22 is to be read as proviso to Art. 21.

Per Govinda Menon J.—One of the modes of depriving the personal liberty is indicated in Art. 22 which should be read as a proviso to Art. 21. The curtailment of personal liberty should be in accordance with what is prescribed by Art. 22. If that article is followed both in letter and spirit the Court cannot question an Act dealing with preventive detention. As Art. 22 prescribes the procedure established by law for making preventive detention valid, it is esssential that its terms should be complied with and observed, if preventive detention has to be legally recognised and given effect to, otherwise the detention will be unlawful. It is, therefore, abundantly clear that the Indian Constituent Assembly intended to define and explain what is meant by "procedure established by law" in Art. 21 by enacting Art. 22 as a proviso to it. So with regard to preventive detention Art. 22 clearly lays down the procedure to be adopted. (Govinda Menon and Krishnaswami Nayudu JJ.) M. R. Venkataraman v. Commissioner of Police, Madras

AIR 1951 Mad 1015=1952 Cr L J 170.

——Art. 22 (1), (2) and (4) — Criminal P. C., S. 123A (U. P.) is inconsistent with Art. 22 — See Criminal P. C. (1898), S. 123A (U. P.)

AIR 1950 All 562=52 Cr L J 1282.

——Preventive Detention (Amendment) Act (1951), Ss. 9 (2) and 12 (1)—Sections substantially satisfy requirements of Art. 22 (4)—See ibid, Art. 21

AIR 1951 S C 301=52 Cr L J 1103 (SC).

——Detention of persons for preventing them from making speeches prejudicial to maintenance of public order—See ibid, Art. 19

AIR 1951 S C 270=52 Cr L J 904 (SC).

——Arts. 22 (5), 246—Conflict between Act of Legislature and power given by Constitution.

Where there is a conflict between an Act of a Legislature, which is enacted by it under a particular power given to it by Constitution, and the Constitution itself, then the words of the Constitution must prevail. (Bavdekar and Vyas JJ.) In re Maganlal Jivabhai

AIR 1951 Bom 33=53 Bom L R 127 = 1951-21 Bom Cr C 80=ILR (1951) Bom 546=52 Cr L J 418.

——Art. 22, Cls. (1) and (2)—Arrest of person.

Per Das J. — Clauses (1) and (2) of Art. 22 lay down the procedulre that has to be followed when a man is arrested. They ensure four things; (a) right to be informed regarding grounds of arrest, (b) right to consult, and to be defended by a legal practitioner of his choice, (c) right to be produced before a Magistrate within 24 hours and (d) freedom from detention beyond the said period except by order of the Magistrate. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras

AIR 1950 S C 27=1950-2 M L J 42=63 M L W 638 =1950 S C J 174=1950 M W N 495=1950 S C R 88= 1950 M W N (Cr) 127=51 Cr L J 1383 (SC).

——Bengal Criminal Law Amendment Act (6 of 1930) as amended by Criminal Law Amendment (Amending) Ordinance (1949)—Act if in accord with the Article — See Bengal Criminal Law Amendment Act (VI of 1930), Preamble

AIR 1950 Cal 274=51 Cr L J 1110 (SB).

——Preventive Detention (Extension of Duration) Order, 1950 if complies with provisions of Article — See Prevctive Detention (Extension of Duration) Order, 1950

AIR 1950 Cal 274=51 Cr L J 1110 (SB).

——West Bengal Security Ordinance if complies with sub-s. (4) of Article — See West Bengal Security Ordinance (1949), S. 22

AIR 1950 Cal 274=51 Cr L J 1110 (SB).

CONSTITUTION OF INDIA (1950), Art. 22 —

1. Scope of the Article

——Detention provisions in Bihar Maintenance of Public Order Act (III of 1950)—Validity—See Bihar Maintenance of Public Order Act (III of 1950)

AIR 1950 Pat 265=51 Cr L J 1081.

2. Retrospective effect.

——Scope.

The words employed in Art. 22 (7) are not 'a law in force' or 'an existing law' but only 'any law'. 'Prima facie', it could not therefore refer to 'a law in force' or 'existing law' but to 'a law'. Art. 22, if read carefully, only indicates that it was intended to apply to a prospective legislation. (Govinda Menon and Krishnaswami Nayudu JJ.) M. R. Venkataraman v. Commissioner of Palice, Madras

AIR 1951 Mad 1015=1952 Cr L J 170.

——Art. 22 (1)—Retrospective operation—Interpretation of Statutes—Constitution Statute.

The Article has no retrospective effect and does not apply to a person who was arrested before 26-1-1950. The words used are "who is arrested ' and not "who has been arrested". The words "shall be detained" and "shall be denied", suggest futurity. Constitution is always prospective and never retrospective. (Dayal and Desai JJ.) Deodat Rai v. State

AIR 1951 All 718=ILR (1951) 2 All 745=52 Cr L J 1251.

3. "Arrest" — Meaning of.

——"Arrest" does not include removal — (Bengal Suppression of Immoral Traffic Act (6 of 1933), S. 13).

The word "arrest" in Art. 22 has a much restricted meaning and does not include the removal of a minor girl from a brothel or from premises which are used as a brothel under S. 13 of the Bengal Suppression of Immoral Traffic Act, 1933. (Mitter and Sen JJ.) Raj Bahadur v. Legal Remembrancer

AIR 1953 Cal 522=57 C W N 507=1953 Cr L J 1187.

——Art. 22 (1) — Restraint on abducted person is not "arrest" within meaning of Art. 22 — See Abducted Persons (Recovery and Restoration) Act (1949), S. 4

AIR 1953 S C 10=1953 Cr L J 180 (SC).

4. Right to be defended by pleader.

——Art. 22 (1)—Right to be defended—Conformity with provisions of Criminal P. C. (1898).

There is nothing sacrosanct in the procedure provided by the Code of Criminal Procedure. This Code has been amended from time to time and may well be amended in future. Absolute conformity with a procedure laid down in that Code would not be essential to the right to be defended laid down in Art. 22 (1). There are, however, in the Code certain principles laying down the nature of the defence which is open to a person against whom criminal proceedings are being taken which have stood for a very long time and which may well be taken to furnish a general standard of reasonableness when the nature of the right of defence allowed in an Act is to be considered, and substantial ground must be shown for drastic departure from the mode of defence contained in the Code. (Weston C. J. Kapur J.) Inderjit Singh v. State of Delhi

AIR 1953 Punj 52=54 P L R 312=ILR (1952) Punj 362=1953 Cr L J 421.

——Art. 22 (1) — Infringement of — See U. P. Goondas Act (1 of 1932) (as modified and extended to the State of Delhi)

AIR 1953 Punj 52=1953 Cr L J 421.

——Art. 22 (1) — Complainant cannot take advantage of Article.

The complainant cannot possibly take advantage of Art. 22 (1) because he is neither a person arrested nor a

CONSTITUTION OF INDIA (1950), Art. 22 —

4. Right to be defended by pleader

person detained in custody. (Brij Mohan Lall J.) Lal Bachan Singh v. Suraj Bali Singh

AIR 1952 All 924 = 1952 A L J 195 = 1952 A W R (H C) 223=1952 R D (H C) 183=1952 Cr L J 1666.

——Art. 22 (1)—Applicability.

The only condition necessary for a person to have the right of defence by legal practitioner is that he must have been arrested; it is not at all obligatory that after arrest he should have been detained. If after arrest he was released on security, his right of defence by a legal practitioner which accrued at the moment of his arrest would continue, because the right to be defended is a continuing right. (Dayal and Desai JJ.) Deodat Rai v. State,

A I R 1951 All. 718=I L R (1951) 2 All. 745=52 Cr L J 1251.

——Art. 22 (1)—Infringement—What constitutes.

In order to show that the Constitution has been infringed it is not necessary to show that a person arrested under a certain Act was actually denied the right of defence by a legal practitioner. It is sufficient that the Act impugned itself denied the arrested person the right. (Dayal and Desai JJ.) Deodat Rai v. State,

A I R 1951 All. 718=I L R (1951) 2 All. 745=52 Cr L J 1251.

——Art. 22 (1)—Applicability.

The provision as to the right to be defended by a legal practitioner is only conferred on a person who is arrested and is not a general right conferred on every one. (Dayal and Desai JJ.) Deodat Rai v. State,

A I R 1951 All. 718=I L R (1951) 2 All. 745=52 Cr L J 1251.

——Art. 22 (1) & (3)—U. P. Prevention of Crimes (Special Powers) (Temporary) Act (5 of 1949), S. 4 — Warrant to the police directing them to take security from the applicants and to take them in custody only on their default —Police taking them into custody first and then releasing them on security, thinking that it was warrant for arrest and that the security to be taken from the applicants was for their appearance before the Magistrate and not for being of good behaviour and keeping the peace — Arrest could not be said to be under the Act which was held to be one for preventive detention.—Hence Art. 22 (3) did not apply to rob them of the right of defence by a legal practitioner. (Dayal and Desai JJ.) Deodat Rai v. State,

A I R 1951 All. 718=I L R (1951) 2 All. 745=52 Cr L J 1251.

——Personal liberty—Invasion of—Right of person affected, to be heard in his defence even in time of war—Equal protection to every man — See Constitution of India, Art. 19.

A I R 1943 Nag. 36=44 Cr L J 237.

5. Clause (2).

——Art. 22 (2) — Order of remand — Who can pass — Subsequent remand—Production of accused before Magistrate—Necessity of—(Criminal P. C. (1898), S. 167).

An order of remand can only be passed by a Magistrate sitting as a Court. It is immaterial where such a Magistrate was sitting at the time of the passing of the order. Neither Art. 22 of the Constitution nor S. 167, Criminal P. C., requires production of an accused person before a Magistrate on the occasion of a subsequent remand. (Thadani C. J.) Prabhat Malla Barooah v. D. C. Kamrup,

A I R 1952 Assam 167=I L R (1952) 4 Assam 18= 1952 Cr L J 1659.

6. Clause (3) (b).

——Art. 22 (3)—Construction—Preventive detention and externment or banishment — Distinction — (Words and

CONSTITUTION OF INDIA (1950), Art. 22 — 6. Clause (3) (b)

Phrases)—(U. P. Goondas Act (1 of 1932) (as modified and extended to the State of Delhi), S. 6 (1)).

Clause (3) of Art. 22 must be construed strictly as it provides an exception to the fundamental right created by cl. (1) of that Article.

Externment or banishment is something akin to preventive detention. It is a precautionary measure; its object is not to punish but to prevent; it is not imposed on criminal conviction; its justification is suspicion or reasonable probability. The fact remains, however, that externment or banishment is not detention. Detention means that the person detained is at liberty to go nowhere.

A person externed from Delhi under the U. P. Act (1 of 1932) (as extended to Delhi) may go anywhere he likes in the rest of India. The Act is, therefore, not a law providing for preventive detention. (Weston C. J. and Kapur J.) Inderjit Singh v. State of Delhi,

A I R 1953 Punj. 52 = 54 P L R 312 = I L R (1952) Punj. 362=1953 Cr L J 421.

——Bengal Criminal Law Amendment Act (6 of 1930)— Act if provides for preventive detention — Detenu not produced before Magistrate within 24 hours as required under this Article — Effect — See Bengal Criminal Law Amendment Act, 1930, Preamble.

A I R 1950 Cal. 274=51 Cr L J 1110 (SB).

7. Preventive detention—Legislative competency.

——Art. 22, Cls. (1) and (2) — Section 136 (1), Bombay Prohibition Act (25 of 1949), if ultra vires of Art. 22 (2)— See Bombay Prohibition Act (25 of 1949), S. 136 (1).

A I R 1951 Bom. 210=52 Cr L J 80 (FB).

——Arts. 22, 246, Sch. VII, List 1, Entry 9 and List 3, Entry 3—Preventive detention — Power of Parliament to enact law.

Bearing in mind the provisions of Art. 22 read with Art. 246 and Sch. 7, List 1, Entry 9 and List 3, Entry 3, it is clear that the Parliament is empowered to enact a law of preventive detention; (a) for reasons connected with defence, (b) for reasons connected with foreign affairs, (c) for reasons connected with the security of India, and (under List 3), (d) for reasons connected with the security of a State, (e) for reasons connected with the maintenance of public order, or (f) for reasons connected with the maintenance of supplies and services essential to the community. (Kania C. J. Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

8. Validity of Preventive Detention Act, 1950.

——Preventive Detention Act (1950) if ultra vires Constitution of India — See Preventive Detention Act (1950), S. 1.

A I R 1950 S C 27=51 Cr L J 1383 (SC).

9. Preventive detention—General principles.

——Art. 22 (4)—Section 2, Assam Maintenance of Public Order Act (5 of 1947) is not a law for preventive detention—See Assam Maintenance of Public Order Act (5 of 1947 as amended by Assam Act, 21 of 1950), S. 2.

A I R 1953 Assam 77=1953 Cr L J 657.

——Art. 22 (5)—Curtailment of freedom of person.

The same act may, at the same time, warrant restrictions being placed on two freedoms namely, one, freedom of the right of expression, and the other the liberty of the person. However, liberty of a person is a much wider thing than freedom of expression. And if what is sought to be curtailed is the liberty of the detenu as distinguished from his freedom of expression the detenu cannot

CONSTITUTION OF INDIA (1950), Art. 22 — 9. Preventive detention—General principles

complain against the order of detention on the ground that to the extent that he published secretly unauthorised objectionable news sheets action should have been taken against him under the Press (Emergency Powers) Act, 1931, and not under the Preventive Detention Act 1950. (Bavdekar and Vyas JJ.) In re Maganlal Jivabhai,

A I R 1951 Bom. 33 = 53 Bom. L R 127 = 21 Bom. Cr C 80=I L R (1951) Bom. 546=52 Cr L J 418.

——Meaning of—Effect of disregarding distinction between Preventive and punitive detention — Validity of warrant issued under S. 3, Preventive Detention Act, against person in jail awaiting trial in respect of offences alleged — See Preventive Detention Act (1950), S. 3—Habeas Corpus.

A I R 1950 Hyd. 66.

10. Preventive detention—Satisfaction of detaining authority.

——Art. 22 (5) — Preventive detention — Satisfaction of State Government—Function of Court — See Preventive Detention Act (1950), S. 3 (1).

A I R 1951 Pat 47=52 Cr L J 406.

——Art. 22 (5)—Preventive detention — Satisfaction of Government — Question of satisfaction, if can be challenged—See Preventive Detention Act (1950), S. 3.

A I R 1951 S C 157=52 Cr L J 373 (SC).

11. Preventive detention—Advisory Board.

——Preventive detention—Failure of Advisory Board to submit report within prescribed period — Legality — See Preventive Detention Act (1950), S. 10.

A I R 1953 Sau 63=1953 Cr L J 586

12. Preventive detention—Maximum period of detention.

——Detention beyond three months—See ibid, Art. 21.

A I R 1953 Sau 51=1953 Cr L J 503.

——Art. 22 (4) (a)—Detention order not specifying definite period of detention—Validity of order — See Preventive Detention Act (1950), S. 12.

A I R 1952 S C 350=1953 Cr L J 146 (SC).

——Art. 22 (7) (a) — Preventive detention — Indefinite detention is not repugnant — See Preventive Detention (Amendment) Act (1952), S. 3.

A I R 1952 S C 324=1952 Cr L J 1503 (SC).

——Art. 22 (4) and (7)—Preventive detention—S. 3, Preventive Detention Act does not offend Art. 22 (4) and (7) of the Constitution — See Preventive Detention (Amendment) Act (1952), S. 3.

A I R 1952 S C 324=1952 Cr L J 1503 (S C).

——Art. 22 (7)—Scope—Does not confer legislative power —Period of detention prescribed by it can be altered by Parliament.

Per Mahajan J. — The ambit of the legislative powers of Parliament is contained in Art. 245 of the Constitution read with the entries in Sch. 7. Art. 22 of the Constitution restricts those powers to a certain extent. It does not enlarge them. Clause 7, however, cuts down these restrictions to a certain extent. Parliament having power to make the law has also the power to alter or amend it, if it so chooses. It cannot, therefore, be argued that the Parliament has no authority to alter the period of one year prescribed under Art. 22 (7) (b) as the section does not confer any legislative power on Parliament. (Kania C. J., Patanjali Sastri, Mahajan, S. R. Das and Vivian Bose JJ.) S. Krishnan v. State of Madras

A I R 1951 S C 301=1951-2 M L J 105=1951 S C J 453 =64 M L W 945=1951 S C R 621=52 Cr L J 1103 (SC).

——Art. 22 (7)—Scope — Article whether confers fundamental right.

CONSTITUTION OF INDIA (1950), Art. 22 —

12. Preventive detention — Maximum period of detention

Per Mahajan J. — If the Parliament by law under Art. 22 (7) prescribed a maximum period for which any person may be detained under any law providing for preventive detention, then that period does not become a part of the fundamental right conferred on a person under Part III of the Constitution. Article 22 in Cl. 7 does not confer a fundamental right on a person ; on the other hand, in its true concept, it restricts to a certain degree the measure of the fundamental right contained in Cl. 4 (a) of the Article.

Per Bose J.—The provisions of Cls. 4 (a), 4 (b) and 7 (b) of Art. 22 confer a fundamental right not to be detained beyond a certain period. The extent of that period can vary but the maximum period of detention cannot exceed certain fixed limits. Those limits are, (a) in the first instance, three months; if not, (b) the maximum prescribed by Parliament under sub-cl. 7 (b). No law can be made authorising detention either under sub-cl. 4 (a) or 4 (b) unless a maximum period of detention is prescribed by Parliament under sub-cl. 7 (b). (Kania C. J., Patanjali Sastri, Mahajan, S. R. Das and Vivian Bose JJ.) S. Krishnan v. State of Madras,

A I R 1951 S C 301=1951-2 M L J 105=1951 S C J 453 =64 M L W 945=1951 S C R 621=52 Cr L J 1103 (SC).

——Period of detention—Non-specification of — Legality —See Preventive Detention Act (1950), S. 3 (2).

A I R 1951 Pepsu 1=52 Cr L J 33.

——Validity of S. 2 (1) (a), C. P. and Berar Public Safety Act (1948) — Maximum period of detention — See C. P. and Berar Public Safety Act (1948), S. 2 (1) (a).

A I R 1950 Nag 203=51 Cr L J 1372.

——Orissa Maintenance of Public Order Act (4 of 1948 as amended in 1949), Ss. 2, 3 and 4—Detention under—Preventive Detention (Extension of Duration) Order, 1950, if justifies continuation of detention after Constitution came into force—See Orissa Maintenance of Public Order Act (IV of 1948 as amended in 1949), S. 2.

A I R 1950 Orissa 157=51 Cr L J 1189 (F B).

13. Detention for more than three months without opinion of Advisory Board.

——Art. 22 (7) — Power under Art. 22 (7) — Limitation upon.

It cannot be said that once the power given under clause (7) to fix a maximum period has been exercised the power exhausts itself and cannot be exercised again in respect of the same detention. No such limitation is imposed upon Parliament by the Constitution. (Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das and Bose JJ.) Shamrao Parulekar v. District Magistrate, Thana,

A I R 1952 S C 324 = 1952 S C J 476 = 1952 S C R 683=54 Bom L R 877=1952 S C A 635 = 1952 Cr L J 1503 (SC).

——Arts. 22 (7), 373 — Power of Parliament and President under.

The Parliament's power under Art. 22 (7) (a) and (b) can only relate to detentions made under any law enacted in pursuance of and in conformity with the provisions of Art. 22 (4). Neither the Parliament nor the President acting under Art. 373 can therefore prescribe what it or he is empowered to do under Art. 22 (7) (a) and (b) in respect of the detentions made under a law in force prior to the commencement of the Constitution. (Govinda Menon and Krishnaswami Nayudu JJ.) M. R. Venkataraman v. Commissioner of Police, Madras,

A I R 1951 Mad 1015=1952 Cr L J 170.

——Art. 22 (7)—'And'—Meaning—Words and Phrases.

(Majority view, Bose J. dissenting)—Sub-clause (a) of cl. (7) of Art. 22 being an enabling provision, the word 'and' should be understood in a disjunctive sense. (Kania

CONSTITUTION OF INDIA (1950), Art. 22 —

13. Detention for more than three months without opinion of Advisory Board

C. J., Patanjali Sastri, Mahajan, S. R. Das and Vivian Bose JJ.) S. Krishnan v. State of Madras,

A I R 1951 S C 301=1951-2 M L J 105=1951 S C J 453 =64 M L W 945=1951 S C R 621=52 Cr L J 1103 (SC).

——Art. 22 (7) (a)—"The circumstances under which, and the class or classes in which."

Per Kania C. J., Patanjali Sastri and Das JJ. — By Cl. (7) (a) of Art. 22, as worded, the Legislature intended that the power of preventive detention beyond three months may be exercised either if the circumstances in which or the class or classes of cases in which, a person is suspected or apprehended to be doing the objectionable things mentioned in the section.

Contra Per Fazl Ali and Mahajan JJ. — The provision clearly means that both the circumstances and the class or classes of cases should be prescribed, and prescription of one without prescribing the other will not be enough. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27=1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

——Art. 22 (7) (a)—Parliament may prescribe either the circumstances or the classes of cases or both—Preventive Detention Act (1950), S. 12 (1).

Per Patanjali Sastri and Das JJ. — Article 22 (7) (a) means that Parliament may prescribe either the circumstances or the classes of cases or both, and in enacting S. 12 of the Preventive Detention Act, 1950, Parliament evidently regarded the matters mentioned in Cls. (a) and (b) of sub-s. (1) of that section as sufficiently indicative both of the circumstances under which and the classes in which a person could be detained for the longer period. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

——Art. 22 (7) — Interpretation of — Real purpose and intention.

Per Mahajan J.—The real purpose of Cl. (7), Art. 22 is to provide for a contingency where compulsory requirement of an Advisory Board may defeat the object of the law of preventive detention. The intention was to lay down some objective standard for the guidance of the detaining authority on the basis of which without consultation of an Advisory Board detention could be ordered beyond the period of three months. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

——Art. 22, Cls. (4) (a) and (7)—Cl. (7) whether is exception to Cl. (4) (a).

Per Kania C. J. and Patanjali Sastri J. — Contra Per Fazl Ali J. — An attempt to correlate Cl. (4) (a) and Cl. (7) (a) as a rule and an exception respectively is opposed both to the language and the structure of those clauses. They are two alternatives provided by the Constitution for making laws on preventive detention. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

CONSTITUTION OF INDIA (1950), Art. 22—Detention for more than three months without opinion of Advisory Board

——Art. 22 (4) (a)—"Such detention."

Per Fazl Ali J., Per Patanjali Sastri J. Contra — The words "such detention" occurring at the end of Cl. (4) (a) of Art. 22 mean detention for a period longer than three months. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

——Art. 22 (7) (a)—Circumstances and class or classes — Meaning of—Preventive Detention Act (1950), S. 12 (1).

Circumstances ordinarily mean events or situation extraneous to the actions of the individual concerned, while a class of cases means determinable groups based on the actions of the individuals with a common aim or idea. Determinable may be according to the nature of the object also. The classification can be by grouping the activities of people or by specifying the objectives to be attained or avoided. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

——Art. 22 (7)—Interpretation of.

Per Kania C. J. — In the case of an Act of preventive detention passed by the Parliament Cl. (7) of Art. 22 contained in the Chapter on Fundamental Rights, permits detention beyond a period of three months and excludes the necessity of consulting an advisory board. If the opening words of the sub-clause are complied with sub-clause (b) is permissive. It is not obligatory on the Parliament to prescribe any maximum period. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

A I R 1950 S C 27 = 1950 S C R 88 = 1950 M W N (Cr) 127 = 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174=1950 M W N 495=51 Cr L J 1383 (SC).

14. President's powers.

——Arts. 22 (7), 373 — Powers of President under Art. 373—Extent of.

The President cannot order the continuance of the detention of a person even in a case which is not covered by Art. 22, Cl. (7). (Hemeon and Mudholkar JJ.) Trimbak v. The State,

A I R 1950 Nag 203=1951 N L J 1=51 Cr L J 1372.

——Power of President to revive an expired Act or Ordinance by another order passed subsequently in exercise of power under sub-s. (7) cls. (a) and (b) read with Art. 373 — See Preventive Detention (Extension) Order, 1950,

A I R 1950 Cal 274=51 Cr L J 1110 (SB).

——Art. 22 (7)—Scope.

Article 22 (7) does not authorise making a new detention law that can stand by itself. (Meredith C. J. and Sarjoo Prasad J.) Brahmeshwar Prasad v. The State of Bihar,

A I R 1950 Pat 265=29 Pat 335=51 Cr L J 1081.

15. Clause (5) — General.

——Arts. 22 (5), 21 — One of several grounds vague — Effect—(Preventive Detention Act (1950), S. 7).

Preventive Detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court.

CONSTITUTION OF INDIA (1950), Art. 22 — 15. Clause (5)—General

(Patanjali Sastri C. J., B. K. Mukherjea, S. R. Das, Ghulam Hasan and Bhagwati JJ.) Dr. Ram Krishan Bhardwaj v. State of Delhi,

A I R 1953 S C 318 = 1953 S C J 444 = 1953 S C A 604=1953 A W R (Sup) 66 = 1953 S C R 708 = 1953 Cr L J 1241 (SC).

——Art. 22 (5)—S. 123A (U. P.), Criminal P. C., if void as being inconsistent with Art. 22 (5)—See Criminal P. C., S. 123A.

A I R 1950 All 562=52 Cr L J 1282.

——Art. 22 (5) — "Authority making the order", meaning of—See Preventive Detention Act (1950), S. 7,

A I R 1951 Bom 33 = 52 Cr L J 418.

——Grounds of detention — Failure to communicate to detenu — Effect — See Preventive Detention Act (1950), S. 7,

A I R 1950 Hyderabad 68.

16. "The grounds on which the order has been made."

——Art. 22 (5)—Grounds of detention—Detention under S. 3, Preventive Detention Act, 1950—Preventive Detention Act (1950), S. 3.

The expression "the maintenance of public order" is comprehensive enough to include "the security of the State" as used in S. 3, Preventive Detention Act, 1950. Therefore, when the grounds supplied to the detenu do not suggest that there were other grounds besides those mentioned it cannot be said that they do not disclose all the grounds merely because they were described as concerning maintenance of public order while the order of detention stated that the detention was for the security of the State as well. (Jamuar and Rai JJ.) Mohit Lal Pandit v. State,

A I R 1951 Pat 439 (2) = 1952 Cr L J 543.

——Preventive detention — Grounds supplied to detenu must be connected with preventive detention order — See Preventive Detention Act (1950), S. 3,

A I R 1951 All 709 = 52 Cr L J 732.

——Grounds for detention.

If it is found that the grounds supplied to a detenu are not connected with the order of preventive detention it cannot be said that the requirements of Art. 22 (1), (3) and (5) had been complied with and the failure to establish such connection would render the order invalid. Thus it will be open in the case of an order under S. 12, Preventive Detention Act to contend that the grounds on which the order was made have no connection at all with the maintenance of public order or with the circumstances or classes of cases under which an order under the section could be supported. (Sapru J.) Asha Ram v. State,

A I R 1950 All 709 = I L R (1951) 2 All 493=52 Cr L J 732.

——Detention without furnishing grounds — Validity — Preventive Detention Act (1950), S. 7.

Under Art. 22 of the Constitution and S. 7, Preventive Detention Act, a detenu is entitled at the earliest possible opportunity to know the grounds of his detention. If there is any detention without furnishing of grounds to the person concerned such detention is not lawful. Those who are responsible for ordering detention in order to justify such detention have to comply with the letter as well as with the spirit of the Constitution and the Act. (Manohar Pershad and Ansari JJ.) Morampudi Narsayya v. Hyderabad State,

A I R. 1951 Hyd 79 (1)=I L R (1951) Hyd 187 = 52 Cr L J 502.

CONSTITUTION OF INDIA (1950), Art. 22 — 16. "The grounds on which the order has been made"

——Art. 22 (5) — Detention grounds — Necessity to disclose all grounds — See Preventive Detention Act (1950), S. 7,

A I R 1951 Pat 389 = 52 Cr L J 282.

——Preventive detention—Grounds of—Non-compliance with constitutional and statutory provisions — See Preventive Detention Act (1950), S. 7,

A I R 1951 Bom 856.

17. Vagueness of grounds.

——Art. 22 (5) — Preventive detention — Vagueness of grounds—See Preventive Detention Act (1950), S. 7,

A I R 1953 Hyd 277 = 1953 Cr L J 1845.

——Arts. 22 (5) and 226 — Vague grounds of detention, effect — (Criminal P. C. (1898), S. 491) — Preventive Detention Act (1950), S. 3).

All the grounds supplied to the petitioner must be clear and specific and even if one of them does not satisfy this condition the right of representation guaranteed to the detenu under Art. 22 (5) of the Constitution is affected and consequently the order of detention is illegal. (Teja Singh C. J.) Bakhtawar Singh Bishan Singh v. State,

AIR 1953 Pepsu 207 = I L R (1953) Patiala 423 = 1953 Cr L J 1838.

——Art. 22 (5) — Vagueness of grounds — Preventive Detention Act (1950), S. 3).

Where the grounds are so vague that the detenu cannot make an effective representation, he has a right to approach the Court, and complain that there has been an infringement of his fundamental right, and even if the infringement of the second part of the right under Art. 22 (5) is established, he is bound to be released by the Court. (Wanchoo C. J. and Bapna J.) Durg Singh v. State,

AIR 1953 Raj 177=1953 R L W 343 = I L R (1953) 3 Raj 63=1953 Cr L J 1424.

—— Art. 22 (5)—Vagueness of grounds — Preventive Detention Act (1950), S. 7).

A layman who is not experienced in the interpretation of documents, can hardly be expected without legal aid, which is denied to him, to interpret the grounds in the proper sense. It is, therefore, up to the detaining authority to make his meaning clear beyond doubt, without leaving the person detained to his own resource for interpreting them. Otherwise such grounds would be regarded as vague so as to render it difficult, if not impossible, for the petitioner to make an adequate representation. (Patanjali Sastri C. J., B. K. Mukherjea, S. R. Das, Ghulam Hasan and Bhagwati JJ.) Dr. Ram Krishan Bhardwaj v. State of Delhi,

AIR 1953 S C 318=1953 S C J 444=1953 S C A 604 =1953 A W R (Sup) 66 = 1953 S C R 708 = 1953 Cr L J 1241 (SC).

——Art. 22 (5) — Detenu having made detailed representation to the Advisory Board cannot contend that grounds supplied were vague — See Preventive Detention Act (1950), S. 7.

AIR 1952 Hyd 187=1952 Cr L J 1756.

——Art. 22 (5) — Objection that grounds supplied are vague — Sufficient particulars immediately supplied — Infringement of fundamental right—(Preventive Detention Act (1950), S. 3).

There can be no infringement of any fundamental right of a person detained under the Preventive Detention Act or the contravention of any constitutional provision if he has been supplied with sufficient particulars as soon as he raised the objection that the grounds

CONSTITUTION OF INDIA (1950), Art. 22 — 17. Vagueness of grounds

supplied are vague. (Medapa C. J. and Vasudevamurthy J.) D. M. Revanasiddaiah v. State of Mysore,

AIR 1952 Mys 85 = I L R (1951) Mys 455=1952 Cr L J 1526.

——Art. 22 (5) — Grounds of detention—Vagueness of—Preventive Detention Act (1950), S. 3.

The grounds on which the officer passes the order for detention within the meaning of S. 3, Preventive Detention Act, 1950, should not necessarily mean the detailed facts on which a prosecution in a criminal Court may be launched. It is not necessary to mention in the grounds the particulars in the same way as they are mentioned in a charge of a criminal offence.

It is not safe to judge the vagueness of grounds in a particular case with reference to the grounds in other cases. The decision will depend on the contents of the grounds in each case. Hence, where in a case of detention for instigating in collaboration with a notorious outlaw, the landless labourers to loot foodgrains the grounds served upon the detenu clearly mentioned the places at which the disturbances have taken place and also the period when they took place the mere fact that the exact date and hour and the part played by the detenu in each of the occurrences were not set out in detail will not render the grounds vague. (Jamuar and Rai JJ.) Mohit Lal Pandit v. State,

AIR 1951 Pat 439 (2)=1952 Cr L J 543.

——Art. 22 (5) — Preventive detention — Inaccuracy in grounds—Effect — See Preventive Detention Act (1950), S. 7.

AIR 1951 Pat 68=52 Cr L J 603.

——Preventive detention — Particulars of grounds for—To be furnished to detenu — See Preventive Detention Act (1950), S. 7 (1) and (2).

AIR 1951 Bom 252=52 Cr L J 437.

——Art. 22 (5) — Preventive detention — Vagueness of grounds — Satisfaction of authority — See Preventive Detention Act (1950), S. 3.

AIR 1951 S C 174=52 Cr L J 400 (SC).

——Art. 22 (5)—Deprivation of constitutional safeguards —See Preventive Detention Act (1950), S. 7.

AIR 1951 Bom 266.

18. Grounds of detention — Consideration by the Court.

——Art. 22 (6) — Preventive detention — Grounds for—Statements relating to past conduct—Whether justiciable —See Preventive Detention Act (1950), S. 3.

AIR 1951 Hyd 162=52 Cr L J 1527 (FB).

——Art. 22 (5) — Grounds supplied to detenu—Jurisdiction of Court to test if they are sufficient when arises — Preventive Detention Act (IV of 1950), S. 7.

Per Majority [Patanjali Sastri and Das JJ., contra]—Article 22 (5) postulates two rights. The first part of Art. 22, cl. 5 gives a right to the detained person to be furnished with "the grounds on which the order has been made" and that has to be done "as soon as may be." The second right given to such person is of being afforded "the earliest opportunity of making a representation against the order." It is obvious that the grounds for making the orders as mentioned above are the grounds on which the detaining authority was satisfied that it was necessary to make the order. These grounds, therefore, must be in existence when the order is made. The question whether such ground can give rise to the satisfaction required for making the order is outside the scope of the inquiry of the Court. But the question whether the vagueness or indefinite nature of the statement furnished to the detained person is such as to give

CONSTITUTION OF INDIA (1950), Art. 22 — 18. Grounds of detention — Consideration by the Court

him the earliest opportunity to make a representation to the authority is a matter within the jurisdiction of the Court's inquiry and subject to the Court's decision.

The conferment of the right to make a representation necessarily carries with it the obligation on the part of the detaining authority to furnish the grounds, i. e., materials on which the detention order was made. Thus while there is a connection between the obligation on the part of the detaining authority to furnish grounds and the right given to the detained person to have an earliest opportunity to make the representation, the test to be applied in respect of the contents of the grounds for the two purposes is quite different. For the first, the test is whether it is sufficient to satisfy the authority. For the second the test is whether it is sufficient to enable the detained person to make the representation at the earliest opportunity. (Kania C. J., Fazl Ali, Patanjali Sastri, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) State of Bombay v. Atma Ram,

AIR 1951 S C 157 = 1951 S C J 208 = 1951-1 M L J 380 = 53 Bom L R 437 = 1951 A L J (SC Sup) 36 = 1951 S C R 167 = 21 Bom Cr C 134 = 1951 M W N 532=1951 M W N (Cr) 148=52 Cr L J 373 (S C).

——Grounds of detention—Sufficiency of—Court's power to look into—See Preventive Detention Act (1950), S. 7.

AIR 1951 Cal 194=51 Cr L J 1569.

19. Supplementary grounds

——Art. 22 (5)—"As soon as may be" — Supplementary grounds—Preventive Detention Act (1950), S. 7.

The detenus were detained in February 1950 and did not receive the particulars of the grounds served in the middle of March until towards the end of July 1950. The so-called supplementary grounds or particulars did not state any new grounds for the orders of detention. They were in the nature of particulars of the rather general grounds given earlier. They merely amplified those grounds giving specific instances to support the general statements made earlier.

Held that the detenus had been given the grounds of detention "as soon as may be" and had been given "the earliest opportunity of making representations." (Harries C. J. and G. N. Das J.) Ananda Sankar v. Chief Secretary to Govt. of W. B.

AIR 1953 Cal 129=1953 Cr L J 361.

——Art. 22 (5)— Supplementary grounds — Connotation of — When do they infringe right given by Art. 22 (5) — Preventive Detention Act (IV of 1950), S. 7. A I R 1951 Bom 266, Reversed.

The adjective "supplementary" in the words "supplementary grounds" is capable of covering cases of adding new grounds to the original grounds, as also giving particulars of the facts which are already mentioned, or of giving facts in addition to the facts mentioned in the ground to lead to the conclusion of fact contained in the ground originally furnished. If by "supplementary grounds" is meant additional grounds, i. e. conclusions of fact required to bring about the satisfaction of the Government, the furnishing of any such additional grounds at a later stage will amount to an infringement of the first mentioned right in Art. 22 (5) as the grounds for the order of detention must be before the Government before it is satisfied about the necessity for making the order and all such grounds have to be furnished as soon as may be. The other aspects, viz., the second communication (described as supplemental grounds) being only particulars of the facts mentioned or indicated in the grounds firstly supplied or being additional incidents which taken along with the facts mentioned or indicated in the ground already conveyed lead to the same conclusion of the fact,

CONSTITUTION OF INDIA (1950), Art. 22— 19. Supplementary grounds

(which is the ground furnished in the first instance) stand on a different footing. These are not new grounds within the meaning of the first part of Art. 22 (5). Thus, while the first mentioned type of "additional" grounds cannot be given after the grounds are furnished in the first instance, the other types even if furnished after the grounds are furnished as soon as may be, but provided they are furnished so as not to come in conflict with giving the earliest opportunity to the detained person to make a representation, will not be considered an infringement of either of the rights mentioned in Art. 22 (5).

Having regard to this principle the summary rejection by a Court of the later communication solely on the ground that all materials in all circumstances must be furnished to the detenu when the grounds are first communicated, is not sound : A I R 1951 Bom 266, Reversed. (Kania C. J., Fazl Ali, Patanjali Sastri, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) State of Bombay v. Atma Ram,

AIR 1951 S C 157 = 1951 S C J 208 = 1951-1 M L J 389=53 Bom L R 437=1951 A L J (S C Sup) 36=1951 S C R 167=21 Bom Cr C 134=1951 M W N 532=1951 M W N (Cr) 148=52 Cr L J 373 (S C).

20. "As soon as may be"

——Preventive detention — Unreasonable or unjustifiable delay cannot be allowed — See Preventive Detention Act (1950), S. 7.

AIR 1953 Hyd 277=1953 Cr L J 1845.

——Art. 22 (5)—Preventive detention—Delay in furnishing grounds held not unreasonable—See Preventive Detention Act (1950), S. 7.

AIR 1952 Hyd 112=1952 Cr L J 1076.

——Art. 22 (5)—Delay in supplying grounds of detention —If justiciable.

Delay in supplying the grounds of detention to the detenu and in affording him opportunity to make representation is justiciable issue in Indian Law. The authorities concerned can apprehend prejudicial activities on the part of a detenu from his past conduct, even though such conduct may have been long time ago and he has in the interval been in jail. When the authorities are apprehensive of such future conduct, their satisfaction is subjective and is not justiciable. But the rights to have the ground and to make representation against it are secured by the Constitution and the obligations of 'as soon as may be' and 'earliest opportunity' in each are cast on the authority concerned. Enquiry about the time limitations is, therefore, an important judicial function. (Shripat Rao, Mohd. Ahmed Ansari and Deshpande JJ.) Santhamma v. State of Hyderabad,

AIR 1951 Hyd 128 = I L R (1951) Hyd 654 = 52 Cr L J 1402 (FB).

——Art. 22 (5)— "As soon as may be"—Meaning—Delay in communication of grounds.

The phrase "as soon as may be" in Art. 22 (5) does not exclude reasonable time for formulating the grounds on the material in the possession of the authority. The time must necessarily vary with the activities of the person and the other circumstances of the case. It is, therefore, a question of fact in each case whether there has been delay. (Shripat Rao, Mohd. Ahmed Ansari and Deshpande JJ.) Santhamma v. State of Hyderabad,

AIR 1951 Hyd 128=ILR (1951) Hyd 654=52 Cr L J 1402 (FB).

——Art. 22 (5)—"As soon as may be."

Under the Bengal Criminal Law Amendment Act, 1930, a very large number of persons were detained. The validity of that Act was being challenged in the Calcutta High Court and the judgment was expected to be delivered

CONSTITUTION OF INDIA (1950), Art. 22 —

20. "As soon as may be."

towards the end of February 1950. The Preventive Detention Act (1950) was passed in the last week of February 1950 and the detention orders on all the detenus were served on 26-2-1950 :

Held, that having regard to the fact that the State Government had suddenly to deal with a large number of cases on one day it could not be said that the grounds of detention served on 14-3-1950 were not communicated "as soon as may be." (Kania C. J., Fazl Ali, Patanjali Sastri, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) Tarapada De v. State of West Bengal,

AIR 1951 S C 174 = 1951 S C J 233 = 1951-1 M L J 431 = 1951 S C R 212=1951 A L J (S C Sup) 70=1951 M W N 549=1951 M W N (Cr) 165=52 Cr L J 400 (SC).

——Art. 22 (5)—Preventive detention— Delay in furnishing detention grounds— Effect—See Preventive Detention Act (1950), S. 7.

AIR 1951 Bom 30=52 Cr L J 366 (FB).

21. Right to make representation against order of detention

——Art. 22 (5) — Opportunity to the person detained for making representation against order— See Criminal P. C. (1898), S. 123A (U. P.).

AIR 1950 All 562=52 Cr L J 1282.

——Art. 22 (5) —Communication of grounds of detention —Sufficiency.

(Per Kania C. J. Patanjali Sastri and Das JJ. — Mahajan and Bose JJ. dissenting.)

To hold that Art. 22 (5) requires that, wherever detention is grounded on alleged prejudicial speeches, the detaining authority should indicate to the person detained the passages which it regards as objectionable, would rob the provisions of the Act of much of their usefulness in the very class of cases where those provisions were doubtless primarily intended to be used and where their use would be most legitimate. Hence where an order of detention is based upon speeches made by the person sought to be detained, the detaining authority need not communicate to the person the offending passages or even the gist of such passages on pain of having the order quashed if it did not. If the time and place at which the speeches were alleged to have been made are specified and their general nature and effect (being such as to excite disaffection between Hindus and Muslims) is also stated, these constitute sufficient particulars to enable the person to make his representation to the authority concerned, and the requirements of Art. 22 (5) are complied with.

Per Mahajan J. — The sufficiency of the material supplied is a justiciable issue, though the sufficiency of the grounds on which the detaining authority made up its mind is not a justiciable issue. In the absence of any indication in the grounds as to the nature of the words used by the detenus in their speeches from which an inference has been drawn against them, they would not be able fully to exercise their fundamental right of making a representation and would not be able to furnish a proper defence to the charge made against them.

Per Bose J. — On the facts and circumstances of the present cases, the grounds supplied were insufficient and the gist of the offending passages should have been supplied. The omission to do so invalidates the detention. (Kania C. J., Patanjali Sastri, Mahajan, S. R. Das & Bose JJ.) Ram Singh v. The State of Delhi,

A I R 1951 S C 270 = 1951 S C J 374 = 1951 A L J (SC Sup) 111 = 1951 M W N 765=1951 M W N (Cr) 233=1951 S C R 451=52 Cr L J 904 (SC).

——Arts. 22 (5), 226— Habeas corpus — Copy of order of detention not given to detenu—Effect—Preventive Detention Act (1950), S. 3.

CONSTITUTION OF INDIA (1950), Art. 22 —

21. Right to make representation against order of detention

The right vested in the detenu under Art. 22 (5) is not merely to take exception to the grounds or to show that these grounds are not tenable but also to take exception to the validity of the order of detention for doing which he must be put in possession of a copy of the order especially when he has made a request for it. When refusal to comply with such request deprives the detenu of his right to object to the validity or legality of the order it is a case in which he can seek redress in a Court of Law. The right to move the Court can be exercised by the detenu not only after he has been served with a copy of the grounds of the order, but also during the period of the interregnum between the commencement of the detention and the date on which the grounds are served on him. When in response to the request of the detenu a copy of the order of detention was not given to him to enable him to see whether it is a proper order or not the detention is not legal. (Kunhiraman C. J. and Subramania Ayer J.) Thiruvadinatha v. District Magistrate,

A I R 1951 Trav-Co 130 = 1951 K L T 34 = I L R (1951) T C 114=52 Cr L J 845.

——Art. 22 (5)—Information conveyed to detenu—Nature of—Preventive Detention Act (4 of 1950), S. 7.

If the representation to be made by detenu contemplated by Art. 22 (5) has to be intelligible to meet the charges contained in the grounds, the information conveyed to the detained person must be sufficient to attain that object. Without getting information sufficient to make a representation against the order of detention it is not possible for the man to make the representation. Indeed the right will be only illusory but not a real right at all. The right to receive the grounds is independent but it is intentionally bound up and connected with the right to make the representation. (Kania C. J. Fazl Ali, Patanjali Sastri, B. K. Mukherjea, S. R. Das and Chandra Sekhara Aiyar JJ.) State of Bombay v. Atma Ram,

A I R 1951 S C 157=1951 S C J 208 = 1951-1 M L J 389=53 Bom L R 437= 1951 A L J (SC Sup) 36=1951 S C R 167=21 Bom Cr C 134=1951 M W N 532=1951 M W N Cr 148=52 Cr L J 373 (SC).

22. Clause (6).

——Preventive detention — Particulars of grounds of detention not necessary.—See Preventive Detention Act (1950), S. 7

A I R 1952 Raj 171=1953 Cr L J 34.

——Art. 22 (5), (6) — Basis of grounds — Disclosing of— Preventive Detention Act (1950), S. 7.

Though if the grounds of detention are very vague and indefinite so as to render the object of furnishing the grounds nugatory the order may be set aside, the detaining authority is under no obligation to disclose to the detenu the basis of the allegation, i.e., the particulars of the allegations on which the detention is made. It is not correct to say that what cl. 6 of Art. 22 entitles the detaining anthority is only to refrain from disclosing to the detenu the evidence of the allegations. Grounds of detention cannot be said to be vague and indefinite for the reason that they do not contain the basis of those grounds. (Govinda Menon and Chandra Reddi JJ.) Narayana Raju v. Government of Madras,

A I R 1951 Mad 182=1951-1 M L J 274=64 M L W 311=1951 M W N 248 = 1951 M W N (Cr) 76=52 Cr L J 688.

——Art. 22 (6) — Detention grounds — Necessity to disclose all grounds — See Preventive Detention Act (1950), S. 7.

A I R 1951 Orissa 251=52 Cr L J 679.

CONSTITUTION OF INDIA (1950), Art. 22 — 22. Clause (6)

——Art. 22 (6) — Preventive detention — Grounds for— Particulars to be furnished to detenu — See Preventive Detention Act 1950, S. 7 (1) and (2).

A I R 1951 Bom 252=52 Cr L J 437.

——Art. 22 (6) — Refusal to disclose grounds in public interest.

There is a clear difference between grounds and facts. The grounds are the bases of the allegations. The facts really are the evidence upon which the bases of the allegations are to be established. Under Art. 22 (6) the authority cannot refuse to disclose the grounds in the public interest. All that it can refuse to disclose are facts which would be harmful to public interest if they were disclosed. (Harries C. J. and Mitter J.) Safatulla Khan v. Chief Secretary to Government of West Bengal,

A I R 1951 Cal 194=55 C W N 27= 51 Cr L J 1569.

23. Fresh order of detention.

——Preventive detention — Former defective order — Subsequent fresh order free from defect—Legality — See Preventive Detention Act (1950), Ss. 3, 13.

A I R 1952 S C 106=1952 Cr L J 656.

——Preventive detention — Former order defective — Subsequent fresh order free from defect—Legality — See Preventive Detention Act (1950), S. 3

A I R 1951 Raj 69=1952 Cr L J 425.

——Art. 22 (5) — Scope — Detention period extended— Suplying of fresh grounds—See Preventive Detention Act (1950), S. 3

A I R 1951 Punjab 119=52 Cr L J 1451.

——Arts. 22 (7), 246, Sch. 7, List III, item 3—Preventive detention — Legislation — Powers of State — Successive legislations.

Per Sarjoo Prosad J. — Successive legislations and orders of detention passed under legislations which have ultimately to be abandoned as defective and void on technical grounds may in most cases lead to the result of detaining a person for a period much beyond that contemplated by Art. 22 of the Constitution of India. A State must, therefore, guard against any such unfortunate action. (Sinha J. on a difference of opinion between Meredith C. J. and Sarjoo Prosad J.) Ratan Ray v. State of Bihar,

AIR 1950 Pat 332 = 29 Pat 410 = 51 Cr L J 1251.

—Art. 23.

——Chamba Paid Forced Labour Act (3 of 2004B) invalid

Chamba Paid Forced Labour Act was repugnant to the provisions of Article 23 of the Constitution of India. Conscription for the defence of the country, or for social services, are possible instances of imposition of compulsory service for public purposes under the Article. That cannot however be said of imposition of compulsory service for the purpose of carrying a load of Government property by the Tahsildar or any Government servant in normal times. (Chowdhry J. C.) State v. Jorawar

AIR 1953 H P 18 = 1953 Cr L J 400.

——U. P. Removal of Social Disabilities Act (XIV of 1947)—Validity.

The passing of the U. P. Removal of Social Disabilities Act does not contravene Art. 23 at all.

When a person is prohibited from refusing to render service merely on the ground that the person asking for it belongs to a scheduled caste he is not thereby subjected to forced labour similar in form to bigar. (Desai J.) State v. Banwari,

AIR 1951 All 615 = 1951 A L J 282 = 1951 A W R (H C) 305 = 1951 All Cr R 59 = 1951 R D (HC) 229= 52 Cr L J 899.

CONSTITUTION OF INDIA (1950) —Art. 25.

——Art. 25 (5)—"As soon as may be"—Held, delay of 22 days was not unreasonable in the case. (Jamuar and Rai JJ.) Mohit Lal Pandit v. State,

AIR 1951 Pat 439 (2) = 1952 Cr L J 543.

——No contravention — See Madras Hindu (Bigamy Prevention and Divorce) Act (6 of 1949)

AIR 1952 Mad 193 = 1952 Cr L J 434.

——Social reform—No discrimination—See Bombay Prevention of Hindu Bigamous Marriages Act (25 of 1946)

AIR 1952 Bom 84 = 1952 Cr L J 354.

——Art. 25 Expl. I—Kirpans—Only one kirpan is allowed without license — See Arms Act (1878), S. 19 (f).

AIR 1952 All 53 = 1952 Cr L J 218.

——Kirpan, meaning of—See U. P. Arms Rules and Orders (1935), R. 17.

AIR 1952 All 53 = 1952 Cr L J 218.

—Art. 31.

——Scope — Limitations under — Provisions of Ss. 14 and 16 of Arms Act held not repugnant with Art. 31 — See Arms Act (1878), S. 14

AIR 1953 Madh B 236 = 1953 Cr L J 1409.

——Confiscation of goods under Sea Customs Act — Sea Customs Act (1878), Ss. 167 (8), 182.

Under Art. 31 (1) a person can be deprived of his property provided he is so deprived by authority of law. Further no question arises for payment of compensation under clause (1) of Art. 31. In providing for confiscation under the Sea Customs Act the Government has purported to exercise the Police power, and as such the Legislation is one which falls under Art. 31 (1). (Bose J.) Shew Pujan Rai Indrasan Rai Ltd. v. Collector of Customs,

AIR 1952 Cal 789 = 1952 Cr L J 1651.

——When Art 31 is invoked Art. 19 (1) (f) has no application — See ibid, Art. 19 (1) (f)

AIR 1952 Raj 74 = 1952 Cr L J 732.

——Art. 31 (2)—Provisions offending to — See Rajasthan Food Grains Control Order (1949), Cl. 25

AIR 1952 Raj 74 = 1952 Cr L J 732.

——"Compensation," meaning of —(Words and Phrases).

Under Art. 31 of the Constitution of India the compensation to be provided by law, when property is taken away, should be fair compensation which means equivalent in value of the property taken or acquired, subject only to this qualification that such equivalent need not be paid in money. (Wanchoo C. J. and Bapna J.) Nathmal v. Commissioner, Civil Supplies, Rajasthan,

AIR 1952 Raj 74 = 1951 Raj L W 467 = ILR (1951) 1 Raj 674 = 1952 Cr L J 732.

——Scope—See ibid, Art. 14.

AIR 1951 M B 160 = 52 Cr L J 1533.

——Art. 31 (2) — Scope —Article if violated by C. P. and Berar Accommodation (Requisition) Act—See C. P. and Berar Accommodation (Requisition) Act (63 of 1948), S. 3.

AIR 1951 Nag 33.

——Art. 31 (2)—"Public purpose"—Act of requisitioning accommodation for — C. P. and Berar Accommodation (Requisition) Act (63 of 1948), S. 3 (1).

A public office, whether of the Central or the Provincial Government or of a local authority exists for the benefit of the public and requisitioning accommodation for locating such office is a "public purpose." Similarly, a person holding an office of profit under the Government is charged with the performance of public duties. Such a person must, for enabling him to discharge his duties, be housed and requisitioning accommodation for

CONSTITUTION OF INDIA (1950), Art. 31

him is as much a public purpose as is the location of a public office. (Mangalmurti and Mudholkar JJ.) Manohar v. G. G. Desai

AIR 1951 Nag 33= 1951 N L J 346 = ILR (1951) Nag 791.

——Arts. 31, 226 — Deprivation of possession by Custodian of Evacuee Property — Right to writ of mandamus —Administration of Evacuee Property Act (1950), S. 28.

A lady executed and registered a deed of wakfnama on 4-5-1946 in respect of her property which provided that she was to be the mutwalli and that on her death or her relinquishing the office her three sons were to be joint mutwallis. She resigned her office as well as her right to receive a share of the income by a letter on 2-5-1949. The Deputy Custodian of Evacuee Property holding her to be an evacuee and that her letter of 2-5-1949 amounted to a transfer of property took possession of the property. The sons who were admittedly citizens of India applied for a writ of mandamus. It being also found that the lady who was born in India and married to an Indian citizen was herself a citizen of India :

Held (1) that there was an infringement of fundamental right of the petnrs. to hold and enjoy property ;

(2) that there was no transfer of the property subsequent to 14-8-1947 so as to bring it within the meaning of the expression "evacuee property" in the Administration of Evacuee Property Act, 1950, and that the question was of no consequence since the lady was found to be a citizen of India ;

(3) that Art. 226 gave the H. C. original jurisdiction in all such matters to issue a mandatory injunction and that the special remedy of an appeal provided by the Act was no bar to the exercise of the jurisdiction. (Shearer and Sarjoo Prasad JJ.) Sayeedan Khatoon v. State of Bihar

AIR 1951 Pat 434 = 30 Pat 21.

—Art. 32.

——Detention without remand — (Criminal P. C. (1898), Ss. 167 and 344).

Detention of a person in custody after the expiry of remand order, without any fresh order of remand committing him to further custody while adjourning the case under S. 344, Criminal P. C., is illegal. (Patanjali Sastri C. J., B. K. Mukherjea, S. R. Das, Ghulam Hasan and Bhagwati JJ.) Ramnarayan Singh v. State of Delhi

AIR 1953 S C 277 = 1953 S C A 399 = 1953 S C J 326 = 1953 A W R (Sup) 68 = 1953 M W N 647 = 1953 S C R 652 = 1953 Cr L J 1113 (SC).

——Crucial date of detention.

In habeas corpus proceedings, the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. (Patanjali Sastri C. J., B. K. Mukherjea, S. R. Das, Ghulam Hasan and Bhagwati JJ.) Ram Narayan v. State of Delhi,

A I R 1953 S C 277 = 1953 S C A 399 = 1953 S C J 326=1953 A W R (Sup) 68=1953 M W N 647 = 1953 S C R 652=1953 Cr L J 1113 (SC).

——Returns.

In a question of habeas corpus, when the lawfulness or otherwise of the custody of the persons concerned is in question, the documents containing order of remand would be of vital importance and should be produced at the time of filing return. (Patanjali Sastri C. J., B. K. Mukherjea, S. R. Das, Ghulam Hasan and Bhagwati JJ.) Ram Narayan v. State of Delhi,

AIR 1953 S C 277=1953 S C A 399= 1953 S C J 326 = 1953 A W R (Sup) 68 = 1953 M W N 647 = 1953 S C R 652=1953 Cr L J 1113.

CONSTITUTION OF INDIA (1950), Art. 32

——Habeas Corpus petition — Rejection on merits—Reconsideration on constitutional points—Case cannot be reopened for reason that grounds of detention are vague. (Patanjali Sastri C. J., B. K. Mukherjea, Chandrasekhara Aiyar, Bose and Ghulam Hasan JJ.), Mrs. Godavari Parulekar v. State of Bombay,

AIR 1953 S C 52=1953 S C J 28= 1953-1 M L J 203 =1953 S C R 210 = 1953 S C A 287 = 1953 Cr L J 508 (SC).

——Art. 32 (3)—'Any other Court', meaning of—See ibid Art. 226.

AIR 1952 Bhopal 1=1952 Cr L J 660.

——Arts. 32, 226 — Habeas Corpus — Prior application dismissed by High Court — Subsequent application to Supreme Court can be made directly without leave.

A petitioner whose petition for habeas corpus has been dismissed by the High Court need not ask for leave of the High Court to move another habeas corpus petition to the Supreme Court. He can move the Supreme Court directly under Art. 32. (Thadani C. J.) Himanshu v. State,

AIR 1951 Assam 143 (1)=ILR (1951) 3 Assam 42= 52 Cr L J 1360.

——Art. 32 (3) —Power of High Court under Art. 226 — Effect of Art. 32 (3)—See ibid, Art. 226.

A I R 1951 Nag 58=52 Cr L J 1140 (FB).

——Art. 32 (2)—Retrospective operation.

The provisions of the Article were not intended to operate retrospectively, and therefore, something which was legally good on 25-1-1950, cannot be held to have become bad on 26-1-1950. Where, therefore, the judgment of the H. C. affirming the convictions and sentences of the petitioners had acquired finality in the fullest sense of the term before 26-1-1950, no one could question the validity of the convictions at the date when the Constitution came into force. (Fazl Ali, Mahajan, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) Janardhan Reddy v. State of Hyderabad,

AIR 1951 S C 217 = 64 M L W 406 = 1951 S C J 320 = 1951 SCR 344= 1951 A L J (S C Sup) 94=1951 M W N 613 (2) = 1951 M W N (Cr) 189 (2) = 52 Cr L J 736 (SC).

——Art. 32 (2) — Conviction and sentence by trial Court —Confirmation by Appellate Court—Finality of appellate order — Want of jurisdiction of trial Court — Writ of habeas corpus— Cr. P. C. (1898), S. 430.

If it should appear on the face of the return that a person is in detention in execution of a sentence on indictment on a criminal charge, that would be a sufficient answer to an application for a writ of habeas corpus. Assuming, however, that it is open even in such cases to investigate the question of jurisdiction, where the conviction and sentence had been upheld on appeal by a Court of competent jurisdiction, the mere fact that the trial Court had acted without jurisdiction would not justify interference, treating the appellate order also as a nullity. Evidently, the appellate Court in a case which properly comes before it on appeal, is fully competent to decide whether the trial was with or without jurisdiction, and it has jurisdiction to decide the matter rightly as well as wrongly. If it affirms the conviction and thereby decides wrongly that the trial Court had the jurisdiction to try and convict, it cannot be said to have acted without jurisdiction, and its order cannot be treated as a nullity.

It is well settled that if a Court acts without jurisdiction, its decision can be challenged in the same way as it would have been challenged if it had acted with jurisdiction, i.e., an appeal would lie to the Court to which it would lie if its order was with jurisdiction. (Fazl Ali,

CONSTITUTION OF INDIA (1950), Art. 32

Mahajan, B. K. Mukherjea, S. R. Das & Chandrasekhara Aiyar JJ.) Janardhan Reddy v. State of Hyderabad,

AIR 1951 S C 217=64 M L W 406= 1951 S C J 320 =1951 S C R 344 = 1951 A L J (S C Sup) 94 = 1951 M W N 613 (2) = 1951 M W N (Cr) 189 (2) = 52 Cr L J 736 (SC).

——Art. 32 (2)—Scope.

The power given to the Supreme Court under this provision is a large one, but it has to be exercised in accordance with well-established principles. The writs under the article must obviously be correlated to one or more of the fundamental rights conferred by Part III of the Constitution and can be made only for the enforcement of such rights. (Fazl Ali, Mahajan, B. K. Mukherjea, S. R. Das & Chandrasekhara Aiyar JJ.) Janardhan Reddy v. State of Hyderabad,

AIR 1951 S C 217=64 M L W 406= 1951 S C J 320 = 1951 S C R 344 = 1951 A L J (S C Sup) 94 = 1951 M W N 613 (2) = 1951 M W N (Cr) 189 (2) = 52 Cr L J 736 (SC).

——Arts. 32 and 226 — Whether an application under Art. 32 is maintainable after a similar application under Art. 226 is dismissed by the High Court (Quaere). (Fazl Ali, Mahajan, B. K. Mukherjea, S. R. Das & Chandrasekhara Aiyar JJ.) Janardhan Reddy v. State of Hyderabad,

AIR 1951 S C 217=64 M L W 406=1951 S C J 320= 1951 S C R 344 = 1951 A L J (S C Sup) 94 = 1951 M W N 613 (2) = 1951 M W N (Cr) 189 (2) = 52 Cr L J 736 (SC).

——Power to issue writs in matters outside its original jurisdiction—See Constitution of India, Art. 226,

A I R 1951 Mad 70.

——Art. 32 (3)—High Court's power to issue directions, orders or writs "for any other purpose" in praesenti—See Constitution of India, Art. 226,

A I R 1950 M B 46.

—Art. 33.

——Arts. 33, 35 (b), 372 — Indian Army Act, 1911 — If continued to be effective till passing of Act XLVI of 1950.

Though Art. 33 of the Constitution gave power to the Parliament to modify the rights conferred by Part III, relating to fundamental rights in their application to the forces of the Crown by making law, still unless the Parliament determines to what extent such rights can be modified the law which stood before the conferment of the fundamental rights will apply so far as the Armed Personnel are concerned. Therefore, even after the inauguration of the Republic till the passing of Act XLVI of 1950, the existing law namely the Indian Army Act, 1911 & the rules & orders made thereunder continued to be effective. (Govinda Menon and Basheer Ahmed Sayeed JJ.) Chatterjee R. v. Sub-Area Commander,

AIR 1951 Mad 777 = 64 M L W 193=1951 M W N 156=1951 M W N (Cr) 40 = I L R (1952) Mad 153 = 1951-1 M L J 258=52 Cr L J 827.

—Art. 35.

——Arts. 35, 13, 17 and 372 — U. P. Removal of Social Disabilities Act, 1947 not void—(U. P. Removal of Social Disabilities Act (14 of 1947), S. 1).

Article 35 which is not retrospective in operation withdraws from the States the power of making any enactment relating to acts which are declared to be offences under the Constitution after the commencement of the Constitution. It does not render null and void any legislation which had already been passsed before the commencement of the Constitution. Hence, even assuming that the U. P. Removal of Social Disabilities Act, 1947, deals with disability arising out of untouchability, it is

CONSTITUTION OF INDIA (1950), Art. 35

not invalid as it is an Act which was already on the statute book before the Constitution came into force.

Further, it cannot be said that anything in the U. P. Removal of Social Disabilities Act which was already on the statute book is inconsistent with the provisions of Part 3 of the Constitution and is thus affected by Art. 13. The U. P. Act, therefore, still remains in force under Art. 372 and has not become void by anything contained in the Constitution. (Agarwala and Chaturvedi JJ.) State v. Gulab Singh,

AIR 1953 All 483=1953 A L J 211=1953 Cr L J 1103.

——Art. 35 (b) — Continuation of existing laws. — See ibid, S. 33

AIR 1951 Mad 777=52 Cr L J 827.

—Art. 37.

——Arts. 37 and 47—Bombay Prohibition Act (25 of 1949) — Act, if has gone beyond scope of directive laid down in Art. 47.

The directive principles laid down in the Constitution are in the nature of instrument of instructions which both the Legislature and the executive are expected to respect and to follow, but they do not confer any legislative competence on a Legislature in respect of any matter over which it has no competence. In any event, the Prohibition Act was passed by the Local Legislature long before the Constitution came into force, and can only be said to carry out in advance the directive principle of State policy laid down in Art. 47; and, in doing so, the Act appears to have gone beyond the scope of the directive inasmuch as it does not prima facie appear to have made adequate provision for allowing the use and consumption of intoxicating drinks for medicinal purposes. (Chagla C. J., Gajendragadkar and Tendolkar JJ.) Fram Nusserwanji v. State of Bombay,

AIR 1951 Bom 210 = 52 Bom L R 799=ILR (1951) Bom 17=52 Cr L J 80 (FB).

—Art. 47.

——Directive principles—Scope — Bombay Prohibition Act has gone beyond scope—See ibid, Art. 37.

AIR 1951 Bom 210=52 Cr L J 80 (FB).

—Art. 51.

——Scope—See ibid, Art. 19 (1) (d).

AIR 1952 Punjab 309=1952 Cr L J 1313 (FB).

—Art. 53.

——Arts. 53, 73, 154 and 162 — Legislature and Executive—Duty of Government.

The Government can exercise only those powers which have been delegated to it by the Legislature. Governments have no inherent powers of their own. They have to execute the wishes of the Legislature which in fact has the sovereign authority. If the Legislature does not in specific words authorize the Government to take a certain action against a person who is dealt with under some law, the power to take such action cannot be presumed without a clear provision of law. (Jia Lal Kilam and Shahmiri JJ.) Ghulam Nabi Jan v. State,

AIR 1954 J & K 7=1953 Cr L J 1885.

——Arts. 53, 73, 154 and 162—Executive and judiciary —Conflict—Duty of executive.

Satyanarayana Rao J. — The Court is not concerned with person or personalities and has to administer justice according to law without consideration of the character of the person who invokes its jurisdiction. The executive is as much bound to obey the law as an ordinary citizen and show respect to the law. The judiciary being only another limb of the Government it is as much the duty of executive as that of anybody else to maintain the dignity of the Court and see that its prestige is not lowered in the eye of the public by flouting the judgment of the Courts.

CONSTITUTION OF INDIA (1950), Art. 53

Raghava Rao J. — While this Constitution does not in so many words provide for a separation of powers in the strict sense of the term between the legislature, the judiciary and the executive, there are specific provisions in regard to the three heads of powers embodied in different portions of the Constitution which have to be read together. Whatever the relative degrees of importance enjoyed by the three organs of State, the powers of each one of them have to be exercised as fundamentally subject to the provisions of the Constitution relating to the organ individually as well as to the provisions relating to the other organs.

Whatever the limits within which the judiciary in this land can function in relation to the Union Parliament and State Legislatures and whatever the residual powers of the executive under the Constitution over and above what is defined in the specific articles thereof there is no doubt that the executive must needs respect the decisions of the judiciary and can only avoid as in England, their due operation by appropriate legislation. In India as in England it is the business of the Courts to apply the Constitution and the laws and in cases properly brought before them the judiciary exercises control over the executive action in so far as to refuse to uphold as valid any act of Government which is not supported by the Constitution or by some law. The authority of the Courts as regards the executive action arises when the executive exceeds its authority in which case the agents and instruments through which the action is carried out are personally responsible to law and the Courts.

While on the one hand, it is not the business of the Courts to pass judgments on the policy of executive action, the executive, on the other hand, has no authority to pass verdict upon the validity of a judgment but must assist in enforcing the judgment even though the executive may believe it to be erroneous.

It is the respect that is accorded by one organ of the State to the others that ensures that healthy working of the Constitution which is the acid test of its merits whatever the paper value of its provisions. (Satyanarayana Rao and Raghava Rao JJ.) Gopalan A. K., In re,

AIR 1953 Mad 41=65 M L W 876=1952-2 M L J 690=1953 Cr L J 224.

—Art. 73.

——Legislature and Executive — Duty of Government—See Constitution of India, Art. 53.

AIR 1954 J & K 7=1953 Cr L J 1885.

——Executive and judiciary—Conflict — Duty of executive—See ibid, Art. 53.

AIR 1953 Mad 41=1953 Cr L J 224.

—Art. 84.

——Scope—Preventive detention if a disqualification—See ibid, Art. 105.

AIR 1952 Cal 632=1952 Cr L J 1454 (SB).

—Art. 85.

——Arts. 85 and 174—Parliament—Session—Continuity—Legislature must be deemed to be in session till it is prorogued or dissolved, though its meetings are adjourned sine die. (Rajamannar C. J., Govindarajachari and Govinda Menon JJ.) Narayanaswami Naidu v. Inspector of Police, Mayavaram

AIR 1949 Mad 307=1948 M W N 853=(1949) 1 M L J 1=(1948) 11 F L J 43=62 M L W 51=ILR (1949) Mad 377=50 Cr L J 405 (SB).

—Art. 101.

——Privilege under — Position of the member compared with the position of member in England—See ibid, Art. 105.

AIR 1952 Cal 632=1952 Cr L J 1454 (SB).

CONSTITUTION OF INDIA (1950)

—Art. 102.

——Preventive detention, if a disqualification—See ibid, Art. 105.

AIR 1952 Cal 632=1952 Cr L J 1454 (SB).

—Art. 105.

——Arts. 105, 21, 22, 84, 101, 102 and 226—Members of State Legislature — Immunity from arrest for preventive detention—Representation of the People Act (1951), Ss. 5 to 8.

Under the existing law persons returned as members of a State Legislative Assembly or the Council of States cannot claim immunity from arrest for preventive detention and therefore, they can be detained under the provisions of the Preventive Detention Act whilst their membership of the Assembly or the Council of States continues.

A claim by a member of either houses of State Legislature, of freedom from arrest during his membership is a claim to privilege or immunity and, therefore, is governed by Art. 105 of the Constitution of India.

Under Art. 105 (3) the powers, privileges and immunities of members may be defined by Parliament and until they are so defined they shall be similar to the powers, privileges and immunities of members of the British Parliament.

A perusal of the provisions of Arts. 84 and 102 of the Constitution of India and the relevant provisions (Ss. 5, 6, 7, 8, 16 and 19) of the Representation of the People Act, 1951, which deal with qualifications and disqualifications of members of either house of the State Legislature will make it clear that preventive detention does not disqualify a member and a person against whom an order under the Preventive Detention Act has been made can be elected as a member of either House of the Legislature and if so elected, such an order does not disqualify him from membership. Further, if the order was made during his membership such would not disqualify him.

Under Arts. 21 and 22 of the Constitution of India if a person, whoever he may be, has been convicted of an offence under the law in a trial in accordance with the procedure laid down by law, or if a person, whoever he may be, has been detained by an order made under some valid law, the procedure of that law being properly followed, such conviction or detention is valid. Articles 21 and 22 do not exempt members of either House of a Legislature, and apply to all.

The various Articles of the Constitution must be construed as a whole and effect, if possible, must be given to all of them. It would be impossible to hold that Articles 21 and 22 of the Constitution do not apply to members of the Legislature who have been convicted and sentenced to shorter terms of imprisonment and to persons detained under valid orders made under the Preventive Detention Act.

The Constitution of India deals with the qualifications for membership and disqualifications for membership in Arts. 84 & 102 and it deals with the privileges and immunities of members in Art. 105. The makers of our Constitution therefore drew a sharp distinction between the qualifications and disqualifications of members and their privileges and immunities. The Representation of the People Acts of 1950 and 1951 merely deal with the qualifications and disqualifications of members. They do not purport to deal with the privileges and immunities of members. The Acts in question have been passed under powers given in Arts. 84 and 102 of the Constitution. The Constitution envisages express legislation on these questions of privileges and immunities and mere legislation on qualifications and disqualifications will not touch the question. Parliament has not yet defined any privileges or immunities of members. All that it has done is

to lay down what should be the qualifications of a member and what will disqualify him. If he is not disqualified he will continue as a member with such privileges and immunities as now exist. As no legislation has yet been passed affecting such powers and immunities, the rights, privileges and immunities of members of either House of the Legislature are those of members of Parliament of the United Kingdom. Disqualification is a very different matter from any particular immunity claimed by members. If a member is not disqualified he remains a member. Whether as such member he can claim any particular immunity must depend upon express law relating to such immunities.

At the present time, in England the privilege of freedom from arrest is limited to civil causes and has not been allowed to interfere with the administration of criminal justice.

Preventive detention partakes more of a criminal than of a civil character. The Preventive Detention Act only allows persons to be detained who are dangerous or are likely to be dangerous to the State. It is difficult to contend that an order of preventive detention is of a civil character. They are orders made when persons are suspected of serious criminal activities directed at the welfare of the State and of the community. It is true that such orders are made when criminal charges possibly could not be established, but the basis of the orders are a suspicion of nefarious and criminal or treasonable activities.

It seems to follow, therefore, that the English Parliament claims no privilege for its members against preventive detention or against executive order made under legislative authority. If no such privilege exists or is claimed in the United Kingdom then it follows that no such privilege exists at the present moment in India.

Under Art. 101 (4) of the Constitution, the absence of a member for sixty days without permission of the House does not automatically lead to vacation of the seat. The House in such a case may declare the seat vacant. But it may not, and it is impossible to believe that a House of Parliament would declare a seat vacant by reason of absence where the cause of absence was due to detention, or imprisonment, unless the House thought that the conduct of the person concerned was such as really to make him unfit to be a member of the House. Though there is no such provision in England, it cannot be overlooked that the House of Commons in England may expel a person for reasons which do not disquality him and declaring a seat vacant under Art. 101 (4) of the Constitution is action very similar to expulsion, and, therefore, action under that clause may never be taken except for good cause. That being so, the existence of Cl. (4) of Art. 101 does not really make the position in India materially different from that obtaining in England.

Even assuming that privilege could be claimed because it was recognised in England, such could only be claimed within a period of forty days from the summoning of Parliament. In England the immunity from arrest existed for forty days before the sitting of Parliament and for forty days after prorogation. Hence, where the Assembly of a State has not been summoned and there is no knowing when it will be summoned it would be premature to claim such a privilege. (Harries, C. J., Das and Das Gupta JJ.) Ansumali Majumdar v. State of West Bengal,

AIR 1952 Cal 632=86 C W N 711=1952 Cr L J 1454 (SB).

——Arts. 105 and 194—Legislature—Privilege—Freedom of speech—Extent of such privilege indicated.

The setting up of a colonial Legislature does not vest in that Legislature without express grant all the privileges of the house of the Imperial Parliament but only such powers or privileges as are necessary to the existence of such a body and the proper exercise of the functions which it is intended to execute. Whatever in a reasonable sense is necessary for these purposes is impliedly granted whenever any such legislative body is established by competent authority. There is no doubt of the existence of the privilege of free speech and it is absolute. It arises from inherent necessity. The necessity is just as great here as in the Imperial Parliament. No distinction can be drawn in this matter between representative and non-representative legislative assemblies. Observation of Lord Selborne in (1886) 11 A C 197; 1881-2 N S W 18; 1842-4 Moore P C 63, Rel. on. (Lords Simonds, Uthwatt, Morton of Henryton and Reid) Chenard & Co. v. Joachiem Arissol

AIR 1949 P C 127 = 1949 A L J 141 = 1949 A W R (P C) 246=1949 All Cr C 45 (PC).

—Art. 129.

——Contempt of Supreme Court — Contempt of Courts Act (1926), S. 1.

Where a newspaper article while criticising a Supreme Court decision not merely preached the Courts of law the sermon of divine detachment from extraneous considerations such as politics and policies but also proceeded to attribute improper motives to the Judges, it was held that the article not only transgressed the limits of fair and bona fide criticism but had a clear tendency to affect the dignity and prestige of the Court and therefore amounted to gross contempt of Court.

If an impression is created in the minds of the public that the Judges in the highest Court in the land act on extraneous considerations in deciding cases, the confidence of the whole community in the administration of justice is bound to be undermined and no greater mischief than that can possibly be imagined. (Mahajan, B. K. Mukherjea, S. R. Das, Chandrasekhaa Aiyar and Bhagwati JJ.) Editor, Printer and Publishers "Times of India" (Daily) Bombay and Delhi, In the matter of

AIR 1953 S C 75=1953 S C J 38=1953 S C R 215= 1953 A W R (Sup) 25 = 1953-1 M L J 211 = 1953 M W N 171 = 1953 S C A 188 = 55 Bom L R 278 = 1953 Cr L J 519 (SC).

—Art. 132.

——Art. 132 (1) — Certificate under — Time to apply — Validity of Rules — See Allahabad High Court Rules, Chap. 23, R. 28

AIR 1953 All 610=1953 Cr L J 1376.

——Art. 132 (1) (3)—Grounds of appeal.

Where the appeals have come up before Supreme Court on the strength of a certificate granted under Art. 132 (1), the appellants are not entitled to challenge the propriety of the decision appealed against on a ground other than that on which the certificate was given except with the leave of the Supreme Court. (Patanjali Sastri C. J., B. K. Mukherjea, Chandrasekhara Aiyar, Bose and Ghulam Hasan JJ.) Darshan Singh Balwant Singh v. State of Punjab

AIR 1953 S C 83=1953 S C J 48=1953-1 M L J 220 =1953 S C R 319=1953 S C A 856=19 Cut L T 419= ILR (1953) Punj 639=1953 Cr L J 525 (SC).

——Order of release on application for writ of habeas corpus—Appealability under Constitution — Principles— See ibid, Art. 226

AIR 1953 Mad 66=1953 Cr L J 256.

——Arts. 132 (1) and 133 (1) (c)—"It shall be lawful" in S. 13, Police Act — Wrong interpretation of leave to appeal—(Police Act (1861), S. 13).

CONSTITUTION OF INDIA (1950), Art. 132

The Police Act was enacted to reorganize the police and to make it a very efficient instrument for the prevention and detection of crime, and S. 13 gives a statutory protection to the authorities if they act in the manner provided therein. It imposes no obligation on any of them to exercise the power if they do not consider it necessary to do so. It cannot, therefore, be contended that the use of the expression, "It shall be lawful" in S. 13 of the Police Act makes it obligatory on the officers concerned to act in the manner indicated in the section and failure to act in such a manner entitles the person aggrieved to ask for a writ. But assuming that the contention is right, the question involved is one of interpretation of S. 13 of the Police Act; and even if the High Court be held to have rejected the application of the petitioner for the issue of a writ of mandamus on a wrong interpretation of the statute, leave to appeal cannot be granted under the provision of Art. 132 (1) of the Constitution because no question of law as to the interpretation of the Constitution arises. Nor can leave be granted under Art. 133 (1) (c) of the Constitution, because the High Court has not passed any order in a civil proceeding nor is any matter of wide public importance involved in the case. (Lakshmikanta Jha C. J. and Chatterji J.) Lachhman Prasad Bhagat v. Govt. of Bihar,

AIR 1952 Pat 386=30 Pat 1252=1952 Cr L J 1639.

——Power of High Court under, when special leave is granted by Supreme Court — See Criminal P. C. (1898), S. 426 (2B)

AIR 1952 H P 67=1952 Cr. L J 1461.

——Art. 132 (1)—Question of interpretation of Constitution—See ibid, S. 215

AIR 1953 Nag 130=1952 Cr L J 749.

——Art. 132 (1)—No substantial question of law as to the interpretation of Constitution—See ibid, Art. 14

AIR 1951 M B 159=52 Cr L J 1533.

——Arts. 132 (1), 134 (1) — Question under Preventive Detention Act — Case held not fit for appeal to Supreme Court.

Before the High Court can grant a certificate under Art. 132 (1) the case must involve a substantial question of law as to the interpretation of the Constitution of India. Where the case merely involves the interpretation of certain sections of the Preventive Detention Act IV of 1950, as amended by Act IV of 1951 and not the Constitution of India and the short point for determination is whether a detenu is entitled to be released forthwith when his case has not been considered within the period prescribed, by all the 3 members of the Advisory Board, it is not a fit case for appeal to the Supreme Court. (Thadani C. J., Ram Labhaya and Deca JJ.) Kishorilal v. State

AIR 1951 Assam 169 = ILR (1951) 3 Assam 494= 52 Cr L J 1453 (SB).

——Substantial question of law — Preventive Detention Act (1950), S. 3.

If the applicant was a member of a Communist party which itself was indulging in unlawful and subversive activities, that by itself would be sufficient for the Government to come to the conclusion that his being at large would be prejudicial to the maintenance of public order in the State. There is no substantial question of law involved in such a case. (Govinda Menon and Basheer Ahmed Sayeed JJ.) In re T. Venkateswara

AIR 1951 Mad 611=1951-1 M L J 11=1951 M W N (Cr) 16 (2) = 1951 M W N 68 (2) = 64 M L W 202 = 52 Cr L J 252.

——Endangering "communal harmony" — Substantial question of law as to the interpretation of Constitution—See West Bengal Security Act (XIX of 1950), S. 2 (9) (a) (i)

AIR 1951 Ca 424.

CONSTITUTION OF INDIA (1950), Art. 132

——Arts. 132 (1), 134 (c) — Leave to appeal to Supreme Court—Appeal involving important questions of law one of which relating to interpretation of the Constitution—Question as to validity of Saurashtra Public Safety Measures (Third Amendment) Ordinance (LXVI of 1949) also involved — Leave granted. (Shah C. J. and Chhatpar J.) Kathi Raning Ravat v. Saurashtra

4 Sau L R 178.

——Art. 132 (1) — High Court can refuse leave to appeal if the question is devoid of merit. (Per Koshi J.) — Civil P. C. (1908), Ss. 109 and 110. (Koshi and Sankaran JJ.) Parameswaran Pillai v. State,

A I R 1951 Trav-Co 45 = 1950 T C L R 306 = 1950 K L T 439.

——Art. 132 (1) — Certificate of fitness—Appreciation of approver's evidence by High Court — Civil P. C. (1908), Ss. 109 and 110,

Per Koshi J. — The question whether the High Court went wrong in placing reliance upon the approver's evidence is hardly a matter that could be made the subject of an appeal to the Supreme Court. (Koshi and Sankaran JJ.) Parameswaran Pillai v. State.

A I R 1951 Trav-C 45=1950 T C L R 306=1950 K L T 439.

——Jurisdiction of Supreme Court under Art. 32 whether concurrent with that of High Court under Art. 226 — Constitution of India, Art. 226.

The jurisdiction conferred on the Supreme Court by Art. 32 is not concurrent with the one given to High Courts by Art. 226. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Dass JJ.) Ramesh Thappar v. The State of Madras,

A I R 1950 S C 124=1950 M W N 495=1950 A L J 485=1950 S C J 418 = 1950 2 M L J 390 = 63 M L W 929=1950 S C R 594 = 1950 M W N (Cr) 115 = 51 Cr L J 1514 (SC).

——Petition to Supreme Court.

The Supreme Court can be moved to grant a suitable relief, mentioned in Art. 32 (2), only in respect of the Fundamental Rights mentioned in Part III of the Constitution. (Kania C. J.; Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukerjea and S. R. Das JJ.) A. K. Gopalan v. The State of Madras,

A I R 1950 S C 27 = 1950 2 M L J 42 = 63 M L W 638 = 1950 S C J 174 = 1950 S C R 88= 1950 M W C 495=1950 M W N (Cr) 127=51 Cr L J 1383 (SC).

—Art. 133.

——Arts. 133 and 215—Proceedings in contempt—Criminal contempt—Leave to appeal under Art. 133 to Supreme Court cannot be granted against conviction for criminal contempt — Distinction between criminal and civil contempt pointed out—(Contempt of Courts Act (1926), S. 2. (Jagannadhadas C. J. and Mohapatra J.) S. S. Roy v. State,

A I R 1953 Orissa 266=I L R (1952) Cut 467=1953 Cr L J 1578.

——Certificate of fitness — See also ibid, Art. 134 (1) (c).

A I R 1953 Sau 170=1953 Cr L J 1531.

——Art. 133 (1) (c) — Certificate of fitness for leave to appeal—See ibid, Art. 132 (1).

A I R 1952 Pat 386=1952 Cr L J 1639.

—Art. 134.

SYNOPSIS

1. Scope.
2. Criminal proceeding — See under Note 6—Proceedings for contempt of Court.
3. Certificate of fitness, clause (1) (c).
   (a) General principles.
   (b) Special leave and certificate of fitness — Distinction.

CONSTITUTION OF INDIA (1950), Art. 134

(c) Grounds for.
(d) Substantial question of law.
(e) Question of public or private importance.
(f) Concurrent findings of fact.
(g) New point.
4. Who can apply.
5. Appeal against acquittal.
6. Proceedings for contempt of Court.
7. Habeas corpus applications.
8. Proceedings under S. 476, Criminal P. C.
9. Proviso to Cl. (1) (c).
10. Bail.
11. Powers of Supreme Court on appeal.

1. Scope.

——Article 134 constitutes the S. C. as a Court of criminal appeal, but this right of appeal is restricted to a limited class of cases only and does not imply that an appeal would lie to S. C. as a matter of course or right but in cases specified therein. (Sripat Rao and Mahohar Pershad JJ.) Habib Mohammed v. Hyderabad State,
A I R 1951 Hyd 71=52 Cr L J 481.

2. Criminal proceeding.

See under Note 6 — Proceedings for contempt of Court.

3. Certificate of fitness, Cl. (1) (c).

(a) General principles.

——Art. 134 (1) (c)—Leave to appeal to Supreme Court—Certificate of fitness — Principles — Question of interpretation of temporary Act — Quashing of proceedings against accused in view of interpretation — Case held not fit for appeal to Supreme Court.

Per Mehta J. — To justify a grant of leave to appeal under Art. 134 (1) (c), there must at least be a substantial question of law or a disregard of the forms of legal process or some violation of the principles of natural justice, or otherwise substantial or grave injustice must have been done, or it should be a matter of great public importance. The mere fact that the petitioner raised a point which may be a point of law does not justify his claim for a certificate under Art. 134 (1) (c).

Where the question of law is not well settled or where there is some doubt as to the principles of law involved or there is a conflict of judicial decisions, it may be that a substantial question of law can be said to arise which may require the final adjudication by the highest Court.

The construction of a legislative provision which is no longer in force and under which no further questions on the same point can arise, cannot be said to be of great public importance so as to justify the grant of such leave.

Per Kaul C. J. — It would not be proper for any Judge to attempt to define in what cases or classes of cases a certificate of fitness should be granted and thus, to restrict the wide generality of the language advisably used by the framers of the Constitution. A Judge might indicate in a negative form a class of cases in which the certificate contemplated by Art. 134 (1) (c) should not be granted.

Substantial and grave injustice to the party asking for leave to appeal has almost invariably been held to be the test which must be fulfilled before such leave would be granted in a criminal case.

It should not be granted if the question for consideration is only the interpretation of any section of a temporary Act which is not likely to affect a large number of cases

CONSTITUTION OF INDIA (1950), Art. 134 — 3. Certificate of fitness, Cl. (1) (c) — (a) General principles

and in respect of which it cannot be said that if the view taken by the High Court is erroneous it would result in grave and substantial injustice.

Where all that the High Court had done was to interpret the words "shall continue to remain in force until repealed or amended", as used in S. 3 of Madhya Bharat Ordinance No. 1 of 1948 and held that the use of these words could not have the effect of making a temporary Law or order which was to remain in force for a special period, perpetual and in support of this view relied upon AIR 1941 F C 16 and in this view quashed the proceeding initiated against the accused for breach of notification under Indore Essential Supplies (Temporary Powers) Order, 1946, which had expired before the alleged breach was committed and the State filed an application for leave to appeal under Art. 134 (1) (c) against the judgment of the High Court:

Held, (1) that the case was not fit one for appeal under Art. 134 (1) (c) as there was no substantial question of law or a question of public importance involved in the case. The mere fact that the view of Law taken by the High Court resulted in the acquittal of a person who had committed a breach of a rule made under a temporary Order or in a proceeding initiated against him being quashed does not necessarily constitute grave and substantial injustice, justifying the grant of a certificate. (Kaul C. J. and Mehta J.) State v. Raj Kumar Singh
A I R 1953 M B 35 = I L R (1952) M B 97 = 1953 Cr L J 437.

——Art. 134 (1) (c)—Certificate of fitness under — Considerations involved are same as those under S. 109 (c), Civil P. C.—(Civil P. C. (1908), S. 109 (c)).

Making allowance in any given case for a possible difference between considerations pertinent to civil cases and those pertinent to criminal in the matter of the application of the tests laid down by cases under S. 109 (c), Civil P. C., the application of the analogy of the latter to cases under Art. 134 (1) (c) is, broadly speaking, correct.

It is settled by cases under S. 109 (c), Civil P. C. that the grant of a certificate is in the discretion of the Court which must be judicially exercised and sparingly used, that a question will be one of public importance if it affects not merely the parties to the case but also large bodies of persons or communities, that the mere existence of a substantial question of law is not sufficient, that a question of private importance means of private importance to both parties to the litigation and not merely in one of them, and that the fact that the question affects third parties is no ground of fitness. (Satyanarayana Rao and Raghava Rao JJ.) Public Prosecutor v. A. K. Gopalan
A I R 1953 Mad 66=65 M L W 892 = 1952-2 M L J 725=1953 Cr L J 256.

——Art. 134 (1) (c)—Jurisdiction under—Nature of.

The jurisdiction to certify a case as a fit one for further appeal is to a certain extent discretionary, and like the jurisdiction of the Judges of the Divisional Court in England to give or to refuse leave to appeal to the Court of Appeal from their own decisions, is a very delicate one. When the question involved is one of principle and the High Court has decided it for the first time, it is not sufficient reason for refusing the certificate of fitness for the High Court to say that they are satisfied that their own decision is right. (Satyanarayana Rao and Raghava Rao JJ.) Public Prosecutor v. A. K. Gopalan
A I R 1953 Mad 66=65 M L W 892 = 1952-2 M L J 725=1953 Cr L J 256.

CONSTITUTION OF INDIA (1950), Art. 134 — 3. Certificate of fitness, Cl. (1) (c) — (a) General principles

——Art. 134 (1) (c) — Principles for granting leave to appeal to Supreme Court, indicated. (Sen Gupta J. C.) Abdul Gafur v. Govt. of Tripura.

A I R 1952 Tripura 25=1953 Cr L J 68.

——Art. 134 (1) (c)—Certificate of fitness—Principles.

The principle on which a certificate of fitness under Art. 134 (1) (c) is expected to be granted is practically the same on which the Supreme Court would normally grant leave to appeal. Generally speaking, Supreme Court will not grant special leave to appeal in criminal cases unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. It would be opposed to all principles and precedents if the Supreme Court were to constitute itself into a third Court of fact and after reweighing the evidence come to conclusion different from that arrived at by the trial Judge and the High Court. (Case held not fit for granting Certificate). (Sen Gupta J. C.) Sona Mia v. Govt. of Tripura.

A I R 1952 Tripura 23=1953 Cr L J 64.

——Art. 134 (1) (c)—Certificate of fitness—Requirements.

The conditions necessary to be satisfied for a certificate under Art. 134 (1) (c) are not specified but the need of a certificate implies that there should be something more than what is required for an ordinary appeal under the Code of Criminal Procedure. There should not only be, in the case, substantial points of law but also exceptional and special circumstances in the case, and it must also be shown that substantial and grave injustice has been done to enable the High Court to issue a certificate under Art. 134 (1) (c). The fact that one of the many Assistant Commissioners in the State is convicted of the offence of taking a bribe does not make the case one of great public importance. Case law discussed. (Venkata Ramaiya and Mallappa JJ.) Bashiruddin v. State of Mysore

A I R 1952 Mys 88=I L R (1951) Mys 480=1953 Cr L J 32.

——Art. 134 (1) (c)—Grant of certificate — Reliability or otherwise of evidence—No ground.

In granting leave to appeal to the Supreme Court in criminal matters, the High Court must be governed by the provisions of Art. 134 and the interpretation put on it. The question whether the evidence is or is not reliable, when that evidence has been believed by the Sessions Judge and by the High Court, does not justify the grant of a certificate under Art. 134 (1) (c). (Malik C. J. and V. Bhargava J.) Jai Singh v. State,

A I R 1952 All 991=1952 R D (HC) 305=1952 A L J 566=1952 A W R (HC) 502=1952 Cr L J 1755.

——Art. 134 (1) (c) — Certificate of fitness — Guiding principle.

Under Art. 134 (1) (c) a case cannot be certified as a fit one for appeal if no injustice of a serious and substantial character has occurred to the petitioner and if the case does not involve such a substantial question of law as by reason of the question being unsettled or by reason of there being conflict of existing authorities as to the principle of law involved, requires an authoritative decision from the highest Court in the land. (Shinde C. J., Dixit and Chaturvedi JJ.) Laxminarayan v. State

A I R 1952 Madh. B. 170 = Madh. B L R (1952) Cr 58=1952 Cr L J 1440 (FB)

——Art. 134 (1) (c)—Standard of fitness—Test.

(Per Thadani C. J.)—The High Court will not ordinarily certify that the case is a fit one for appeal to the Supreme Court unless it thinks the final order passed by it is unfit to remain or has doubts as to its fitness to

CONSTITUTION OF INDIA (1950), Art. 134 — 3. Certificate of fitness, Cl. (1) (c) — (a) General principles

remain, whether on facts or in law, without a certificate as prescribed by cl. (c). (Thadani C. J. and Ramlabhaya J.) Chowthmal Sharma v. Hiralal Patni

A I R 1951 Assam 38=55 C W N (Assam) 117=I L R (1951) 3 Assam 117=1952 Cr L J 381.

——Art. 134 (1) (c)—Leave to appeal to Supreme Court—Certificate of fitness when to be granted — Principles — Criminal P. C. (1898), S. 236.

The jurisdiction to certify a case as a fit one for further appeal under Art. 134 of the Constitution is to a certain extent discretionary like the jurisdiction of the Judges of the divisional Court in England to give or refuse leave to appeal from their decision and is a very delicate one.

Though the Privy Council was not a Court of criminal appeal the principles laid down by that Court as essential for granting leave have been held to be applicable even in cases of leave to appeal to the Supreme Court which has been constituted a Court of Criminal Appeal under Article 134 of the Constitution. According to these principles leave to appeal to Supreme Court will not ordinarily be granted unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done, and that the case in question prevents features of sufficient gravity to warrant a review of the decision appealed against.

The accused was charged and convicted at one trial with offences under Sections 134, 217, 263, 330/71 and 389/71, Hyderabad Penal Code. The High Court acquitted the accused of all the charges on the ground that there was a misjoinder of charges vitiating the trial and that the accused could not be convicted for abetment in absence of any charge to that effect. The Government filed an application for leave to appeal to the Supreme Court under Article 134 of the Constitution.

'Held' that the application could not be granted especially when it raised no substantive question of law of paramount importance such as might be allowed to override the liberty earned by the accused.

There is a great divergence of opinion on the question whether an accused charged with substantive offence can be convicted for its abetment without a separate charge for it. Hence, if the High Court decides the question one way and holds that the accused cannot be charged for abetment and acquits the accused, it would not be a ground for granting leave to appeal to the Supreme Court. (Ahmed Mohiuddin Ansari and Vithal Rao Deshpande JJ.) State of Hyderabad v. Baquer Hussain

A I R 1952 Hyd 40=I L R (1951) Hyd 866=1952 Cr L J 352.

——Art. 134 (1) (c)—Standard of fitness—Conviction on basis of portion of retracted confession — Non-compliance with S. 342, Criminal P. C. — Criminal P. C. (1898), Ss. 342 and 404—Evidence Act (1872), S. 24.

The scope of an appeal to the Supreme Court against a final order or sentence in a criminal proceeding has not at all been widened. That Court will have to interfere with convictions by local tribunals within the same bounds of limitations and restraints laid down by the Privy Council and the fitness has to be judged by the standard that that tribunal laid before it in granting special leave to appeal. The only change that the Constitution has introduced is to endow the State High Courts with powers to certify, or in other words, to grant leave to appeal.

Where a major portion of the retracted confession by the accused implicating a co-accused for offences under Ss. 457, 380 and 461, Penal Code, has been found to be false and the co-accused has been acquitted, the accused cannot be convicted for the same offences on the basis of

CONSTITUTION OF INDIA (1950), Art. 134 — 3. Certificate of fitness, Cl. (1) (c) — (a) General principles

the remaining portion of the confession which amounts to entangling the accused as one who came into possession of some property recently stolen, unless the accused is given an opportunity under S. 342, Criminal P. C., to explain as to how it came into his possession. The general sort of examination under S. 342 as to why and under what circumstances the accused made the confession would not be sufficient under the circumstances. In such a case there is a disregard of the form of legal process so vital to a criminal trial in the failure of compliance with the statutory rule of accused's examination under S. 342, Criminal P. C. and the case is a fit one for appeal to the Supreme Court under Art. 134 (1) (c) of the Constitution. (Ray C. J., and Narasimham J.) Arjuna Misra v. The Indian Union

AIR 1950 Orissa 235=16 Cut L T 115=I L R (1950) Cut 305=1952 Cr L J 120.

——Art. 134 (1) (c)—Case when not fit for appeal.

When a case is not a special case nor is it one of great public or private importance and no injustice of a serious and substantial character has occurred to the accused, it is not a fit case for appeal. (Panchapakesa Ayyar and Basheer Ahmed Sayeed JJ.) In re Mandalapu Pandayya.

AIR 1951 Mad 329=63 M L W 969 = 1950-2 M L J 569=1950 M W N 765 = 1950 M W N (Cr) 62 = 1952 Cr L J 102.

——Art. 134 (1) (c)—Certificate of fitness—Criminal case.

A certificate of fitness under Art. 134 (1) (c) should be granted only in exceptional cases where injustice of a serious nature or character has occurred because of an error in procedure which is of so grave a character as deprives the accused of a constitutional or statutory right to be tried in a particular way, or the error has been carried to such an extent as to cause the outcome of the proceedings to be contrary to fundamental principles which justice requires to be observed or there has been some disregard of legal principles of natural justice or where the law upon a material point is in doubt or has been differently interpreted by the various High Courts in India.

The case must also be of great public or private importance. In all criminal cases, except in cases in which an accused person is convicted of a technical offence not involving moral turpitude and the sentence is of fine only, the conviction of an accused person is a matter of great private importance to him, a matter which cannot be measured in money and which may have serious consequence for the accused throughout his life. (Kidwai and Agarwalla JJ.) Kali Prasad v. The State.

AIR 1952 All 630=1951 A L J 473 = I L R (1953) 2 All 471.

——Art. 134 (1) (c)—Certificate of fitness—Interpretation of S. 524, Criminal P. C. and S. 110, Evidence Act.

A case cannot be certified under Art. 134 (1) (c) as a fit one for appeal to the Supreme Court if injustice of a serious and substantial character has not occurred to the petitioner and if the case does not involve such a substantial question of law, as, by reason of the question not being well settled or by reason of their being a conflict of existing authorities as to the principle of law involved, requires an authoritative decision of the highest Court in the land. The question as to the construction of S. 524, Criminal P. C., and S. 110, Evidence Act, is no doubt a question of law, but is not a substantial question of law in respect of which it can be said that there is, or there may be, a difference of opinion. (Dixit J.) Madan v. State.

AIR 1951 Madh B 159=52 Cr L J 1533.

——Art. 134 (1) (c) — Certificate of fitness — Tests — Case merely involving interpretation of sections of Preventive Detention Act, 1950—Case held not fit for appeal to Supreme Court—See ibid, Art. 132 (1),

CONSTITUTION OF INDIA (1950), Art. 134 — 3. Certificate of fitness, Cl. (1) (c) — (a) General principles

AIR 1951 Assam 169=52 Cr L J 1453 (SB).

——Art. 134 (1) (c) — Certificate of fitness for appeal in criminal cases—Guiding principles—Appeal against orders in revision.

Some guidance as to the meaning of the phrase "a fit one for appeal to the Supreme Court," in Art. 134 (1) (c) can be furnished by the decisions relating to similar provisions for civil appeals contained in S. 109 (c), Civil P. C., regarding which it has been held that certificate should not be granted in a case which does not involve question of wide public or private importance. Where there is no want of jurisdiction in the Magistrate an error of law or an error in the procedure adopted by him, is not a sufficient ground to grant leave to appeal to the Supreme Court, unless there was something so irregular or outrageous as to shock the very basis of justice. These principles apply with greater force in a case where a certificate is sought for an appeal against an order of the High Court passed in exercise of discretionary revisional powers. (Lakshmikanta Jha C. J. and Reuben J.) Raghubans Prasad Singh v. Lakhan Gope,

AIR 1951 Pat 437=29 Pat 681=52 Cr L J 701.

——Art. 134 (1) (c)—Certificate of fitness—Considerations which should weigh in granting certificate — Merely raising question of law, if sufficient.

Except in cases falling under sub-cls. (a) and (b) of Art. 134 (1) in all other criminal matters the Constitution of India intends that the High Courts in the respective States in the territory of India should normally and ordinarily be the final Courts of appeal. This fact must therefore be borne in mind in deciding the question as to whether a certificate of fitness should be given in a case. There must at least be a substantial question of law; or considerations like those mentioned by Viscount Simon L. C., in AIR 1941 P C 132 should be shown to be present; or it should be a matter of great public importance. The mere fact that the petitioner raises a point which may be a point of law does not justify his claim for a certificate under Art. 134 (1) (c). (Gajendragadkar and Vyas JJ.) King W. H. v. Emperor,

AIR 1950 Bom 380=52 Bom L R 534=1950 Bom Cr C 178=52 Cr L J 620.

3. Certificate of fitness, Clause (1) (c)—(b) Special leave and certificate of fitness—Distinction.

——Arts. 134, 136 — Criminal appeal when to be entertained—Criminal P. C. (1898), S. 404.

The Supreme Court will not entertain a criminal appeal except in special and exceptional cases where it is manifest that by a disregard of the forms of legal process or by a violation of the principles of natural justice or otherwise substantial and grave injustice has been done. Where the appellant has been convicted notwithstanding the fact that the evidence is wanting on a most material part of the prosecution case, the Supreme Court will entertain the appeal. (Fazl Ali, B. K. Mukherjea and Chandrasekhara Aiyar JJ.) Mohinder Singh v. State,

AIR 1953 S C 415 = 1950 S C R 821 = 1953 Cr L J 1761 (SC).

——Art. 134 (1) (c) — Leave to appeal to Supreme Court when to be granted.

The test, to be applied by the High Court in granting a certificate of fitness under Art. 134 (1) (c), is not different from the one laid down by the Supreme Court in 51 Cri L J 1270 (S C), when granting special leave under Art. 136 of the Constitution. The High Court will not therefore grant leave to appeal in criminal cases, unless it is shown that exceptional and special circumstances exist,

CONSTITUTION OF INDIA (1950), Art. 134 —
3. Certificate of fitness, Cl. (1) (c) — (b) Special leave and certificate of fitness — Distinction

that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. (Shah C. J. and Baxi J.) Bachubha v. Saurashtra State,

AIR 1953 Sau 198=1953 Cr L J 1723.

——Art. 134 (1) (c) — Test for granting leave : 1953 Cri L J 256 and 1953 Cri L J 32, Dissent. from.

In granting leave, it must be remembered that the High Courts are, in criminal matters other than those falling under Art. 134 (1) (a) and (b), final Courts of appeal. Test to be adopted is that there should be a substantial question of law or the infringement of some essential principles of justice. Same tests laid down by Supreme Court in—'Pritham Singh's case,' (51 Cri L J 1270 (SC)) in connection with grant of special leave are to be applied by the High Court also in granting leave.

Weight to be attached to evidence of witnesses on record or that conclusions were reached on an erroneous appreciation of evidence are not sufficient grounds for granting leave. (Shah C. J. and Baxi J.) Nirmal Kumarsinhji v. Saurashtra State,

AIR 1953 Sau 170 = 6 Sau L R 210 = 1953 Cr L J 1531.

——Arts. 134 (1) (c), 136 — Grant of certificate by High Court — Considerations involved not same as those under Art. 136.

The principles governing the grant of a certificate under Art. 134 (1) (c) and the granting of special leave by the Supreme Court under Article 136 are not always the same. Possibly the only common consideration which the High Court under Art. 134 (1) (c) and the Supreme Court under Article 136 may well take into account as a ground for granting leave is that "exceptional and special circumstances exist." The other considerations which can be taken into account only by the Supreme Court under Art. 136 are that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. (Satyanarayana Rao and Raghava Rao JJ.) Public Prosecutor v. A. K. Gopalan,

AIR 1953 Mad 66 = 65 M L W 892 = 1952-2 M L J 725=1953 Cr L J 256.

——Special leave to appeal in criminal matters—Powers of Supreme Court are not controlled by Art. 134 but by Art. 136—See ibid, Art. 136,

A I R 1952 All 991=1952 Cr L J 1755.

——Art. 134 (1) (c)—Standard of fitness—Test.

The Supreme Court is not a Court of appeal in matters not covered by cls. (a) and (b) of Art. 134 or possibly Art. 132. So far as criminal matters are concerned, a High Court may certify that a case is fit one for appeal to the Supreme Court under Art. 134 (1) (c), and the Supreme Court may in its discretion grant special leave to appeal from any judgment, decree, final order or sentence in criminal proceeding under Art. 136. Therefore, the test or the standard which would guide the High Court, in determining whether a certificate under Art. 134 (1), cl. (c) should be granted or not ought to be the same which the Supreme Court may apply in exercising its discretion when asked to grant special leave. The standard in the two Courts cannot be different, for the appellate jurisdiction of the Supreme Court which is to be exercised after a certificate from a High Court or after special leave under Art. 136, is the same. According to this test, the case must have exceptional and special circumstances. There should be substantial and grave injustice and it should have features of sufficient gravity to warrant a review of the decision. (Thadani, C. J. and Ram Labhaya J.) Chowthmal Sharma v. Hiralal Patni,

A I R 1951 Assam 38=55 C W N 117 = ILR (1951) 3 Assam 117=1952 Cr L J 381.

——Art. 134 (1) (c) — Leave to appeal in criminal case — Standard of fitness—Principles.

Generally speaking, the Supreme Court will not grant special leave under Art. 136 unless it is shown that exceptional circumstances exist and that severe and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. These principles laid down by the Supreme Court in interpreting Art. 136 are to be followed in deciding whether leave should be granted under Art. 134 (1) (c) also.

As the Supreme Court of India will not interfere with the course of justice in criminal cases in the free fashion of a fully constituted Court of Criminal appeal and it will interfere only in special cases of great public or private importance or if injustice of a seriors and substantial character has occurred, the High Court cannot grant leave to appeal, unless those circumstances mentioned exist.

Where the question involved in the appeal is based on a construction of S. 145 (4), Criminal P. C., on which there had been a sharp divergence of judicial opinion the question is no doubt of some importance but it is not of such general or even public importance as to warrant granting of leave to appeal under Art. 134 (1) (c). (Govinda Menon and Basheer Ahmed Sayeed JJ.) Narayana v. Kesappa,

A I R 1951 Mad 721=1951-1 M L J 296=1951 M W N 198 = 64 M L W 289 (2) = 1951 M W N (Cr) 50 = ILR (1951) Mad 387=1952 Cr L J 95.

——Arts. 134 (1) (c) and 136 — Certificate of fitness — When to be granted.

In construing Art. 134 (1) (c) it will not be correct to assume that the principles governing the grant of a certificate under Art. 134 (1) (c) and the granting of special leave by the Supreme Court under Art. 136 are the same.

Article 134 (1) (c) must, therefore, be construed independently of Art. 136.

Where the High Court on a consideration of the evidence in the case directs a prosecution under S. 193, Penal Code of the petitioner for swearing a false affidavit and it is impossible to find any question of public or private importance or even a question of law, the case is not one such as to justify the granting of a certificate of fitness under Art. 134 (1) (c). (Satyanarayana Rao and Basheer Ahmed Sayeed JJ.) M. S. Sheriff v. M. Govindan,

A I R 1951 Mad 1060=64 M L W 929=1951-2 M L J 501=1951 M W N 825=1951 M W N (Cr) 245=ILR (1952) Mad 638=1952 Cr L J 61.

——Art. 134 (1) (c) — Criminal case — Leave to appeal to Supreme Court—Principles enunciated by Supreme Court in A. I. R. 1950 S. C. 162 in granting special leave under Art. 136 are equally applicable when leave to appeal is sought under Art. 134 (1) (c) — High Court will refuse to grant leave unless special circumstances are shown to exist. (Ray C. J. and Narasimham J.) Bana Behera v. The State of Orissa,

A I R 1951 Orissa 261 = 17 Cut L T 7 = 52 Cr L J 697 (1).

——Art. 134 (1) (c) — Certificates — Grant of — Circumstances justifying grant of certificate.

The Supreme Court will not entertain an appeal unless exceptional circumstances exist or unless there has been either a denial of a fair trial to the appellant or while maintaining outward semblance of a fair trial, the appel-

CONSTITUTION OF INDIA (1950), Art. 134 — 3. Certificate of fitness, Cl. (1) (c) — (b) Special leave and certificate of fitness—Distinction

lant has been denied it, or if there are other circumstances of gravity. The High Court is not entitled to ignore these principles on which the Supreme Court will admit or entertain appeals to itself. It is as much bound by them as any petitioner who approaches the Supreme Court for leave. (Baxi J. C.) Nanalal v. Govt. of Kutch,

A I R 1951 Kutch 30=52 Cr L J 587.

——Art. 134 (1) (c) — Leave to appeal in criminal cases—Certificate as to fitness when to be granted—Principles.

The principles in connection with the grant of special leave to appeal to S. C. in criminal cases laid down in A. I. R. 1950 S. C. 169 are useful as furnishing a sound basis in the matter of granting a certificate of fitness under Art. 134 (1) (c) of the Constitution in the absence of any rules under Art. 145.

According to these principles leave to appeal to Supreme Court will not ordinarily be granted unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done, and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against.

Consequently, where the accused has been sentenced to death on a fair trial and the questions involved in the case all relate to the appreciation of evidence and the trial Court and H. C. are concurrent on the question of facts and there is no substantial question of law and no sufficient gravity to warrant review of the judgment, leave to appeal under Art. 134 (1) (c) cannot be granted. (Sripat Rao and Manohar Pershad JJ.) Habib Mohammed v. Hyderabad State,

A I R 1951 Hyd 71=52 Cr L J 481.

3. Certificate of fitness, Clause (1) (c) —(c) Grounds for.

——Art. 134 (1) (c)—Improper admission of evidence.

The question whether a particular report made to police was rightly admitted in evidence as the First Information Report is not such as to justify grant of leave. (Shah C. J. and Baxi J.) Bachubha v. Saurashtra State,

A I R 1953 Sau 198=1953 Cr L J 1723.

——Art. 134 (1) (c) — Question involved purely one of fact — No certificate. (Agarwala and Chaturvedi JJ.) Soney Lal v. State,

A I R 1953 All 610=1953 A L J 294 = 1953 A W R (HC) 505=1953 Cr L J 1376.

——Art. 134 (1) (c)—Certificate.

Reference under S. 307, Criminal P. C. — High Court not considering the illegality of procedure followed by the Sessions Judge — High Court considering facts and evidence and holding conviction of accused justified—No miscarriage of justice — No certificate would be granted. (Ram Labhaya Ag. C. J. and Deka J.) Gedeng Sut v. State,

A I R 1933 Assam 136=1953 Cr L J 1138.

——Art. 134 (1) (c) — Reasons for certificate of fitness — (Criminal P. C. (1898), S. 376).

If in any particular State there is only one Judicial Commissioner as the ultimate appellate authority, and if the confirmation of sentence of death has to be made by him, the procedure laid down must be followed. The fact that there is not a Bench of two Judges as in the High Courts to deal with death sentences is not an adequate ground for converting the Supreme Court into an ordinary Court of appeal and confirmation in such matters. (Patanjali Sastri C. J., B. K. Mukherjea, Chandrasekhara Aiyar, Bose and Ghulam Husan JJ.) Kalawati v. State of Himachal Pradesh,

A I R 1953 S C 131=1953 M W N 219 = 1953 S C J 144=1953 A W R (Sup) 52 = 1953 S C R 546 = 1953 S C A 660=1953 Cr L J 668 (SC).

CONSTITUTION OF INDIA (1950), Art. 134 — 3. Certificate of fitness, Cl. (1) (c)—(c) Grounds for ——Art. 134 (1) (c)—Question as to appreciation of evidence on record.

A question as to the weight to be attached to the evidence of witnesses on the record in a criminal case cannot be deemed to be sufficient ground for allowing leave under Art. 134 (1) (c). (Malik C. J. and Mushtaq Ahmed J.) Raja Ram v. State,

AIR 1953 All 133=1952 R D (H C) 116=ILR (1952) 1 All 737=1953 Cr L J 372.

——Statement by accused before committing Magistrate not tendered in evidence under S. 287, Criminal P. C.—High Court admitting it under S. 428—No prejudice to accused—Not a ground for certificate under Art. 134 (1) (c)—See Criminal P. C. (1898), S. 428.

AIR 1952 Tripura 25=1953 Cr L J 68.

——Art. 134 (1) (c)—No adverse inference against prosecution drawn from non-production of witness—Other evidence reliable and sufficient for conviction—No certificate can be granted—(Evidence Act (1872), S. 114), (Sen Gupta J. C.) Abdul Gafur v. Govt. of Tripura,

AIR 1952 Tripura 25=1953 Cr L J 68.

——Art. 134 (1) (c)—Appreciation of evidence—Question of.

The evidence on the material facts relied on by the learned Sessions Judge and two of the three Assessors, as also by the High Court is not really a matter for the Supreme Court to consider, as that Hon'ble Court is not a third Court of appeal on facts and would not, therefore, be prepared to reweigh the evidence. (Sen Gupta J. C.) Abdul Gafur v. Govt. of Tripura,

AIR 1952 Tripura 25=1953 Cr L J 68.

——Irregularity in choosing assessors—Grant of certificate—(Criminal P. C. (1898), S. 284).

Where no prejudice is caused to the accused any irregularity in choosing the assessors cannot be a ground which would justify the High Court in granting a certificate of fitness under Art. 134. (Kaul C. J. and Mehta J.) Babulal Tendwa v. State,

AIR 1952 Madh B 133=Madh B L R (1952) Cr 18=1952 Cr L J 1261.

——Art. 134 (1) (c) — Certificate of fitness—Failure to supply copies under S. 162, proviso, Criminal P. C.—Criminal P. C. (1898), S. 162, Proviso.

Where the case in respect of which complaint was made was not investigated by the Police the accused is not entitled under the proviso to S. 162, Cr. P. C., to copies of Police statements recorded in the course of investigation of case started on the report of the accused. It is one thing to ask for statements under the proviso to S. 162, and another thing to request the Court for production of some documents or statements for contradiction of a witness. This is not a question of law and no certificate of fitness under Art. 134 (1) (c) can be granted. (Vakil J. C.) Parshottam v. State,

AIR 1952 Kutch 54=1952 Cr L J 1037.

——Art. 134 (1) (c)—Ground for—Question of fact.

The point that certain evidence should not have been accepted by the Magistrate proceeding under S. 145, Criminal P. C., is a question of fact and cannot be a ground on which a certificate can be granted. (Reuben and Sinha JJ.) Jagdhari Koeri v. Ambika Singh,

AIR 1951 Pat 305=29 Pat 904=1952 Cr L J 540.

——Art. 134 (1) (c)—Criminal case—Appeal to Supreme Court—Certificate of fitness.

A certificate under Art. 134 (1) (c) for appeal to the Supreme Court was granted in this criminal case on the ground that the Magistrate who tried the case, was disqualified from trying the case by reason of the provisions of S. 556,

CONSTITUTION OF INDIA (1950), Art. 134 —

3. Certificate of fitness, Cl. (1) (c)—(c) Grounds for

Criminal P. C. The Magistrate who tried the case was the person who granted sanction under S. 38, Assam Foodgrains Control Order, 1947, for the prosecution of the accused under S. 7 (1), Essential Supplies (Temporary Powers) Act, 1946, for the contravention of the provisions of Ss. 3 and 7, Assam Foodgrains Control Order, 1947. (Thadani C. J. and Ram Labhaya J.) Rameswar Bartia v. The State,

AIR 1952 Assam 14=1952 Cr L J 116.

——Art. 134 (1) (c)—Application under—Non-compliance with S. 342, Criminal P. C.—If ground for granting certificate.

In a Sessions trial the Sessions Judge merely read over the examination of the accused in the Court of the committing Magistrate and asked him whether he had made that statement and it was correct. No question was put to him regarding the evidence produced and circumstances appearing against him in the Sessions Court. Even as regards the evidence which was recorded exclusively in the Sessions Court, only a general question was put to the applicant as to whether he had to say anything in regard to that evidence. The accused filed an application under Art. 134 (1) (c) of the Constitution for leave to appeal to the Supreme Court on the ground that non-compliance with S. 342, Criminal P. C. vitiated the trial.

'Held' that the omissions complained of were sufficient to justify the Court in certifying that the case was a fit one for appeal to the Supreme Court. (Chowdhry J. C.) Ranjha v. State,

AIR 1952 H P 5=1952 Cr L J 114.

3. Certificate of fitness, Clause (1) (c)—
(d) Substantial question of law.

——Art. 134 (1) (c)—Substantial question of law.

A finding that there was no undue delay in submitting the charge-sheet is a finding of fact and a certificate cannot be granted on the ground that it is erroneous.

Where there has been no failure of justice by the delay in submitting the charge-sheet, the question, whether the delay in submitting the charge sheet should affect the conviction of the accused becomes at best a question of law but is not a substantial question of law, which might justify the grant of a certificate. (Shah C. J. and Baxi J.) Bachubha v. Saurashtra State,

AIR 1953 Sau 198=1953 Cr L J 1723.

——Arts. 134 (1) (c) and 133—Substantial question.

If there is a well-established principle of law and that principle of law is applied to the facts of the case that would not be a substantial question of law. Where the question of law was not well settled, or where there was some doubt as to the principles of law involved, it might be regarded as a substantial question of law. This test or standard is equally true of criminal matters. (Shah C. J. and Baxi J.) Nirmal Kumarsinhji v. Saurashtra State,

AIR 1953 Sau 170=6 Sau L R 210=1953 Cr L J 1531.

——Art. 134 (1) (c)—Substantial question of law.

A substantial question of law is an important or difficult question of law on which there may be divergence of judicial opinion not set at rest by a pronouncement of the highest Court. But mere existence of a substantial question of law is not sufficient under Art. 134 (1) (c). It must be shown that as the substantial question of law was not decided in the manner contended for by the applicant, injustice of serious and substantial character had occurred. Case law discussed. (Vakil J. C.) Sameja Abdul Karim Arab v. State of Kutch,

AIR 1952 Kutch 51=1952 Cr L J 1025.

——Art. 134 (c)—Substantial question of law.

CONSTITUTION OF INDIA (1950), Art. 134 —

3. Certificate of fitness, Cl. (1) (c)—(d) Substantial question of law

Where on the findings arrived at by the High Court that the dispute was of a civil nature and the decision of the complicated question arising out of it involved elaborate and prolonged inquiry and that the complaint did not disclose any offence against the accused personally the High Court holds that the proceedings before the Magistrate deserved to be quashed there is no question of law, much less a substantial question of law involved in the case. Any difficulty existing in the application of the law would not make the matter a question of law or a substantial question of law. (Thadani C. J. and Ram Labhaya J.) Chowthmal Sharma v. Hiralal Patni,

AIR 1951 Assam 38=55 C W N 117 = I L R (1951) 3 Assam 117=1952 Cr L J 381.

——Art. 134 (1) (c)—Substantial question of law—Applicability of law.

When the principle of law is well established then the applicability of the law to the facts of a case is not a substantial question of law. (Dixit J.) Madan v. State,

AIR 1951 Madh B 159=52 Cr L J 1533.

——Art. 134 (1) (c)—Case involving question of law.

It is not necessary that in every case where a point of law is raised the matter should be certified as fit for appeal : 52 Cr. L. J. 620 and 51 Cr. L. J. 1270, Rel. on. :

Held, that though the case involved a question of law (relating to the legality of conviction under S. 149, Penal Code, where the culprits that could be identified were less than five) it was not a fit case for appeal to the Supreme Court. (Tejasingh C. J. & Chopra J.) Sarwan Singh v. State,

AIR 1951 Pepsu 152= 3 Pepsu L R 132 = 52 Cr L J 1409.

——Art. 134 (1) (c)—Certificate— Grant of — Substantial question of law—Construction of document.

The question of construction of documents is undoubtedly a question of law but it is not a substantial question of law so as to justify the grant of a certificate under the Article. (Baxi J. C.) Nanalal v. Government of Kutch,

AIR 1951 Kutch 30=52 Cr L J 587.

—— Art. 134 (1) (c)—Fit case for appeal—Validity of leave in appeal under S. 411-A, Criminal P. C.

The question whether an appellate Court at the time of hearing an appeal under S. 411A, Criminal P. C., is entitled to go into the validity or otherwise of the order granting leave to appeal by the trial Judge is a question of importance regarding procedure on which there is no direct authority and the case is fit one for appeal to Supreme Court. (Govinda Menon and Krishnaswami Nayudu JJ.) In re Sakthi Velu,

AIR 1951 Mad 212=1950-2 M L J 245=1950 M W N (Cr) 13 (2)=1951 M W N 65 (2)=52 Cr L J 35.

3. Certificate of fitness, clause (1) (c)—
(e) Question of public or private importance

——Art. 134 (1) (c)—Matter of public importance —(Penal Code (1860), S. 228).

There can be no doubt that the question of maintenance of the integrity of the jurisdiction is a matter of great public importance. But the reputation of the judiciary is so well established that it will not suffer even if one contempt of Court goes unpunished. The publication of an article in a newspaper against a Magistrate is not of great importance and the purpose would not be advanced by the grant of a certificate of leave to appeal to the Supreme Court. (Nigam J. C.) State of Ajmer v. Tilokchand Gopaldas,

AIR 1953 Ajmer 11=1953 Cr L J 1206.

——Art. 134 (1) (c) — Certificate of fitness under — Propriety of grant or refusal of an adjournment — Not a

CONSTITUTION OF INDIA (1950), Art. 134 — 3. Certificate of fitness, Cl. (1) (c) — (e) Question of public or private importance

question of sufficient importance for granting certificate under the Article. (Satyanarayana Rao and Raghava Rao JJ.) Public Prosecutor v. A. K. Gopalan,

AIR 1953 Mad 66 = 65 M L W 892 = 1952-2 M L J 725=1953 Cr L J 256.

——Art. 134 (1) (c)— Certificate of fitness — Police officer making complaint to Magistrate in respect of non-cognisable offence—Criminal P. C. (1898), Sections 4 (1) (h) and 190 and Ss. 529 and 530.

Where a police officer who was investigating a complaint made by a person in respect of a cognizable offence made a complaint to the Magistrate in respect of a non-cognizable offence, the complaint is valid in view of the definition in Section 4 (1) (h). It was open to the Magistrate to have asked the police officer to investigate the complaint. The proceeding of the Magistrate is not liable to be quashed because the police officer instead of resorting to S. 155 filed a complaint. Section 529 (e) and not Section 530 applies in such a case. The question is not of such public or private importance that a certificate of fitness can be issued. (Vakil J. C.) Parshottam v. State,

AIR 1952 Kutch 54=1952 Cr L J 1037.

——Art. 134 (1) (c)—Certificate of fitness — Terror of criminal complaint—Penal Code (1860), S. 385.

Terror of a criminal complaint, whether true or false amounts to fear of injury and the guilt or innocence of the party threatened is immaterial. When in the complaint it was stated that a person put another in fear that as his passport was false he would be prosecuted, the complaint discloses commission of an offence. The point is not of such a public or private importance that a certificate of fitness can be issued. (Vakil J. C.) Parshottam v. State,

AIR 1952 Kutch 54=1952 Cr L J 1037.

——Art. 134 (1) (c) —Certificate of fitness— Sufficiency of evidence.

A question of sufficiency or credibility of evidence in proof of a particular fact is not a case of private importance specially when there are concurrent findings of fact and no certificate under Art. 134 (1) (c) can be granted. (Vakil J. C.) Parshottam v. State,

AIR 1952 Kutch 54=1952 Cr L J 1037.

——Art. 134 (1) (c)—Fit case for appeal—Validity of leave in appeal under S. 411A, Criminal P. C.

The question whether an appellate Court at the time of hearing an appeal under S. 411A, Criminal P. C., is entitled to go into the validity or otherwise of the order granting leave to appeal by the trial judge is a question of importance regarding procedure on which there is no direct authority and the case is fit one for appeal to Supreme Court. (Govinda Menon and Krishnaswami Nayudu JJ.) In re Sakthi Velu,

AIR 1951 Mad 212=1950-2 M L J 245=1951 M W N Cr 13 (2)=1951 M W N 65 (2)=52 Cr L J 35.

——Art. 134 (1) (c) —Leave to appeal to Supreme Court— Appeal involving important questions of law one of which relating to interpretation of the Constitution — Question as to validity of Saurashtra Public Safety Measures (Third Amendment) Ordinance (66 [LXVI] of 1949) also involved — Leave granted — See Constitution of India, Art. 132 (1).

4 Sau L R 178.

3. Certificate of fitness, Clause (1) (c)— (f) Concurrent findings of fact

The Supreme Court will not enter into questions of fact decided on appreciation of evidence by the Courts below. When, therefore, the trial Court and the High Court, in appeal, concurrently hold, after appreciating the evidence on record, that the circumstances alleged by the prosecution are proved, a certificate cannot be granted on the ground that the appreciation of evidence was erroneous. (Shah C. J. and Baxi J.) Bachubha v. Saurashtra State,

AIR 1953 Sau 198=1953 Cr L J 1723.

CONSTITUTION OF INDIA (1950), Art. 134 — 3. Certificate of fitness, Cl. (1) (c) — (f) Concurrent findings of fact

3. Certificate of fitness, Clause (1) (c,—(g) New point

——New point.

Point not raised in proceedings before High Court, against which leave to appeal is sought, cannot be raised as a ground for leave to appeal to Supreme Court specially when it is raised not with reference to pure question of law but is one which depends upon certain further facts. (Jagannadhadas C. J. and Mohapatra J.) S. S. Roy v. State,

AIR 1953 Orissa 266=ILR (1952) Cut 467= 1953 Cr L J 1578.

——Art. 134 (1)—New plea.

The point that the Magistrate decided under S. 145, Criminal P. C., the question of possession with reference to title which was not raised before the High Court in revision cannot be allowed to be raised at the stage of an application under Art. 134 (1) (c). (Reuben and Sinha JJ.) Jagdhari Koeri v. Ambika Singh,

AIR 1951 Pat 305=29 Pat 904=1952 Cr L J 540.

4. Who can apply

——Right of third party.

The provisions of Art. 134 of the Constitution of India are intended to be availed of by an accused who has been convicted by the State and not by a third person. A third person even if he be the father of the murdered man has no locus standi to make this application. (Malik C. J. and C. B. Agarwala J.) Ajudhia Prasad v. Chhotey Lal,

AIR 1952 All 85 = 1951 A L J 455 = I L R (1951) 2 All 545.

5. Appeal against acquittal

——Art. 134 (1) (c)—Leave to appeal against acquittal— (Criminal P. C. (1898), S. 429).

Per Das C. J. (Panigrahi J. concurring)—Appeal against acquittal—One of the Judges constituting the Division Bench agreeing with trial Court while the other Judge though inclined to take different view ultimately agreeing with order of acquittal giving benefit of doubt to accused —No question of violation of any fundamental principles of criminal law or of S. 429, Criminal P. C., arises by adoption of such a course—Leave cannot be granted. (Jagannadhadas C. J., Panigrahi and Narasimham JJ.) State of Orissa v. Minaketan Patnaik,

A I R 1953 Orissa 160=I L R (1952) Cut 678=1953 Cr L J 1084 (S B).

——Arts. 134 (1) (c) and 136—Scope.

Per Das C. J. (Panigrahi J. concurring, Narasimham J. dissenting): Though Art. 134 (1) is wide enough to cover a case of appeal to Supreme Court against acquittal the standard applicable in respect of Art. 134 (1) (c) is not same as indicated in Art. 134 (1) (c) which relates to civil matters. No doubt principles which regulate granting of special leave to appeal by Supreme Court under Art. 136 equally apply in granting leave under Art. 134 (1) (c).

It would, however, be against the policy of legislature to construe Art. 134 (1) (c) as permitting High Court to grant leave to appeal as against judgment of acquittal confirmed by High Court. The mere fact that case involves important questions of law on which there is difference of opinion between judges but which do not ultimately affect decision of appeal on merits is not a sufficient ground for granting leave under Art. 134 (1) (c). The position with regard to Supreme Court is, however, different and, in exceptional cases, it is within the pre-

CONSTITUTION OF INDIA (1950), Art. 134 —

5. Appeal against acquittal

rogative of the Supreme Court to grant special leave under Art. 136 even against an order of acquittal where circumstances amounting to grave miscarriage of justice or obvious perversity or deceipt by fraud are made out. (Jagannadhadas C. J., Panigrahi and Narasimham JJ.) State of Orissa v. Minaketan Patnaik,

A I R 1953 Orissa 160=I L R (1952) Cut 678=1953 Cr L J 1084 (S B).

——Arts. 134 and 20 (2) — Scope — No conflict exists between Articles—Article 134 recognising right of appeal from acquittal does not give way to Art. 20 (2) — Section 417, Criminal P. C., conferring right of appeal against acquittal is not ultra vires of Art. 20 (2) of Constitution: —(Cri. P. C. (1898). S. 417). (Chowdhry J. C.) Ranjit Singh v. State,

A I R 1952 H P 81=1952 Cr L J 1720.

6. Proceedings for contempt of Court.

——Arts. 134 (1) (c) and 215 — Criminal contempt — (Contempt of Courts Act (1926), S. 2).

The jurisdiction in contempt proceedings for what is called "criminal contempt" is criminal and the High Court has the power to grant leave to appeal in such cases under sub-cl. (c) of Cl. (1) of Art. 134, but only on the very limited grounds akin to those on which the Privy Council was granting special leave as in the case in A I R 1936 P C 141, (Jagannadhadas C. J. and Mohapatra J.) S. S. Roy v. State,

A I R 1953 Orissa 266=I L R (1952) Cut 467=1953 Cr L J 1578.

——Arts. 134 and 215—Contempt proceedings—Leave to appeal.

High Court as a Court of record has exclusive jurisdiction in matters relating to contempt of Court — Findings arrived at are not open to further challenge — No leave can be granted to appeal to Supreme Court for purposes of challenging those findings. (Jagannadhadas C. J. and Mohapatra J.) S. S. Roy v. State,

A I R 1953 Orissa 266=I L R (1952) Cut 467=1953 Cr L J 1578.

——Arts. 134 and 215—Contempt proceedings—Substantial question of law.

Whether deliberate and intended interference with Civil Court process by a Magistrate without authority and, exercising his official position without due care, require to be checked by the High Court by proceedings in contempt, is a question of sufficient importance with reference to which leave to appeal to the Supreme Court may be granted if the High Court has the power to grant such leave. (Jagannadhadas C. J. and Mohapatra J.) S. S. Roy v. State,

A I R 1953 Orissa 266=I L R (1952) Cut 467=1953 Cr L J 1578.

——Arts. 134 and 215 — Leave to appeal to Supreme Court from conviction for contempt — Prejudice—Inadmissible evidence admitted — (Contempt of Courts Act (1926), S. 2).

Proceedings in contempt though criminal in one sense are not strictly governed by the Criminal Procedure Code or the Evidence Act.

A procedural illegality can be waived by the contemner. Hence absence of objection to any particular procedure is a material consideration in judging whether justice has suffered in order to grant leave to appeal.

Where inadmissible evidence was admitted in contempt proceedings and no objection was taken, it was held that there had not been such gross violation of the principles of natural justice which was likely to have caused pre-

CONSTITUTION OF INDIA (1950), S. 134 —

6. Proceedings for contempt of Court

judice. (Jagannadhadas C. J. and Mohapatra J.) S. S. Roy v. State,

A I R 1953 Orissa 266=I L R (1952) Cut 467=1953 Cr L J 1578.

——Arts. 134 (1) (c) and 215—Contempt of High Court—Nature of proceeding — Principles governing granting of certificate in criminal cases—Certificate refused.

Article 134 (1) (c) of the Constitution confers a wide discretion upon the High Courts. Under it an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court if the High Court certifies that the case is a fit one for appeal to the Supreme Court. There is, however, nothing in the Constitution to indicate in what cases or classes of cases a certificate of fitness to appeal may be granted by the High Court.

In the absence of anything in the Constitution to guide the Courts in this matter, the question should be determined on general principles and such inferences as may be drawn as to the nature and scope of the discretion conferred upon the High Courts from the existing criminal law of the country. There is another Article in the Constitution, Art. 136, under which the Supreme Court may in its discretion grant a special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter, passed or made by any Court or tribunal in India. How the discretion conferred upon the Supreme Court will be exercised in criminal cases was indicated in the recent decision of that Court in—'Pritam Singh's case,' 51 Cri L J 1270 (S C). (Principles laid down in 51 Cri L J 1270 (S C), indicated).

Observations in AIR 1950 S C 169 may well furnish some guidance to the High Courts in granting of certificate applied for under Art. 134 (1) (c). In granting a certificate for leave to appeal the High Court must be satisfied that there is reasonable ground for thinking that grave and substantial injustice may have been done by reason of some departure from the principles of natural justice.

The High Court when considering an application for grant of a certificate under Art. 134 (1) (c) does not sit in judgment upon its own decision. It has, however, been authorised to grant a certificate of fitness to appeal to the Supreme Court in any case that it might consider appropriate. It would not be proper for any Judge to attempt to define in a few clear-cut categories in what cases or classes of cases a certificate of fitness should be granted and thus to restrict the wide generality of the language advisedly used by the framers of the Constitution. Every case should be considered on its own facts and circumstances, but a certificate should not be granted unless there is something exceptional or special in the case calling for a review of the decision of the High Court by the Supreme Court.

The jurisdiction exercised by the High Courts under Art. 215 of the Constitution is criminal jurisdiction. It is true that the High Court exercises as special and summary jurisdiction in cases of contempt of itself. But from the earliest times it was never intended that the exercise of this jurisdiction should be made subject to a review by an appeal and there is a serious doubt whether a certificate of fitness can at all be granted in such a case except possibly under some extraordinary circumstances. High Court would not be justified in applying to petitions for grant of a certificate under Art. 134 (1) (c) in cases of conviction for a contempt of itself, a standard of scrutiny different from that by which it judges applications for certificates of fitness in other cases.

Liability of an editor and printer when they are not connected with the work of the press at the relevant time

CONSTITUTION OF INDIA (1950), Art. 134—

6. Proceedings for contempt of Court

when the contempt was published is not a question of general importance, since the law on the subject is well-settled. Similarly when the ground upon which the certificate is sought challenges a finding of fact, it is not a ground for granting certificate. (Kaul C. J. and Mehta J.) Krishna Kant Vyas v. State,

A I R 1953 Madh B 206 = I L R (1952) M B 308 = 1953 Cr L J 1323.

——Art. 134 (1) (c) — Conditions required — (Penal Code (1860), S. 228).

The contention that the High Court should not have treated the qualified apology as an unqualified one and should have convicted and sentenced the accused for contempt of Court, cannot be considered in an application for a certificate that the case is a fit one for appeal to the Supreme Court. (Nigam J. C.) State of Ajmer v. Tilokchand Gopaldas,

A I R 1953 Ajmer 11=1953 Cr L J 1206.

——Art. 134 (1) (c)—Proceedings for Contempt of Court —If criminal proceedings within Art. 134—See Contempt of Court.

A I R 1952 Nag. 130=1952 Cr L J 749.

——Art. 134 (1) (c) — Leave to appeal to Supreme Court against conviction for contempt — Considerations — Case held not fit one for granting leave—(Contempt of Court).

Granting for the nonce that a proceeding resulting in conviction for contempt is a criminal proceeding within the meaning of Art. 134 (1), half the efficiency of the jurisdiction exercised by the Court in the matter of contempt would be impaired if the contemner were to be permitted to appeal as a matter of course under Cl. (c) in every case of conviction.

A right of appeal is no doubt a creation of statute. Where an appeal as of right is given by a statute, it cannot be limited by any considerations foreign to the statute, but the right of appeal given in Cl. (c) is not as of right but at the discretion of the Court. The discretion has to be exercised not arbitrarily but on sound judicial considerations. But in considering a case under the residuary Cl. (1) (c) of Art. 134, it may not be improper to bear in mind the nature of the jurisdiction exercised by a superior Court of record in a matter of contempt. It is well established that every superior Court of record is the sole and exclusive Judge of what constitutes contempt of itself.

The facts that while punishing the petitioner for contempt the Court has not exercised either a new fangled jurisdiction or held anything to be a contempt which was not already covered by precedent, and the questions raised in the decision cannot be regarded as either 'res integra' or such as have given rise to any divergence of view, the entire range of the discussion in the decision against which appeal is sought being covered by one Full Bench and two Division Bench decisions, are considerations normally sufficient, to reject an application for leave under Art. 134 (1) (c) to appeal to the Supreme Court. (R. Kaushalendra Rao and Deo JJ.) Zikar v. State,

A I R 1952 Nag. 130 = I L R (1952) Nag. 130=1952 Cr L J 749.

——Art. 134 (1) (c)—Contempt of Court—Leave to appeal to Supreme Court—Considerations.

A I R 1952 Nag. 130=1952 Cr L J 749.

——Arts. 134 and 136—Penalty imposed for Contempt of Court — Appeal to Privy Council — Principles on which leave to appeal may be granted.

It is competent to His Majesty in Council to give leave to appeal and to entertain appeals against orders of the Courts overseas imposing penalties for contempt of Court. In such a case the discretionary power of the Board will no doubt be exercised with great care. Everyone will

CONSTITUTION OF INDIA (1950), Art. 134—

6. Proceedings for contempt of Court

recognise the importance of maintaining the authority of the Courts in restraining and punishing interferences with the administration of justice whether they be interferences in particular civil or criminal cases or take the form of attempts to depreciate the authority of the Courts themselves. It is sufficient to say that such interferences when they amount to contempt of Court are quasi-criminal acts, and orders punishing them should, generally speaking, be treated as orders in criminal cases, and leave to appeal against them should only be granted on the well-known principles on which leave to appeal in criminal cases is given. (Lords Atkin and Maugham and Sydney Rowlatt) Andre Paul Terence Ambard v. Attorney-General of Trinidad and Tobago,

A I R 1936 PC 141 = 8 R P C 229=40 C W N 801=(1936) A L J 671=38 P L R 541=(1936) M W N 619=44 M L W 15=38 Bom. L R 681 = 1936 A W R (P C) 600=64 C L J 36=71 M L J 665=162 I C 92 (2) (P C).

——Leave to appeal to Privy Council.

Proceeding for contempt for publication of articles in newspaper by an Advocate are in the exercise of inherent jurisdiction of the High Court and of criminal nature. No leave, therefore, to appeal to His Majesty in Council can be granted. (Sulaiman C. J. and Bennet J.) Kapildeva Malviya v. Chief Justice and Judges of the High Court, Allahabad,

A I R 1935 All. 811=(1935) A L J 810=1935 A W R (HC) 669=7 R A 902=57 All 910=155 I C 188.

7. Habeas Corpus applications.

——Art. 134 (1) (c) — Order of release on application for writ of habeas corpus — Appealability under Constitution — Principles — High Court should be extremely chary in exercising its powers under Art. 134 (1) (c) against the person released—See ibid, Art. 226.

A I R 1953 Mad. 66=1953 Cr L J 256.

——Art. 134 (1) (c)—Certificate of fitness under — Order of release on application for writ of habeas corpus — Detenu rearrested within five minutes of release—Second application for same writ also allowed — Government applying for leave to appeal against both orders — Held, no leave could be granted.

On an application for a writ of habeas corpus by a detenu under the Preventive Detention Act, 1950, the High Court ordered his release. But within five minutes of the order, a fresh order of detention was served on the detenu who again applied for the same writ and was ordered to be released on the ground that the conduct of the Government was lacking in bona fides. The State Government applied for leave to appeal to Supreme Court under Art. 134 (1) (c) against both the orders:

Held, that no leave could be granted in respect of the first order as in the events that followed it, such leave would be of no practical interest.

Further that as the question of bona fides or contra of the Government was essentially one of fact or at the most of mixed question of fact and law, no question of public importance was involved and hence leave to appeal against second order also could not be given. (Satyanarayana Rao and Raghava Rao JJ.) Public Prosecutor v. A. K. Gopalan,

A I R 1953 Mad. 66=65 M L W 892=1952-2 M L J 725=1953 Cr L J 256.

8. Proceedings under S. 476, Criminal P. C.

——Art. 134 (1) (c) — Proceedings under S. 476, Criminal P. C.

High Court is not subordinate to Supreme Court within meaning of S. 195 (3), Criminal P. C.—No automatic right of appeal under S. 476B, Criminal P. C., unless leave of High Court is obtained under Art. 134 (1) (c) — See Criminal P. C. (1898), S. 195 (3).

A I R 1951 Mad. 1060=1952 Cr L J 61.

CONSTITUTION OF INDIA (1950), Art. 134

9. Proviso to Cl. (1) (c).

——Art. 134 (1) (c) — Certificate under Art. 134 (1) (c) — Time to apply—Validity of R. 28 of Chap. 23 of Allahabad High Court Rules — See Allahabad High Court Rules, Chap. 23, R. 28.

A I R 1953 All. 610=1953 Cr L J 1376.

10. Bail.

——Certificate of fitness granted under Art. 134 (1) (c)— High Court has no power to grant bail to convicted person —It is only where special leave is granted by Supreme Court that it can do so—See Criminal P. C. (1898), Section 426 (2B).

A I R 1952 H P 67=1952 Cr L J 1461.

11. Powers of Supreme Court on appeal.

——Appreciation of evidence—Interference.

Some eye-witnesses implicating both accused — Eye-witnesses believed — One of accused admitting his guilt and convicted — Supreme Court refusing to interfere in his case — In such case ordinarily Supreme Court would not interfere with the case of the other accused also, unless there are special reasons for not accepting the statements of these witnesses at their face value against the other accused. (Special circumstances, held existed.) (Fazl Ali, Mahajan and Bose JJ.) Hate Singh Bhagat Singh v. State of Madhya Bharat,

A I R 1953 S C 468=Madh. B L R (1952) Cr 1=1953 Cr L J 1933 (SC).

——Appreciation of evidence—Interference.

Usually the Supreme Court in a criminal appeal before it will not depart from its practice of declining to reassess the evidence but where there has been a departure from the rule that when an accused person puts forward a reasonable defence which is likely to be true, and in addition is supported by two prosecution witnesses, then the burden on the other side becomes all the heavier because a reasonable and probable story likely to be true when pitted against a weak and vacillating case is bound to raise reasonable doubts of which the accused must get the benefit, the Supreme Court would examine the evidence at length. (After reviewing the evidence the Supreme Court set aside the conviction and the sentence.) (Fazl Ali, Mahajan and Bose JJ.) Hate Singh Bhagat Singh v. State of Madhya Bharat,

A I R 1953 S C 468=Madh. B L R (1952) Cr 1=1953 Cr L J 1933 (SC).

——Supreme Court — Practice — Concurrent findings of fact — No interference. (Mahajan and S. R. Das JJ.) Damodaran v. State of Trav-Coch.

AIR 1953 S C 462=1953 Ker L T 295 = 1953 Cr L J 1928 (SC).

——Arts. 134, 136 —Power to look into evidence—Criminal P. C. (1898), S. 404.

The Supreme Court will not look beyond the finding of fact arrived at by the Courts below, but it may do so where decision on the plea of alibi has been arrived at in disregard of the principle that the standard of proof which is required in regard to that plea must be the same as the standard which is applied to the prosecution evidence and in both cases it should be a reasonable standard. (Fazl Ali, B. K. Mukherjea and Chandra Sekhara Aiyar JJ.) Mohinder Singh Inder Singh v. Singh

AIR 1953 S C 415 = 1950 S C R 821 = 1953 Cr L J 1761 (SC).

——No interference.

Supreme Court would not be justified in disturbing the decision of the Courts below merely on the ground that perhaps a different inference could also have been drawn from the facts found in the case. (Mahajan, Bose and

CONSTITUTION OF INDIA (1950), Art. 134 —

11. Powers of Supreme Court on appeal

Jagannadha Das JJ.) Vijendrajit Ayodhya Prasad Goel v. State of Bombay

AIR 1953 S C 247 = 1953 S C A 395 = 1953 S C J 328 = 1953 A W R (Sup) 70 = 1953 M W N 552 = 1953 Cr L J 1097 (SC).

——Arts. 134, 142—Supreme Court, powers of.

Where the Courts below in coming to their decision regarding the guilt of the accused relied to a considerable extent on the so-called admission of the accused which had no existence in fact.

Held that the proper order to make would be to direct a rehearing of the appeal on the evidence as it actually stood after excluding from consideration the alleged admission, (Patanjali Sastri C. J., B. K. Mukherjea, Chandrasekhara Aiyar, Bose and Ghulam Husan JJ.) Darshan Singh Balwant Singh v. State of Punjab

AIR 1953 S C 83 = 1953 S C J 48 = 1953-1 M L J 220=1953 S C R 319 = 1953 S C A 856 = 19 Cut L T 419 = ILR (1953) Punj 639=1953 Cr L J 525 (SC).

——New point of fact.

A question of fact which has to be investigated afresh cannot be allowed to be raised for the first time in appeal to the Supreme Court. (Chandrasekhara Aiyar and Bhagwati JJ.) Rameshwar Bhartia v. State of Assam

AIR 1952 S C 405 = 1952 S C J 559 = 1953-1 M L J 17 = 1953 A W R (Sup) 1 = 1953 S C A 42 = 1953 S C R 126 = I L R (1953) 5 Assam 1=1953 M W N 343 = 1953 Cr L J 163 (SC).

——Arts. 134 and 136 — Concurrent findings of fact — Interference—Practice of Supreme Court—(Supreme Court —Practice—Concurrent findings of fact)—(Criminal P. C. (1898), S. 404).

When the Court of first instance and the Court of appeal arrive at concurrent findings of fact after believing the evidence of a witness, the Supreme Court as the final Court does not disturb such findings, save in most exceptional cases. But where a finding of fact is arrived at on the testimony of a witness who is admittedly an accomplice and the Courts below depart from the rule of prudence that such testimony should not be accepted unless it is corroborated by some other evidence on the record, a finding of that character in the circumstances of a particular case may well be reviewed even on special leave if the other circumstances in the case require it, and substantial and grave injustice has resulted. (Mahajan, S. R. Das and Bhagwati JJ.) Hanumant Govind Nargundkar v. State of Madhya Pradesh

AIR 1952 S C 343 = 1952 S C J 509 =1952-2 M L J 631 = 1952 S C A 623 = 1952 A W R (Sup) 109 = 1952 S C R 1091 = 1953 M W N 347 = 1953 Cr L J 129 (SC).

——Art. 134 (1) — Argument on point of fact.

It is not the function of the Supreme Court to reassess evidence and an argument on a point of fact which did not prevail with the Courts below cannot avail the appellants in the Supreme Court. (Fazl Ali and Bose JJ.) Lachhman Singh v. The State

AIR 1952 S C 167 = 65 M L W 429 = 1952 S C J 230 =1952 M W N 389=1952 M W N (Cr) 93= 1952-2 M L J 100 =1952 A L J 437=ILR (1952) Punj 278= 1952 SCA 491=1952 SCR 839=1952 Cr L J 863 (SC).

—Art. 135.

——Arts. 135, 136 — Applicability — Judgments passed before 26-1-1950 by Courts in Nizam's territory.

Under the words used in Art. 136 the Courts which passed judgments or sentence must be Courts within the territory of India. The territory of the Government of H. E. H. the Nizam was never the territory of India before 26-1-1950 and, therefore, the judgments and sentence passed by the High Court of H. E. H. the Nizam

CONSTITUTION OF INDIA (1950), Art. 135

on the 12th, 13th and 14th December, 1949, cannot be considered as judgments and sentence 'passed by a Court within the territory of India,' and as such they do not fall within the class of judgments against which special leave to appeal to the Supreme Court can be asked for under Art. 136. It is also obvious that such judgments are not covered under Art. 135, Constitution of India. The Supreme Court has, therefore, no jurisdiction to entertain the petitions for special leave to appeal against such judgments of the High Court of Hyderabad under Art. 136. (Kania C. J. Fazl Ali, Patanjali Sastri, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) Janardhan Reddy v. State,

AIR 1951 S C 124 = 1951 S C J 98 = 1950 S C R 940 = 64 M L W 378 = 1951 M W N 709 = 1951 M W N (Cr) 213 = 52 Cr L J 391 (SC).

—Art. 136.

——Criminal appeal when to be entertained—See ibid, Art. 134

AIR 1953 S C 415 = 1953 Cr L J 1761 (SC).

——Summary rejection order by High Court —Indication of the views of High Court — Advisability—See Criminal P. C., S. 421

AIR 1953 S C 282 = 1953 Cr L J 1127 (SC).

——Scope—See ibid, Art. 134 (1) (c)

AIR 1953 Orissa 160 = 1953 Cr L J 1084 (SB)

——Grant of certificate by High Court — Considerations involved not same as those under Art. 136—See ibid, Art. 134 (1) (c)

AIR 1953 Mad 66 = 1953 Cr L J 256.

——Concurrent findings of fact — Interference —Practice of Supreme Court—See ibid, Art. 134,

AIR 1952 S C 343 = 1953 Cr L J 129 (SC).

——Arts. 136, 134 — Special leave to appeal in criminal matters—Powers of Supreme Court.

In granting special leave to appeal in criminal matters, the Supreme Court is not governed by Art. 134 but by Art. 136, the powers under which are much wider and it can, in its discretion, grant special leave in any case.

Similarly the jurisdiction of the Supreme Court in matters coming up before it is not limited by any provision in the Constitution and that Court is not precluded from going into questions of fact if it considers it necessary. (Malik C. J. and V. Bhargava J.) Jai Singh v. State,

AIR 1952 All 991=1952 R D (HC) 305 = 1952 A L J 566 = 1952 A W R (HC) 502 = 1952 Cr L J 1755

——Special leave is different from certificate of fitness—It can only be granted by Supreme Court — See Criminal P. C. (1898), S. 426 (2B),

AIR 1952 H P 67 = 1952 Cr L J 1461.

——Principles governing grant of certificate of fitness are different than those under Art. 134 (1) (c) — See ibid, Art. 134 (1) (c),

AIR 1951 Mad 1060 = 1952 Cr L J 61.

——Retrospectivity.

'Prima facie', every legislation is prospective and there is no reason to depart from this rule of interpretation in the case of Art. 136 of the Constitution. Even without the use of the word 'hereafter' the Article conveys the same meaning. (Kania C. J., Fazl Ali, Patanjali Sastri, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) Janardhan Reddy v. State,

AIR 1951 S C 124=1951 S C J 98=1950 S C R 940= 64 M L W 378 = 1951 M W N 709= 1951 M W N (Cr) 213 = 52 Cr L J 391 (SC).

——Powers of Supreme Court — Special leave to appeal—When granted.

The wide discretionary powers with which the Supreme Court is invested under Art. 136 is to be exercised sparingly and in exceptional cases only adopting a uniform standard of granting special leave only in those cases where special circumstances are shown to exist. (Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) Pritam Singh v. The State,

AIR 1950 S C 169 = 53 P L R 1=1950 M W N (Cr) 236 = 1950 S C R 453 = 86 C L J 120 = 63 M L W 875 =1950 M W N 605 = 51 Cr L J 1270 (SC).

——Penalty imposed for contempt of Court — Appeal to Privy Council —Principles on which leave to appeal may be granted—See Constitution of India, Art. 134,

AIR 1936 P C141.

—Art. 141.

——Law deliberately pronounced — Supreme Court — (Obiter),

Where the Supreme Court deliberately with the intention of settling the law pronounces upon a question, the pronouncement is the law declared by the Supreme Court within the meaning of Art. 141 and is binding on all Courts in India. It cannot be treated as a mere 'obiter dictum'.

It is true that where a point has not been argued and certain general observations have been made which may seem to cover points not argued before the Court, may not be considered to be binding, and in such cases the binding nature of the observation of the Court may be limited to the points specifically raised and decided by the Court. It is also true that pronouncements made on concessions of counsel, when a point is not argued, are not binding but otherwise even what is generally called an 'obiter dictum' provided it is upon a point raised and argued, is binding upon the Courts in India. (Raghubar Dayal and Agarwala JJ.) Smt. Bimla Devi v. Chaturvedi,

AIR 1953 All 613 = 1953 A L J 273 = 1953 A W R (HC) 257=ILR (1953) 2 All 735 = 1953 Cr L J 1384.

——High Court of Mysore is now bound by the law laid down by the Supreme Court — (Precedents). (Medapa C. J. and Vasudevamurthy J.) State of Mysore v. K. Basappa,

AIR 1953 Mys 75 = 31 Mys L J 38 = ILR (1953) Mys 79 = 1953 Cr L J 1064.

——Federal Court decisions if binding on Courts not subject to its jurisdiction, after commencement of Constitution—See ibid, Art. 374 (2),

AIR 1951 Mys 72 = 52 Cr L J 992 (FB).

——Decisions of Federal Court—Binding effect after Constitution—See ibid, Art. 374 (2)

AIR 1951 Mad 115 = 52 Cr L J 396.

—Art. 142.

——Powers of Supreme Court — See ibid Art. 134.

AIR 1953 S C 83 = 1953 Cr L J 525 (SC).

—Art. 144.

——Federal Court — Decision by, how far fetters rights of Legislature—See Constitution of India, Art. 246,

AIR 1943 Pat 346 = 44 Cr L J 809.

—Art. 154.

——Legislature and Executive — Duty of Government—See Constitution of India, Art. 53,

AIR 1954 J & K 7 = 1953 Cr L J 1885.

——Exercise of executive power by Raj Pramukh.

The exercise of the executive power under Art. 154 directly by the Raj Pramukh is as regards the function or functions which he can exercise in his discretion under Art. 163 (1) whichever it or they may be. (Koshi C. J., Govinda Pillai and Subramonia Iyer JJ.) Joseph John v. State of Trav-Co.,

AIR 1953 T C 130 = 1953 K L T 1 = ILR (1952) T C 884=1953 Cr L J 752 (FB).

CONSTITUTION OF INDIA (1950), Art. 154

——Executive and judiciary — Conflict — Duty of executive—See ibid, Art. 53,

AIR 1953 Mad 41 = 1953 Cr L J 224.

——Art. 154 (1) — Delegation of power to pass detention orders — See Preventive Detention Act (IV of 1950) S. 3 (1),

AIR 1951 Pepsu 147 = 52 Cr L J 1215.

——Satisfaction of detaining authority—Onus—See Preventive Detention Act (1950), S. 3

AIR 1951 Pepsu 126=52 Cr L J 1081.

——Governor — Powers of — Self governing dominion—Extraordinary powers in cases of grave crisis.

The Governor of a small colony inhabited by primitive and backward peoples has very much less power than the Governor-General of a self-governing dominion, the reason being that in the former the Government is carried out personally by the Governor and the official Subordinate to him; but in the case of a self-governing dominion where the Government is, in practice, in the hands of the people, the Governor needs extraordinary powers to interfere when a grave crisis arises, but these extraordinary powers he rarely uses. (Horwill J.) Batliwala, S. S., In re

AIR 1938 Mad 758=11 R M 375=1938 M W N 529 =48 M L W 170=(1938) 2 M L J 416=177 I C 747= 39 Cr L J 938.

—Art. 161.

——Power under—It can be exercised by Military Governor or Chief Minister.

Under Art. 161, the powers of suspension, revision and reduction of sentences are given to the Governors (or Rajpramukhs). The Military Governor and the Chief Minister do not come under that designation. (Naik C. J., Sripat Rao and M. A. Ansari JJ.) Abdur Rahim v. Joseph A. Pinto

AIR 1951 Hyd 11 = ILR (1951) Hyd 1 = 52 Cr L J 1333 (FB).

—Art. 162.

——Legislature and Executive — Duty of Government—See Constitution of India, Art. 53

AIR 1954 J & K 7=1953 Cr L J 1885.

——Executive and judiciary—Conflict—Duty of executive—See ibid, Art. 53

AIR 1953 Mad 41=1953 Cr L J 224.

——Arrest for activities in another State—Legality—See Preventive Detention Act, S. 3

AIR 1951 Mad 583=52 Cr L J 294.

—Art. 163.

——Arts. 163 (3) and 167 (a)—Advice by Minister.

The Arts. 163 (3) and 167 (a) read together show that the question as to the tendering of advice is a matter purely between His Highness the Raj Pramukh and his Council of Ministers. Whether there is or there is not a communication of the decisions under Art. 167 and if so what the advice tendered under Art. 163 was, is not justiciable as Art. 163 (3) clearly provides. The precise date when and the particular manner in which the communication was made to the Raj Pramukh is beyond the jurisdiction of the Court to consider as it comes within the prohibition contained in Art. 163 (3). (Koshi C. J., Govinda Pillai and Subramania Iyer JJ.) Joseph John v. State of Trav-Co.

AIR 1953 Trav-Co 130=1953 K L T 1=I L R (1952) T C 884=1953 Cr L J 752 (FB).

—Art. 165.

——Powers and duties of Advocate-General — (Criminal P. C. (1898), S. 417).

The Advocate-General is entitled to file an appeal to the High Court against an acquittal by virtue of Art. 165,

CONSTITUTION OF INDIA (1950), Art. 165

Constitution of India, read with Mysore Government Notification, D/- 13-4-1950, which authorises him to perform all acts necessary in or for a case without restriction. Non-mention of Advocate-General in S. 417, Criminal P. C., is of no effect. (Venkata Ramaiya J.) Government of Mysore v. Gulam Mohamad

AIR 1953 Mys 42 = I L R (1952) Mys 394 = 1953 Cr L J 1040.

—Art. 166.

——Memorandum of State appeal — Signature of Rajpramukh—Necessity of—(Criminal P. C. (1898), S. 417).

The signature of the Rajpramukh is not necessary under Art. 166 on the memorandum of a State appeal against acquittal; for, in such matters, the direction in that Article is only declaratory and not mandatory and, moreover, that Article refers to executive acts and the filing of an appeal is evidently a judicial and not an executive act. (Siadat Ali Khan and Deshpande JJ.) State of Hyderabad v. Ahmad Mohiuddin

AIR 1953 Hyd 59 = I L R (1953) Hyd 131 = 1953 Cr L J 477.

——Art. 166 (1)—Preventive detention—Order purporting to be made by Governor and signed by Home Secretary—Legality—See Preventive Detention Act (1950), S. 3

AIR 1952 S C 350=1953 Cr L J 146 (SC).

——Art. 166 (3)—Rules of Business (Orissa Government) —See Preventive Detention Act (1950), S. 3

AIR 1953 Orissa 33=1953 Cr L J 349.

——Art. 166 (1) — "Expressed to be taken in the name of"—Meaning—Order of detention issued as 'directed by Government' and 'by order of the Governor'—Validity—Public Safety—Preventive Detention Act (1950), S. 3 (1)).

One of the meanings of "expressed" is to make known the opinions of the feelings of a particular person and when a Secretary to Government apprehends a man and tells him in the order that it is being done under the order of the Governor, he is in substance saying that he is acting in the name of the Governor and, on his behalf, is making known to the detenu the opinion and feelings and orders of the Governor. The Constitution does not require a magic incantation which can only be expressed in a set formula of words. What the Court has to see is whether the substance of the requirements of Art. 166 (1) is there.

An order of detention under S. 3 (1) of the Preventive Detention Act, 1950, stated in the preamble "whereas the Government of Bombay was satisfied . . . . ." and its operative part read: "Now, therefore . . . . . the Government of Bombay is pleased to direct that the said Shri . . . . . be detained.

By order of the Governor of Bombay
Sd/- x.x.x.x.
Secretary to the Government of Bombay, Home Department."

Held that the order was "expressed" to be made in the name of the Governor as required by Art. 166 (1) because it said "by order of the Governor."

Further that though the addition of the words "and in his name" to the words "By order of the Governor of Bombay" would have placed the matter beyond controversy, the order which purported to be an order of the Governor of Bombay could not be otherwise than in his name. (Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das and Bose JJ.) State of Bombay v. Purushottam Jog Naik

AIR 1952 S C 317 = 1952 S C J 503 = 1952-2 M L J 338 = 1952 S C R 674=54 Bom L R 869=1953 S C A 893=1952 Cr L J 1269 (SC).

CONSTITUTION OF INDIA (1950), Art. 166

——Art. 166 (1) — Executive order of State Government —Proof of—Form of verification of affidavit—(Civil P. C., (1908), O. 19, R. 3).

The verification of an affidavit filed by a Government officer to prove that certain order was validly made by the State Government should invariably be modelled on the lines of O. 19, R. 3, Civil P. C., whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed. (Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das and Bose JJ.) State of Bombay v. Purushottam Jog Naik

AIR 1952 S C 317 = 1952 S C J 503 = 1952-2 M L J 338=1952 S C R 674=54 Bom L R 869 = 1953 S C A 893=1952 Cr L J 1269 (SC).

——Art. 166 (1) — Executive order of Government of State—Proof of—Calling of minister in charge—Necessity.

It is not necessary in every case to call the Minister in charge. If the Secretary, or any other person, has the requisite means of knowledge and his affidavit is believed, that will be enough to prove that the order was validly made by the Government of the State. (Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das and Bose JJ.) State of Bombay v. Purushottam Jog Naik

AIR 1952 S C 317 = 1952 S C J 503 = 1952-2 M L J 338=1952 S C R 674=54 Bom L R 869 = 1953 S C A 893=1952 Cr L J 1269 (SC).

——Art. 166 (3) — Preventive detention—Satisfaction of Government — Delegation of responsibility from Minister to Home Secretary—Validity—See Preventive Detention Act (1950), S. 3

AIR 1952 Orissa 200=1952 Cr L J 1051.

——Art. 166 (3) — Rules of Business of Orissa Government, R. 14 — Subsidiary Rules of Business, Rr. 2 and 8 (b) (iii)—Secretary dealing with cases of detention — No submission to Chief Minister or Government—Validity of orders passed—(Preventive Detention Act (1950), S. 3).

If orders of preventive detention fall under clause (iii) of sub-rule (b) of R. 8 of the Subsidiary Rules, it would follow that even though the Secretary deals with such cases, they have to be submitted to the Chief Minister and Governor, and if there is no proof of the same, the orders are invalid. (Das C. J. and Panigrahi J.) Shyamaghana Ray v. State

AIR 1952 Orissa 200=I L R (1952) Cut 353=18 Cut L T 307=1952 Cr L J 1051.

——Art. 166 (3)—Rules of business of Orissa Government, Rule 14 — Subsidiary Rules of Business, R. 2—Order of detention passed by Home Secretary — Validity — Presumption as to implied authority — (Evidence Act (1872), S. 114, Illustration (e))—(Preventive Detention Act (1950), S. 3).

The presumption that all official acts are to be taken to have been regularly performed is one that "may" be drawn by a Court. In a matter so fundamental and important as the liberty of a subject, which can be deprived of only by strict compliance with the statutory requirements of S. 3 of the Preventive Detention Act, the High Court will not be prepared to uphold the validity of an order of detention by reliance on any such presumption.

Thus Rule 2 of the Subsidiary Rules of Business cannot validate an order of detention passed by the Home Secretary, as the authority of the Minister in charge who could have passed the order to the Home Secretary to deal with the case cannot be presumed. (Das C. J. and Panigrahi J.) Shyamaghana Ray v. State

AIR 1952 Orissa 200=ILR (1952) Cut 353 = 18 Cut L T 307=1952 Cr L J 1051.

CONSTITUTION OF INDIA (1950), Art. 166

——Art. 166 (2) — Order not based on satisfaction of appropriate authority — Challenge to validity of order — (Preventive Detention Act (1950), S. 3).

What Article 166 (2) prevents is the challenge to the validity of properly authenticated order on the ground that it is not an order or instrument made or executed by the Governor; but that does not prevent a challenge to the validity of the said order on the ground that such an order was not based on the satisfaction of the appropriate authority, who under the law, can legally act for the Provincial Government. (Das C. J. and Panigrahi J.) Shyamaghana Ray v. State

AIR 1952 Orissa 200=I L R (1952) Cut 353=18 Cut L T 307=1952 Cr L J 1051.

——Art. 166 (1) — Non-compliance with does not render action a nullity — See Preventive Detention Act (1950), S. 11 (1).

AIR 1952 S C 181=1952 Cr L J 955 (SC).

——Detention order by Rajasthan Government — Order signed by Home Secretary — Express mention that order was issued by Rajpramukh — Order if not in accordance with law.

Where in an order for detention issued by the Rajasthan Government above the signature of the Home Secretary it is explicitly mentioned that the order had been issued by His Highness the Rajpramukh, it may be taken to have been made in the name of His Highness the Rajpramukh and this was authenticated by the signature of the Home Secretary to the Government of Rajasthan. The defect that the order had not been expressly passed in the name of His Highness the Rajpramukh, if any, is of highly technical character. (Wanchoo, C. J. and Nawal Kishore J.) Abdul Rahim v. The State,

A I R 1952 Raj 33=1951 R L W 263=I L R (1951) 1 Raj 193=1952 Cr L J 370.

——Delegation of power — See Preventive Detention Act (IV of 1950), S. 3 (1),

AIR 1951 Pepsu 147=52 Cr L J 1215.

——Presumption under — Extent of — See Preventive Detention Act (1950), S. 3,

AIR 1951 Pepsu 126=52 Cr L J 1081.

——Art. 166 (2) — Order by Governor — Authentication —Signature of Under Secretary—If sufficient.

Under the rules for authentication under Art. 166, an order of detention made in the name of the Governor, if signed by an Under Secretary, is properly authenticated. (Sinha J. on a difference of opinion between Meredith C. J. and Sarjoo Prasad J.) Ratan Ray v. State of Bihar,

AIR 1950 Pat 332=29 Pat 410=51 Cr L J 1251.

—Art. 167.

——Art. 167 (a)—Advice by Ministers—See ibid, S. 163 (3)

AIR 1953 Trav-Co. 130=1953 Cr L J 752 (FB).

—Art. 174.

——Legislature — Session of —.Continuity — See Constitution India, Art. 85.

AIR 1949 Mad 307=50 Cr L J 405 (SB).

—Art. 194.

——Preventive Detention — Right to attend sittings of House.

A member of the Legislative Assembly can claim no privilege from arrest and the detention under Preventive Detention legislation. Once a member of a Legislative Assembly is arrested and lawfully detained, though without actual trial under any Preventive Detention Act, there can be no doubt that under the law as it stands, he cannot be permitted to attend the sittings of the House. A declaration by the High Court that he is entitled to do

CONSTITUTION OF INDIA (1950), Art. 194

so, even under armed escort is entirely out of the question. If however a party in power detains a politi al opponent or continues his detention with the mala fide object of stifling opposition and prejudicing the party to which he belongs in a forthcoming election, there would be an undermining of the basis of the Constitution. A I R 1951 Mad 269, Ref. (Mack and Somasundaram JJ.) Anandan Nambiar In re,

AIR 1952 Mad 117=64 M L W 1031=1951 M W N Cr 258 = 1951 M W N 838 = 1952-1 M L J 1 = I L R (1953) Mad 93.

——Art. 194 (3)— Right of detenu member to correspond with Legislature.

As long as a detenu continues to be a member of a Legislature, drawing the emoluments of his office, receiving summons to attend, he is entitled to the right of correspondence with the Legislature, and to make representations to the Speaker and the Chairman of the Committee of Privileges and no executive authority has any right to withhold such correspondence. This right flows not merely from principles of natural justice, which will be violated by such correspondence being withheld, but as a continuing member of the House, he would also appear to be entitled to this privilege under Art. 194 (3) of the Constitution under which English Parliamentary practice has to be followed until a law is enacted by the Legislature defining the powers, privileges and immunities of the House, its committees and its members. (Mack & Somasundaram JJ.) Anandan Nambiar In re,

AIR 1952 Mad 117= 64 M L W 1031=1951 M W N Cr 258 = 1951 M W N 838 = 1952-1 M L J 1 = I L R (1953) Mad 93.

——Arts. 194, 226—Privileges of member — Determination —Jurisdiction of High Court.

(Per Somasundaram J.) The obligation to ascertain and determine the privileges of a member of the House rests primarily and in the first instance with the House and House only and jurisdiction of the High Court comes in only later i.e., when the House fails to perform its duties or refuses to perform its duties or performs it contrary to clause 3 of Art. 194 (Mack & Somasundaram JJ.) Anandan Nambiar In re,

AIR 1952 Mad 117=64 M L W 1031= 1951 M W N Cr 258 = 1951 M W N 838 = 1952-1 M L J 1 = I L R (1953) Mad 93.

——Report of proceedings in Legislature in newspaper — If privileged—See Penal Code (1860), S. 500.

AIR 1951 Cal 176=52 Cr L J 1422.

——Arts. 194, 226 —Privileges and immunities of members of House of Legislature — Extent of— Arrest under Madras Maintenance of Public Order Act (XXIII of 1949) — Immunity if extends to such arrest — Power to issue writ of habeas corpus.

In the absence of any definition by Legislature, at present every member of the Legislature of a State has all the powers, privileges and immunities which a member of the House of Commons at Westminster is entitled to.

These privileges and immunities are, freedom from arrest for the persons of members during the continuance of session and for forty days before its commencement and after its conclusion.

This immunity from arrest extends only to arrest for a civil debt and not to preventive detention or, where the member is charged with an indictable offence.

Consequently, a member of the Madras Legislature cannot claim immunity from being detained under Madras Maintenance of Public Order Act, and in such cases no writ of habeas corpus can issue. (Govinda Menon

CONSTITUTION OF INDIA (1950), Art. 194

and Krishnaswami Nayudu JJ.) In the matter of Pillalamarri Venkateswarlu,

AIR 1951 Mad 269 = 1950-2 M L J 207=63 M L W 1035=1950 M W N 718=1950 M W N (Cr) 242=ILR (1951) Mad 135.

——Legislature —Privilege—Freedom of speech—Extent of such privilege indicated — See Constitution of India, Article 105.

A I R 1949 P C 127.

—Art. 213.

——Bihar Preventive Detention Ordinance (2 of 1950) — Validity — See Bihar Preventive Detention Ordinance (II of 1950),

A I R 1950 Pat 332=51 Cr L J 1251.

——"Satisfied"—Meaning—Words and Phrases.

Per Sarjoo Prosad J. — Wherever a legislation uses the word "satisfied," it must mean reasonably satisfied. Therefore, an Ordinance that is irrational and unreasonable on the face of it would certainly be held by the Court invalid and is unenforceable. (Sinha J, on a difference of opinion between Meredith C. J. and Sarjoo Prosad J.) Ratan Ray v. State of Bihar

A I R 1950 Pat 332=29 Pat 410=51 Cr L J 1251.

—Art. 214.

——Art. 214 (2) — Re-appointment of Judge resigning on 24-1-1950—See ibid, Art. 224

A I R 1951 Pat 305=1952 Cr L J 540.

——Art. 214 (2)—'Shall be deemed to be" — Meaning of.

Article 214 (2) does not relate to the period of time after the commencement of the Constitution and the words "shall be deemed to be" indicate that it is not meant for converting the Provincial High Court into a State High Court. (Reuben and Sinha JJ.) Jagdhari Koeri v. Ambika Singh

A I R 1951 Pat 305=29 Pat 904=1952 Cr L J 540.

——Arts. 214 (2), 366 (14) and Explanation (b) to Art. 217 (2)—Scope of Explanation (b) to Art. 217 (2).

The Explanation (b) to Art. 217 (2) does not conflict with the definitions in Art. 214 (2) and Art. 366 (14). (Reuben and Sinha JJ.) Jagdhari Koeri v. Ambika Singh

A I R 1951 Pat 305=29 Pat 904=1952 Cr L J 540.

—Art. 215.

See also (1) Contempt of Court.
(2) Contempt of Courts Act (1926).

SYNOPSIS

1. Applicability and scope.
2. Contempt of Court.
3. Court of record.
4. Jurisdiction.

1. Applicability and scope.

——Contempt of Court—Power to deal with contempt of Court — Art. 19 if curtails the right of High Court— See ibid, Art. 19 (1) (a)

A I R 1953 Orissa 249=1953 Cr L J 1491.

——Power to punish contempt of subordinate Court — (Contempt of Courts Act (1952), S. 3).

Article 215 vests in the High Court all the powers of a Court of record and all the powers of such a Court including the power to punish for contempt of itself. The phrase "the power to punish for contempt of itself," does not limit such powers of the High Court as it possesses as a Court of record or other powers with which it may be invested by law. The power to commit for contempt of Subordinate Courts has been expressly conferred upon it by the Contempt of Courts Act, 1952. (Raghubar Dayal and Agarwala JJ.) Lakhan Singh v. Balbir Singh

A I R 1953 All 342 = 1953 A W R (H C) 170= 1953 A L J 376=I L R (1953) 1 All 796=1953 Cr L J 733.

CONSTITUTION OF INDIA (1950), Art. 215 —

1. Applicability and scope

——Contempt of Court — "Existing law" relating to contempt of Court saved by Art. 19 (2) if saves case law also—See ibid, Art. 19 (2)

A I R 1952 Orissa 318=1952 Cr L J 1605.

——Arts. 215, 132 (1) — Power of Nagpur High Court to punish for contempt is not derived from Art. 215 — Question of interpretation of Constitution does not arise every time High Court exercises this power—(Contempt of Court).

The power of the Nagpur High Court to punish for contempt is inherent in itself as a Court of record. Article 215 of the Constitution does not confer any new power on this Court which it did not already possess. A question of law as to the interpretation of the Constitution cannot therefore be said to arise every time this Court exercises the power to punish for contempt. (R. Kaushalendra Rao and Deo JJ.) Zikar v. State

A I R 1952 Nag 130 = I L R (1952) Nag 130 = 1952 Cr L J 749.

——Summary pnnishment—Sind Chief Court, powers of.

The Chief Court of Sind can punish in a summary manner contempt of Court of itself. (O' Sullivan J.) Ramzan Moosakhan v. Abubucker Sakhi Mohd

A I R 1945 Sind 75 = I L R (1944) Kar 396 = 1946 Sind Rul 104=222 I C 288=47 Cr L J 408.

——Right of Chief Court to punish contempt of itself.

The Chief Court of Sind has a right to punish in a summary way contempt of itself. (Davis C. J. and Lobo, Weston and Tyabji JJ.) Emperor v. P. C. Tarapore

A I R 1940 Sind 239 = 13 R L 143 = I L R (1941) Kar 3=191 I C 519=42 Cr L J 1 (F B).

——High Court's inherent power to punish for contempt.

The inherent power of the High Courts as superior Courts of Record to punish contempt of themselves has not been taken away by the Contempt of Courts Act: it has been left undisturbed and consequently the High Courts in India continue to have power to deal with contempt of themselves in the same manner as a Court of Record has under the Common Law of England.

Every non-presidency High Court in India is vested with an inherent right to punish for contempt of the Court itself. A non-presidency High Court is a Superior Court of Record, and, this being so, the jurisdiction to punish for contempt of itself is inherently vested in every High Court. It is a necessary incidence of this jurisdiction that such contempts are punishable summarily by committal. (Young, C. J. Monroe and Din Mohammad JJ.) Harkishan Lal, In the matter of

A I R 1937 Lah 497 = 39 P L R 733 = I L R (1937) Lah 69=10 R L 103 (2) = 170 I C 375=38 Cr L J 883 (S B)

2. Contempt of Court.

——Disobedience of order of High Court — Apology — Contempt of Courts Act (1926), S. 1.

One R was detained under the Bihar Maintenance of Public Order Act, 1947, in pursuance of an order issued by the Provincial Government. On 30-7-1948, the High Court directed him to be "released forthwith." The very same day, a copy of the High Court's order was forwarded to the District Magistrate, Bhagalpur, for information and necessary action, and it reached the District Magistrate's office on 31-7-1948. R was not, however, released until 8-8-1948. The District Magistrate was away from Bhagalpur on tour from 31-7-1948, when the order of the High Court releasing the detenu was received in his office. When the case for contempt of High Court came up before the High Court the Advocate-General of Bihar tendered an apology on behalf of the District Magistrate.

CONSTITUTION OF INDIA (1950), Art. 215 —

2. Contempt of Court

Held, that the District Magistrate was not personally guilty of contempt. The fact that he was away on tour and was not aware of the order of the High Court, must be regarded as a good defence in the contempt proceeding. Again, as there was no intention to flout or disobey the order of the High Court, that must also be regarded as an important circumstance in favour of the District Magistrate. The apology must not be taken to be a confession of guilt, especially as it was made in connection with the delay which had occurred in his office. (Fazl Ali, B. K. Mukherjea and Chandrasekhara Aiyar JJ.) H. P. Singh v. Thakur Prasad Tewari

A I R 1953 S C 436 = 31 Pat 182=1953 Cr L J 1837 (SC).

——Contempt of Court, what constitutes — (Contempt of Courts Act (1926), S. 1).

High Court dismissing application for prohibitory order against Government on ground of want of jurisdiction—Government issuing required notification pending such application—Issue of notification held caused no real prejudice to applicant—No substantial interference with due course of justice—Theoretical consideration of High Court taking different view was not sufficient to constitute notification contempt of Court. (Shinde C. J., Dixit and Chaturvedi JJ.) Malojirao Shitole v. C. G. Matkar

A I R 1953 Madh B 245=1953 Cr L J 1675 (F B).

——Punishment—(Contempt of Courts Act (1926), S. 3).

Held, that though the opposite parties were guilty of contemnt the mischief in the instant case so far as it affected the proceedings in the High Court had been trifling. High Court would only warn them that a repetition of such conduct in the future would be dealt with severely. (Panigrahi C. J. and Mohapatra J.) Bijoyananda Patnaik v. Balakrushna Kar

A I R 1953 Orissa 249=I L R (1953) Cut 283 = 1953 Cr L J 1491.

——Contempt by inferior judicial officers and Magistrates —Power of High Court.

Judges of interior Courts and Magistrates can be punished for contempt of Court for acting unjustly, oppressively or irregularly in the execution of their duties, by colour of judicial proceedings wholly unwarranted by law, or for disobeying writs issued by the High Court requiring them to proceed or not to proceed in matters before them. (Dixit J.) Mahabir Prasad v. State

A I R 1953 Madh B 60=1953 Cr L J 570.

——Consideration of validity of detention order pending —Revocation of order—It is contempt of Court—Passing of fresh order on advice of Central Government, when would amount to contempt — (Preventive Detention Act (1950), S. 3).

Any act which is calculated to undermine the authority of the Court and to disturb the confidence of the citizen in the unquestioned effectiveness of its orders as against any executive authority however high, would be contempt. Of course, this is not to say that every such act will necessarily be treated as contempt by Courts in whom this drastic and summary jurisdiction is vested, not for the personal glorification of a judge in his office, but for the effective maintenance of the strong arm of judicial administration. None is more conscious than a judge how sparingly such drastic and summary power is to be used.

It would clearly be contempt of Court for any official to pass an illegal order of detention and on the basis thereof to decline to give effect to an order of release passed by the Court however bona fide the action of the said official may be. That being so, there is no reason to think that, such contempt is committed, only when the concerned authority has actually flouted the authority of

CONSTITUTION OF INDIA (1950), Art. 215 —
2. Contempt of Court

the Court by such an illegal order and not when he has passed an order intended to be so used. The basis of jurisdiction for contempt arises not merely from the actual flouting of the Courts' authority, but from the clear tendency that the particular act may have tendency to undermine the authority of the Court.

When the validity of an order of detention is pending consideration by the High Court, a fresh but illegal order of detention on revocation of the prior order, would amount to contempt of Court and that this would be equally so, if that fresh order was passed, not during the actual pendency of an application questioning the prior detention, but in anticipation of such an application being made by the detenu.

Where the fresh order of detention was passed in accordance with the advice conveyed in the letter of the Ministry of Law, New Delhi, in anticipation of any fresh application being made by the detenu, mere anticipation is not enough to constitute contempt. What is required, is the knowledge of the imminence of the fresh proceedings.

It was held that the fresh order of detention could not be said to have been passed either during the pendency of the fresh application before the Court challenging the validity of the detention order or with knowledge of the imminence of any such application. (Jagannadha Das C. J. and Panigrahi J.) State v. Somnath

A I R 1953 Orissa 33=19 Cut L T 58 = 1953 Cr L J 349.

——What amounts to—Disobedience to order — Personal service of order when essential — Mandamus directing Government Officers to restore possession — Non-compliance—Personal service of order not effected—No contempt of Court—(Contempt of Courts Act (1926), S. 1).

Contempt of Court is either (1) criminal contempt consisting of words or acts obstructing, or tending to obstruct, the administration of justice, or (2) contempt in procedure, consisting of disobedience to the judgments, orders, or the process of the Court, and involving a private injury.

But disobedience, if it is to be punishable as a contempt, must be wilful. Disobedience cannot be held to be wilful until the order is served. Hence the judgment or order must be shown to have been served on the party personally, except in the following cases (1) prohibitive orders, the drawing up of which is not completed ; (2) orders embodying an undertaking to do an act by a named day ; (3) orders to answer interrogatories or discovery or inspection of documents ; (4) where an order for substituted service has been made ; (5) where the respondent has evaded service of the order.

Personal service of the judgment or order may be dispensed with (1) if it be made to appear to the Court or a Judge that prompt personal service of judgment or order cannot be effected ; in such a case substituted or other service of the order or merely giving notice of the order may be directed ; (2) if it is shewn that the person to be served has evaded service. But the fact that the person ordered to do an act was actually in Court when the order was made is not a ground for dispensing with personal service of it. In the case of a breach of a prohibitory order, however, service on the party against whom committal is sought, is not necessary, (1) if the party concerned had notice of the order and knew that the order was intended to be enforced, (2) or if he consented to the order (3) or if he was present in Court when the order was pronounced or the motion was made although he may have left the Court before the order was pronounced.

Hence, where a mandamus issued by the High Court directs certain officers of the Government to restore possession of the land which had been acquired by the

CONSTITUTION OF INDIA (1950), Art. 215 —
2. Contempt of Court

Government but the order is not personally served on the officers concerned, they cannot be committed for contempt for disobedience of the order. (G. N. Das and K. C. Das Gupta JJ.) Naba Kumar Saha v. S. Banerjee

A I R 1953 Cal 96=56 C W N 589=1953 Cr L J 306.

——Defendant giving undertaking to vacate premises on or before certain date—On default, decree to be executed —Undertaking is not unqualified — Default committed—Defendant held should not be committed for contempt.

Where the defendant gives an undertaking to the Court to vacate the premises on or before a certain date and in default agrees that the ejectment decree be executed or some other steps be taken according to law, and that he would raise no objection, and the High Court passes an order in the terms of the undertaking but without formally recording the undertaking in the order, the undertaking is not an unqualified one, the consequences of the default being provided in the order itself. Failure on the part of the defendant to keep to the terms of the undertaking cannot be regarded as justifying the exercise of the discretionary powers of the High Court to order committal for contempt.

Even otherwise, considering the fact that while giving the undertaking the defendant had reasonable doubt that he had not given an unqualified undertaking and also considering the practice that the proceedings for contempt should be taken with reluctance and that any benefit of doubt should be given to the party, the case was held not fit for starting contempt proceedings. (Das and Lahiri JJ.) Sukumar Mitra v. Tarasankar Ghosh

A I R 1952 Cal 591 = 56 C W N 580 = 1952 Cr L J 1301.

——Application by detenu to High Court—State delaying transmission—Unreasonable delay — It amounts to contempt of High Court.

Where an application by detenu in respect of withdrawal of certain privileges from him, is received by State for transmission to the High Court, the State should despatch it to the High Court as expeditiously as possible. It would amount to contempt if any impediment is placed in its reaching the High Court within reasonable time. Whoever is found guilty of this is liable to be committed for contempt of High Court. Under the present Constitution the High Court possesses the necessary power. (Sarkar and P. N. Mookerjee JJ.) Jyotirmoy Bhattacharjee v. Chief Secretary of Govt. of West Bengal

A I R 1952 Cal 562=56 C W N 246=1952 All W R (Sup) 57=1952 Cr L J 1255.

——Deliberately withholding document addressed to High Court.

An application dated September 22, 1943, by a prisoner was handed over to the Jail Superintendent for being forwarded to the High Court. Instead of forwarding the application to the High Court, the Jail Superintendent forwarded it to the trying Magistrate with a request to forward it to the Inspector General of Prisons for such remarks as the Magistrate might like to make on it. The Magistrate returned the application to the Jail Superintendent and the Jail Superintendent, instead of forwarding it to the High Court, forwarded it to the Inspector General of Prisons. When Inspector General received this application, he did not forward it to the High Court as he should have done but returned it to the Jail Superintendent. The Jail Superintendent contended that the application was forwarded to the trying Magistrate for being forwarded to the High Court through the Inspector General. The idea of sending the petition through trying Magistrate was that the case of the applicant may be adjourned till the orders of the High Court on the petition of the prisoner were received :

CONSTITUTION OF INDIA (1950), Art. 215 — 2. Contempt of Court

Held, that the explanation offered by the Jail Superintendent for not forwarding the application to the High Court could make no difference to the offence of contempt. It could only be relevant regarding the measure of punishment. (Bose and Sen JJ.) Balkrishna Narayan Saoji v. Col. N. S. Jatar

A I R 1945 Nag 33=I L R (1945) Nag 74=1945 N L J 30.

——Withholding or delaying applications addressed to High Court constitutes contempt.

No official, however highly he may be placed, has the right to determine the extent of his authority and power, and any attempt by whomsoever made and however highly he may be placed, to withhold matter or delay applications addressed to the High Court, however frivolous or worthless they may appear to be, constitutes contempt of Court and if this happens, severe action should be taken against any person who attempts to abuse his authority by withholding or delaying the matter intended for High Court and this should be done whoever the official may be and however highly he may be placed. (Bose and Sen JJ.) Balkrishna Narayan v. Col. N. S. Jatar

A I R 1945 Nag 33=I L R (1945) Nag 74=1945 N L J 30.

——Contempt of High Court.

Contempt of a High Court, though it may not be an offence under the I. P. C., is certainly an offence. The proceedings for contempt are of a criminal nature. (Thomas' C. J. and Kaul J.) P. L. Jaitley v. Chief Justice, Allahabad

A I R 1945 Oudh 266=1945 O W N (C C) 169=1945 A W R (C C) 153=20 Luck 442=1946 Oudh Rul 69 =222 I C 260=47 Cr L J 294.

——Test to be applied—Defamation of Judge not affecting administration of justice—Judge has ordinary remedy for defamation—See Contempt of Courts.

A I R 1943 P C 202=46 Cr L J 318.

——Posting of cases before Benches — Reasonable criticism.

It obviously might be said that reasonable criticism about the administration of the Chief Justice in posting cases before Benches, Single Division etc., should be allowed, but where the criticisms are not reasonable or bona fide and there is underlying all of them a suggestion or allegation of improper motives, it is contempt of Court. (Young C. J., Monroe and Muhammad Munir JJ.) Gauba K. L. Lahore, In re

A I R 1942 Lah 105=44 P L R 206=I L R (1942) Lah 411=14 R L 449=200 I C 182=43 Cr L J 599 (FB).

——Newspaper comment that Chief Justice was acting under influence of executive amounts to contempt of Court. (Iqbal Ahmad C. J. and Collister J.) Emperor v. Debi Prasad Sharma

1942 O W N 6 (All).

——Article in newspaper suggesting abuse of power by Chief Court, desire on its part to enter into conflict with executive Government and inviting Magistrates to disregard its authority.

An article in a newspaper suggesting abuse by the Chief Court of its powers, a desire on the part of the Chief Court to enter into a conflict with the executive Government and containing a plain invitation to Magistrates to disregard the authority of the Chief Court and to subordinate themselves to the alleged wishes of the executive Government is one tending to embarrass the administration of justice, and is calculated to create in the minds of the general public grave apprehension that the Chief Court is not entitled to public confidence in its discharge

CONSTITUTION OF INDIA (1950), Art. 215 — 2. Contempt of Court

of its duties and it is a clear contempt of Court. (Davis C. J. and Lobo, Weston and Tyabji JJ.) Emperor v. P. C. Tarapore

A I R 1940 Sind 239=13 R S 143=I L R (1941) Kar 3=191 I C 519=42 Cr L J 1 (FB).

——Duty of Court to preserve its proceedings from misrepresentation.

It is a duty of a Court, not so much to itself but to the public in whose interest it administers justice, that it should preserve its proceedings from misrepresentation. There is no distinction between a misrepresentation of the action of a Chief Court when it exercises its undoubted powers of superintendence of Magisterial Courts under S. 224, Government of India Act, 1935, and S. 17, Sind Courts Act, 1926 and the misrepresentation of the action of the Court or a Judge in a judicial as distinct from an administrative capacity, provided always that that action relates to the administration of justice. (Davis C. J. and Lobo, Weston and Tyabji JJ.) Emperor v. P. C. Tarapore

A I R 1940 Sind 239=13 R S 143=I L R (1941) Kar 3=191 I C 519=42 Cr L J 1 (FB).

——Aspersion not against a particular Judge or Bench or in connection with a particular case.

Proceedings for contempt can lie even in a case where the aspersion on the Court is not against a particular Judge or Bench and in connection with a particular case. (Thom and Harris JJ.) Advocate of Allahabad, In the matter of

A I R 1935 All 1=7 R A 827=(1935) A L J 125=4 A W R (HC) 1155=154 I C 955.

——Proceedings for contempt—Object of.

Proceedings for contempt are not brought to vindicate the character of any particular Judge or Judges who have been assailed, but to protect the administration of justice. The question of sensitiveness does not arise. The only question which the Court has to decide is whether the published article lowers or tends to lower the dignity and prestige of the High Court. (Thom and Harris JJ.) Advocate of Allahabad, In the matter of

A I R 1935 All 1=7 R A 827 = (1935) A L J 125=4 A W R (HC) 1155=154 I C 955.

——Contempt—Article in newspaper.

In an article in a newspaper headed 'Calcutta High Court' consisting of two paras., in para. 1 reference was made to a discussion which was said to have taken place the day before in the Bengal Legislative Council about the administration of the Calcutta High Court. Then it was said that every word of Mr. N. K. Basu, who was one of the speakers in that discussion, was true. Then appeared the following passage :

"It is so unfortunate and regrettable that at the present day, the Chief Justice and the Judges find a peculiar delight in hobnobbing with the Executive with the result that the Judiciary is robbed of its independence which at one time attracted the admiration of the whole country." Then it was said : "The old order of things has vanished. We wish the Chief Justice and the Judges will appreciate the sentiments of the public. The generation that has gone by should be an ideal to them :"

Held, (per Full Bench).—That the words made a very serious allegation upon the Chief Justice and Judges of High Court in their judicial capacities and were within the definition of contempt by scandalising the Court and the Editor and the Printer and Publisher should be adjudged to be guilty of contempt of Court in respect of publishing the same ; and that the High Court had the right to punish by summary procedure the contempt of Court by scandalising the Court. (Derbyshire C. J.,

CONSTITUTION OF INDIA (1950), Art. 215 —

2. Contempt of Court

Mukerji, Costello, Lort-Williams and Jack JJ.) Tushar Kanti Ghosh, In the matter of

A I R 1935 Cal 419=39 C W N 770=8 R C 53 = 61 C L J 376=63 Cal 217=156 I C 1055=36 Cr L J 1053 (FB).

3. Court of record.

——Judicial Commissioner's Court—Jurisdiction to punish for contempt of Courts subordinate to it—(Constitution of India, Art. 215)—(Judicial Commissioner's Courts (Declaration as High Courts) Act (1950), S. 3).

A Judicial Commissioner's Court is now a "High Court" for certain purposes under the Judicial Commissioner's Courts (Declaration as High Courts) Act, 1950, and by virtue of Art. 215 of the Constitution of India, it is a Court of record, and has the power to punish for a contempt of itself as well as for contempt of the Courts subordinate to it. (Atma Charan C. J.) Rattanlal v. Ghisulal Pandiya Publisher

A I R 1952 Ajmer 33 (1)=1952 A M L J 18=1952 Cr L J 1234.

——Power of Judicial Commissioner's Court of V. P. to punish for contempt of itself and of subordinate Courts — Constitution of India, Art. 215—Judicial Commissioner's Courts (Declaration as High Courts) Act (1950), S. 3.

The Judicial Commissioner's Court of V. P. is a High Court under S. 3, Judicial Commissioner's Courts (Declaration as High Courts) Act (1950) and by virtue of Art. 215 of the Constitution of India it has power to punish for contempt of itself.

The applicability of the Contempt of Courts Act, 1926 to Part 'C' States being very doubtful the Judicial Commissioner's Court of V. P has no power to punish for Contempt of subordinate Courts under that Act.

But by virtue of its being a superior Court of Record it has inherent power to punish for contempt of subordinate Courts. (Krishnan J. C.) Vindhya Pradesh State v. Bhaij Nath Dube

A I R 1951 Vind P 14.

——What amounts to—Court of Record is sole judge.

The High Court at Allahabad being a Court of Record, is the sole and exclusive judge of what amounts to a contempt of Court. (Thomas C. J. and Kaul J.) P. L. Jaitley v. Chief Justice, Allahabad

A I R 1945 Oudh 266=1945 O W N (C C) 169=1945 A W R (C C) 153=20 Luck 442=1946 Oudh Rul 69 = 222 I C 260=47 Cr L J 294.

——Lahore High Court if can proceed summarily and punish its own contempt.

The High Court of Lahore is a Court of Record and, therefore, possesses the ordinary jurisdiction of a Court of Record to commit for contempt of itself by summary procedure and it is not possible for a Judge to pursue a remedy for libel or slanders in a Civil or Criminal Court. (Young C. J., Monroe and Muhammad Munir JJ.) Gauba K. L., Lahore, In re

A I R 1942 Lah 105=44 P L R 206 = 14 R L 449 = I L R (1942) Lah 411=200 I C 182 = 43 Cr L J 599 (FB).

4. Jurisdiction.

——Considerations of propriety—(Contempt of Courts Act (1926), S. 1).

On considerations of propriety, the jurisdiction of the High Court to commit for contempt cannot be exercised. (Shinde C. J., Dixit and Chaturvedi JJ.) Malojirao Shitole v. C. G. Matkar

A I R 1953 Madh B 245=1953 Cr L J 1675 (FB).

—— Contempt of Court — Jurisdiction — Attack on judgment of High Court at a time when appeal from judgment

CONSTITUTION OF INDIA (1950), Art. 215 —

4. Jurisdiction

was filed and pending before Supreme Court — Passages also likely to amount to Contempt of Supreme Court — High Court not debarred from continuing contempt proceedings.

Per Narasimham J.—Where the editorial comments on a judgment of the High Court at a time when an appeal against the judgment has been filed and was pending before the Supreme Court, are shown to amount to contempt of the High Court, the jurisdiction of the High Court to continue the contempt proceedings cannot be challenged on the ground that the offending passages may also amount to contempt of the Supreme Court. (Jagannadhadas C. J. and Narasimham J.) State v. Editors & Publishers of Eastern Tiwies and Prajatantra

A I R 1952 Orissa 318=I L R (1952) Cut 1=1952 Cr L J 1605.

——Contempt of Court outside jurisdiction of High Court —Jurisdiction to punish offender.

Although the publication in a newspaper of certain matters relating to a suit pending on the Original Side of the Calcutta High Court amounting to contempt of Court is not made within the jurisdiction of the High Court it would amount to contempt of the High Court and the High Court has the jurisdiction to punish the offender for such contempt though he may be residing beyond its jurisdiction. (Majumdar J.) Onkarmul Jalan v. Padampat Singhania

53 C W N 310.

——Contempt of High Court, if offence— Jurisdiction of High Court over persons residing outside.

The contempt of High Court, though not an offence under the I. P. C., is nevertheless an offence and the High Court being a superior Court of Record, is authorised in its inherent jurisdiction to take proceedings for its contempt against the offender.

Where a contempt has been committed within the territorial jurisdiction of a High Court in India, such Court is competent to issue process to secure the attendance of the offender wherever he may be residing in British India as in the case of an offence under the I. P. C., or under any other law for the time being in force.

Where a man is within the jurisdiction of a High Court and is charged with the offence of contempt of Court, it will not avail him to say that he was brought there illegally from outside the jurisdiction. (Thomas C. J. and Kaul J.) P. L. Jaitley v. Chief Justice, Allahabad

A I R 1945 Oudh 266=1945 O W N (CC) 169=1945 A W R (CC) 153=20 Luck 442=1946 Oudh Rul 69= 222 I C 260=47 Cr L J 294.

——Contempt by publication out of Court — Power of High Court to take action for contempt of itself — Contempt of Allahabad High Court — Bombay High Court held had no jurisdiction to take action.

The power to punish for contempt of Court is a power inherent in superior Courts of Record, which in India are the High Courts. Each High Court has inherent power to punish contempt of itself committed by publication out of Court. That is necessary in order to ensure that the orders of the Court are enforced, and that the administration of justice is not interfered with. But no other Court has any power to deal with contempt of Court.

If the High Court considers that a person has committed contempt of that Court, although the contempt may have been committed outside the jurisdiction of that Court, it can deal with that person if he were within its jurisdiction.

CONSTITUTION OF INDIA (1950), Art. 215 — 4. Jurisdiction

But there is no power in the High Court itself to arrest for contempt of Court a man outside the jurisdiction of that Court.

Nor has any High Court any power to arrest a person for contempt of another High Court.

The Bombay High Court cannot take action in respect of contempt of the Allahabad High Court itself committed by publication out of Court by a person within the jurisdiction of the Bombay High Court. If the Bombay High Court cannot take action in respect of contempt of the Allahabad High Court, a fortiori the Chief Presidency Magistrate of Bombay cannot do so; he has no power to take action for contempt of any Court, even his own Court. And most certainly the Commissioner of Police of Bombay cannot deal with the matter. Indeed, the Police are not concerned with the cases of contempt of Court. Arrests for contempt of the Bombay High Court are made by its own officer, the Sheriff. Hence the Chief Presidency Magistrate, Bombay, has no jurisdiction to carry out a warrant issued by the Allahabad High Court for the arrest and production of a person in Bombay charged with contempt of Allahabad High Court by the publication of an article in a newspaper in Bombay. (Beaumont C. J. and Sen J.) Benjamin Guy Horniman, In re

A I R 1944 Bom 127=46 Bom L R 94=17 R B 30=1944 O W N 32=1944 A W R Sup 11=I L R (1944) Bom 333=212 I C 631=45 Cr L J 647.

——Prohibitory order of one High Court — Breach committed in jurisdiction of other High Court.

Where certain prohibitory order is passed against certain person by one High Court restraining him from proceeding with certain proceedings within the jurisdiction of other High Court and such person commits breach of order in the jurisdiction of such other High Court, the former High Court has jurisdiction to commit such person for contempt. (Ameer Ali J.) All India Sugar Mills, Ltd. v. Sunder Singh

A I R 1937 Cal 601 (603)=11 R C 7=175 I C 872=39 Cr L J 654.

——Offence committed within Madras Presidency — Offenders residing in Calcutta — Jurisdiction of Madras High Court—Apology coupled with arguments — Special Costs—(Contempt of Courts Act (1926), S. 3).

The Madras High Court, as a Court of Record, has jurisdiction in all matters of contempt of Court arising in the Madras Presidency, even though the offenders happen to reside outside the Presidency.

It is an ordinary rule that the jurisdiction of the Court is determined by the place where the offence is committed and not by the place where the offender may happen to reside.

Apology is not, as a rule, coupled with arguments.

[Where the accused, while submitting an unqualified apology challenged the jurisdiction of the Court, special costs were awarded against them.] (Jackson and Butler JJ.) Rajah v. Witherington

A I R 1934 Mad 423=6 R M 613=66 M L J 650=39 M L W 680=(1934) M W N 607=57 Mad 831=149 I C 238=35 Cr L J 962.

——Proper Court to hear proceedings for contempt—Counsel's privilege—Statement reflecting on the dignity of Court based on client's instructions — Litigant—Right to apply for re-constitution of Bench.

When a contempt is committed in the face of a Court, it is that Court which is the proper tribunal to decide the whole matter.

Counsel's privilege does not extend to stating his instructions when these instructions involve an attack on the dignity of the Court.

CONSTITUTION OF INDIA (1950), Art. 215 — 4. Jurisdiction

No litigant is entitled to have any say in the selection of the Judges who are to constitute any Bench. (Broadway, Actg. C. J., Coldstream and Monroe JJ.) In re, Sham Lal

A I R 1932 Lah 502=Ind Rul (1932) Lah 543=33 P L R 785=138 I C 878=33 Cr L J 675 (FB).

—Art. 216.

——Applicability — See Judicial Commissioner's Courts (Declaration as High Courts) Act (1950), S. 6 (a)

A I R 1952 H P 5=1952 Cr L J 114.

—Art. 217.

——Art. 217 (2) — Explanation (b) — Scope — See ibid, Art. 214 (2).

A I R 1951 Pat 305=1952 Cr L J 540.

——Art. 217 (1) — Person over 60 years if disqualified from holding office as Judge — See Travancore and Cochin High Court Act (5 of 1125 M E) S. 9 (1)

A I R 1951 T C 45

——Proceedings to test right to office — De facto Judges.

Per Koshi J.—The right of a de facto Judge to hold his office is not open to question nor is his jurisdiction subject to attack in a collateral proceeding.

To raise the competency of the Chief Justice to hear and decide certain appeals when they were taken up for hearing or in the proceeding for leave to appeal to the Supreme Court against that judgment, or in the appeal before the Supreme Court would amount to collateral attack. (Koshi and Sankaran JJ.) Parameswaran Pillai v. State

A I R 1951 Trav. C. 45=1950 T C L R 306=1950 K L T 439.

—Art. 224.

——Arts. 224, 214 (2) — Reappointment of Judge resigning on 24-1-1950.

A Judge of the Provincial High Court who resigned on 24-1-1950 can be appointed as a Judge of the corresponding State High Court under Art. 224 as, though such a person is not a Judge of the Provincial High Court on 25-1-1950, the identity of the Provincial High Court is not changed between 24-1-1950 and 25-1-1950. (Reuben and Sinha JJ.) Jagdhari Koeri v. Ambika Singh

A I R 1951 Pat 305=29 Pat 904=1952 Cr L J 540.

—Art 225

——Power of Judicial Commissioner of Bhopal to issue high prerogative writs — See Judicial Commissioner's Courts (Declaration as High Courts) Act (1950), Ss. 5 and 6

A I R 1952 Bhopal 1=1952 Cr L J 660.

——Constitution of India, Art. 225—Legal Practitioner—Hyderabad High Court—Power of, to grant permission to any advocate from outside, not on the rolls of the High Court to appear in particular civil case—Hyderabad High Court Act (3 of 1337 F), S. 13 (18) and (24) — Hyderabad Legal Practitioners Act (6 of 1318F), S. 3—Part B States (Laws) Act (1951), S. 6—Bar Councils Act (1926) S. 19 (4) — Legal Practitioners Act (1879) — Civil P. C. (1908), Ss. 116, 151.

Majority opinion of the Full Bench.

(1) Per Naik C. J., Sripat Rao, A. M. Ansari, M. A. Ansari, M. S. Ali Khan, Auryanarayana Rao, Srinivasa Chari, JJ.; Manohar Prasad and V. R. Deshpande JJ. Contra: Even though all the provisions of the Indian Bar Councils Act, 1926 and the Indian Legal Practitioners Act, 1879 have not been made applicable to the Hyderabad State by a proper notification in this regard, the Hyderabad High Court has full power to grant permission to any Advocate from outside the State who is not on the rolls of that High Court to appear and argue in a Civil Case.

CONSTITUTION OF INDIA (1950), Art. 225

Per Naik C. J. — S. 3 of the Hyderabad Legal Practitioners Act has been repealed and is no longer in force and at any rate it certainly does not control the exercise of powers of the Hyderabad High Court under Sub-section (18) of S. 13 of the High Court Act. Besides, S. 3 of the said Act refers to persons who are entitled to practise as a matter of right. To have a right to appear in a case is one thing and to permit anyone to appear in a special case is quite another thing. In one case it is the right of the individual and in another it is the discretion of the High Court.

Per M. A. Ansari J.—The High Court's powers under S. 13 (18), of the High Court Act are still intact, which have been preserved by Art. 225 of the Constitution and permission can be granted by it to any Advocate from outside who is not on the rolls of this Court.

(2) Per Naik C. J., Sripat Rao, A. M. Ansari, M. A. Ansari, Suryanarayana Rao and V. R. Deshpande JJ.: S. 19 (4), Indian Bar Councils Act and S. 6 Part B States (Laws) Act read with S. 16, Hyderabad General Clauses Act do not affect the powers of the Hyderabad High Court to grant such permission.

Per Naik C. J. — The effect of the application of S. 19 (4) of the Indian Bar Councils Act and S. 6 of the Part B States (Laws) Act, read with S. 16 of the Hyderabad General Clauses Act does not save S. 3 of the Hyderabad Legal Practitioners Act. S. 19 (4) of the Indian Bar Councils Act is the usual provision made in the case of repealed and amended enactments. It has nothing to do with the grant of a permission to an Advocate enrolled in other High Courts in India. If anything, it supports the contention that whatever prohibition there may have been under S. 3 of the Hyderabad Legal Practitioners Act and the rules made thereunder, they cannot be deemed in force as being repugnant to the context of this Act. Similarly, S. 6 of the Part B States (Laws) Act read with S. 16 of the Hyderabad General Clauses Act provides the saving of the previous operation of the law and treats the acts done thereunder so far as they are not opposed to the provisions of the new law. None of these sections come in the way of the High Court granting permission to a lawyer to appear in a particular case. In the very nature of things, the High Court has the power to grant permission when it deems it necessary in the interests of justice.

Per Manohar Prasad J.—S. 3 of the Hyderabad Legal Practitioners Act remains in force unrepealed. The effect of the application of S. 19, Cl. (4), of the Indian Bar Councils Act of 1926 and S. 6 of Part B States (Laws) Act read with Ss. 16 and 19 of the Hyderabad General Clauses Act is that only such of the provisions of the Hyderabad Legal Practitioners Act as are inconsistent with the provisions which have come into operation will stand repealed 'pro tanto' leaving unaffected the other provisions of the Hyderabad Legal Practitioners Act.

(3) Per Naik C. J., Sripat Rao, A. M. Ansari, M. A. Ansari, Srinivara Chari, and Suryanarayana Rao and V. R. Deshpande JJ.: Irrespective of any enactment the High Court as a Court of Record has inherent power to grant permission to Advocates who are not on the rolls of the High Court to appear in particular civil cases.

Per Manohar Prasad and M. S. Ali Khan JJ.: Question of inherent power does not arise when there is specific provision. (Naik C. J., Qamar Hasan, Shripat Rao, A. M. Ansari, Manohar Pershad, M. A. Ansari, M. S. Ali Khan, V. Suryanarayana Rao, Srinivasa Chari, and Deshpande JJ.) Ramdayal v. Shankarlal

A I R 1951 Hyd 140=I L R (1951) Hyd 689 (FB).

——Litigant if has right to have his case decided by particular Judge.

CONSTITUTION OF INDIA (1950), Art. 225

A litigant's right is to invoke the jurisdiction of the High Court and not to have his case decided by any particular Judge or Judges. The particular Judge or Judges who may happen to be dealing with any class of cases at any given moment is entirely a matter of internal arrangement in the High Court with which the litigant has no concern. (R. Kaushalendra Rao and Deo JJ.) Zikar Yusuf v. Goverment of Madhya Pradesh

A I R 1951 Nag 11=I L R (1951) Nag 251.

——Divisional Court in seisin of case — Chief Justice, if has power to withdraw or transfer case — Government of India Act (1915), S. 108 (2).

There is no power in the Chief Justice of a High Court under the Constitution or the Letters Patent or the rules of the High Court or S. 108 (2), Government of India Act, 1915, to withdraw or transfer a case of which a Divisional Court is in seisin. (R. Kaushalendra Rao and Deo JJ.) Zikar Yusuf v. Govt. of Madhya Pradesh

A I R 1951 Nag 11=I L R (1951) Nag 251.

——Jurisdiction of Madhya Bharat High Court to hear appeals from decisions of Division Bench of that High Court after 25-1-1950 — See Madhya Bharat High Court of Judicature Act (VII of 1949)

A I R 1949 M B 149=52 Cr L J 1467.

——Applicability—See India and Hyderabad Exchange of Enclaves Order (1950), Ss. 2 and 7.

A I R 1950 Hyd 71=52 Cr L J 1398.

—Art. 226.

See also (1) Criminal P. C. (1898), S. 491.
(2) Specific Relief Act (1877), Ss. 45 and 50.
(3) Constitution of India, Art. 32.

SYNOPSIS

1. 'Directions, orders or writs'.
2. Nature and scope of High Courts' powers under Art. 226.
3. Arts. 226 and 32 (3)—Jurisdiction of High Court.
4. Arts. 226 and 227—Distinction.
5. Bar to writs.
6. Retrospective effect.
7. High Court.
8. 'For any other purpose'.
9. Other remedy open.
10. Futile or unnecessary writ.
11. 'Any person or authority.'
12. Writs in pending cases.
13. Writs against executive orders.
14. Mala fide order.
15. Territorial jurisdiction of High Courts.
16. Procedure.
17. Declaratory relief.
18. New point.
19. Principles of natural justice.
20. Habeas corpus—General.
20a. Successive applications for habeas corpus.
21. Who can apply for habeas corpus.
22. Illegal detention.
23. Production of prisoner in Court.
24. Arrest in contravention of privilege.
25. Preventive detention.
26. Detention under extradition law.
27. Effect of valid order pending illegal detention.
28. Costs in habeas corpus proceedings.
29. Appeal in habeas corpus matters.
30. Review or rehearing.
31. Mandamus—General.
32. Demand and Refusal of relief.
33. Certiorari, against whom lies.

CONSTITUTION OF INDIA (1950), Art. 226

34. Grounds of certiorari.
35. Jurisdiction.
36. Stage at which certiorari can issue.

1. 'Directions, orders or writs.'

——Prayers—Power of High Court to amend.

It is true that the prayers in the petition for a writ under Art. 226 should be specific but the High Court has power to amend the relief at the hearing. (Bose J.) Monoranjan Roy v. Collector of Customs.

AIR 1953 Cal 753=87 C L J 391=1953 Cr L J 1745.

——Issue of.

Assuming that writs of mandamus are limited to the ordering of positive acts, yet apart from the power to issue writs specifically named in Art. 226 the High Court has been expressly empowered to issue any "direction, orders or writs" for the enforcement of any of the rights conferred by Part III and for any other purpose. It is not correct to say that "directions, orders or writs" can issue only in the circumstances in which the writs named specifically can issue because such construction would so restrict the meaning of the words "directions, orders or writs" as to render them otiose. (Mangalmurti and Mudholkar JJ.) Mahohar v. G. G. Desai,

A I R 1951 Nag 33 = 1951 N L J 346= I L R (1951) Nag 791.

——Interpretation of.

The power conferred by Art. 226 on High Court is discretionary. It would not be right to read limitations in the wide powers conferred by the general words used therein, namely, "directions, orders or writs" merely because these words are followed by some specific words which connote a restricted power, more so when the Article provides that the power conferred by the specific words is included in that conferred by the general words. (Mangalmurti and Mudholkar JJ.) Manohar v. G. G. Desai.

A I R 1951 Nag 33=1951 N L J 346 = I L R (1951) Nag 791.

—— Scope.

Article 226 empowers the High Court to issue necessary directions for the enforcement of any of the rights conferred by Part III of the Constitution even though such directions may not strictly conform to one of the writs specifically mentioned in that Article (Ray C. J. and Narsimham J.), Ismail v. State of Orissa,

AIR 1951 Orissa 86=16 Cut I T 209.

——Power of High Court — Necessary direction, though not conforming to any of the writs, can be given.

Article 226 gives High Court full authority to issue necessary directions for the enforcement of any of the rights conferred by Part 3 and it does not matter even if the direction does not conform exactly to one of the writs specifically mentioned in the Article. Where therefore High Court declares a particular provision of law by a State invalid under Art. 19 (5) of the Constitution, it can issue a direction upon the State Government prohibiting it and its officers from taxing any action for the enforcement of any order under that law. (Meredith C. J., Shearer and Das JJ.), Brajnandan Sharma v. State of Bihar.

AIR 1950 Pat 332=29 Pat 461=52 Cr L J 610 (FB).

2. Nature and scope of High Courts' powers under Art. 226

——Proceedings for prerogative writs—Extent of Court's powers.

In proceedings for Writs of Mandamus or Certiorari, the Court does not constitute itself a Court of appeal and it cannot go into the merits of the conclusion of the inferior

CONSTITUTION OF INDIA (1950), Art. 226 —

2. Nature and scope of High Courts' powers under Art. 226

Court or Tribunal. Where therefore the lower Court or Tribunal has not acted in an arbitrary manner or has not exceeded its jurisdiction, the High Court cannot interfere with its decision on the ground that it is erroneous on the merits. (Bose J.) Monoranjan Roy v. Collector of Customs,

AIR 1953 Cal 753=87 C L J 391=1953 Cr L J 1745.

——Power and duty of High Court — Application challenging search warrants issued by Magistrate — Matters which the Court should consider in deciding the question — High Court whether entitled to sit in judgment over Magistrate's opinion. See Criminal P. C. (1898), S. 96 (1) (iii).

AIR 1953 Orissa 153=1953 Cr L J 1041.

——Mere mention of Article in petition does not make out case for issue of writ. (Deka J.) Dhan Bahadur Ghorti v. State,

A I R 1953 Assam 61=I L R (1952) 4 Assam 220 = 1953 Cr L J 495.

——Power under Art. 226 is unfettered by the restrictions given in S. 45, Specific Relief Act — High Court in a proper case can order Government to pay compensation to the applicant especially when there is no other remedy open to applicant — Government freezing and acquiring stocks of grain in possession of applicant under Cl. 25, Rajasthan Food Grains Control Order, 1949 — Grain sold away by Government—Action of Government held illegal —Government was ordered to pay to applicant a sum of money in respect of stocks acquired at prevailing market rate as fair compensation. (Wanchoo C. J., and Bapna J.) Nathmal v. Commissioner of Civil Supplies, Rajasthan

AIR 1952 Raj 74= 1951 Raj L W 467=I L R (1951) 1 Raj 674=1952 Cr L J 732.

——Corrective function of High Court where executive transgresses limits of Constitution or violates fundamental rights.

The duty to abide by the Constitution and to maintain the rule of law is cast upon all the three branches of the State i. e., the legislature, executive and the judiciary, and if the first two in any way transgress the limits of the Constitution or violate any of the fundamental rights, it is the duty of the Courts to declare it so. Naturally, the High Court will be very reluctant to interfere with an order of the executive unless it is fully satisfied that the action of the executive cannot in any way be supported in view of the provisions of the Constitution. The High Court will exercise the utmost restraint in interfering with the acts of the executive. But where the High Court is satisfied that the fundamental rights guaranteed by the Constitution have been violated by any act or order of the executive, it is the sacred duty of the High Court to set it aside. The High Court has power to do this under Art. 226 by issuing a writ or any appropriate order so that a wrong done by the order of the Government may be remedied. (Shripat Rao Palnitkar and Suryanarayana Bao JJ.), Kristareddy, G. v. Commr. of City Police, Hyderabad,

A I R 1952 Hyd 36 = I L R (1952) Hyd 180 = 1952 Cr L J 340.

——Powers under—Extent.

(Per Mack J.)—Art. 226 confers on the High Court extremely wide powers of interference and a corresponding extremely heavy burden of responsibility. The framers of the Constitution could never have contemplated High Courts constituting themselves on applications by all sorts of aggrieved persons into inquisitorial tribunals supervising, criticising, modifying or cancelling the actions and orders of different departments of executive authority, institutions, public bodies and last but not least of the Legislatures as regards their internal affairs which are

CONSTITUTION OF INDIA (1950), Art. 226 — 2. Nature and scope of High Courts' powers under Art 226

controlled by the Sp aker and the House and its committees. It is only in exceptional cases that writs under these wide powers "for any other purposes" can be issued, such as for instance when there has been a clear violation of statutory law, when principles of natural justice have been violated or perhaps where there has been mala fide discrimination against an individual to the detriment of his rights. It is impossible to define with exactitude the cases in which Art. 226 of the Constitution can be rightly invoked. They should be comparatively exceptional and very few. (Mack and Somasundaram, JJ.) Anandan Nambiar, In re.

AIR 1952 Mad 117=64 M L W 1031=1951 M W N Cr 258 = 1951 M W N 838 = 1952-1 M L J 1 = I L R (1953) Mad 93.

——Powers under—Exercise of—Not obligatory in every case.

The remedy given by Art. 226 is an extraordinary one and can be invoked only in exceptional circumstances when there is no alternative remedy by way of suit or otherwise or where though such alternate remedy is available, it is not equally appropriate, beneficial or convenient: (1922) 1 K B 72 & (1889) 2 Q B 632, Ref.

Per Sarjoo Prosad J.—The words "any other purpose" in Art. 226 must mean "the enforcement of any legal right and the performance of any legal duty." Although the powers of High Court to issue writs under the Constitution are very wide, it has been rightly held that the remedy provided by the Article must remain an extraordinary remedy to be used where ordinary legal process cannot give adequate and prompt relief: AIR 1950 Pat 387, Rel. on. (Ramaswami and Sarjoo Prosad JJ.) Maharaja Gopeshwar Prasad Sahi v. State of Bihar,

A I R 1951 Pat 570=30 Pat 735.

3. Articles 226 and 32 (3)—Jurisdiction of High Court

——High Court's jurisdiction to entertain application under Art. 226. (Majority view in 51 Cr L J 1352=A I R 1950 M B 60 (F B), Overruled.)

Per Full Bench (Kaul C. J. dissenting)—Under Art. 226 of the Constitution of India the High Court has jurisdiction to entertain applications with respect to all matters in relation to which the powers conferred by the article may be exercised. (Majority view in 51 Cr L J 1352=AIR 1950 M B 60 (FB), Overruled.)

Per Kaul C. J.—In framing Art. 226, the word "jurisdiction" has been scrupulously avoided and the Constitution has used only the word "power," a word which in Art. 225 is used in a connotation altogether different from that of "jurisdiction." The fact that power to issue orders in the nature of high prerogative writs is conferred upon a Court as part of its general authority or capacity does not necessarily carry with it as an incident of that power the jurisdiction to take cognisance of any matter in relation to which any one of those writs could be issued. No doubt this power can be used always but subject to the condition that the High Court has some jurisdiction to implement which this power can be exercised. Thus, apart from the power to pass an order, direction or writ, there must exist the authority to take cognisance of the matter in relation to which such order, direction or writ may be issued, otherwise the power remains ineffective or dormant except in so far as it can be exercised under the existing law. Hence, so long as the Madhya Bharat High Court is not invested with any original jurisdiction under Art. 226 or by the Madhya Bharat High Court of Judicature Act (8 of 1949) it cannot entertain an application under

CONSTITUTION OF INDIA (1950), Art. 226 — 3. Arts 226 and 32 (3) Jurisdiction of High Court Art. 226. (Kaul C. J., Shinde, Dixit, Mehta and Chaturvedi JJ.) Dayabhai v. R. T. Authority,

A I R 1951 Madh B 121 = I L R (1952) M B 454 = 52 Cr L J 1305 (F B).

——Power and jurisdiction under — Relative position of Art. 226 — Effect — High Court has jurisdiction to issue writs.

Per Hidayatullah J.—When power is unconditionally granted by the people to certain legislative and other bodies, in a solemn Constitution, the power is to be used eo instanti, unless otherwise provided, for the purpose for which it is granted. Every grant of power carries with it a jurisdiction to exercise that power.

The fact that Art. 226 is sandwiched between Arts. 225 and 227 has not much relevance. The collocation of articles in the Constitution is not decisive, though it has some relevance in the matter of amendment thereof. In any event the position of Art. 226 has not the same quality as the placing of Art. 32 in the Chapter on fundamental rights.

Held that, the High Court is invested with a jurisdiction as well as a power to issue writs, directions or orders as laid down in Art. 226 in appropriate cases.

Per Mangalmurti and Mudholkar JJ. — Article 225, which is subject to the other provisions of the Constitution, does not restrict the jurisdiction of the High Court but merely preserves its existing jurisdiction and Arts. 227 and 228 confer some additional jurisdiction on it. Article 226 which finds place in between Art. 225, on the one hand, and Arts. 227 and 228, on the other hand, cannot reasonably be regarded as having nothing to do with jurisdiction. It clearly states that the territorial limits of the exercise of the powers conferred by it on the High Court are those within which the High Court exercises jurisdiction. The power to do a thing necessarily implies jurisdiction to do it, otherwise the conferral of such power is pointless. There is nothing in Art. 226 which warrants the limitation of the jurisdiction of the High Court to act only on the appellate or revisional side. Furthermore, if the power to issue a writ, direction etc., can be exercised only on the appellate or the revisional side, it seems difficult to appreciate how at all it could be so exercised because no law confers upon subordinate Courts the power to issue writs, orders, etc.

Held that the Nagpur High Court has original jurisdiction to entertain a petition under Art. 226. (Hidayatullah, Mangalmurti and Mudholkar JJ.) Sheoshankar v. State Govt. of M. P.

A I R 1951 Nag 58 = I L R (1951) Nag 646 = 52 Cr L J 1140 (F B).

——Arts. 226, 32 (3) — Power of High Court under Art. 226 — Effect of Art. 32 (3), Constitution of India, Art. 32 (3).

Per Hidayatullah J. — The exercise of powers by High Court under Art. 226 need not await legislation by Parliament in that behalf under Art. 32 (3). In fact, the very opening words of Art. 226 read with cl. (2) of Art. 32 show that the High Court's powers under Art. 226 are not postponed and that the High Courts are excepted from the operation of Art. 32 (3).

Per Mangalmurti and Mudholkar JJ.—No doubt, the words of cl. (3) of Art. 32 are wide enough to include a High Court, but it is equally pertinent to note that the powers conferred by Art. 226 are "notwithstanding anything in Art. 32" from which it would follow that the High Courts do not come within cl. (3) of that Article. What the Constituent Assembly had apparently in view while enacting that clause was Art. 247 which empowers Parliament to provide for the establishment of additional

CONSTITUTION OF INDIA (1950), Art. 226 —

3. Arts. 226 and 32 (3)—Jurisdiction of High Court

Courts for the better administration of laws made by Parliament or of any existing law with respect to a matter enumerated in the Union list.

Furthermore, the words in cl. 3 of Art. 32 which are efficient for enabling Parliament to confer jurisdiction on the High Court are "may by law empower." But this is precisely what the Constitution itself has done by using the words "shall have power" in Art. 226. (Hidayatullah, Mangalmnrti and Mudholkar JJ.) Sheo Shankar v. State Government of Madhya Pradesh,

A I R 1951 Nag 58 = I L R (1951) Nag 646 = 52 Cr L J 1140 (F B).

——Articles 226, 32 — Power to entertain application for issue of writ of habeas corpus—Criminal P. C. (1898), S. 491. (A I R 1950 M B 46, Overruled.)

Per Kaul C. J. and Shinde J. (Mehta J. Contra.) — The High Court cannot entertain an application under Art. 226 for issue of a direction in the nature of habeas corpus apart from the provisions of S. 491, Criminal P. C.: A I R 1950 M B 46, Overruled. (Kaul C. J., Shinde and Mehta JJ.) Anant v. State,

A I R 1950 M B 60=51 Cr L J 1352 (F B).

[Overruled in A I R 1951 M B 121 =.52 Cr L J 1305 (F B)]

——Arts. 226 and 32 (3) — High Court's power to issue directions, orders or writs "for any other purpose" in praesenti.

Reading Art. 226 with cl. (3) of Art. 32, the High Court has the power under Art. 226 to issue directions, orders or writs not only for the enforcement of any of the rights conferred by Part III but also for any other purposes and the words "shall have power" only emphasise the fact that the issue of these directions, orders or writs is entirely a matter for the discretion of the Court. The fact that cls. (2) and (3) of Art. 32 make no reference to the power to issue directions, orders or writs for any purpose other than the enforcement of any of the rights conferred by Part III, does not in any way indicate that the words "shall have power" in Art. 226 (1) though meaning immediate conferment of power in relation to the enforcement of any of the rights conferred by Part III, imply futurity as regards the power to issue directions, orders or writs "for any other purpose." (Dixit and Mehta JJ.) Harendranath Sharma v. State of Madhya Bharat,

A I R 1950 Madh B 46=I L R (1952) M B 231.

[Overruled in A I R 1950 M B 60 = 51 Cr L J 1352 (F B)].

4. Articles 226 and 227—Distinction.

(Per Sapru J.) — According to the interpretation given by the Allahabad High Court to the word 'superintendence' the scope of Art. 227 would seem to be of a more limited character than that of Art. 226. Articles 226 and 227 are supplementary to each other. The emphasis under Art. 227 is on administrative control and the limited judicial powers contemplated by it are intended for and merely ancillary to such administrative control. Thus Arts. 226 and 227 are not intended for identical situations. Their purpose, though complementary, is somewhat different and it is by remembering this that overlapping can be avoided. The power of superintendence cannot merely be described as an administrative power for, in addition to the administrative powers specifically enumerated a power partaking of a limited judicial character has been added. That power essentially is meant only to see whether a Court or tribunal has acted within its bounds or not, and is ancillary to the administrative powers conferred by the Article. (Sapru and Agarwala JJ.) Motilal v. State,

A I R 1952 All 963 = I L R (1952) 1 All 558 = 1952 Cr L J 1695.

CONSTITUTION OF INDIA (1950), Art. 226 —

4. Arts. 226 and 227—Distinction

——Arts. 226 and 227 — Nature and scope of jurisdiction under — Jurisdiction under Art. 227 can be exercised by Single Judge.

Article 227 lays down that every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction; and that without prejudice to the generality of foregoing provision the High Court may act in the manner specified in the Article. In exercise of the power of superintendence under Art. 227, the High Court cannot exercise the powers exercisable under Art. 226. The Court can exercise, only in a limited manner, "the power to interfere with judicial orders of subordinate Court", "to check the assumption, or excess, of jurisdiction or to compel the exercise of jurisdiction wrongfully declined, and not to substitute its own judgment, whether on a question of fact or on a question of law, in place of the subordinate Courts". The power conferred on the High Court under Art. 227 is not in any way controlled by the power exercisable by the Court under Art. 226. Under the rules of the Allahabad High Court, applications under Art. 226 and those under Art. 227 of the Constitution are treated and dealt with differently. There are special rules for the institution and disposal of applications under Art. 226, while there are no such rules for applications under Art. 227. An application filed in the High Court for the exercise of power under Art. 226 is, no doubt, cognizable by a Bench of this Court but an application for the exercise of power of superintendence under Art. 227 is cognizable by a Single Judge. (P. L. Bhargava J.) Ram Prasad v. State,

A I R 1952 All 843 = 1952 A L J 161=1952 A W R (H C) 165=1952 R D (H C) 101=1952 Cr L J 1520.

5. Bar to writs.

——Arts. 226 and 227—Scope—(Abducted Persons (Recovery and Restoration) Act, (1949), S. 8).

Section 8, Abducted Persons (Recovery and Restoration) Act does not affect the High Court's power to issue writs or orders or directions to the tribunal under Art. 226 or 227 of the Constitution. (Raghubar Dayal and Agarwalla JJ.) Smt. Bimla Devi v. Chaturvedi,

A I R 1933 All 613=1933 A L J 273=1933 A W R (H C) 257=I L R (1933) 2 All 735=1953 Cr L J 1384.

——Arts. 226 and 227—Powers not taken away by S. 85 (5) of U. P. Panchayat Raj Act (XXVI of 1947).

The Constitution is the fundamental law of the land. No law which is contrary to the provisions of the Constitution can be valid except in so far as the Constitution itself provides for the appropriate authority to make such law. Hence S. 85 (5), U. P. Panchayat Raj Act, cannot take away the jurisdiction of the High Court under Arts. 226 and 227 of the Constitution. (Sapru and Agarwala JJ.) Motilal v. State,

A I R 1952 All 963=I L R (1952) 1 All 558=1952 Cr L J 1695.

——Power cannot be affected by legislative provisions—Section 27 (7) Bombay Police Act which prevents High Court from enforcing fundamental rights is ultra vires as being repugnant to the Article — See City of Bombay Police Act (IV of 1902), S. 27 (7),

AIR 1951 Bom 432=52 Cr L J 1442.

6. Retrospective effect.

——Arts. 226, 227—Retrospective operation.

Articles 226 and 227 do not relate to matters of procedure but confer a power upon High Courts to interfere in certain cases. This power cannot be invoked by a person aggrieved by a decision of Court or a tribunal arrived at before these provisions come into force. (Hida-

CONSTITUTION OF INDIA (1950), Art. 226 —

6. Retrospective effect

yatullah, Mangalmurti and Mudholkar JJ.) Rajaram Dadu v. The State,

A I R 1951 Nag 443 = 1951 N L J 535=I L R (1951) Nag 741=1952 Cr L J 1 (FB).

——Order in violation of fundamental rights passed before passing of Constitution—S. 6, General Clauses Act, if operates as bar—General Clauses Act (1897), S. 6.

Per Full Bench—Even though the order may have been saved by S. 6 of the General Clauses Act if the order is in violation of the fundamental rights, which have come into existence after 26th January 1950, the Court is entitled to interfere. (Chagla C. J. Bavdekar and Shah JJ.) Emperor v. Jeshingbhai Ishwarlal,

AIR 1950 Bom 363=52 Bom L R 544=I L R (1930) Bom 539=20 Bom Cr C 188=52 Cr L J 120 (FB).

——Order in violation of fundamental rights passed before passing of Constitution — Interference after passing of Constitution—S. 6, General Clauses Act, if operates as bar —General Clauses Act (1897), S. 6.

Per Full Bench. — The saving of an order made prior to the commencement of the Constitution under S. 6, General Clauses Act, does not mean that the State is entitled, after 26th January 1950, to deprive a citizen of a fundamental right which is guaranteed to him. Therefore, even though the order may have been saved by S. 6, if the order is in violation of the fundamental rights, which have come into existence after 26th January 1950, the Court is entitled to interfere. In such a case, there is no question of applying S. 6 General Clauses Act. (Chagla C. J., Bavdekar and Shah JJ.) Jeshing Bhai v. Emperor,

A I R 1950 Bom 363=52 Bom L R 544=ILR (1950) Bom 539=20 Bom Cr C 188=52 Cr L J 120 (FB).

——Order passed before Constitution came into force—High Court can be moved under Art. 226 to test vires of order. (Dixit and Mehta JJ.) Harendranath Sharma v. State of Madhda Bharat,

AIR 1950 M B 46=ILR (1952) M B 231.

7. High Court.

——Jurisdiction of Judicial Commissioner's Court, Bhopal, to entertain and decide application under Art. 226.

The Judicial Commissioner's Court, Bhopal, declared as a High Court, under the Judicial Commissioner's Courts (Declaration as High Courts) Act, 1950, has jurisdiction to entertain, hear and decide an application under Art. 226, Constitution of India. (Sathaye J. C.) Wahid Ali v. State of Bhopal,

AIR 1952 Bhopal 6=1952 Cr L J 683.

——Power of Judicial Commissioner's Court to issue high prerogative writs — See Judicial Commissioner's Courts (Declaration as High Courts) Act (1950), Ss. 5 and 6.

AIR 1952 Bhopal 1=1952 Cr L J 660.

8. 'For any other purpose.'

——Scope — Jurisdiction of High Court to issue order, directions or writs — Extent of — 'Any other purpose,' meaning of—Constitution of India, Arts. 32 (3), 247.

Article 226, as worded, means nothing more or less than that the High Courts are invested with jurisdiction 'in præsenti' to issue an order, direction or a writ as mentioned in the Article.

The words "notwithstanding anything in Art. 32" occurring in the beginning of Art. 226 are not redundant. They have special significance and cannot be ignored. They only mean that in spite of the provisions of Art. 32, every High Court shall be empowered to issue the writs of the sort specified in the Article. If it had been the intention of the framers of the Constitution to subject the exercise of this power to any future legislation by the Parliament, there could be no difficulty in finding suitable

CONSTITUTION OF INDIA (1950), Art. 226 —

8. 'For any other purpose'

words for the same but the Article, as drafted, does not contain even the remotest suggestion that such was their purpose :

The words 'any other Court' in Art. 32 (3) when read along with Art. 247 can only mean any Court other than a High Court, because when the High Courts have already been invested with powers under Art. 226, those words could not manifestly refer to a High Court.

The words "any other purpose" in Art. 226 mean nothing more than any other purpose ancillary to the enforcement of any of the rights conferred by Part III of the Constitution. They cannot mean "for the enforcement of any legal right and the performance of any legal duty." (Tribeni Saran Addl. J. C.) Govind Prasad Srivastava v. The State of Bhopal,

AIR 1952 Bhopal 1=1952 Cr L J 660.

——Applicant not possessing any fundamental right — If entitled to any writ.

Article 226 deals with writs to enforce the fundamental rights under Art. 19 of the Constitution. Where the applicant does not possess any such right no writ of mandamus can be issued to enforce any other right under Art. 226. (Sathaye J. C.) Jagannath Nathmal v. The State of Bhopal,

A I R 1951 Bhopal 5=1952 Cr L J 57.

——Scope of authority—Constitutionality of legislation—Examination of, without any injury.

Per Hidayatullah J.—It is true that Art. 226 gives the power not only for the enforcement of fundamental rights but also for 'any other purpose'. The words 'any other purpose' are of very wide significance, but it cannot be postulated that the High Courts were given unlimited power to do anything by their writs, orders or directions. Some limitations must be placed by the High Court on its own powers. Thus, a petition for the examination of the constitutionality of an Act does not lie even under the wide powers conferred by Art. 226. In no country is the constitutionality of a statute examined on a mere petition to a superior Court. In other words, advisory opinions or declaratory judgments on the constitutionality of legislation cannot be given apart from some concrete injury or controversy. (Procedure in England, Australia, Canada and U. S. A. considered and limitations on the power of Court stated.) (Hidayatullah, Mangalmurti and Mudholkar JJ.) Sheoshankar v. State Govt. of M. P.,

A I R 1951 Nag 58=ILR (1951) Nag 646=52 Cr L J 1140 (FB).

——"Any other purpose"—Words, if to be read ejusdem generis with purpose mentioned in Article.

The words "any other purpose" in Art. 226 should not be read as ejusdem generis with the purpose specially mentioned before. The power to issue directions, orders or writs under Art. 226 is discretionary and the rule of ejusdem generis has but little, if any, value in construing a provision conferring discretionary powers on the judiciary. Secondly, the rule being one of mere construction and not an inflexible one, it cannot be applied where its application would defeat the general intent of the instrument to be construed. The object of the article in giving to the High Court the discretionary jurisdiction to issue certain directions or writs is to secure the protection of the rights of the public and to ampliate justice and redress grievances in any matter which the ordinary course of law is too defective to reach. Its purpose is not merely to prevent the infringement only of those rights mentioned in Part III. Consistently, therefore, with the object of the article the word "any other purpose" must be construed to refer to all purposes for which at English Common Law the high prerogative writs are issued, to

CONSTITUTION OF INDIA (1950), Art. 226 —

8. 'For any other purpose'

wit, for the protection of the rights of the individuals, to check excess or abuse of powers. (Dixit and Mehta JJ.) Harendranath Sharma v. State of Madhya Bharat,

A I R 1950 Madh B 46=ILR (1952) Madh B 231.

[Overruled in A I R 1950 M B 60 = 51 Cr L J 1352 (FB).]

9. Other remedy open.

——Existence of alternative remedy—Effect.

Alternative remedies are factors which are taken into consideration in exercise of Court's discretion in issuing prerogative writs. But the remedies must be adequate. (Bose J.) Monoranjan Roy v. Collector of Customs,

A I R 1953 Cal 753=87 C L J 391=1953 Cr LJ 1745.

——In order to found an application for 'mandamus' there should be a specific legal right, as well as the want of a specific legal remedy.

Thus where the remedy was in applicant's own hand in that he could file a complaint which the District Magistrate was bound to receive and deal with according to law but instead he filed an application under Art. 226, the High Court refused to enforce the law of the land by the extraordinary remedy of a writ of mandamus. (Harnam Singh J.) Gurdit Singh Bishan Singh v. District Magistrate, Jullundar,

A I R 1953 Punjab 242 = I L R (1954) Punjab 125= 1953 Cr L J 1637.

——The remedy provided by Art. 226 in respect of rights other than fundamental rights, is an extraordinary remedy, and is not intended to supersede the ordinary procedure under which a person aggrieved can obtain relief by means of a suit in a civil Court. (Das and Sinha JJ.) Jogesh Pandey v. Bhuneshwar Pandey,

A I R 1953 Pat 103=1953 Cr L J 799.

——Order under S. 47C of Saurashtra District Police Ordinance (46 of 1948, as amended by Act 23 of 1951).

When an appeal is provided, the High Court will not issue a writ as a general rule but if the High Court is satisfied that the District Magistrate purported to act under S. 47C of Saurashtra District Police Ordinance without applying his mind to the question whether the condititions which gave him jurisdiction existed or not he contravenes the fundamental rights of a citizen and it becomes the duty of the High Court to interfere. (Shah C. J. and Baxi J.) Bharwad Chania Meru v. State of Saurashtra,

A I R 1953 Sau 3=1953 Cr L J 86.

——Writ of mandamus—Cannot be issued when there is more effective and beneficial other remedy—(Criminal P. C. (1898), S. 439).

A was prosecuted for an offence of staying in India longer than what was allowed to him by his permit. His defence was that he was a subject of the Indian Republic and that the statute and the rules did not apply to him. He also applied to the High Court under Art. 226 for writ of mandamus directing the State Government not to proceed with the prosecution :

Held (1) that the Court would not exercise its powers under Art. 226 in the case as *A* had even more effective, beneficial and convenient remedy by way of applying under S. 439, Criminal P. C., for quashing the proceedings before the Magistrate.

(2) that if there is an adequate and specific remedy other than by a writ and such a remedy is equally convenient then it would be an abuse of Art. 226 to ask the Court to interfere under that Article. (Harries C. J. and Das J.) Nazir Hussain v. State of West Bengal,

A I R 1952 Cal 853=1952 Cr L J 1738.

——Habeas corpus — Detention for offence which is bailable—Refusal of bail — Application under Article instead of seeking remedy under provisions of Criminal P. C., if

CONSTITUTION OF INDIA (1950), Art. 226 —

9. Other remedy open

proper—See Assam Maintenance Public Order Act (5 of 1947), S. 2 (7),

A I R 1952 Assam 192=1952 Cr L J 1710.

——Writ of mandamus — Application under S. 13 of Police Act—Prayer in application refused — Issue of writ —(Police Act (1861), S. 13).

Section 13, Police Act, gives statutory protection to the Police Officers named therein if any of them deputes, subject to the general direction of the Magistrate of the district, any additional police force to keep the peace at any place within the general police district, on the application of any person at his cost. But if the authorities named in the section, in the exercise of their discretion. do not consider it necessary to depute additional police force for the maintenance of peace and order, the person aggrieved or interested cannot claim protection as of right, even if he shows the necessity for the same and undertakes to meet the cost. If the prayer is not granted the petitioner can seek protection of his right under the provisions of Criminal P. C., or seek remedy in a civil Court, and as another remedy is open to him a writ in the nature of mandamus cannot be granted. (Lakshmikanta Jha C. J. and Chatterji J.) Lachhman Prasad Bhagat v. Government of Bihar,

A I R 1952 Pat 386=30 Pat 1252=1952 Cr L J 1639.

——Alternative relief through another tribunal — Interference under Art. 226.

Where the statute provides an alternative relief through another tribunal the Court would not ordinarily interfere in exercise of its prerogative powers until the other remedy has been exhausted. (Jagannadhadas and Narsimham JJ.) Ratanlal Gupta v. D. C. of Ganjam,

A I R 1952 Orissa 52=ILR (1951) Cut 441=1951 Cr L J 1039.

——Certiorari—Writ of—Other remedy open.

Where a distinct remedy is open to a party aggrieved by an order of an inferior Court it is an abuse of the process of the Court to approach the High Court for issue of a writ of certiorari.

This is not, however, an inflexible rule and in exceptional cases the High Court may interfere if it is shown that before resort was made to such other remedy the mischief sought to be avoided would be committed. (The Court refused to quash the proceedings under S. 103, Travancore Criminal P. C.) (Govinda Pillai J.) Narayana Panicker v. P. Kumaran Nair,

A I R 1952 Trav-C 101=1950 K L T 217=1950 T C L R 604=1952 Cr L J 598.

——Fundamental rights of person interfered with — Adequate remedy provided in law — Jurisdiction of High Court under Art. 226 if can be invoked.

The extreme proposition namely, that under Art. 226 of the Constitution the Court has power to grant relief only in cases where either the State or an officer of the State interferes with the fundamental rights of the subject, is not acceptable. However, if adequate and specific remedy has been provided in law and a subject whose fundamental rights have been interfered with, can take recourse to the ordinary course of law, the jurisdiction under Art. 226 of the Constitution should not be invoked in such circumstances.

Thus, where it is alleged that a policeman who was posted to keep watch over the petitioner's activities, intimidated the petitioner's customers but it has not been established that such alleged intimidation took place by virtue of any instructions received from any higher authorities, then the remedy open to the petitioner in such a case is to file either civil or criminal proceedings, against the particular policeman or if he can establish that the higher authorities are concerned in the matter,

CONSTITUTION OF INDIA (1950), Art. 226 —

9. Other remedy open

he may take appropriate proceedings against them as well in an appropriate Court of law. In such a case the High Court will not pass any order under Art. 226. (Das Gupta J.) Santi Priya Mukerjee v. Surendra Nath Chatterji,

A I R 1952 Cal 137=I L R (1952) 1 Cal 94=1952 Cr L J 345.

—Deprivation of possession by Custodian of Evacuee Property—Right to writ of mandamus—Remedy of appeal is no bar—See Constitution of India, Art. 31.

A I R 1951 Pat 434.

—Writ of mandamus when can be issued.

A party who has entered into an agreement with another party and is illegally dispossessed by the other in breach of the agreement cannot ask the High Court for a writ of mandamus as the aggrieved party can get an effectual and adequate remedy by an ordinary action in th. Civil Court. (Reuben and Das JJ.) Bukhtiarpur Bihar Light Rly. Co. Ltd. v. State of Bihar,

AIR 1951 Pat 231.

—A Municipal servant who had been dismissed summarily without any justification, has a complete remedy for wrongful dismissal against the administrator and therefore an application for a writ of certiorari will not be granted — See Master and Servant

1948 Bur L R 733 (S C).

—Order imposing a penalty under Sea Customs Act — Remedy of appeal provided under S. 188, Sea Customs Act, though expensive open to applicant — Order under S. 45, Specific Relief Act will not be passed—Sea Customs Act (1878), S. 167, Entry 8.

I L R (1947) 1 Cal 425.

10. Futile or unnecessary writ

—Writ of mandamus—Order complained against quashed — Mandamus directing authority not to give effect to it not necessary. (Agarwala and Mukerji JJ.) Benichand v. District Magistrate,

AIR 1953 All 476 = 1953 A L J 183 = 1953 A W R (H C) 248=1953 Cr L J 1078.

—Complaint by Additional Deputy Commissioner under S. 177, I. P. C.—Application for withdrawal under S. 195 (5), Criminal P. C., made to Board of Revenue — Application rejected by Board for want of jurisdiction — Petition for writ under Art. 226 directing Board to return application for representation— Order of Board upheld — Direction to Board held unnecessary as there being no question of limitation petitioner could apply to State Government for relief. (Sinha C. J. and Mudholkar J.) Gopalprasad Gayaprasad Tiwari v. Board of Revenue M. P. Nagpur,

AIR 1953 Nag 121= 1953 N L J 126 = I L R (1953) Nag 668=1953 Cr L J 741.

11. 'Any person or authority'

—The words "any person or authority" include Courts and tribunals whether under the appellate jurisdiction of the High or not. (Sapru and Agarwala JJ.) Motilal v. State,

AIR 1952 All 963 =I L R (1952) 1 All 558 = 1952 Cr L J 1695.

12. Writs in pending cases

—Interference in pending cases—Whether case has not been decided for a long time a good ground for interference —See Criminal P. C. (1898), S. 561A.

AIR 1953 All 630=1953 Cr L J 1407.

—Arts. 226 and 228—Prosecution of person for violation of some section or rule—Procedure to be followed — (Criminal P. C. (1898), S. 435).

The proper course for a person who is being prosecuted for the violation of some section or rule of an Act is to raise an objection before the trying Court for its decision on that point and to move the High Court on revision if the

CONSTITUTION OF INDIA (1950), Art. 226 —

12. Writs in pending cases

decision goes against the petitioner or in the alternative to move the High Court under Art. 228 and to satisfy the High Court that a case pending in a subordinate Court involves a substantial question of law as to the interpretation of the Constitution the determination of which is necessary for the disposal of the case and to request the High Court to withdraw the case to itself and either to dispose of the case or to determine the question of law involved. Instead of this where he puts in an application for a writ under Art. 226 to have the provisions declared ultra vires, the High Court would reject the petition on the ground that the proper procedure had not been followed. (Falshaw and Soni JJ.) Bishambar Nath v. State of Punjab,

AIR 1953 Punjab 77 = 55 P L R 187 = ILR (1953) Punjab 618=1953 Cr L J 549.

—Writ of Certiorari — Matter not finally decided — Petitioner able to defend himself in lower Courts — Writ not to be issued.

A Magistrate rejected an application under S. 144, Criminal P. C., on the ground that the applicant did not show any bona fide right on his part and directed the police to institute proceedings under S. 107, Criminal P. C., against the applicant, if he intended to exercise the right claimed by him. The applicant applied for a writ of certiorari quashing the direction :

Held that the High Court was not called upon to exercise its jurisdiction under Art. 226 simply on an executive direction given by the Magistrate which did not finally decide the right of the applicant. Moreover, the applicant had the right to defend himself fully if and when the proceedings under S. 107, Criminal P. C., were instituted. (Rajamannar C. J. and Venkatarama Ayyar J.) Subbaiah v. Raghavalu,

AIR 1952 Mad 880=1952 M W N 268=1952-1 M L J 471=1952 M W N (Cr) 68=1953 Cr L J 63.

13. Writs against executive orders

—Administrative order—Order for expulsion of person from Garo Hills according to long standing custom which prohibited nepalis or foreigners living in those villages made after hearing party — Order made for maintenance of public peace or for removal of nuisance—Person affected if can obtain relief under Art. 226—See ibid, Art. 19 (5).

AIR 1953 Assam 61=1953 Cr L J 495.

—Scope of—Administrative order— Fundamental right affected— Jurisdictian of High Court to issue writ of certiorari or other writs against executive officer.

Under Art. 226, the jurisdiction of the High Court is not merely confined to the writs which it issued in the past, but power has been conferred upon it to issue directions, orders or writs for the enforcement of any of the rights conferred by Part III which deals with fundamental rights. It is not possible to read 'directions, orders or writs" as being ejusdem generis with what follows, because these "directions, orders or writs" refer to a larger category in which category is included writs in the nature of habeas corpus, mandamus, quo warranto and certiorari. The article further confers upon the High Court the power to issue not only writs in the nature of various categories specified in that article, but those writs themselves, and further the article goes on to state that these writs or orders can be issued not only for the enforcement of fundamental rights but for any other purpose. "Any other purpose" was embodied in the article in order to remove any doubt that the High Court's jurisdiction to issue these writs was confined merely to the enforcement of fundamental rights because the High Court could issue a writ otherwise than for the enforcement of fundamental rights and that power of the High Court is saved and safeguarded by providing in Art. 226 that the writs can

CONSTITUTION OF INDIA (1950), Art. 226 —

13. Writ against executive orders

be issued not only for the purposes of enforcement of fundamental rights but also for any other purpose.

Hence, the High Court has under Art. 226 the jurisdiction to issue an order against even an executive officer who has issued an administrative order, in order to safeguard the fundamental rights of the citizen although a writ of certiorari cannot be obtained to correct such an administrative order, as a writ of certiorari cannot be obtained except for the purpose of calling for the record of a proceeding which was either judicial or quasi judicial in character and for correcting an error of jurisdiction in that proceeding.

The Court will not exercise its power under Art. 226 in a matter which it cannot deal with judicially, nor would it take notice of anything which it cannot take notice of judicially, nor would it interfere with the action of an executive officer unless it is satisfied that that executive officer is under an obligation to do something or to forbear from doing something. (Chagla C. J., Bavdekar and Shah JJ.) Jeshing Bhai v. Emperor,

AIR 1950 Bom 363= 52 Bom L R 544=I L R (1950) Bom 539=1950 Bom Cr C 188=52 Cr L J 120 (FB).

14. Mala fide order

——Mala fides of officer—Bad motive.

If an officer has a power, the fact of his using it from a bad motive does not invalidate the exercise of that power. (Fawcett and Mirza JJ.) Shivbat v. Emperor,

AIR 1928 Bom 162= 109 I C 487=52 Bom 238 = 30 Bom L R 392=10 A I Cr R 308=29 Cr L J 551.

15. Territorial jurisdiction of High Courts

——Arts. 226, 32—Power of High Court to issue writs in matters outside its original jurisdiction.

The High Court has both the power and jurisdiction to issue the writs specified in Art. 226. The Madras High Court, therefore, has power to issue writs in matters outside its Ordinary Original jurisdiction after the commencement of the Constitution: AIR 1950 M B 60 (FB), Dissent. (Govinda Menon, Panchapagesa Sastri and Basheer Ahmed Sayeed JJ.) Srinivasa Bhat v. State of Madras,

AIR 1951 Mad 70=64 M L W 82=1951-1 M L J 115.

16. Procedure

——Application under—Procedure to be followed indicated.

An application under Art. 226 concerns very important matters including the liberty of the citizen and the protection of his fundamental rights guaranteed by the Constitution. Such applications are to be taken seriously and in this respect the Government is by no means a favoured litigant and must comply with the normal procedure to be adopted in legal proceedings. If in showing cause, the Government is of the opinion that disclosure of any fact or document will be injurious to the State, it is its duty to allege so, and it will be for the Court to decide the point. In the absence of any specific rules providing for the procedure to be followed on such application the ordinary rules should be followed and the allegation in the petition should be answered by an affidavit in opposition filed by the respondent copy whereof should be furnished to the applicant in good time before the date fixed for hearing and the applicant will be at liberty to use a reply, also furnishing copies to the respondent. (Sinha J.) Khudi Prasad Bhakat v. State,

AIR 1952 Cal 798=55 C W N 45=1952 Cr L J 1662.

——Application under — Two persons against whom two different orders under Cl. 25, Rajasthan Food Grains Control Order were passed joining in one petition—Application is maintainable, when their case is exactly the same—Affidavit filed by one of applicants in support of application held was sufficient. (Wanchoo C. J. and Bapna J.) Nathmal v. Commissioner of Civil Supplies, Rajasthan

AIR 1952 Raj 74=1951 Raj L W 467=ILR (1951) 1 Raj 674=1952 Cr L J 732.

CONSTITUTION OF INDIA (1950), Art. 226 —

16. Procedure

——Mandamus or prohibition petitions—Contents.

When petitions of the nature of mandamus or prohibition are filed the petitioner should state precisely the nature of the relief which he asks for. For example in the case of an externment order under W. B. Security Act (1950) made by the District Magistrate of Dinajpur, West Bengal, the relief claimed should be an order in the nature of a mandamus upon the District Magistrate of West Dinajpur calling upon him to refrain from giving effect to the order alleged to be invalidly made. (Harries C. J. and Banerjee J.) Khagendra Nath De v. District Magistrate, Dinajpur

AIR 1951 Cal 3=55 C W N 53.

——Art. 226 (1)—Application under—Affidavit in support of application—Facts stated in such a way as to mislead Court—Rejection of application.

Where an ex parte application has been made to a High Court under Art. 226 (1), if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court, ought for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit and reject the application. (R. Kaushalendra Rao and Deo JJ.) Zikar Yusuf v. Govt. of Madhya Pradesh

AIR 1951 Nag 16=ILR (1951) Nag 64.

17. Declaratory relief.

——Court will not exercise jurisdiction merely for purposes of granting declaration, if it cannot be followed by grant of effective relief—Legality of search challenged—No articles seized—Petition will not be entertained, inasmuch as there would be no order for return of articles, if search were held to be illegal. (Jagannadhadas C. J. and Narasimham J.) Kalinga Tubes Ltd. v. D. Suri

AIR 1953 Orissa 153=19 Cut L T 103=1953 Cr L J 1041.

18. New point.

——Point not taken in petition but based on statement in return cannot be allowed.

In regard to applications for prerogative writs, the settled practice of English and American Courts is that no ground shall be relied upon or relief sought at the hearing of the motion except the grounds and relief set out in the application and a writ would be refused where the case tendered by the petition is radically different from that set up upon argument. The practice being one which only carries out the object with which a copy of the application for the issue of a writ is served on the opponent and he is called upon to show cause in respect of the grounds stated in the application, must be adopted as regards applications under Art. 226 also. The appli-

CONSTITUTION OF INDIA (1950), Art. 226 — 18. New point

cant cannot be permitted to argue and raise objection on the basis of an incidental statement in the return. (Shinde C. J. and Dixit J.) Mahendra Bahadur Singh v. State

AIR 1953 Madh B 236=1953 Cr L J 1409.

——New point of fact — Writ application filed long ago— Date of hearing fixed from time to time — New point of fact raised at date of final hearing, held could not be entertained, specially when affidavit in support of it did not disclose clearly when the applicants became aware of the information which was the basis of the new ground. (Jagannadhadas C. J. and Narasimhan J.) Kalinga Tubes Ltd. v. D. Suri

AIR 1953 Orissa 153=19 Cut L T 103=1953 Cr L J 1041.

——Art. 226 (1) — Prosecution under S. 15 (b), Madras General Sales Tax Act — Accused taking out writ of 'certiorari' for quashing proceedings — Contentions which can be raised—(Madras General Sales Tax Act (9 of 1939), S. 12A).

Where the petitioners who were being prosecuted under S. 15 (b) of the Madras General Sales Tax Act, took out a writ for quashing those proceedings on the ground that the Act and the Rules and the assessment made thereunder were void and that the prosecution was illegal :

Held that the petitioners were duly served with notice under the Act and had ample opportunity of putting forward before the Tribunals constituted under the Act all contentions based on the provisions of the Act or the Rules. Not having done so, they could not be permitted to put forward in these proceedings contentions which were available to them before the Tribunals. The only pleas that were open to them were those which could not have been urged before the Tribunals, such as the plea that the Act is 'ultra vires' which could not obviously be entertained by a Tribunal which owes its very existence to the Act. (Rajamannar C. J. and Venkatarama Ayyar J.) Syed Mohamed & Co. v. State of Madras

AIR 1953 Mad 105=65 M L W 1030=1952-2 M L J 598=1952 M W N 847=1952 M W N (Cr) 235=1953 Cr L J 277.

——Art. 226 (1)—Application for issue of writ of certiorari to quash order of Court—Particular objection not taken in Court nor in affidavit—Objection cannot be raised for first time in writ of certiorari. (Subba Rao J.) Janardana Rao v. Venkata Subba Rao

AIR 1952 Mad 885 = 1952 M W N 219=65 M L W 275=1950.1 M L J 472=1953 Cr L J 16.

——Submission to or acquiescence in jurisdiction — Objection that Panchayat Bench was improperly constituted not raised by accused during trial — Point whether can be raised for the first time in application under Art. 226 — See U. P. Panchayat Raj Act (XXVI of 1947), S. 49 (2)

AIR 1952 All 489=1952 Cr L J 900.

19. Principles of natural justice.

——Inquiry under S. 45, City of Bombay Police Act, is quasi-judicial — Violation of principles of natural justice by refusal to hear testimony in rebuttal — High Court can interfere by issuing writ of certiorari — See (Bombay) City of Bombay Police Act (IV of 1902), S. 45

AIR 1948 Bom 236=49 Cr L J 511.

——Member of Corporation — Expulsion of, from Committee—Rules of natural justice—See Corporation

47 Cal 623=56 I C 556.

20. Habeas corpus — General.

——Writ of — Scope — The right of petition for Habeas Corpus is a high prerogative right and is a constitutional remedy for all manner of illegal confinement—This is one

CONSTITUTION OF INDIA (1950), Art. 226 — 20. Habeas Corpus — General

of the most fundamental rights known to the Constitution but it does yield to another matter namely the safety of the State and its people. (Sripat Rao and Shrinivasa Chari JJ.) Maqdoom Mohiuddin v. State of Hyderabad

AIR 1952 Hyd 112 = I L R (1952) Hyd 122 = 1952 Cr L J 1076.

——Application for habeas corpus—Validity of provisions for detention—Criminal P. C. (1898), S. 491.

In an application for a writ of habeas corpus the validity of the law under which an order for detention has been passed can be challenged. It is open to the High Court to ascertain if the Act under which the order of detention was passed is ultra vires and beyond the competence of the authority by which it has been passed. (Mir Siadat Ali Khan and Srinivasa Chari JJ.) Abdul Karim v. Government of Hyderabad

AIR 1951 Hyd 83=ILR (1951) Hyd 168=52 Cr L J 710 (2).

——Writ of habeas corpus — Powers of High Court — Extent of.

The power of the High Court under Art. 226, of the Constitution is no longer confined to issuing writs in the nafure of habeas corpus. It has been given the power to issue any direction, any order, or any writ for the purpose of enforcing fundamental rights, and to the extent that the High Court may think it necessary to issue the common law writ of habeas corpus for the enforcement of fundamental rights it has been given that power notwithstanding the fact that that power may be outside S. 491, Criminal P. C., and may be wider than the power conferred under that section. (Chagla C. J., Gajendragadkar and Dixit JJ.) In re Prahlad Krishna

AIR 1951 Bom 25=53 Bom L R 61 = 1951-21 Bom Cr C 50=ILR (1951) Bom 181=52 Cr L J 305 (FB).

——Article supersedes, Cr. P. C., S. 491.

Article 226 of the Constitution of India has superseded all provisions of the Criminal Procedure Code which gave power and authority to the High Court to issue writs in the nature of Habeas Corpus. (Govinda Menon and Krishnaswami Nayudu JJ.) In the matter of Pillalamarri Venkateswarlu,

AIR 1951 Mad 269=1950-2 M L J 207 = 63 M L W 1035=1950 M W N 718=1950 M W N (Cr) 242=ILR (1951) Mad 135.

20a. Successive applications for habeas corpus.

——Habeas Corpus—Writ of—Successive applications.

Quaere. — Whether successive applications for writs in the nature of habeas corpus on the same facts can be made ? (Harries C. J. and G. N. Das J.) Ananda Sankar v. Chief Secretary to Govt. of West Bengal,

AIR 1953 Cal 129=1953 Cr L J 361.

——Habeas Corpus—Writ of — Applications under different circumstances.

Applications were made under Art. 226 after the Act of 1951 was passed amending the earlier Preventive Detention Act of 1950. In these applications, it was contended that the later amending Act was ultra vires and further that if it was intra vires, certain new rights were granted to the detenus :

Held that a decision under the Preventive Detention Act of 1950 could never prevent an application made when that Act had been amended in the manner in which it was amended by the 1951 Act. The fact that an application had been dismissed under the 1950 Act might afford no answer whatsoever to the contentions of the detenu under the Act as amended in 1951. That being so, the High Court was bound to hear these applications even if the law prohibited successive applications. (Harries

CONSTITUTION OF INDIA (1950), Art. 226 —

20a. Successive applications for habeas corpus

C. J., and G. N. Das J.) Ananda Sankar v. Chief Secretary to Govt. of West Bengal,

AIR 1953 Cal 129=1953 Cr L J 361.

——Habeas Corpus—Successive applications—Application dismissed by High Court — Subsequent application to Supreme Court under Art. 32 if can be made directly without leave—See ibid, Art. 32,

AIR 1951 Assam 143 (1)=52 Cr L J 1360.

——Application under Art. 32 whether maintainable after similar application under Art. 226 was dismissed (Quaere)—See ibid, Art. 32,

AIR 1951 S C 217=52 Cr L J 736 (SC).

——Application for issue of writ of habeas corpus dismissed—Right to present another application to different Judge of High Court—Criminal P. C. (1898), S. 491.

Under Art. 226 a citizen has no right to present successive applications for issue of writ of 'habeas corpus' to different Judges of the same High Court. The jurisdiction to issue such writ is conferred on the High Court as such and not upon any Judge or Judges of the High Court and, therefore, when a Division Bench nominated for the purpose hears an application under Art. 226 it is hearing that application as the High Court and its ultimate decision is not their decision but the decision of the High Court to which the principle of finality of criminal judgments will apply. Hence, when an application under S. 491, Criminal P. C., has been refused a subsequent application under Art. 226 will be incompetent.

Although the decision of the High Court refusing a writ or an order under Art. 226 may become final qua the High Court, it is not as if the Constitution does not provide other remedies to the citizen. He has a right, an independent right, to approach the Supreme Court under Art. 32. Apart from that there is a right of appeal given to the citizen from an order of refusal of the High Court to enforce his fundamental rights. He has the right to ask the Supreme Court to grant him special leave to appeal under Art. 136. Therefore, it is not as if the citizen is without a remedy in the event of the High Court refusing to review its own judgment, however erroneous that judgment may be. (Chagla C. J., Gajendragadkar and Dixit JJ.) In re Prahlad Krishna,

AIR 1951 Bom 25=53 Bom L R 61 = 21 Bom Cr C 50=I L R (1951) Bom 181=52 Cr L J 305 (FB).

21. Who can apply for habeas corpus.

——Application in case where minor is incarcerated.

Where a girl incarcerated is a minor, the only person competent to move the High Court in habeas corpus under Art. 226 is one who is entitled either to the custody of the child or to represent her legally. Where, however, such a person is shown to be incapable of making the application, or where no such person exists, the question of the right of a friend to make such an application may properly arise. But, in that case it must be shown by an affidavit, firstly, that no one who is legally entitled to the custody of the child or to represent her exists, or that such a person, if any, is unable, for reasons to be set out in the affidavit, to make such an application and, secondly, that the applicant himself is interested in the welfare of the child. (Mitter and Sen JJ.) Raj Bahadur v. Legal Remembrancer,

AIR 1953 Cal 522 = 57 C W N 507 = 1953 Cr L J 1187.

22. Illegal detention.

——Habeas Corpus—Criminal P. C., S. 491 — Illegal and improper detention — Order by District Magistrate for detention of person at place beyond his jurisdiction — See Criminal P. C. (1898), S. 491,

AIR 1953 J & K 18=1953 Cr L J 1300.

CONSTITUTION OF INDIA (1950), Art. 226

23. Production of prisoner in Court.

——Habeas corpus — Rule nisi for production of detenu in Court—Criminal P. C. (1898), S. 491.

The High Court has a discretion in the matter of directing the attendance of the detenu in Court. Generally the allegations made in a petition for habeas corpus are not conclusive by themselves and the practice is to issue an order to the respondent to show cause why the petition should not be granted. A Rule nisi for production of the detenu in Court would be made only where a 'prima facie' case of unlawful detention has been made out on behalf of the person invoking the aid of the Court. Where order of detention produced by the Government appears to be on the face of it a proper order and there is no defect or irregularity about the same it cannot be said that the detenu has made out a 'prima facie' case for the issue of an order directing the production of the detenu in Court. (Mir Sayeed Ali Khan and Srinivasa Chari JJ.) Abdul Karim v. Government of Hyderabad,

AIR 1951 Hyd 83=I L R (1951) Hyd 168 = 52 Cr L J 710 (2).

24. Arrest in contravention of privilege.

——Members of State Legislature — Whether immune from arrest for preventive detention—See ibid, Art. 105,

AIR 1952 Cal 632=1952 Cr L J 1454 (SB).

25. Preventive detention.

——Law authorising police officer to arrest and detain within his own jurisdiction — Order of detention directing detention outside jurisdiction of detaining authority — Validity of—See Jammu and Kashmir Public Security Act (15 of 2003 S. M.), S. 3,

AIR 1954 J & K 7=1953 Cr L J 1885.

——Habeas Corpus—(Criminal P. C. (1898), S. 491).

The mere fact that the ban on the communist party to which the detenu belonged has been removed will not entitle the detenu to obtain an order of release from the High Court. The justification for imposing a ban or laying restrictions on the activities of an association may cease to exist but the right of the Government to exercise its powers under the Preventive Detention Act with regard to a particular individual in the interest of maintenance of public order and for the sake of public security will continue as long as the Government is responsible for the security of the State and for the maintenance of law and order. It is one thing to remove a ban on an association and it is quite a different thing to release a member of that organisation to whom violent and subversive activities are attributed. (Srinivasachari and Deshpande JJ.) Raj Bahadur Singh v. State of Hyderabad,

AIR 1953 Hyd 277 = I L R (1953) Hyd 459 = 1953 Cr L J 1845.

——Grounds of detention vague — Effect — See ibid, Art. 22 (5).

AIR 1953 Pepsu 207=1953 Cr L J 1838.

——Habeas Corpus—Scope of enquiry in Habeas corpus —Court whether can make inquiry into truth or falsehood of grounds supplied to detenu—See Criminal P. C. (1898), S. 491,

AIR 1953 Pepsu 190=1953 Cr L J 1710.

——Power of Court to enquire into truth of grounds on which order for detention was made — See Preventive Detention Act (1950), S. 7,

AIR 1953 Pepsu 145=1953 Cr L J 1519.

——Report of Advisory Board received within ten weeks — Order of confirmation passed beyond ten weeks but within three months of order of detention — Nature and effect of the order and legality of further detention— Necessity for communication of order to detenu or for

CONSTITUTION OF INDIA (1950), Art. 226 — 25. Preventive detention

the issue of a fresh warrant of arrest — See Preventive Detention Act (1950), S. 10 (1),

AIR 1953 Sau 138=1953 Cr L J 1247.

——Object of preventive detention — Validity of order passed for collateral purpose of either to punish detenu for past acts or to prejudice his defence in pending case— See Preventive Detention Act (1950), S. 3,

AIR 1953 Pepsu 111=1953 Cr L J 1210.

——Habeas corpus — Preventive detention—Order whether can be passed for detention of person already in custody — Order for detention passed under Preventive Detention Act in anticipation of release of person in custody pending case registered against him under Assam Maintenance of Public Order (Amendment) Act, 1951— Validity of order challenged on ground of mala fide— Burden of proof — See Preventive Detention Act (1950), S. 3 (1) (a) (ii),

AIR 1953 Assam 97=1953 Cr L J 770.

——Application under, against detention under Preventive Detention Act — Grounds available but not taken in previous application against same detention or in the present application, will not be allowed to be raised.

Point available to the detenue against his detention under Preventive Detention Act in his previous applications under Art. 226 before the High Court and under Art. 32 before the Supreme Court, cannot be allowed to be taken in subsequent application under Art. 226 against the same detention.

Similarly grounds not stated in the application under Art. 226, against which the Government could not have an opportunity to file an affidavit cannot be allowed to be raised. (Rajadhyaksha and Vyas JJ.) Maganlal Jivabhai v. Government of Bombay,

AIR 1953 Bom 59=54 Bom L R 629 = 22 Bom Cr C 1=ILR (1953) Bom 182=1953 Cr L J 322.

——Habeas Corpus — Preventive detention—Validity of detention order — Challenged on the ground of mala fide —Conduct of Government which reflects their want of bona fides—See Preventive Detention Act (1950), S. 3,

AIR 1953 Mad 41=1953 Cr L J 224.

——Habeas Corpus — Order under Preventive Detention Act—Power of Court to enquire into sufficiency of grounds for satisfaction of authority — (Criminal P. C. (1898), S. 491).

As to whether the grounds are sufficient to enable the detaining Authority to pass an order of detention, is beyond the scope of an enquiry in a proceeding upon an application for a writ of habeas corpus. The satisfaction is only that of the detaining Authority and the Court is the least appropriate tribunal to investigate into this question. (Mohommed Ahmed Ansari and Srinivasa Chari JJ.) S. Ramanadhan v. State of Hyderabad,

AIR 1952 Hyd 186=I L R (1952) Hyd 770=1952 Cr L J 1756.

——Preventive detention—Application for writ of habeas corpus — Practice — See Preventive Detention Act (4 of 1950), S. 1 (3).

AIR 1952 Pat 298=1952 Cr L J 1101.

——Habeas Corpus—Mala fide detention alleged—Duty of Court—(Preventive Detention Act (1950), S. 3).

It is accepted on all hands that in dealing with applications for the issue of a writ of Habeas Corpus, the Court can in a proper case consider and determine the question whether there has been an abuse of the power vested in it under the law. No hard and fast rule can be laid down by which this question can be decided. The petitioner has to satisfy the Court that there has been in fact a misuse of the powers vested in the executive.

CONSTITUTION OF INDIA (1950), Art. 226 — 25. Preventive detention

The Legislature has given the power of detention of a person to the executive and that power can be exercised by the executive subject to the restrictions imposed and under the conditions laid down in the Act. If the authority comes to a particular conclusion on the material placed before it and passes an order of detention, the Court will presume that the action was validly and properly taken; and it would be upon the applicant who alleges fraud or malice (malice in law) to establish as a fact such fraud or malice. Sweeping assertions in the affidavit without materials or sources of information with regard to the allegations made in the affidavit cannot be taken into consideration. (Shripat Rao and Shrinivasa Chari JJ.) Maqdoom Mohiuddin v. State of Hyderabad,

AIR 1952 Hyd 112=ILR (1952) Hyd 122=1952 Cr L J 1076.

—— Right of detenu to apply under Art. 226 or S. 491, Criminal P. C., before making representations or before there is reference to advisory Board — Effect of dismissal of petition by Court—Effect on the reference made to the Board—See Preventive Detention Act (1950) (as amended in 1951), Ss. 9, 10 and 11.

AIR 1952 Cal 26=1952 Cr L J 204.

——Habeas Corpus—Preventive detention—Right to move Court when arises to the detenu—Refusal to give detenu order of detention — Legality of detention — See ibid, Art. 22 (5).

AIR 1951 T C 130=52 Cr L J 845.

——Preventive Detention Act under which detenu is detained becoming void on Constitution coming into force —Legality of continuing the detention—See Bihar Maintenance of Public Order Act (III of 1950), S. 2 (1) (a).

AIR 1950 Pat 265=51 Cr L J 1081.

26. Detention under extradition law.

——Extradition treaty not having the force of municipal law. Detention under if valid—See Criminal P. C. (1898), S. 491.

AIR 1951 Raj 127=52 Cr L J 1021.

27. Effect of valid orders pending illegal detention.

——Habeas corpus — Order of Court declaring detention invalid — Effect of valid order of detention passed before pronouncement of judgment but not brought to notice of Court—(Criminal P. C. (1898), S. 491).

Satyanarayana Rao J. (Raghava Rao J. dubitante)— A writ of habeas corpus is concerned with the justification for detention. The justification may be based upon an order originally passed or an order which was subsequently made and brought to the notice of the Court. But the essence of the matter is that if an order came into existence before the judgment is pronounced, it is the duty of the Government to bring it to the notice of the Court. The effect of the omission to do so would be that the order of the Court directing the release of the detenu would automatically discharge the fresh order passed before the pronouncement of the judgment and the Government thereafter would be precluded from putting forward the fresh order of detention in justification of the arrest and detention of the detenu. (Satyanarayana Rao and Raghava Rao JJ.) Gopalan A. K., In re,

AIR 1953 Mad 41 = 65 M L W 876 = 1952-2 M L J 690=1953 Cr L J 224.

——Habeas Corpus—Nature of proceedings—Jurisdiction of Court to consider validity of orders passed subsequent to institution of proceedings — (Criminal P. C. (1898), S. 491).

The analogy of civil proceedings in which the rights of parties have ordinarily to be ascertained as on the date of the proceedings cannot be invoked in habeas corpus proceedings. It is open to the Court in such proceedings to

CONSTITUTION OF INDIA (1950), Art. 226 —

27. Effect of valid orders pending illegal detention

consider if there was a valid order which came into existence later directing the detention and decline to release the person even if the earlier order was invalid. (Satyanarayana Rao and Raghava Rao JJ.) Gopalan A. K., In re,

AIR 1953 Mad 41=65 M L W 876 = 1952-2 M L J 690=1953 Cr L J 224.

——Habeas corpus, writ of — Detention valid on the date of hearing—That there was no valid cause for detention at prior stage if ground for release.

The analogy of civil proceedings where the rights of parties ordinarily have to be ascertained on the date of their institutions cannot be invoked in habeas corpus proceedings. If at any time before the Court hears the applications valid orders authorising custody are produced the release cannot be ordered on the ground that at some prior stage there was no valid cause for the detention. The question is not whether the later orders validate the earlier detentions but whether in the face of the later orders release can be directed. (Naik C. J., Sripat Rao and M. A. Ansari JJ.) Abdur Rahim v. Joseph A. Pinto,

AIR 1951 Hyd 11=ILR (1951) Hyd 1=52 Cr L J 1333 (FB).

28. Costs in habeas corpus proceedings.

——Habeas corpus writs—Power of Court to direct State to pay costs of application to detenu — See Criminal P. C. (1898), S. 491.

AIR 1951 Mad 267.

29. Appeal in habeas corpus matters.

——Arts. 226, 132, 134 (1) (c)—Order of release on application for writ of habeas corpus—Appealability under Constitution—Principles—(Criminal P. C. (1898), S. 491).

Under the Constitution which contains fuller and wider provisions as to appeal than those of the Government of India Act, 1935, which contained only S. 205 corresponding to Art. 132, there is no such immunity from appealability in the case of an order of release on an application for a writ of habeas corpus as obtains in England. The question of appealability of such an order must be judged with reference to the provisions of the Constitution and appealability must be recognised and given effect to within the limits defined by Art. 134 thereof. The intention of the framers of the Constitution seems to be that if on the one hand the absolute immunity from appeal against an order of release obtaining in England is not to be imported into India, appealability in India ought not to be treated as a matter of course on the other hand. The Constitution accordingly provides for a certificate of fitness from the High Court or for special leave from the Supreme Court as a 'sine qua non' for imperilling the liberty of a released subject, which is a matter of vital moment. Even so the High Court ought to be extremely chary of exercising its power under cl. (c) of the Article against the person released.

In all other criminal matters than those which fall under sub-cls. (a) and (b) of Art. 134 (1), the Constitution of India undoubtedly intends that the High Courts in the respective States in the territory of India should ordinarily be the final Courts of Appeal. This is a fact which must not be lost sight of by the Court when considering the question as to whether a certificate of fitness should or should not issue in any given case.

If the matter of an application for the writ of habeas corpus is not criminal in nature the provision of the Constitution governing appealability will be Art. 132 under which, except where a substantial question of law as to the interpretation of the Constitution arises, there can be no question of an appeal to the Supreme Court. (Satya-

CONSTITUTION OF INDIA (1950), Art. 226 —

29. Appeal in habeas corpus matters

narayana Rao and Raghava Rao JJ.) Public Prosecutor v. A. K. Gopalan,

AIR 1953 Mad 66 = 65 M L W 892 = 1952-2 M L J 725=1953 Cr L J 256.

30. Review or rehearing.

——Habeas corpus — Review or rehearing — Application disposed of on merits — Rehearing if permissible — See Criminal P. C. (1898), S. 491.

A I R 1951 Mad 611=52 Cr L J 252.

31. Mandamus—General.

——Writ of mandamus—Writ can be issued only if there is any statutory duty cast on Government to do something. (Weston C. J., and Falshaw J.) Satwant Singh v. State of Punjab,

A I R 1951 Punj 90 (1)=52 Cr L J 1230.

——Writ of mandamus—Nature of.

The grant of a writ of mandamus is, as a general rule, a matter for the discretion of the Court and is not a writ of right. (Reuben and Das JJ.) Bukhtiarpur Bihar Light Rly. Co. Ltd. v. State of Bihar

A I R 1951 Pat 231.

——Issue of mandamus in matters of discretion—Industrial Disputes Act (1947), S. 10 (1), proviso.

Where the State Government refuses to refer the industrial dispute under the proviso to S. 10 (1) of the Industrial Disputes Act, writ of mandamus under Art. 226 cannot be issued directing the Government to refer the dispute under the proviso. (Meredith C. J., Shearer and Das JJ.) Bagaram Tuloule v. The State of Bihar

A I R 1950 Pat 387 = 2 F J R 71 = 29 Pat 491 = 51 Cr L J 1509 (F B).

32. Demand and refusal of relief.

——Question relating to privileges of member of Legislature—Obligation to determine question is primarily on the house itself — Jurisdiction of High Court arises only when the house fails to perform its duties or refuses to do so or performs the duties contrary to law—See Constitution of India, Art. 194.

A I R 1952 Mad 117.

——Petition for writ of mandamus — No demand or refusal under impugned Act—Application whether maintainable.

Per Mangalmurti and Mudholkar JJ. — Ordinarily before a person petitions for a mandamus to enforce the performance of a public duty, or makes some other demand, he must show that he had made such a demand from the appropriate authority and that the demand was refused or not met. This is, however, not an inflexible rule. So, when in the particular circumstances, such a demand could not have been met, the absence of a demand has been held to be immaterial.

Thus where a petitioner applies under Art. 226 for a writ of mandamus directing the State Government not to enforce against him the C. P. and Berar Prohibition Act, 1938, or some sections thereof and to withdraw and cancel certain rules and notifications thereunder and it was found that he had not done any act under the Act nor was any action taken under the Act to his detriment and that there was no demand and refusal of a permit under the Act to him :

Held, that what the petitioner sought was something which the State Government or its agencies could not as things stood, be expected to comply with and hence, in the circumstances of the case, it being idle for him to make a demand upon them, the absence of demand did not affect the tenability of the petition.

Per Hidayatullah J. — The mandamus could not issue unless there was demand and a refusal or some act or

CONSTITUTION OF INDIA (1950), Art. 226 —

32. Demand and refusal of relief

omission is to be ordered and hence the application should be dismissed. (Hidayatullah, Mangalmurti and Mudholkar JJ.) Sheoshankar v. State Government of M. P.

A I R 1951 Nag 58 = I L R (1951) Nag 646 = 52 Cr L J 1140 (F B).

——Compliance with conditions similar to those laid down in S. 46, Specific Relief Act.

While in a case of urgency, where an immediate order may be necessary, the Court may not insist upon compliance with conditions similar to those laid down in S. 46, Specific Relief Act, in ordinary cases, the Court must insist upon compliance with those conditions. (Chagla C. J., Gajendragadkar and Tendolkar JJ.) Fram Nusserwanji v. State of Bombay

A I R 1951 Bom 210=52 Bom L R 799=I L R (1951) Bom 17=52 Cr L J 80 (F B).

33. Certiorari, against whom lies.

——Tests of Judicial Tribunal—(Special Tribunal)—(Civil P. C. (1908), S. 9).

A true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites :—(1) the presentation (not necessarily orally) of their case by the parties to the dispute ; (2) If the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence ; (3) if the dispute between them is a question of law, the submission of legal argument by the parties, and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law. (Patanjali Sastri C. J., B. K. Mukherjea, S. R. Das, Ghulam Hasan and Bhagwati JJ.) Maqbool Hussain v. State of Bombay

A I R 1953 S C 325 = 1953 S C A 641 = 1953 S C J 456=1953-2 M L J 113 = 1953 A W R (Sup) 84=1953 M W N 648=1953 S C R 730=56 Bom L R 13 = 1953 Cr L J 1432 (SC).

——Customs Collector acting under S. 182, Sea Customs Act—Sea Customs Act (1878), Ss. 19A and 182.

While exercising its jurisdiction under Art. 226 the High Court does not function as a Court of Appeal. It is only when the order of the inferior Tribunal or body is a Speaking order and there is an error of law on the face of the record that the Superior Court has power to quash it by Certiorari. The Collector when exercising his power under S. 182, Sea Customs Act, does not function as a Court of Justice. In the absence of any Regulations framed under S. 19A, Sea Customs Act, the Customs Authorities are masters of their own procedure. The absence of such regulations does not affect the jurisdiction of the Customs Collector to act and proceed under S. 182 of the Act. So long as principles of natural justice are observed and the Customs authorities have given a "fair opportunity to those who are parties in the controversy, to correct or contradict any relevant statement prejudicial to their view" they have discharged the obligation or duty cast upon them by the Statute. (Bose J.) Shew Pujan Rai Indrasan Rai Ltd. v. Collector of Customs

A I R 1952 Cal 789=1952 Cr L J 1651.

——Writ for quashing order—Arguments heard by Additional Collector—Order passed by Collector.

It is an accepted principle of law that it is only that authority who can pass the final order who hears the argument. There is no procedure of one authority hearing the case and expressing his opinion and sending it for formal sanction by a higher authority. Such a procedure may probably be prevalent and in force on the executive

CONSTITUTION OF INDIA (1950), Art. 226 —

33. Certiorari, against whom lies

or the administrative side but not at any rate on the judicial side :

Held, that the order passed by a Collector in a case where the arguments were heard not by him but by the Additional Collector was improper and should be quashed. (Shripat Rao and Shrinivasachari JJ.) Ali Mohomed v. Mahomed Abdul Gani

A I R 1952 Hyd 146=I L R (1952) Hyd 525 = 1952 Cr L J 1297.

——Writ of Certiorari — Power to issue when to be exercised.

Whenever any body of persons having legal authority to determine questions affecting the rights of subject and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the High Court exercised in issuing writs under Art. 226. (Subba Rao J.) A. Vedachala Mudaliar v. State of Madras

A I R 1952 Mad 276=1951-2 M L J 411=64 M L W 882=1951 M W N 882=1952 Cr L J 616.

——Writ of certiorari — Order cancelling license under Cl. 20, Bhopal Cotton Cloth Dealers' Licensing Order (18 of 1949) — Certiorari against Chief Commissioner passing such order.

The essential for a writ of Certiorari is that the act challenged must be a judicial or a quasi-judicial act.

The necessity of this condition is not affected by the passing of the Constitution of India.

The Chief Commissioner in passing an order cancelling the license of a dealer, under Cl. 20 of the Bhopal Cotton Cloth Dealers' Licensing Order (18 of 1949), does not act judicially or quasi-judicially. He acts as an Executive or an Administrative authority. The Chief Commissioner has absolute and unfettered discretion to pass the order under Cl. 20. (Sathaye J. C.) Jagannath Nathmal v. State of Bhopal

A I R 1951 Bhopal 5=1952 Cr L J 57.

——Assistant Collector acting under Ss. 167 and 183, Sea Customs Act—Nature of jurisdiction exercised — Rules of natural justice not observed — Order demanding fine—Order can be quashed by issue of writ under Art. 226—S. 198 and non-availment of remedy under S. 188 if bar issue of writ—See Sea Customs Act, S. 167.

A I R 1952 Cal 656.

——Writ of certiorari against non-judicial Acts — Certiorari.

Writs of certiorari and prohibition cannot issue unless the impugned order is a judicial or a quasi-judicial one. An order requisitioning property does not fall in either category and, therefore, a writ of 'certiorari' cannot be issued. (Mangalmurti and Mudholkar JJ.) Manohar v. G. G. Desai

AIR 1951 Nag 33 = 1951 N L J 346 = ILR (1951) Nag 791.

——Judicial and quasi-judicial proceedings—Test—Requisition of premises by Government under S. 25 (1), West Bengal Security Act — Nature of order —Government's action bona fide — Power of Court to enquire into reasonableness or policy, sense or any other aspect of the matter —Matters which the Courts can consider when order is before them for consideration—See West Bengal Security Act, S. 25 (1),

54 C W N 855.

34. Grounds of certiorari

——Proceedings under S. 107, Criminal P. C. pending against parties to a dispute regarding possession of land — Magistrate holding enquiry and passing order declaring one of the parties to be entitled to possession—Enquiry conducted completely ignoring the procedure laid down

CONSTITUTION OF INDIA (1950), Art. 226 — 34. Grounds of certiorari

either by S. 107 or S. 145 and admittedly conducted in that manner in order to avoid any proceedings under the latter section — Absence of any other provision of law on the revenue side which gave power to magistrate to pass order in question — Order held should be quashed —See Criminal P. C. (1898), S. 107,

AIR 1953 Raj 202 = 1953 Cr L J 1843.

——Order in contravention of S. 85, U. P. Panchayat Raj Act—Order should be quashed—See U. P. Panchayat Raj Act (26 of 1947), S. 85,

AIR 1954 All 3 = 1953 Cr L J 1842.

——A person making out a prima facie case that he is a citizen and not an alien is entitled to a writ of certiorari against the order of his deportation — See Constitution of India, Art. 19 (e),

AIR 1951 Pat 434.

35. Jurisdiction.

——(Civil P. C. (1908), S. 9).

A Civil Judge may be vested with the jurisdiction of both kinds, namely, civil and criminal. But when two jurisdictions are so distinct they cannot be exercised even simultaneously, much less can criminal jurisdiction be exercised in relation to a civil matter or civil jurisdiction in relation to a criminal matter. Therefore, an order which ought to have been made in exercise of civil jurisdiction, at appellate stage, if made in exercise of criminal jurisdiction, is made wholly without jurisdiction and can be set aside by the High Court under Art. 226. (Sinha C. J. and Mudholkar J.) Alla Malua Kurmi v. Civil Judge

AIR 1953 Nag 213 = 1953 N L J 237 = ILR (1953) Nag 620=1953 Cr L J 1096.

——Constitution of Panchayat Adalat in a manner clearly contravening the provisions of the Act under which the tribunal was formed—Act itself not providing power to High Court to cure such irregularities affecting the jurisdiction of the tribunal — Interference upon application under Art. 226 justified — See U. P. Panchayat Raj Act (26 of 1947), S. 49,

AIR 1953 All 118 = 1953 Cr L J 348.

——Cognizance of case taken by a Panchayat Bench of five panchas— Division by three of them is without jurisdiction—See U. P. Panchayat Raj Act (26 of 1947), S. 49,

AIR 1952 All 510 = 1952 Cr L J 940.

36. Stage at which certiorari can issue.

——Writ of certiorari, if lies after judgment for quashing conviction.

Per Chakravartti J. — Where an indictment has been tried and judgment pronounced, certiorari to quash will not be granted. But there is a distinction between quashing an indictment and quashing the whole proceedings for want of jurisdiction and in the latter type of case the writ would seem to lie even after the determination. This jurisdiction however is only procedural jurisdiction or jurisdiction in respect of the particular case in a tribunal otherwise competent, for when there was a total lack of authority in the person or persons who tried a case, the proceedings were not merely voidable but wholly void and in such cases no certiorari would lie. When it cannot possibly be said that the Special Judge in the case was a mere usurper of authority or a pretender, because the provision of law providing for the constitution of Special Courts, is not in itself 'ultra vires' the fact that the trial has been concluded is not therefore a bar to the quashing of the conviction on certiorari in the case. In any event, Art. 226 of Constitution speaks not of the English writs but of writs "in the nature of" those writs and consequently there is no reason why the High Courts in India should always confine themselves strictly to the Crown Side Practice in England. (Harries C. J., Chakravartti, Das, Banerjee and S. R. Das Gupta JJ.) Anwar Ali Sarkar v. State of West Bengal,

AIR 1952 Cal 150 = 1952 Cr L J 450 (FB).

CONSTITUTION OF INDIA (1950), Art. 226 — 36. Stage at which certiorari can issue

——Appeal from conviction under impugned Act under valid provisions thereof, pending — Whether writ of certiorari to quash conviction can issue—(Quaere) (Per Chakravartti J.) (Harries C. J., Chakravartti, Das, Banerjee and S. R. Das Gupta JJ.) Anwar Ali Sarkar v. State of West Bengal

AIR 1952 Cal 150 = 1952 Cr L J 450 (FB).

—Art. 227.

SYNOPSIS

1. Scope and applicability.
2. Power of superintendence — Nature and scope of.
   (a) Power is both judicial and administrative.
   (b) Illustrative cases as to where High Court may interfere.
   (c) Cases where High Court may not interfere.
3. Transfer of cases.
4. All Courts and Tribunals.
5. Revision and the power of superintendence
6. This Article and Art. 226.
7. Other remedy open.
8. Statutory bar.
9. Contempt of Court.
10. Retrospective effect.

1. Scope and applicability.

——Enabling power of High Court.

The extraordinary powers conferred on the High Court under Art. 227 enable the High Court to ensure that the tribunals are kept within the bounds of their authority and that they do what their duty requires and that they do it in a legal manner. (Ramaswami J.) Annamalai Mudaliar, In re,

AIR 1953 Mad 362 = 65 M L W 1229 = 1953 Cr L J 636.

——Nature of remedy.

The remedy that this article makes available is new. It did not exist under S. 224, Government of India Act, 1935, and it partakes of the character of an appeal or revision, though the power of the High Courts under the Article is described as one of superintendence. (Thadani C. J., Ram Labhaya and Deka JJ.) State v. Judhabir Chetri,

A I R 1953 Assam 35 = I L R (1953) 5 Assam 24 = 1953 Cr L J 395 (FB).

——Preamble and Art. 227 — Retrospective operation — Applicability of General Clauses Act—Order under Assam Opium Prohibition Act — Finality of — (General Clauses Act (1897), S. 6)—(Assam Opium Prohibition Act (23 of 1947), Ss. 16 and 17 (3)).

The Constitution in the matter of its interpretation is not placed on any higher pedestal than any other Act of the Legislature of the Dominion. Like all other Acts the General Clauses Act applies for purposes of interpretation of the Constitution and the provisions contained in it will, therefore, govern the interpretation, unless the context otherwise requires. There is nothing in Art. 227 which excludes the use of the provisions contained in the General Clauses Act for purposes of interpretation. They, therefore, do apply.

The Constitution is a repealing enactment within the meaning of S. 6, General Clauses Act. Article 227 has got therefore, no retrospective effect and cannot apply to a proceeding which was pending immediately before the date on which the Constitution came into force and the rights of the parties in regard to that proceeding shall be

CONSTITUTION OF INDIA (1950), Art. 227 —

1. Scope and applicability

regulated by the law which was in force on the date immediately preceding 26-1-1950.

Where, therefore, a proceeding under S. 16, Assam Opium Prohibition Act was at its appellate stage when the Constitution came into force :

Held, that the appellate order became final under S. 17 (3) of the Act and it was not open to challenge under Art. 227. (Thadani C. J., Ram Labhaya and Deka JJ.) State v. Judhabir Chetri,

A I R 1953 Assam 35 = I L R (1953) 5 Assam 24 = 1953 Cr L J 395 (FB).

——Scope—Meaning of the Article—Reference to marginal notes of corresponding provisions of Government of India Act for ascertaining the meaning — See Interpretation of Statutes,

A I R 1952 All 788 = 1952 Cr L J 1282.

2. Power of superintendence — Nature and scope of.

(a) Power is both judicial and administrative.
(b) Illustrative cases as to where High Court may interfere.
(c) Cases where High Court may not interfere.

2. Power of superintendence — Nature and scope of.

Superintendence includes power to guide, and encourage Judges of the subordinate Courts, to direct subordinate Courts and tribunals to carry out orders of the High Court; and to direct enquiry with a view to take disciplinary action for flagrant maladministration of justice. (Ramaswami J.) Annamalai Mudaliar, In re,

A I R 1953 Mad 362=65 M L W 1229=1953 Cr L J 636.

——Single Judge of High Court whether can exercise jurisdiction—See ibid, Art. 226,

A I R 1952 All 843 = 1952 Cr L J 1520.

The superintendence referred to in Art. 227 does not invest the High Court with an unlimited prerogative to interfere in cases where a wrong decision has been arrived at either in fact or in law and the powers contained therein must be restricted to cases of grave dereliction of duty and flagrant abuse of any fundamental principles of law. The right to obtain relief under it depends further on the conditions that no other remedy is available to the applicant and the remedying of the wrong is essential in order to prevent very serious results. (Misra J.) Pambhi v. State,

A I R 1952 All 526 = 1952 A W R (H C) 106= 1952 A L J 180 = 1952 R D (H C) 180=1952 Cr L J 1176.

——Order under S. 36, Legal Practitioners Act — Power of High Court to revise the order under powers conferred by the Article—See Legal Practitioners Act, S. 36.

A I R 1951 Ajmer 13.

2. Power of superintendence — Nature and scope of.

(a) Power is both judicial and administrative.

——Supervision over judicial matters.

Article 227 confers upon the High Court a power of supervision over all judicial matters decided by any Court or tribunal within the State. (Ramaswami J.) Annamalai Mudaliar, In re,

A I R 1953 Mad 362=65 M L W 1229= 1953 Cr L J 636.

——"Superintendence" — Meaning of.

(Per Agarwala J.) — Under the present Constitution in Art. 227 there is not to be found any provision corresponding to S. 224 (2), Government of India Act, 1935.

CONSTITUTION OF INDIA (1950), Art. 227 —

2. Power of superintendence — Nature and scope of — (a) Power is both judicial and administrative

The High Courts have now judicial powers of superintendence. (Sapru and Agarwala JJ.) Motilal v. State,

A I R 1952 All 963 = I L R (1952) 1 All 558 = 1952 Cr L J 1695.

——Validity of statutory bar contained in S. 49, Patiala Panchayat Act — See Patiala Panchayat Act (13 of 2000), S. 49,

A I R 1952 Pepsu 130 = 1952 Cr L J 1439.

——Supervision of judicial matters.

Under Art. 227 the High Court, now, has supervisory powers over all Courts and Tribunals within the State and this authorises supervision of judicial matters also. (Naik C. J., Sripatrao and M. A. Ansari JJ.) Abdur Rahim v. Joseph A. Pinto,

A I R 1951 Hyd 11=I L R (1951) Hyd 1=52 Cr L J 1333 (FB).

2. Power of Superintendence — Nature and scope of.

(b) Illustrative cases as to where High Court may interfere.

——Lower Court acting without jurisdiction—Magistrate remanding under S. 73, Bihar Panchayat Raj Act, case to Gram Cutcherry for retrial—Order is without jurisdiction—High Court can intervene — See Bihar Panchayat Raj Act (7 of 1948), S. 73,

A I R 1953 Pat 339 = 1953 Cr L J 1771.

——Illegal exercise of jurisdiction—(Criminal Law Amendment Act (1952), S. 7 (2)).

When there is illegal exercise of jurisdiction by any of the Courts or tribunals within the territorial jurisdiction of the High Court, the High Court in exercise of its power of superintendence under Art. 227 can interfere and set aside the orders impugned and give proper direction.

On the construction of relevant Gazette notifications, it was held that the Special Judge at Gauhati who succeeded in office his predecessor had at no time acquired any jurisdiction or seisin under S. 7, Criminal Law Amendment Act, 1952, over the case in which a Circle Inspector of Police stood charged with an offence punishable under S. 161, Penal Code, and S. 5, Prevention of Corruption Act, 1947, and his orders relating to the hearing of the case were without jurisdiction. (Sarjoo Prosad C. J. and Deka J.) Maidhan Das Agarwalla v. R. B. Medhi,

A I R 1953 Assam 220 = 1953 Cr L J 1768.

——Lower Court acting without jurisdiction — Tribunal constituted under S. 6 of Abducted Persons (Recovery and Restoration) Act (1949) held not properly constituted and its decision held was without jurisdiction — See Abducted Persons (Recovery and Restoration) Act (1949), S. 6,

A I R 1953 S C 10 = 1953 Cr L J 180 (SC).

——Failure by lower Court to exercise jurisdiction or do its duty—Panchayati Adalat not properly constituted — Objection not raised by accused during trial before Subdivisional Magistrate — Subsequent application under Arts. 226 and 227 to quash conviction — Effect of waiver —See U. P. Panchayat Raj Act (26 of 1947), S. 49 (2),

A I R 1952 All 489=1952 Cr L J 900.

——Conflict of jurisdiction — Power to stay criminal proceedings—See Criminal P. C. (1898), S. 344,

A I R 1953 Mad 439 = 1953 Cr L J 837.

——Conflict of jurisdiction—Power of High Court to stay proceedings pending in inferior criminal Courts — See Criminal P. C. (1898), Ss. 561A, 344,

A I R 1952 Assam 78 = 1952 Cr L J 654.

——Constitution of India, Art. 227.

Conflict of jurisdiction — Pendency of civil suit—High Court's power to stay criminal proceedings during such

CONSTITUTION OF INDIA (1950), Art. 227 —
2. Power of superintendence — Nature and scope of —(b) Illustrative cases as to where High Court may interfere

pendency. (Benson and Wallis JJ.) Anna Ayyar v. Emperor,

30 Mad 226 = 6 Cr L J 131.

——Illegal orders—Interference with illegal conviction by Panchayati Adalat — (U. P. Panchayat Raj Act (26 of 1947), S. 52 (1) (a).)

Panchayati Adalat has no jurisdiction to entertain a complaint and try a case where the allegation in the complaint clearly make out an offence under Penal Code which is not mentioned in S. 52 (1) (a) of the U. P. Panchayat Raj Act. Where, in such a case, it entertains the complaint and convicts the accused for a different offence under the Penal Code which is mentioned under S. 52 (1) (a) of the Act, the conviction is illegal and requires to be set aside when an application is made by the accused under Art. 227 of the Constitution. (R. Singh J.) Brij Narain v. Ram Dayal,

A I R 1954 All. 8 = 1953 A W R (H C) 483 = 1953 A L J 559=1953 Cr L J 1852.

——Illegal orders — Externment order — Variation by Appellate Court in a manner which was without jurisdiction — High Court could rectify the error — See Criminal P. C. (1898), S. 369.

A I R 1952 Assam 156=1952 Cr L J 1276.

——Illegal orders—Rectification of errors in judgment—Illegalities concerning sentence on accused — Extra-ordinary jurisdiction under Art. 227 should not be invoked to correct the errors—Proper course indicated—See Criminal P. C. (1898), S. 561A.

A I R 1953 Tra-Co. 233=1953 Cr L J 1265.

2. Power of superintendence—Nature and scope of — (c) Cases where High Court may not interfere.

——Criminal case in Panchayati Adalat — Some panches not signing order sheet on same date—Omission amounts to mere irregularity — Does not affect merits of case—No interference under Art. 227 on that ground — U. P. Panchayat Raj Act (1947), S. 83. (Agarwala J.) Rama Shanker Lal v. State of U. P.

A I R 1953 All. 347 = 1953 A L J 93 = 1952 A W R (HC) 53=I L R (1953) 2 All. 913=1953 Cr L J 751.

3. Transfer of cases.

——Application for transfer — Vague allegations — Criminal P. C. (1898), S. 526.

Every application for transfer of a case should furnish material particulars regarding the general allegations contained in the application against the judicial authority. Mere conclusions of the applicant unless supported by materials accompanying the application, would carry little weight in persuading the High Court to believe the allegations. (Mohammed Ahmed Ansari and Srinivasa Chari JJ.) Mohd. Baquar v. State of Hyderabad,

A I R 1951 Hyd. 82 = I L R (1951) Hyd. 174=52 Cr L J 708.

——Principles governing transfer applications—Criminal P. C. (1898), S. 526.

Where the accused has a reasonable apprehension that a fair and impartial trial or enquiry cannot be had, or where the ends of justice make it expedient, a transfer should be ordered. It is of paramount importance that parties arraigned before the Courts should have confidence in the impartiality of the Courts. It is the duty of the High Court at all events to clear away everything which might reasonably engender suspicion and distrust in the Courts and so to promote and maintain in the public a feeling of confidence in the administration of justice, which is so essential for social order and security. It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be

CONSTITUTION OF INDIA (1950), Art. 227 —
3. Transfer of cases

seen to be done. It is not any and every apprehension in the mind of the accused that can be a ground for transfer but it should be a reasonable apprehension, i. e., an apprehension which the High Court considers it reasonable for the accused as a reasonable person to entertain in the circumstances of the case.

The absence of bias or prejudice, however, does not completely cover the issue. The question has to be considered from the point of view of the fear or apprehension in the mind of the accused and whether the High Court considers that the accused as normal and reasonable person could reasonably entertain the fear or apprehension in the circumstances complained of.

As a general principle, founded on grounds of convenience, the uprightness and judicial outlook of Judges, it is true that expression of opinion in the discharge of the judicial functions in judicial proceedings cannot be considered to be a reasonable cause for transfer but this principle is also subject to the salient principles already referred to. Each case has to be considered on its own merits. (Shripat Rao, Mohammed Ansari and Suryanarayana Rao JJ.) Abdul Raoof v. State of Hyderabad,

A I R 1951 Hyd. 50 = I L R (1951) Hyd. 342=52 Cr L J 273 (FB).

——Art. 227 (1)—Power of superintendence—Nature and scope of — Magistrate not transferring case to Panchayati Adalat in a case governed by S. 56 — High Court if has power under S. 526, Criminal P. C., to transfer the case—The power of High Court under Art. 227 to give directions to the Magistrate to transfer the case — See U. P. Panchayat Raj Act (26 of 1947), S. 52,

A I R 1950 All. 611.

4. All Courts and tribunals.

——Administrative and judicial control over tribunal.

All agencies whether Courts or not, performing the duty of deciding disputed questions of right between parties on behalf of and under the sanction of the State and in accordance with State-made laws are placed under the administrative and judicial control of the High Court. Thus, the High Court has got revisional jurisdiction under Art. 227 by way of superintendence over the judicial work of a duly constituted tribunal, like the Deputy Registrar under the Co-operative Societies Act. (Ramaswami J.) Annamalai Mudaliar, In re,

A I R 1953 Mad. 362 = 65 M L W 1229 = 1953 Cr L J 636.

——Tribunal under S. 6 of Abducted Persons (Recovery and Restoration) Act (1949).

('Per Bhandari and Khosla JJ.') The Tribunal constituted under S. 6 of the Abducted Persons (Recovery and Restoration) Act is subject to the general supervision of the High Court by virtue of Art. 227 of the Constitution inasmuch as the Tribunal performs 'quasi' judicial functions, for it makes an enquiry into the status of an individual. (Bhandari, Khosla and Harnam Singh JJ.) Ajaib Singh Lehna Singh v. The State of Punjab,

A I R 1952 Punj. 309 = 54 P L R 260=I L R (1952) Punj. 381=1952 Cr L J 1313 (FB).

——Panchayati Adalats — Power of High Court to check assumption of excessive jurisdiction or to compel Panchayati adalats to exercise jurisdiction and do their duty — See Contempt of Courts Act (1926), S. 2,

A I R 1951 All. 667=52 Cr L J 984 (2).

——Power of superintendence over special Courts.

The Courts under the Assam Prohibition Act (XXIII of 1947) cannot be regarded as Special Courts in any sense. They are Courts under the Criminal P. C. Further Art. 227, Constitution of India, makes no distinction between ordinary and Special Court and brings all Courts

CONSTITUTION OF INDIA (1950), Art. 227 —

4. All Courts and tribunals

except Courts constituted under any law relating to the Armed Forces subject to the power of superintendence conferred on the High Courts. The powers of superintendence vesting in the High Court, therefore, can certainly be exercised in suitable cases in respect of orders passed under that Act. (Thadani C. J. and Ram Labhaya J.) Israil Khan v. State,

A I R 1951 Assam 106=I L R (1951) 3 Assam 181=52 Cr L J 966.

——Jurisdiction over Special Tribunals.

The word 'superintendence' cannot be confined to mere matters of administrative control but confers judicial powers also on the High Court. The High Court has powers of superintendence not only over Courts subject to its appellate jurisdiction but also over those whose decisions are not subject to appeal to the High Court. If there be laches or denial of justice by a Special Judge the High Court can, under Art. 227, transfer a case from the Special Judge. This jurisdiction cannot be taken away by State legislation such as Special Judges' Regulation. (Mohammed Ahmed Ansari and Srinivasa Chari JJ.) Mohd. Baquar v. State of Hyderabad,

A I R 1951 Hyd. 82=I L R (1951) Hyd. 174=52 Cr L J 708.

——Applicability — Special Tribunal constituted under Special Tribunals Regulation — Power to transfer under Art. 227—Criminal P. C. (1898), S. 526

Article 227 of the Constitution is applicable to the Court of the Special Tribunal constituted under the Special Tribunals Regulation and the powers of superintendence conferred on the High Court are sufficiently wide to include the principles laid down in S. 494, Hyderabad Criminal P. C. (corresponding to S. 526, Indian Criminal P. C.) (Shripat Rao, Mohamed Ansari and Suryanarayana Rao JJ.) Abdul Raoof v. State of Hyderabad,

A I R 1951 Hyd. 50 = I L R (1951) Hyd. 342=52 Cr L J 273 (FB).

5. Revision and the power of superintendence.

——Nyaya Panchayats under Act 1 of 1947 — C. P. and Berar Panchayats Act (1 of 1947) S. 83 (3).

The High Court has no power of revision having regard to S. 83 (3) of the Central Provinces and Berar Panchayats Act, 1946 (1 of 1947). But where the offence was committed on the 11th June 1950, the High Court undoubtedly has power of judicial superintendence over the Nyaya Panchayat tribunals exercising powers under the Act, having regard to Art. 227 (1) of the Constitution. (Hemeon and Deo JJ.) Shrikisan Jaskaram v. Dattu Shivaram

A I R 1953 Nag 14=1952 N L J 503 = I L R (1953) Nag 936=1953 Cr L J 251.

——High Court's revisional jurisdiction taken away — Exercise of power of superintendence.

Since the jurisdiction of the High Court under Art. 227 is extraordinary, it should not serve ordinarily as a substitute for revisional jurisdiction in cases where the revisional jurisdiction has been taken away from the High Court by a competent Legislature, though even in such cases absence, excess or abuse of jurisdiction will no doubt justify interference. The High Court may also, in such cases draw on its powers of superintendence, to avoid or prevent obvious miscarriage of justice. It will not also be justified in constituting itself a Court of appeal and substitute its own view on findings of fact after a minute scrutiny of the evidence, though the extraordinary jurisdiction may be utilised for correcting miscarriages of justice which have been occasioned by patent errors of law or procedure which cannot be corrected otherwise. What weight should have been attached

CONSTITUTION OF INDIA (1950), Art. 227 —

5. Revision and the power of superintendence

to the statements of witnesses on either side is a matter for which powers of superintendence of the High Court may not be invoked. Case law discussed. (Thadani C. J. and Ram Labhaya J.) Israil Khan v. State

A I R 1951 Assam 106 = I L R (1951) 3 Assam 181 =52 Cr L J 966.

6. This article and Art. 226.

——Distinction between Arts. 226 and 227 — See ibid, Art. 226

A I R 1952 All 963=1952 Cr L J 1695.

7. Other remedy open.

——Interference at an interlocutory stage—See Criminal P. C. (1898), S. 561A

A I R 1953 All 630=1953 Cr L J 1407.

8. Statutory bar.

——Section 8, Abducted Persons (Recovery and Restoration) Act whether affects power of High Court to issue writs—See ibid, Art. 226

A I R 1953 All 613=1953 Cr L J 1384.

——Jurisdiction under Article if taken away by S. 85 (5), U. P. Panchayat Act—See ibid, Art. 226

A I R 1952 All 963=1952 Cr L J 1695.

——High Court's power of superintendence— Nature and extent of — (U. P. Panchayat Raj Act (26 of 1947), S. 85 (5))

A reading of the entire Art. 227, Constitution of India in the light of the antecedent law on the subject leads one to the irresistible conclusion that the purpose of the Constitution makers was to make the High Court responsible for the entire administration of justice and to vest in the High Court an unlimited reserve of judicial power which could be brought into play at any time that the High Court considered it necessary to draw upon the same. Springing as it does from the Constitution, which is the parent of all Acts and Statutes in India, the fact that the judgment or order of a Court or tribunal has been made final by an Act or the fact that the body performing judicial functions is a special tribunal constituted under a Statute cannot be set up as a bar to the exercise of this power by the High Court. The prohibited area is to be found within the four corners of the Constitution itself and nowhere else. The fact that these unlimited powers are vested in the High Court should, however, make the High Court more cautious in its exercise. The self-imposed limits of these powers are established and laid down by the High Courts themselves. These powers cannot be exercised unless there has been an unwarranted assumption of jurisdiction not possessed by Courts or a gross abuse of jurisdiction possessed by them or an unjustifiable refusal to exercise a jurisdiction vested in them by law.

The High Court may also be moved to act under it when there has been a flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record or an outrageous miscarriage of justice. But the High Court will not be justified in converting itself into a Court of appeal and subverting findings of fact by a minute scrutiny of evidence or interfering with the discretionary orders of Court. Further, this power should not be exercised, if there is some other remedy open to a party. Above all, this is a power possessed by the Court and is to be exercised at its discretion and cannot be claimed as a matter of right by any party.

Consequently, notwithstanding the provisions of S. 85 (5), U. P. Panchayat Raj Act, the High Court can exercise its powers of superintendence, over proceedings of the

CONSTITUTION OF INDIA (1950), Art. 227 — 8. Statutory bar

Panchayat Adalat or any order passed in revision therefrom. (Nasir Ullah Beg J.) Jodhey v. State

A I R 1952 All 788=1952 A L J 493 = 1952 A W R (HC) 547=1952 Cr L J 1282.

——Art. 227 (1) — Withdrawal of revisional power of High Court under S. 85 (5), U. P. Panchayat Raj Act — High Court if has power to interfere and set aside orders under that Act under Art. 227—See U. P. Panchayat Raj Act (1947), S. 85 (5)

A I R 1952 All 787=1952 Cr L J 1268.

——Art. 227 (1) — Assam Opium Act, S. 17 (3) if has the effect of limiting High Courts' power of superintendence under Art. 227 over special Courts — See Assam Opium Prohibition Act, (23 of 1947), S. 17 (3)

A I R 1951 Assam 106=52 Cr L J 966.

—Even if the judgment or order of the Court or tribunal functioning within the territorial limits of the jurisdiction of the High Court is made final by statute and even if the Court itself is not subject to the appellate jurisdiction of the High Court, its judgments or orders may be interfered with in the exercise of the powers of superintendence of the High Court. The effect of Art. 227 of the Constitution is that not only it restores to the High Courts the jurisdiction that was taken away by S. 224 (2) of the Government of India Act, 1935, but it enlarges the powers of superintendence which the High Courts exercised before 1935 by dispensing with the requirement as a preliminary to the exercise of the powers of superintendence that the Court over which this power is sought to be exercised should be subject to the appellate jurisdiction of the High Court and this power is obviously not limited to matters administrative only. (Thadani C. J. and Ram Labhaya J.) Israil Khan v. State

A I R 1951 Assam 106=I L R (1951) 3 Assam 181=52 Cr L J 966.

9. Contempt of Court.

——Power of High Court to punish for contempt of all Courts and tribunals over which it has power of superintendence under Art. 227 — See Contempt of Courts Act (1926), S. 2

A I R 1951 Punjab 49=52 Cr L J 950.

10. Retrospective effect.

——Retrospective operation — Applicability of provisions of General Clauses Act if excluded while interpreting the Constitution—See ibid, Preamble

A I R 1953 Assam 35=1953 Cr L J 395 (FB).

——Art. 227 may not be applied retrospectively. (Thadani C. J. and Ram Labhaya J.) Israil Khan v. State

A I R 1951 Assam 106=I L R (1951) 3 Assam 181=52 Cr L J 966.

——Art. 228.

——Prosecution for violation of some section or rule — Procedure to be followed—See ibid, Art. 226

A I R 1953 Punjab 77=1953 Cr L J 549.

——Question of constitutional law incidentally arising — Judgment capable of being given on other grounds—High Court will not express any opinion on constitutional question. (Palnitkar, Mohd. Ahmed Ansari and A. Shrinivasa Chari JJ.) Pannalal Lahoti v. State of Hyderabad

A I R 1952 Hyd 187 = I L R (1952) Hyd 684= 1952 Cr L J 1740 (FB).

——Procedure.

A subordinate Court should only make a reference to the High Court, when it is satisfied that a case pending before it involves a real or substantial question as to the validity of any Act or regulation. A mere plea that an Act is 'ultra vires' will not suffice. If it is not so satisfied it should go on with the trial, leaving it to the aggrieved accused to move the High Court under Art. 228, and to continue the trial until such an application is admitted and the trial stayed. (Mack and Somasundaram JJ.) In re M. Rajarama Reddi

A I R 1952 Mad 578=65 M L W 267=1952 M W N 261=1952-1 M L J 468=1952 M W N (Cr) 61= I L R (1953) Mad 191=1952 Cr L J 1235.

CONSTITUTION OF INDIA (1950), Art. 228

——Entire Act challenged—No obligation on Government to file affidavit in reply.

Where an entire Act is called in question as 'ultra vires', there is no obligation on the State Prosecutor on the criminal side to file an affidavit at all seeking to uphold its validity and the onus is on the petitioner to satisfy the Court under Art. 228 that there is a substantial question of law as to the interpretation of the Constitution, in other words, that the Act can for some 'prima facie' substantial reasons be challenged in a Court of law. (Mack and Somasundaram JJ.) In re M. Rajarama Reddi

A I R 1952 Mad 578=65 M L W 267=1952 M W N 261=1952 1-M L J 468=1952 M W N (Cr) 61=I L R (1953) Mad 191=1952 Cr L J 1235.

——'Involves' a substantial question of law as to the interpretation of the Constitution.

Before the High Court can act under Art. 228 the case must involve a substantial question of law & that such question must relate to the "interpretation of the Constitution' & not merely 'application of the Constitution." The distinction between "interpretation" & "application" is substantial & significant. "Interpretation" is the act of making intelligible what was before not understood, ambiguous, or not obvious. It is the method by which the meaning of language is ascertained. Resort to interpretation is never to be had where the meaning is free from doubt.

Where the only question involved in the case is whether S. 23, Bhopal Public Safety Act, 1947 & S. 5, Bhopal (Administration) Order are hit by the language of Art. 13 & Art. 19 (1) (a) of the Constitution, the case does not involve a question as to the interpretation of the Constitution &, therefore, Art. 228 cannot apply to such a case. (Sathaye J. C.) Mahmood-ul-Hussaini v. The State

A I R 1951 Bhopal 9=1952 Cr L J 78.

—Art. 238.

——Order of detention — Delegation of power in Part B States — See Preventive Detention Act (IV of 1950), S. 3 (1)

A I R 1951 Pepsu 147=52 Cr L J 1215.

—Art. 241.

——Scope—See Judicial Commissioner's Courts (Declaration as High Courts) Act (1950), S. 6 (a)

A I R 1952 H P 5=1952 Cr L J 114.

—Art. 245.

SYNOPSIS

1. Retrospective effect.
2. Sovereignty of Legislature.
3. The Legislature and judiciary.
4. Delegated legislation—General.
   (a) Illustrative cases.
   (b) Courts' power to reject Act on ground that it is delegated legislation.
5. Conditional legislation.
6. Territorial extent of legislative power.
7. Constitutional validity of Statutes.

1. Retrospective effect.

——Effect on validity of existing laws which are not contrary to the Constitution — See Essential Supplies (Temporary Powers) Act (1946), S. 1

A I R 1951 All 816=52 Cr L J 1474.

——Arts. 245, 246—Scope—Whether retrospective.

CONSTITUTION OF INDIA (1950), Art. 245 —

1. Retrospective effect

Arts. 245 and 246 restrict the State Legislature's competence to legislate, but they are clearly prospective in their application and do not affect what was done before they came into force. They need not therefore be referred to while considering the validity of a State legislation made before the passing of the Constitution, (Hidayatullah, Mangalmurti and Mudholkar JJ.) Sheoshankar v. State Government of M. P.

A I R 1951 Nag 58=I L R (1951) Nag 646 = 52 Cr L J 1140 (FB).

——Legislature — Retrospective effect — It can be given only by Act of Legislature and not by executive order.

In matters of criminal law, retrospective effect can be given only by an Act of the Legislature, validating Act, and not by the executive orders of Govt. (Davis C. J. Lobo and Weston JJ.) Nawab Jam Khambukhan v. Emperor

A I R 1943 Sind 39=15 R S 107=204 I C 415=44 Cr L J 293 (FB).

2. Sovereignty of Legislature.

——Indian Legislature—Powers of.

Per Desai J. — The powers of the Indian Legislature within its mandate are as plenary and full as those of the British Parliament. Provided that it has power to make laws with respect to the particular matter, it can make any laws which the British Parliament can. Once it acts within its scope, the difference between it and the British Parliament disappears. The doctrine of delegatus non potest delegare does not apply to the Indian Legislature. (Raghubar Dayal and Desai JJ.) State v. Basdeo

A I R 1951 All 44=I L R (1952) 2 All 360=52 Cr L J 1191.

——Arts. 245 (1), 246—Legislative power of Parliament, how far limited.

Per Das J. — By Art. 245 (1) the legislative power of Parliament is definitely made "subject to the provisions of this Constitution." A perusal of Art. 19 makes it abundantly clear that none of the seven rights enumerated in clause (1) of that Article is an absolute right, for each of these rights is liable to be curtailed by laws made or to be made by the State to the extent mentioned in the several clauses (2) to (6) of that Article. Those clauses save the power of the State to make laws imposing certain specified restrictions on the several rights. The unlimited legislative power given by Art. 246 read with the different legislative lists in the Seventh Schedule is cut down by the provisions of Art. 19 and all laws made by the State with respect to these rights must, in order to be valid, observe these limitations (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras

AIR 1950 S C 27=1950-2 M L J 42=63 M L W 638 =1950 S C J 174=1950 M W N 495=1950 S C R 88= =1950 M W N (Cr) 127=51 Cr L J 1383 (SC).

——Arts. 245 and 246—Legislatures—Powers of—Written Constitution.

Per Ray C. J.—No legislative authority that is subject to a written Constitution which it is bound to obey possesses sovereign powers to the fullest extent. No legislative authority can make laws that are not accerding to, and consistent with, the fundamental laws that have been prescribed for its government by the people, who are superior to both the law-making and the Constitution themselves. (Ray C. J., Jagannadhadas, Panigrahi and Narasimham JJ.) Prahalad Jena v. State

A I R 1950 Orissa 157=I L R 1950 Cut 222=51 Cr L J 1189 (FB).

CONSTITUTION OF INDIA (1950), Art. 245 —

2. Sovereignty of Legislature

——Indian Legislature.

Power to legislate — It has unrestricted power of legislation within restricted area—Legislature cannot delegate its legislative power to another authority but can delegate non-legislative power 4 Cal. 172 (P. C.) and (1884) 9 A. C. 117, Rel. on. (Satyanarayana Rao and Basheer Ahmed Sayeed JJ.) In re Kalyanam Veerabhadrayya

A I R 1950 Mad 243 = 1949-2 M L J 663=1949 M W N 733=51 Cr L J 615.

——Legislature—Competency of — Ultra vires — Letters Patent erecting colony giving power to colony to legislate in respect of peace, order and good government subject to rules already made or may be made by Imperial Parliament—Colony passing law protecting members of legislature from prosecution for anything said as member in the council — Such law held was within powers granted by Letters Patent—Imperial Act authorising representative legislature to make laws respecting constitution powers and procedure of such Legislature — Colonial Legislature not representative legislature — Act held did not take away powers derived by non-representative legislature from any other source but it only conferred on them representative legislatures—Moreover granting of privilege of speech held did not fall within the words "constitution, powers and procedure." Such law therefore was not ultra vires and was within powers of colonial legislature — Seychellers Penal Code (Ord. 10 of 1904), S. 192 (1) (a) — Colonial Laws Validity Act, 1865 (28 and 29 Vict. Cap. 63), Ss. 2 and 5. (Lords Simonds, Uthwatt, Morton of Henryton and Reid) Chenard & Co. v. Joachim Arissol,

A I R 1949 P C 127=(1949) A L J 141=1949 A W R (P C) 246=1949 All Cr C 45 (P C).

——Indian Legislature—Powers of legislation, extent of.

It is well settled that the Indian Legislature is not a sovereign Legislature like the Imperial Parliament. Its powers are expressly limited by the Acts of Parliament which created it and it can do nothing beyond the limits which circumscribe these powers. But when the Indian Legislature is acting within these limits, it is not in any way an agent of the Imperial Parliament but has, and was intended to have plenary powers of legislation as large and of the same nature as those of the Parliament itself : 4 Cal 172 (PC), Rel. on. (Abdul Rashid, Sale and Munir JJ.) Mohammad Mohy-Ud-Din v. Emperor,

AIR 1946 Lah 158=224 IC 608=ILR (1947) Lah 327 =47 Cr L J 645 (FB).

——Legislature—Imperial Parliament—Powers of.

The Imperial Parliament is supreme and has powers to enact laws affecting the liberty of person and the rights of property enjoyed by the subject in any manner whatever without assigning any reason whatsoever.

[Powers of Indian Central Legislature, indicated.] (Bhagwati J.) Tan Bug Taim v. Collector of Bombay,

AIR 1946 Bom 216=47 Bom L R 1010=224 I C 476 =ILR (1946) Bom 517.

——Legislature.

Per Iqbal Ahmad C. J.—Even though the powers of the Indian Legislature are limited by the Act of Parliament which created it, that Legislature has, when acting within those limits, plenary powers of legislation as large and of the same nature as those of Parliament itself. (Iqbal Ahmad C. J., Allsop and Bajpai JJ.) Madho Saran Singh v. Emperor,

AIR 1943 All 379=(1943) A L J 511=16 R A 239= 1943 A W R (HC) 332=ILR (1944) All 42=212 I C 83 =45 Cr L J 491 (FB).

——Legislature—Position of—Duties and powers of.

Within the ambit of its authority, it is undoubted that the Indian Legislature exercises sovereign authority. The

CONSTITUTION OF INDIA (1950), Art. 245 — 2. Sovereignty of Legislature

Indian Legislature, within the limits which circumscribe its powers is not in any sense an agent or delegate of the Imperial Parliament and was intended to have plenary powers of legislation as large and of the same nature as those of Parliament itself. When a question arises whether the prescribed limits have been exceeded, the Courts must, of necessity, determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which negatively they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition of restriction by which that power is limited, it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions. (Davis C. J., Lobo and O'Sullivan JJ.) Vishindas Lachmandas v. Emperor,

A I R 1944 Sind 1=ILR (1943) Kar 449=16 R S 217 =212 I C 56=45 Cr L J 471 (FB).

——Sovereign and subordinate Legislature — Jurisdiction of.

Per Sen J.—There is fundamental difference between a Sovereign and a subordinate Legislature. No Court can question the validity of a law made by a Sovereign Legislature like Parliament inasmuch as it has unfettered legislative powers. Bodies or persons given legislative powers by Parliament are in a different position—they are subordinate or non-sovereign Legislatures and as such their Acts may be adjudicated upon by Courts which, in a proper case, may declare them to be ultra vires. A non-sovereign Legislature which has made a law which is ultra vires of itself cannot by a subsequent Act declare such law or any part thereof to be intra vires. To permit this would be to permit a Legislature with powers limited by some other authority to enlarge its powers by its own act without reference to the authority creating it. Now if this cannot be done directly, obviously, it cannot be done indirectly by means of drafting or other devices. (Derbyshire C. J., Khundkar and Sen JJ.) Sushil Kumar v. Emperor,

AIR 1943 Cal 489=47 C W N 757=16 R C 297=78 C L J 281=208 I C 605=45 Cr L J 37 (SB).

3. The Legislature and Judiciary.

——Ultra vires — Test of severability — Correct test of severability is to ascertain whether after the invalid portions of the statute in question are deleted a different law is created. (Naik C. J., Sripatrao and M. A. Ansari JJ.) Abdur Rahim v. Joseph A. Pinto,

A I R 1951 Hyd 11=I L R (1951) Hyd 1=52 Cr L J 1333 (FB).

——Non-sovereign Legislature — Court, if can go into reasonableness of enactment.

Per Desai J.—It is not for a Court to go into the question of reasonableness or propriety of any enactment of even a non-sovereign Legislature. How to legislate is the sole concern of the Legislature; a Court has nothing to do with the means with which the Legislature hopes to secure its end. (Raghubar Dayal and Desai JJ.) State v. Basdeo,

A I R 1951 All 44=ILR (1952) 2 All 360=52 Cr L J 1191.

——Legislature — Views of constitutionalists and Courts, if binding.

Per Desai J. — The view of constitutionalists and American Courts are not at all binding on the Indian Legislature; as a matter of fact, the views of Indian Courts also are not binding. How it should legislate is a matter solely for its concern and it is not open to a Court to throw

CONSTITUTION OF INDIA (1950), Art. 245 — 3. The Legislature and Judiciary

out an enactment, which is within its scope, on the ground that it is unreasonable, unnecessary or improper, or confers too much power upon some authority. (Ragubar Dayal and Desai JJ.) State v. Basdeo,

A I R 1951 All 44=ILR (1952) 2 All 360=52 Cr L J 1191.

——Ultra vires.

An Act cannot be declared to be invalid, merely because it may be feared that the Govt. may abuse it in future nor are the Courts at liberty to declare an Act void, because it is in their opinion opposed to the spirit that is supposed to pervade the Constitution but not expressed in words. (Venkata Ramaiya, Balakrishnaiya and Mallappa JJ.) Abdul Khader v. State of Mysore,

AIR 1951 Mys 72=ILR (1951) Mys 284=52 Cr L J 992 (FB).

——Legislature — Extent of Sovereign and subordinate legislations—Difference between, pointed out.

Per Bajpai J.—There is a distinction between Sovereign legislation and subordinate legislation. Legislation by Parliament is a Sovereign legislation and legislation by the Governor-General or the Central Legislature or the Provincial Legislature is a subordinate legislation. No Court in India or in England can question the validity of anything contained in the Sovereign Act. The same, however, cannot be said of an Act passed by the Central Legislature or an Ordinance promulgated by the Governor-General. A subordinate Legislature has limitations upon its law making powers. It can legislate only in respect to matters over which it has jurisdiction and Courts can declare (as indeed the Federal Court has declared certain provisions of the Special Criminal Courts Ordinance ultra vires) that in certain respects the subordinate Legislature has exceeded its powers. It follows from this that non-Sovereign Legislature which has made a law which is ultra vires of itself cannot by a subsequent Act declare such law or any part thereof to be intra vires. To permit this would be to permit a Legislature with powers limited by some authority to enlarge its powers by its own act without reference to the authority creating it. Now if this cannot be done directly, obviously it cannot be done indirectly by means of drafting or other devices. (Iqbal Ahmad C. J., Allsop and Bajpai JJ.) Madho Saran Singh v. Emperor,

AIR 1943 All 379=(1943) A L J 511=16 R A 239= I L R (1944) All 42=1943 A W R (H C) 332=212 I C 83=45 Cr L J 491 (FB).

——Arts. 245 and 144 — Legislature — Federal Court — Decision by, how far fetters rights of Legislature.

A decision of the Federal Court in a constitutional matter (not being a question of conflict between different Legislatures) having been given on certain premises no Legislature can enact legislation which will affect the validity of the premises but if the same or similar results can be reached by legislation the validity of which depends on different premises the previous decision will be no bar. In other words, a legislature may, if it can, get round the decision but may not override it. (Brough and Sinha JJ.) Jailal Sahu v. Emperor,

A I R 1943 Pat 346=10 B R 67=16 R P 74=22 Pat 565=24 P L T 302=209 I C 55=44 Cr L J 809.

4. Delegated Legislation—General.

(a) Illustrative Cases.

(b) Court's power to reject Act on ground that it is delegated legislation.

4. Delegated legislation—General.

——Delegation of power to administrative bodies to enable them to carry out the principles embodied in Act is not void—See Arms Act (1878), S. 14

A I R 1953 Madh B 236=1953 Cr L J 1409.

CONSTITUTION OF INDIA (1950), Art. 245 — 4. Delegated legislation—General

——Provision in Act that its operation is to be determined by some officer if amounts to delegation of legislative power — See (Hyderabad) Special Tribunals Regulation (5 of 1358F.)

A I R 1953 Hyd 145=1953 Cr L J 785.

——Power to delegate essential legislative functions — Arts. 245 and 246 correspond to Ss. 99 and 100, Govt. of India Act, 1935 and these sections do not confer power to delegate essential legislative functions — India (Central Government and Legislature) Act 1946 has not altered the quality and nature of powers conferred by these sections —See Government of India Act (1935), S. 99.

A I R 1953 Nag 58=1953 Cr L J 481.

——Reasonableness—Justiciable standard.

It is a fundamental principle of law that rules or regulations or orders made under a power conferred by the Legislature upon a subordinate authority must be reasonable. This furnishes a justiciable standard for the Courts to apply to all subordinate legislation. By this wholesome rules no subordinate legislation may make rules and regulations which may be considered unreasonable. Public interest is thus safeguarded and the arbitrariness of executive bodies is thus curbed and controlled. (Agarwala, V. Bhargava and Brij Mohan Lall JJ.) Bhushan Lal v. State

A I R 1952 All 866 = 1952 A W R (HC) 327 = 1952 A L J 412=I L R (1953) 2 All 226 = 1952 Cr L J 1676 (FB).

——The principle that whenever power is conferred upon the Legislature to pass laws in a field mentioned, the power carries with it the power to pass laws on matters which may be called subsidiary or ancillary cannot possibly be applied where subordinate powers of legislation are conferred upon a body, whether it may be Municipality which is empowered to make by-laws, or it may be the Central Government itself, empowered to provide by an order for regulating the production, distribution and supply of, and trade and commerce in essential commodities like cotton, etc. It cannot act beyond the powers except, of course, to the extent that any other powers which it takes upon itself are justified by the doctrine of implied powers; but where the doctrine of implied powers cannot be availed of, it is not permissible to a body, to which powers of subordinate legislation have been given, to say that the power which has been given to it carried with it what may be called subsidiary or ancillary powers of operating beyond the field within which it can operate. (Bavdekar and Chainani JJ.) Agrawal Ayengar & Co. v. State.

AIR 1951 Bom 397=53 Bom L R 689=21 Bom Cr C 189=I L R (1952) Bom 105=52 Cr L J 1381.

——Per Desai J. — If a Legislature, while legislating in respect of a certain matter, confers powers to make rules in respect of that matter on some authority, it cannot be said to be delegating legislative powers. If what the Legislature does amounts to law in respect of that matter, it cannot at the same time amount to delegated legislation. One act cannot at the same time be an act of making laws and an act of delegating the power to make laws, because the two are contradictory in terms. When an authority makes rules in exercise of the powers conferred upon it by the Legislature, the Act is the real authority behind the rules and the Legislature retains control over the authority and the rules. So long as it retains control it cannot he said that it has delegated the power. (Raghubar Dayal and Desai JJ.) State v. Basdeo

A I R 1951 All 44 = I L R (1952) 2 All 360 = 52 Cr L J 1191.

——Delegation of legislative power — Principles stated — Power to extend life of Statute—Delegation to non-legislative body—Validity—U. P. Control of Supplies (Temporary Powers) Act (II [2] of 1947), S. 1 (4)—U. P. Control of Supplies (Continuance of Powers) Ordinance VIII [8] of 1948—U. P. Control of Supplies (Continuance of Powers) Act XLIII [43] of 1948.)

The power conferred upon a Legislature to make laws cannot be delegated or transferred by it to any other body or authority. Such a Legislature, though it may have plenary powers within the limits set by the Constitution of the State, cannot give up those powers and thus pass on the duty of making laws to another authority. Such a procedure would amount to a surrender of its legislative powers, a self-effacement which is not permitted by any Constitutional Law.

Exigencies of modern life, however, have engrafted certain exceptions on the general principle. The "exceptions" may be summed up under the following general heads :

(1) A Statute may be conditional and its taking effect may be made to depend upon some subsequent event e. g., the determination of the existence or absence of certain facts or conditions on which the operation of the Statute is contingent. This is not really an instance of a delegation of a legislative function. Such a form of legislation is inherent in the very nature of the plenary character of legislative power vested in a particular Legislature. Similarly, it may be provided that an enactment shall come into operation only on the petition of a number of electors or a number of people.

(2) A Legislature may enact a law complete in itself, but may expressly authorize specified officials within definite limitations to provide rules and regulations for carrying out and enforcement of the law enacted. The discretion to be exercised by the non-legislative authority must be limited and it must be exercised within the limits prescribed by the law; such authority may fill in the details by making by-laws, rules or regulations.

(3) A Legislature may delegate any power which is not strictly legislative although it may itself be in a position to exercise that power. The line of demarcation between those essentially legislative functions which must be exercised by the Legislature itself and those of an administrative character which may be delegated to another is, as mentioned already, very vague and fluctuating. It is, however, the nature of the power rather than the manner in which it has to be exercised which determines whether or not the delegation is legal.

(4) A limited power of legislation conferred on municipalities and other local bodies which enjoy a certain measure of local self-Government has also been recognized as an exception to the general rule. Indeed such a delegation of power is not regarded as a transfer of "general legislative power" but rather as the grant of the authority to prescribe local regulations.

The duration of a statute is a matter for determination by the Legislature itself. It is of the nature of an essential legislative act. Delegation of such a power is not permitted by law. There is no real analogy between "conditional legislation" which authorizes a non-legislative authority to determine the commencement or termination of an Act and an act done in exercise of a power to determine the life of an enactment itself.

The U. P. Control of Supplies (Temporary Powers) Act, Act II [2] of 1947, was not in force on 3-12-1947, nor would it be deemed to be in force on that date in view of the United Provinces Ordinance No. VIII [8] of 1948 and the United Provinces Act XLIII [43] of 1948.

Section 1 (4) of that Act in so far as it vests powers in the Provincial Government to direct by notified order that the act shall continue in force for two years beginning with 1-10-1946, is ultra vires the powers of the Provincial

CONSTITUTION OF INDIA (1950), Art. 245 — 4. Delegated legislation — General

Legislature. (Wali Ullah, Sankar Saran and Desai JJ.) Ram Kishan v. State

A I R 1951 All 181 = 1951 A L J 64 = 1951 A W R (H C) 128 = 1951 A Cr R 23=I L R (1952) 1 All 376= 52 Cr L J 333 (FB).

——Delegation of power—Delegation of legislative powers —Delegation of ministerial functions—Distinction pointed out. (Agarwala J.) Kunni Lal v. Rex

A I R 1949 All 32 = I L R (1949) All 195 = 1948 A W R H C 222=50 Cr L J 101.

——(Legislature)—Extent to which Legislature can delegate its functions of law-making to executive or other authority.

Per Munir J.—In the case of constitution of the British model the legislative power to the Legislature involves, as part of its content, the power to confer law-making powers upon authorities other than the Legislature itself and an increase in the extent of such powers cannot of itself invalidate the grant unless the grant amounts to an abdication of the functions of the Legislature. This is not only for the reason that the Legislature in that system is supreme but also for the reason that the executive in a constitution of that kind is responsible to the Legislature both of whom co-operate with each other, and the Legislature is always competent to withdraw the grant if the executive acts in opposition to its wishes or the wishes of the electors. The question of the constitutionality or unconstitutionality of a law has to be determined not by the principle of maxim delegatus non potest delegare, but by the consideration whether the Legislature in performing its functions of law-making has laid down the principle of the legislation and left merely the filling up of details to the executive or whether by empowering the executive to make the rules, the Legislature has delegated to the executive the power to lay down the principles of legislation itself. If in the statute the Legislature has laid down a principle or a policy but left it to the executive to carry out that principle or policy subject to well-defined restrictions the enactment would be constitutional but if the Legislature has left it to the executive to lay down the principle or policy and thus given to it absolute and unrestricted discretion to legislate in the form of the power to make rules, the enactment would be unconstitutional. (Harries C. J., Blacker and Munir, JJ.) Harkishan Das v. Emperor,

AIR 1944 Lah 33=ILR (1944) Lah 245= 16 R L 274 =212 I C 321 =45 Cr L J 580 (FB).

4. Delegated legislation—General—(a) Illustrative Cases.

——Delegation of power — Clause 5, Orissa Cotton Cloth Control Order whether ultra vires as amounting to a second delegation of powers vested in the State Government—See Orissa Cotton Cloth Control Order (1948), Cl. 5

AIR 1953 Orissa 233=1953 Cr L J 1281.

——Instance where no question of delegation of legislative power arises—See Punjab Intoxicating Spirituous Preparations, Import, Export, Transport, Possession and Sale Rules (1952),

AIR 1953 Punj 77=1953 Cr L J 549.

——Delegation of power under S. 3, Essential Supplies (Temporary Powers) Act held constitutional—See Essential Supplies (Temporary Powers) Act (1946), S. 3,

AIR 1953 Nag 58=1953 Cr L J 481

——Delegation of essential legislative functions —Ss. 3 and 4 of Essential Supplies (Temporary Powers) Act (1946) are not ultra vires on ground of delegated legislation—S. 6, however, is ultra vires—Validity of the rest of the Act is not affected—See Essential Supplies (Temporary Powers) Act (1946), S. 3,

AIR 1952 All 866=1952 Cr L J 1676.

——Delegation not unconstitutional—See Madras General Sales-tax Act (IX of 1939), Pre

AIR 1953 Mad 105=1953 Cr L J 277.

——Ss. 3 and 4, Essential Supplies (Temporary Powers) Act whether bad on the ground of illegal delegation — See Essential Supplies (Temporary Powers) Act (1946), S. 3.

AIR 1952 Pat 230=1952 Cr L J 710.

——Saurashtra State Public Safety Measures (Third Amendment) Ordinance (LXVI [66] of 1949), Ss. 9, 10, 11 —Validity—Civil P. C. (1908), S. 9.

The legislation contained in Ss. 9, 10 and 11 of the Ordinance is valid and is not obnoxious to the principle of delegatus non potest delegare. (Shah C. J. & Chhatpar J.) Bhoj Ravat v. State,

AIR 1951 Sau 69=52 Cr L J 1300.

——Essential Supplies (Temporary Powers) Act (1946), S. 1.

The question of delegation does not arise in the case of the extension of the period of duration of the Essential Supplies (Temporary Powers) Act (1946) as the intention in S. 1, sub-s. (3), enacting that the Act would cease to have effect on the expiration of the period mentioned in S. 4, India (Central Government and Legislature) Act, 1946 was that without any further action on the part of the Legislature the Act should continue to be in force up to the end of the period during which the Indian Legislature would have powers to legislate under the Imperial Act. Once it is taken that the Legislature intended that and provided for it by legislation, it could not be said that there was as a matter of fact any further legislation. (Bavdekar & Dixit JJ.) State v. Hiralal,

AIR 1951 Bom 369=53 Bom L R 268= 1951-21 Bom Cr C 97=I L R (1951) Bom 626=52 Cr L J 954.

——Delegation of powers — Only ministerial functions delegated — No question of invalidity of Act arises — —Madhya Bharat Rationing Order (1949) Clauses 3 (1) and 10 (1) — Delegation is only of ministerial acts and is valid — See Madhya Bharat Rationing Order (1949), cl. 3 (1).

Madh B L J (1952) (H C R) 397.

4. Delegated legislation — General — (b) Court's power to reject Act on ground that it is delegated legislation.

——Court's power to reject Act as ultra vires.

Per Desai J.—It is not open to an Indian Court to reject an Act as ultra vires though it is within the scope of the Legislature merely on the ground that it involved what is commonly known as delegated legislation. Its power to reject an Act as ultra vires arises only out of the Legislature's exceeding the authority given to it under the Constitution Act. Unless the Court can point its finger to a particular provision of Constitution Act which is violated by the Legislature through the enactment, it cannot rule out the enactment as ultra vires. (Raghubar Dayal and Desai JJ.) State v. Basdeo,

A I R 1951 All 44 = I L R (1952) 2 All 360 = 52 Cr L J 1191.

5. Conditional legislation.

——Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act (1 of 1947), Ss. 2 (a), 3 and 8— Orissa Kendu Leaves (Control and Distribution) Order 1949, cl. VII — Provisions are not unconstitutional— S. 2 (a) is an instance of conditional legislation — That is no abdication of legislative functions — See Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act (I (1) of 1947), S. 2 (a),

AIR 1952 Orissa 260=1952 Cr L J 1354.

CONSTITUTION OF INDIA (1950), Art. 245 —

5. Conditional legislation

——Saurashtra State Public Safety Measures (Third Amendment) Ordinance (66 of 1949) S. 11 is not a case of delegated legislation but is an instance of conditional legislation within the rule of Queen v. Burah, 4 Cal 172 (P. C.) and is not illegal on that ground — See Saurashtra State Public Safety Measures (Third Amendment) Ordinance (66 of 1949), S. 11,

AIR 1952 S C 123= 1952 Cr L J 805 (SC).

——Legislature — U. P. Maintenance of Public Order (Temporary) Act (4 of 1947), S. 1 (4)—Provision for extension of Act by resolution of Legislature is not ultra vires—See U. P. Maintenance of Public Order (Temporary) Act (4 of 1947), S. 1 (4).

AIR 1948 All 414=49 Cr L J 726.

6. Territorial extent of legislative power.

——Principles of legislative competence—Power to enact legislation having extra-territorial effect—Intention must be clearly expressed—See Preventive Detention Act (1950), S. 5.

AIR 1953 Cal 81=1953 Cr L J 310.

——Extra territorial operation — Preventive Detention Act (1950), S. 3—Power for detention of person by Bombay State, found within its territory, for his activities in another State (Madras) — Order is illegal—See Preventive Dentention Act, S. 3.

AIR 1951 Mad 583=52 Cr L J 294.

——Legislature—Power of, to legislate with extra-territorial effect.

Assuming that the subordinate Legislature cannot validly make laws imposing punishments on non-subjects for offences committed by them outside the territorial limits of its jurisdiction there can be no doubt that Parliament can, if it so chooses, authorise even a subordinate Legislature to legislate with extra-territorial effect. (Spens C. J., Varadachariar and Zafrulla Khan JJ.) Mohammad Mohy-Ud-Din v. Emperor,

AIR 1946 F C 27=1946 F L J 64=(1946) 2 M L J 23 =1946 M W N 541=225 I C 520=12 B R 670=1946 F C R 94 = 48 Bom L R 740 = 1946 O A F C 7=81 C L J 263=1946 A W R F C 7=ILR (1947) Lah 387= 47 Cr L J 800 (FC).

——Legislature, power of—Statute having extra-territorial operation—Validity of—Duty of Court.

A Legislature which passes a law having extra-territorial operation may find that what it has enacted cannot be directly enforced, but the Act is not invalid on that account and the Courts of its country must enforce the law with the machinery available to them. (Viscount Simon, Lords Wright, Porter, Uthwatt and Sir Lyman Duff) British Columbia Elc. Rly. Co. v. King,

AIR 1946 P C 180=1946 Pesh L J P C 180 (PC).

7. Constitutional validity of statutes.

——Validity of S. 7 of Abducted Persons (Recovery and Restoration) Act (1949)—Section offends Art. 19 (1) (g)—Parliament has no power to enact the provision which permits to be done indirectly what it has no power to do directly—See ibid, Art. 19 (1) (d).

AIR 1952 Punjab 309=1952 Cr L J 1313 (FB).

——Constitutional legislation and unconstitutional legislation—Distinction.

Per Desai J. — The real distinction between constitutional legislation and unconstitutional legislation is that the former is an exercise of the power of legislation conferred under the Constitution Act or mandate, and the latter is the evasion of the exercise of this power by delegating it to an authority. The phrase "delegated legislation" if all delegated legislation is ultra vires, should be understood to mean the latter kind of legislation. (Raghubar Dayal and Desai JJ.) State v. Basdeo,

AIR 1951 All 44=ILR (1952) 2 All 360 = 52 Cr L J 1191.

——Conflict between Act of Legislature and power given by Constitution—Words of Constitution must prevail—See ibid, Art. 22 (5).

AIR 1951 Bom 33=52 Cr L J 418.

CONSTITUTION OF INDIA (1950), Art. 245 —

7. Constitutional validity of statutes

—Art. 246.

——Art. 246 (3) and Sch. 7 List 2 Entry 1 — Power to legislate measures relating to public safety—(T. C. Public Safety Measures Act (5 of 1950))—(Words and Phrases—"Public Order" and "Public Safety").

"Public Order" in the State list must be interpreted to include "public safety" in its relation to maintenance of public order, both of them being interdependent. Consequently the State Legislature was competent to pass the T. C. Public Safety Measures Act (5 of 1950) which as seen from its preamble was intended to provide for public order as well though styled as "The Public Safety Measures Act." (Govinda Pillai J.) M. P. Menon v. State,

AIR 1953 Trav-Co 540 = 1953 K L T 482 = 1953 Cr L J 1786.

——Art. 246 and Sch. 7 — Interpretation of lists—(Civil P. C. (1908), Pre.)—(Interpretation of Statutes).

Allocation of subjects in the three lists is not on basis of scientific definition but is by way of simple enumeration of broad categories and hence the entries in the lists should be given a large and liberal interpretation. In interpreting the constitution, wide meaning must be given to words which confer power on any legislature to legislate on certain topics and within the ambit of the words, so as to give the most sovereign power to the Legislature. (Govinda Pillai J.) M. P. Menon v. State,

AIR 1953 Trav-Co 540 = 1953 K L T 482=1953 Cr L J 1786.

——Doctrine of occupied field—Test of repugnancy—See ibid, Art. 254 (2).

AIR 1953 Bom 371=1953 Cr L J 1602.

——Legislative lists—Principles governing interpretation —See Government of India Act (1935), S. 100.

AIR 1951 S C 318=52 Cr L J 1361 (SC).

——Preventive detention — Reasons for providing for which Parliament has power to enact law—See ibid, Art. 22.

AIR 1950 S C 27=51 Cr L J 1383 (SC).

——Legislative power of Parliament how far limited—Unlimited powers given by Article is cut down by provisions of Art. 19—Laws dealing with the rights mentioned in that Article must observe these limitations — See ibid, Art. 245 (1).

AIR 1950 S C 27=51 Cr L J 1383 (SC).

——Preventive Detention legislation — Powers of State—Successive legislation — Duty of State to take care and caution to avoid technical defects which render the legislations void—See ibid, Art. 22 (7).

AIR 1950 Pat 332=51 Cr L J 1251.

——Art. 246, Sch. 7, List III, Items 1 and 3—Rule of pith and substance—Applicability.

Per Sarjoo Prasad J. — Where the two fields of legislations such as Criminal law and preventive detention though are distinct and separate, yet come under the same list (viz., the concurrent list) the rule of pith and substance can be applied though in regard to certain incidental matters a legislation which in pith and substance deals with a particular field may casually encroach upon a different subject-matter. (Sinha J. on a difference of opinion between Meredith C. J. and Sarjoo Prasad J.) Ratan Ray v. State of Bihar,

AIR 1950 Pat 332=29 Pat 410=51 Cr L J 1251.

CONSTITUTION OF INDIA (1950), Art. 246

——Legislature—Validating Act, when can be passed.

Per Iqbal Ahmed C. J.—It is competent to enact a provision repealing a previous legislation with a reservation validating the sentences passed by the Special Courts constituted under that legislation.

The operativeness of such a provision is, of course subject to the limitation that the authority which enacts it must be one which could have authorized by antecedent legislation the acts done; otherwise, by the device of precluding an investigation by the Court a legislative authority would be able to do indirectly what it could not do directly.

Per Bajpai J. — Broadly speaking the Validating Acts are of two kinds: (1) where it is intended to validate an act done by another person when that person had no power to do that act, provided the lack of power in that person does not arise from any want of legislative power in the authority seeking to validate the act, (2) where the illegal and void act sought to be validated is the result of lack of power in the authority which seeks to validate it. In the former case, the validation will be all right but in the latter case, the validation will be futile, as it will be an attempt to exercise a power which ex hypothesi did not exist. Where, for example, a particular Legislature has no power to legislate with respect to persons and things beyond a certain territory but erroneously passes an Act which affects such persons and things and attempts to bring about certain jural relation, then upon the discovery of the mistake and after knowledge that the Legislative Act was void, it would not be open to the same Legislature to declare that that Act was a valid one, because that would amount to a repetition of the same mistake. (Iqbal Ahmad C. J., Allsop and Bajpai JJ.) Madho Saran Singh v. Emperor,

AIR 1943 All 379 = 1943 A W R (H C) 332=(1943) A L J 511=16 R A 239 = ILR (1944) All 42=212 I C 83=45 Cr L J 491 (FB).

——Legislature.

It is not possible to ratify an Act which is ultra vires of the ratifying body. (Brough and Sinha JJ.) Jailal Sahu v. Emperor,

AIR 1943 Pat 346=10 B R 67=16 R P 74=22 Pat 565=24 P L T 302=209 I C 55=44 Cr L J 809.

——Legislature—Powers of—Repeal.

The Legislature may impliedly repeal penal Acts by a latter enactment like any other statute even if the repeal introduces stringency of procedure or takes away privilege. (Broomfield and Wassoodew JJ.) Surajlal Harilal, In re

AIR 1943 Bom 82 = 45 Bom L R 72 = I L R (1943) Bom 167=15 R B 382=205 I C 602=44 Cr L J 399.

——Legislature—Criminal law.

Where a legislative body is given power to legislate as to matters relating to 'criminal law', the power must extend to legislation to make new crimes. (Lords Blanesburgh, Merrivale, Atkin, Russell of Killowen and Macmillan) Proprietary Articles Trade Association v. Attorney-General of Canada

AIR 1931 P C 94=Ind Rul (1931) P C 177=132 I C 593=32 Cr L J 899 (PC).

——Legislature—Competency of—Combines Investigation Act (Canada), 1927, S. 26—If ultra vires.

Section 498, Criminal Code (Canada) and the greater part of the provisions of the Combines Investigation Act fall within the powers of the Dominion Parliament to legislate as the matters falling within the class of subjects, "the criminal law including the procedure in criminal matters."

CONSTITUTION OF INDIA (1950), Art. 246

The Combines Investigation Act, 1927, S. 26 is not ultra vires of the Parliament of Canada either in whole or in part. (Lords Blanesburgh, Merrivale, Atkin, Russell of Killowen and Macmillan) Proprietary Articles Trade Association v. Attorney-General of Canada

AIR 1931 P C 94=Ind Rul (1931) P C 177=132 I C 593=32 Cr L J 899 (PC).

—Art. 247.

——Power to provide additional Courts—See ibid, Article 226

AIR 1952 Bhopal 1=1952 Cr L J 660.

—Art. 251.

——Exercise of concurrent powers—Effect—See Government of India Act (1935), S. 107

AIR 1951 Punj 409=52 Cr L J 886.

—Art. 253.

——Scope—Power to make law depriving citizen of India of fundamental rights—See ibid, Art. 19 (1) (d).

AIR 1952 Punj 309=1952 Cr L J 1313 (FB).

—Art. 254.

——Art. 254 (2) — Provision repugnant to provisions of earlier central law—State Act prevails until there is further legislation with respect to same matter by Central Legislature—See Government of India Act (1935), Section 107 (2)

AIR 1953 Bom 371=1953 Cr L J 1602.

——Art. 254 (2) — Inconsistency between State law and Central law—Application of provisions of Art. 254 — See Essential Supplies (Temporary Powers) Act (1946) (as amended by Acts 19 of 1949 and 52 of 1950), S. 7

AIR 1953 Bom 371=1953 Cr L J 1602.

——Arts. 254 (2) and 246 — Doctrine of occupied field — Test of repugnancy.

Per Chagla C. J. — As far as our Constitution is concerned, the doctrine of occupied field cannot be applied, if that doctrine means that if Parliament legislates on a particular subject and thereby occupies the field, the State Legislature is completely debarred from legislating on the same subject. The very fact that a particular subject is in the concurrent List means that both Parliament and the State Legislature are entitled to legislate with regard to that subject. Therefore, Parliament cannot exclude or oust the State Legislature merely by legislating on any particular subject. Our Constitution clearly recognises the right of both Parliament and the State Legislature to legislate concurrently with regard to a subject mentioned in the Concurrent List, and therefore the doctrine of repugnancy to be applied in India is not so stringent as would be applied in other countries where the Constitutional position is different. The repugnancy that has got to be found is the repugnancy in the actual provisions of the two laws and not with regard to the subject-matter of the two laws. Therefore, the proper test is whether effect can be given to the provisions of both the laws or whether both the laws can stand together. If effect cannot be given to both the laws and both the laws cannot stand together, then the law made by Parliament must prevail as against the law made by the State Legislature. (Chagla C. J., on difference of opinion between Bavdekar and Chainani JJ.) State v. Zaverbhai Amaidas

AIR 1953 Bom 371=55 Bom L R 387=I L R (1954) Bom 117=1953 Cr L J 1602.

——Arts. 254 and 372 — Position regarding existing laws of Hyderabad State.

Prior to the coming into force of the Constitution, on 26-1-1950, the laws passed by the State of Hyderabad and which were extant held the field. After the coming into force of the Constitution under Art. 372 read with Art. 254 such of those provisions of the State law which

CONSTITUTION OF INDIA (1950), Art. 254

are repugnant to the corresponding provisions of parliamentary law or which contravene any other provision of the Constitution would be void, and the provisions of the law passed by Parliament alone would prevail. (Palnitkar, Mohd. Ahmed Ansari and A. Shrinivasa Chari JJ.) Pannalal Lahoti v. State of Hyderabad

AIR 1952 Hyd 187 = I L R (1952) Hyd 684 = 1952 Cr L J 1740 (FB).

——Hyderabad Criminal Procedure Code — Repugnancy to Code of Criminal Procedure (Amendment) Act — Case pending at time of coming into force of Act in Hyderabad —Code applicable—(Criminal P. C. (1898), S. 1)—(Code of Criminal Procedure (Amendment) Act (1951), S. 25) — (Hyderabad Criminal P. C., S. 1)

Where the State Law is superseded by the exercise of the Legislative power of Parliament, the sphere of Legislative power of the State so far as that subject is concerned, becomes void. Where, therefore, the Central Legislature evinces its intention to cover the field exclusively, it becomes an "occupied field" and all State Laws in respect of that matter are rendered invalid. The intention of the Code of Criminal Procedure (Amendment) Act is to govern completely the particular matter viz. all matters relating to criminal procedure and therefore the provisions in the Hyderabad Code governing the same subject would be regarded as repugnant.

Therefore a criminal case pending at the time the Code of Criminal Procedure (Amendment) Act came into force in the Hyderabad State would be governed by the Indian Criminal Procedure Code and not by the Hyderabad Criminal Procedure Code. (Palnitkar, Mohd. Amed Ansari and A. Srinivasa Chari JJ.) Pannalal Lahoti v. State of Hyderabad

AIR 1952 Hyd 187 = I L R (1952) Hyd 684 = 1952 Cr L J 1740 (FB).

——S. 5, Industrial Disputes (Madras Amendment) Act, 1949—Inconsistent with S. 10 (1) of the Central Act — Effect of Art. 254 — See Industrial Disputes (Madras Amendment) Act (XII of 1949), S. 5

AIR 1951 Mad 191=52 Cr L J 744.

——Inconsistency — See Hyderabad Legal Practitioners Act (VI of 1318F), S. 3

AIR 1951 Hyd 140.

—Art. 265.

——Applicability—See ibid, Art. 20

AIR 1953 S C 83=1953 Cr L J 625.

—Art. 286.

——Law restricting or prohibiting entry into or exoprt from Province — See Government of India Act (1935), S. 297 (1) (a)

AIR 1951 S C 318=52 Cr L J 1361 (SC).

—Art. 300.

——Contempt proceedings against State—Representation —See Contempt of Courts Act (1926), S. 2

AIR 1953 Cal 919=1953 Cr L J 136.

—Art. 301.

——Not violated by amendment to Harvest Order — See (Mysore) Food Acquisition (Harvest) Order (1949)

AIR 1951 Mys 65=52 Cr L J 822.

—Art. 310.

——Arts. 310 and 311— Articles must be read together— Article 311 is imperative.

Article 310 is to be read along with Art. 311, the provisions of which are imperative, and notwithstanding the wide words of Art. 310 before a person is removed or reduced in rank, opportunity must be given to him to show cause against the action proposed to be taken in

CONSTITUTION OF INDIA (1950), Art. 310

regard to him. (Teja Singh C. J.) Ishar Dass v. The State of Pepsu,

AIR 1952 Pepsu 148 = ILR (1952) Patiala 381 = 1952 Cr L J 1473.

—Art. 311.

——Government servant — Dismissal — Deprivation of salary—See Master and Servant,

AIR 1953 All 470 = 1953 Cr L J 1052.

——Art. 311 (2)—Opportunity of showing cause.

The Governor or Raj Pramukh who is the highest executive authority can unquestionably act under Art. 311 (1) but he need not, because any authority subordinate to him down to and inclusive of the authority which made the appointment can do so. Article 311 (2) does not mention the authority that should ask the delinquent officer to show cause why the action proposed should not be taken against him. In the absence of such mention, it must be taken to mean that whoever can take the action proposed is the authority to whom cause has to be shown. (Koshi C. J., Govinda Pillai and Subramonia Iyer JJ.) Joseph John v. State of Trav-Co.

AIR 1953 T-C 130 = 1953 K L T 1 = ILR (1952) T-C 884 = 1953 Cr L J 752 (FB).

——Previous sanction — Covenant by Ruler, Art. 20.

Article 20 of Covenant entered into by Rulers of Travancore and Cochin refers to the institution of civil and criminal proceedings, two well-known expressions which are terms of art and relate to civil and criminal proceedings before civil and criminal Courts. It is only in respect of civil and criminal proceedings that the sanction of the Raj Pramukh is required under that Article. Article 20 of the Covenant does not apply to proceedings which are not criminal but merely partake of that character. (Koshi C. J., Govinda Pillai and Subramonia Iyer JJ.) Jeseph John v. State of Trav.Co.

AIR 1953 T-C 130 = 1953 K L T 1 = ILR (1952) T-C 884 = 1953 Cr L J 752 (FB).

——Violation of office rules.

Where the provisions contained in Art. 311 of the Constitution have been satisfied, violation of any of the rules in regard to any antecedent enquiry made in a disciplinary action against a Government servant is not material. The Court may not even have jurisdiction to consider the violation of any such rules which would be incidental, ancillary and unessential. (Koshi C. J., Govinda Pillai and Subramonia Iyer JJ.) Joseph John v. State of Trav-Co.

AIR 1953 T C 130 = 1953 K L T 1 = ILR (1952) T C 884 = 1953 Cr L J 752 (FB).

——Removal of Government Servant.

The intention gatherable from the Rules of Business framed under Art. 166 (3) by the Raj Pramukh of the State of Travancore-Cochin is that as for appointment even so for removal or any other kind of dealing with the appointees, the order can be passed by the Minister concerned with the concurrence of the Prime Minister. The Raj Pramukh does not and need not come on the scene at all in this matter though in this as in every other case the decision of the Council of Ministers will have to be communicated to the Raj Pramukh. The result is that the non-existence of a record indicating communication of the decision of the Ministry to remove a member of the civil service to the Raj Pramukh and his concurrence therewith before the member was requested to show cause against the action proposed to be taken against him is of no moment. Indeed it is a matter which really falls beyond the scope of the jurisdiction of the Court to enquire into.

CONSTITUTION OF INDIA (1950), Art. 311

(Koshi C. J., Govinda Pillai and Subramonia Iyer JJ.) Joseph John v. State of Trav-Co.

AIR 1953 T-C 130 =1953 K L T 1=ILR (1952) T-C 884 = 1953 Cr L J 752 (FB).

——Scope—Art. 311 must be read together with Art. 310 —Both are imperative—See ibid, Art. 310,

AIR 1952 Pepsu 148 = 1952 Cr L J 1473.

——Applicability — Service terminable after expiry of period fixed — Article does not apply—Extension of term without further fixation of period—Effect.

Every civil servant of the Union or the State, whether he holds a permanent or a temporary post, is entitled to the protection afforded by Art. 311.

When, however, a person is appointed for a fixed period or when there is an express condition under which he is appointed that his services are terminable by so much notice, his case does not fall within the ambit of Art. 311 of the Constitution and no notice under that Article need be given to him, because his services terminate automatically after the expiry of the period for which he was employed or of the notice, as the case may be.

But if the term of appointment is extended after the expiry of the period so fixed, and no further period of appointment is fixed, it cannot be said that the appointment is for a fixed period and to such temporary appointment the Article would become applicable. (Teja Singh C. J.) Ishardas Mehta v. State of Pepsu,

AIR 1952 Pepsu 148 = ILR (1952) Patiala 381=1952 Cr L J 1473.

——Scope—"Dismissal" and "removal" — Interpretation of.

The Article is meant to cover all kinds of cases irrespective of the fact whether a man's services are terminated because of his misconduct or otherwise. The terms 'dismissal' and 'removal' are used in Art. 311 in their ordinary sense. Dismissal though not confined to cases of misconduct, generally implies that the person dismissed is blameworthy i. e., either he has done something which is objectionable or improper or he lacks the ability or capacity or the will to discharge his duties as he should. Removal of a man from service on the other hand need not be for any fault on his part. Unlike dismissal, it involves no ignominy, nor does it carry any stigma. It merely means that a man's services are no longer required or it is not possible to retain him in service. (Teja Singh C. J.) Ishar Dass v. The State of Pepsu,

AIR 1952 Pepsu 148=ILR (1952) Patiala 381= 1952 Cr L J 1473.

——Applicability—Service terminated according to conditions of service — Article does not apply.

Article 311 applies only to a case in which a person is dismissed or removed or reduced in rank. These are technical words used in cases in which a person's services are terminated for misconduct. They do not apply to cases in which a person's period of service determines in accordance with the conditions of his service (e. g., where it has been terminated by one month's notice in accordance with the conditions of service). It is not so much a question of the post being held temporarily or it being of a permanent nature, the real question is whether a person's services are being dispensed with before his normal period of service has terminated by reason of misconduct on his part, or otherwise. (Agarwala and Brij Mohan Lall JJ.) Jayanti Prasad v. State of Uttar Pradesh

AIR 1951 All 793 = 1951 A L J 450 = 1951 R D (H C) 196 = ILR (1951) 2 All 547 = 1951 A W R (H C) 479 = 52 Cr L J 1450.

——Dismissal of subordinate Police Officer by District Superintendent of Police after departmental enquiry —

CONSTITUTION OF INDIA (1950), Art. 311

Dismissal can be questioned before Court of law — (Police Act (1861), Ss. 7 and 12) (Police Regulations (M. P.) Reg. 214 and 221).

The Constitution of India does not prevent a dismissal of a member of the Subordinate Police Service by the District Superintendent of Police after a departmental enquiry, being questioned before a Court of law. (Mangalmurti and Mudholkar JJ.) Ram Dayal Singh v. Harnam Singh D. S. P.,

1951 N L J 593.

—Art. 319.

——Employment under Government — Judgeship of High Court whether such employment — See Travancore-Cochin Public Service Commission Ordinance (6 of 1124) (M. E.) read with Trav-Cochin Public Service Commission (Continuance) Act (1950), S. 3 (5),

AIR 1951 T-C 45.

—Art. 320,

——Art. 320 (3) (c)—Applicability.

Article 320 (3) (c) applies to a person serving under the Government of a State. It does not apply to a person who has been removed from service for he can hardly be said to be serving thereafter. (Koshi C. J., Govinda Pillai and Subramonia Iyer JJ.) Joseph John v. State of Trav-Co.,

AIR 1953 T-C 130 =1953 K L T 1=ILR (1952) T-C 884=1953 Cr L J 752 (FB).

—Art. 330.

——Applicability — See India and Hyderabad Exchange of Enclaves Order (1950), Ss. 2 and 7,

AIR 1950 Hyd 71 = 52 Cr L J 1398.

—Art. 362.

——Exemption from personal appearance as complainant of Ruler of Sailana State—(Covenants of Madhya Bharat Rulers, Art. 13)—Criminal P. C. (1898), Ss. 197-A, 259.

In pursuance of the power given by Art. 362, Parliament incorporated S. 197A in the Criminal Procedure Code by which the prosecution of Rulers of former Indian States is inhibited except with the previous sanction of the Central Government. By the same section provisions of sub-s. (2) of S. 197 are also made applicable to the Rulers of former Indian States. But no other privilege has been provided for by legislation. It follows, therefore, that the privilege of exemption from personal attendance in Court as a complainant has not been provided for by the law. No such exemption, therefore, can be legally granted to the Ruler of Sailana State even assuming that he enjoyed the privilege of exemption from personal attendance in Courts outside Sailana State even as a complainant. (Shinde C. J.) Purshottam Vijya v. Dilipsinghji,

A I R 1953 Madh B 254 = I L R (1952) M B 405 = 1953 Cr L J 1718.

——Nature and enforceability of Art. 13 of the Covenants of Madhya Bharat Rulers — Interpretation of Statutes—(Civil P. C. (1908), Pre.) — (Covenants of Madhya Bharat Rulers, Art. 13).

The Covenant is an agreement between the Rulers of Gwalior, Indore and certain other States in Central India. The Government of India gave its concurrence and guarantee to this Covenant. But this Covenant is only an agreement and not a statute.

The function of the Judiciary is to interpret the law and to enforce the due observance of it. Unless and until, therefore, the agreement is elevated to the status of law by the Legislature, Courts cannot enforce the observance of it. (Shinde C. J.) Purshottam Vijya v. Dilipsinghji,

A I R 1953 Madh B 254 = I L R (1952) M B 405 = 1953 Cr L J 1718.

CONSTITUTION OF INDIA (1950)

—Art. 363.

——Treaties are not part of law of the land unless expressly made so by legislative authority — See International Law.

A I R 1951 Raj 127=52 Cr L J 1021.

—Art. 366.

——Art. 366 (10)—'Existing law' relating to contempt of Court—See ibid, Art. 19 (2).

A I R 1952 Orissa 318=1952 Cr L J 1605.

——Art. 366 (14)—Explanation (b) to Art. 217 (2) if conflicts with definitions in Art. 366 (14)—See ibid, S. 214 (2).

A I R 1951 Pat 305=1952 Cr L J 540.

——Arts. 366 (10) — Existing law—Meaning and import of—See ibid, Art. 13.

A I R 1951 Mad 1015=1952 Cr L J 170.

——'Existing law' — See (Mysore) Food Acquisition (Harvest) Order (1949).

A I R 1951 Mys 65=52 Cr L J 822.

—Art. 367.

——Constitution is not a Central Act or a Regulation—See General Clauses Act (1897), S. 3 (8) (aa).

A I R 1951 All 703=52 Cr L J 1094.

——General Clauses Act, applicability — General Clauses Act (1897), Pre.

When Art. 367 makes the General Clauses Act applicable for the interpretation of the Constitution, it must have referred to the parts under headings "General Definitions" and "General Rules of Construction". There is nothing to indicate that only the part under the heading "General Definitions" was intended and not the other part. The General Clauses Act is to be used for all purposes for which it is used in respect of Acts. (Desai J.) Jugmendardas v. State,

A I R 1951 All 703 = I L R (1953) 1 All 458=52 Cr L J 1094.

——Applicability of General Clauses Act for interpretation of the Constitution—See General Clauses Act (1897), S. 6.

A I R 1951 Bom 188=52 Cr L J 30.

—Art. 368.

——Scope—See Judicial Commissioner's Courts (Declaration as High Courts) Act (1950), S. 6 (a).

A I R 1952 H P 5=1952 Cr L J 114.

—Art. 369.

——Power of Centre to make laws with respect to matters upon which only State Legislatures can legislate — See Essential Supplies (Temporary Powers) Act (1946), S. 3.

A I R 1951 Cal 120=52 Cr L J 934.

—Art. 372.

——Arts. 372, 13 and 14 — Earlier adaptation of Act under Art. 372 (2) cannot confer validity to Act nor ensure its continuance after commencement of Constitution, if the Act offends Art. 14—Continuance in force of an Act, provided for by Art. 372 is subject to Arts. 13 and 14. (Rajagopalan and Chandra Reddy JJ.) C. J. Menon, In re.

A I R 1953 Mad 729 = 1953-2 M L J 61 = 1953 Cr L J 1364.

——U. P. Removal of Social Disabilities Act (14 of 1947), remains in force after the Constitution under Art. 372 and has not become void by anything contained in the Constitution—See ibid, Art. 35.

A I R 1953 All 483=1953 Cr L J 1103.

——Art. 372 (1) — Extension of Essential Supplies (Temporary Powers) Act (1949), from 1-4-1950 up till 31-3-1951 by resolution of Constituent Assembly (Legislative) D/- 20-12-1949—Validity—See Essential Supplies (Temporary Powers) Act, 1946, S. 1 (3).

A I R 1953 S C 63=1953 Cr L J 515.

CONSTITUTION OF INDIA (1950), Art. 372

——Position regarding existing laws of Hyderabad State indicated—See Constitution of India, Art. 254.

A I R 1952 Hyd 187=1952 Cr L J 1740 (F B).

——Art. 372 (1)—"Subject to the other provisions of the Constitution" — Effect of S. 85 (5), U. P. Panchayat Raj Act (26 of 1947).

The U. P. Panchayat Raj Act is an Act of the U. P. Legislature passed in the year 1947, that is, before the Constitution came into force. It continued to be in force by virtue of the provisions of the Constitution contained in Art. 372 (1). Other provisions mentioned in Art. 372 (1) are contained in Arts. 226 and 227 and, therefore, S. 85 (5), Panchayat Raj Act, does not debar the High Court from interfering with the order of the Panchayati Adalat in appropriate cases. (Sapru and Agarwala JJ.) Motilal v. State,

A I R 1952 All 963 = I L R (1952) 1 All 558 = 1952 Cr L J 1695.

——Repeal of India (Central Government) Legislature Act (1949) by Art. 395 of the Constitution does not end Essential Supplies Act — Resolutions of 23-3-1949 and 20-12-1949 validly kept alive the Act — Adaptation of Laws Order, 1950, was neither illegal nor beyond competency of President—See Essential Supplies (Temporary Powers) Act (1946).

A I R 1952 Pat 185=1952 Cr L J 493 (F B).

—— Art. 372 (1) — Criminal Law Amendment Ordinance (1944) is still alive by virtue of S. 18 (3), Indian Independence Act and Art. 372 (1) of the Constitution—It is wrong to assume that because of the omission of the 9th Schedule to the Government of India Act, 1935, which contains S. 72 under which the Ordinance was promulgated as indicated in the Schedule attached to the India (Provisional Constitution) Order, 1947, this emergency Ordinance has ceased to operate—See Criminal Law Amendment Ordinance (1944), S. 1.

A I R 1952 Pat 148=1952 Cr L J 476.

——In view of Art. 372, the right of appeal, if any, under S. 476B, Criminal P. C., must yield to the restricted right of appeal under Art. 134, as all the law in force in the territory of India immediately before the commencement of the Constitution are to continue to be in force but subject to the other provisions of the Constitution. The right of appeal therefore under Art. 134, overrides the right, if any, under S. 476B, Criminal P. C.—See Criminal P. C. (1898), S. 195 (3).

A I R 1951 Mad 1060=1952 Cr L J 61.

——Art. 246 has nothing to do with laws already made—The words "subject to the other provisions of this Constitution" in Art. 372 do not mean that laws which had been passed by Central Legislature before 26-1-1950 automatically cease to have effect because the subject has now been made a State subject — Essential Supplies (Temporary Powers) Act (1946) which is passed before Constitution does not cease to be in force on 26-1-1950 — See Essential Supplies (Temporary Powers) Act (1946), S. 1.

A I R 1951 All 816=52 Cr L J 1474.

——Madhya Bharat High Court of Judicature Act (8 of 1949, as amended by Ord. 1 of 1950), Ss. 25 and 25A—Decisions of Division Bench given after 25-1-1950 — Jurisdiction of High Court to hear appeals against decisions—See Madhya Bharat High Court of Judicature Act (VIII of 1949).

A I R 1951 M B 149=52 Cr L J 1467.

——Art. 372—'Temporary law'—Meaning of.

Per Chaturvedi J.—The expression 'Temporary law' in explanation 3 to Art. 372 is not confined to laws made by Legislature alone. It is of wide import and includes an

CONSTITUTION OF INDIA (1950), Art. 372

'Ordinance' promulgated by a Rajpramukh in Part B States. (Shinde, Dixit and Chaturvedi JJ.) Baldeo Singh v. State,

A I R 1951 Madh B 149=52 Cr L J 1467 (F B).

——The Constitution was made applicable to Pepsu on 24-11-1949 and is now the law for the Union. All laws in force in Pepsu immediately before the Constitution were kept in force for the purposes of the Union by Art. 372 (1), so far as they were not repugnant or contrary to the constitution itself — See Preventive Detention Act (IV of 1950), S. 3 (1).

A I R 1951 Pepsu 147=52 Cr L J 1215.

——Art. 372 (1)—C. P. and Berar Prohibition Act (7 of 1938) is continued in force unaffected after the Constitution, under Art. 372 (1), except in so far as its validity could be brought into question by reason of the "non-obstante" clause in Art. 13 (1) — See C. P. and Berar Prohibition Act (VII of 1938), S. 1.

AIR 1951 Nag 58=52 Cr L J 1140 (FB).

——Practice of surrendering fugitive criminals in accordance with the treaty not incorporated in an enactment by the State of Dholpur, followed by the State till its merger cannot be deemed to be a law that can be continued under Art. 372—See Criminal P. C. (1898), S. 491,

AIR 1951 Raj 127=52 Cr L J 1021.

——Federal Court judgments reversed by Privy Council — Abolition of Privy Council — Federal Court judgments so reversed if binding after Constitution — See ibid, Art. 374 (2).

AIR 1951 Mys 72=52 Cr L J 992 (FB).

——Art. 372 (2)—Extension of Essential Supplies (Temp. Powers) Act (1946) by Adaptation Order 1950 and by Resolution dated 29-12-1949 — Validity — Powers of the President under S. 372 (2), extent of — See Essential Supplies (Temporary Powers) Act (1946), S. 3.

AIR 1951 Cal 120=52 Cr L J 934.

——Indian Army Act (1911), if continued to be effective till passing of Act, 46 of 1950—See ibid, Art. 33.

AIR 1951 Mad 777=52 Cr L J 827.

——Constitution has not the effect of putting an end to the Defence of India Rules (1949), or divesting the powers vested in Provincial Government to make orders thereunder. Amendment to Mysore Food Acquisition (Harvest) Order (1949) does not constitute a new law requiring previous permission of the President — See (Mysore) Food Acquisition (Harvest) Order (1949).

AIR 1951 Mys 65=52 Cr L J 822.

——Scope of.

As the continuance of law is made expressly subject to provisions of the Constitution other than Art. 395, Art. 372 can be of no assistance to the continuing validity of S. 124-A or any other section of the Penal Code. (Weston C. J. and Khosla J.) Tara Singh v. State,

AIR 1951 Punjab 27=53 Pun L R 22=I L R (1951) Punj 193=52 Cr L J 449.

——Validity of—Adaptation of Laws Order, 1950.

Not only does the Adaptation of Laws Order (1950) conflicts with all principles of judicial independence but it is also something which is contrary to the express provisions of Art. 372 (2) of the Constitution. What the President has done by that Order is to throw upon the Court a burden viz., to adapt or modify any law in force in the territory of India which is exclusively his and which he has no power under sub-cl. (2) of the Article to ask the Court to do. Further by that Article the Constitution has delegated certain powers to the President which powers in accordance with the principle of delegatus non delegare potest he cannot delegate to some other

CONSTITUTION OF INDIA (1950), Art. 372

authority. Not only has the Order tried to convert the Court into a legislative body but in doing so it has by a proviso reduced that body to a position of subordination and inferiority. The effect of the Order is to convert the Courts into legislative bodies with limited power and legislature into judiciary whose decisions are to be final. In this state of affairs the Courts cannot give effect to the Adaptation of Laws Order though it emanated from the President of Republic. (Sen, K. C. Chunder and Lahiri JJ.) Sunil Kumar v. West Bengal Government.

AIR 1950 Cal 274 = 54 C W N 394=51 Cr L J 1110 (SB).

——Scope.

Article 372 (1) does not preserve the effect of all laws in force in the territory of India before the commencement of the Constitution. It keeps only such laws in force as are not inconsistent with the provisions of Part III. That being so the Bengal Criminal Law Amendment Act which became void from the midnight of 25-1-1950 as being inconsistent with the provisions of Part III of the Constitution cannot be brought back to life either by the President or the Legislature by any modification or alteration so as to bring it into accord with the Constitution. (Sen, K. C. Chunder and Lahiri JJ.) Sunil Kumar v. West Bengal Government.

AIR 1950 Cal 274=54 C W N 394 = 51 Cr L J 1110 (SB).

——Scope — Article if can preserve laws rendered void under Art. 13 (1)—See ibid, Art. 13 (1).

AIR 1950 Pat 265=51 Cr L J 1081.

—Art. 373.

——Power of Parliament and President — See ibid, Art. 22 (7).

AIR 1951 Mad 1015=1952 Cr L J 170.

——Order of detention passed under S. 2 (1) (a), C. P. and Berar Public Safety Act (1948) — Power of President to extend period of detention without obtaining opinion from Advisory Board for three months from 26-1-1950 — See C. P. and Berar Public Safety Act (1948), S. 2 (1) (a).

AIR 1950 Nag 203=51 Cr L J 1372.

——Preventive Detention (Extension of Duration) Order passed under Art. 373 — Signature of President affixed at 10-50 A. M. on 26-1-1950 — Order becomes effective from midnight of 25th-26th January 1950—Time intervening between the midnight and the time of actual signing immaterial in considering validity of Orissa Maintenance of Public Order Act (1948) — See Orissa Maintenance of Public Order Act (1948)—Validity.

AIR 1950 Orissa 157=51 Cr L J 1189 (FB).

——President if can revise an Act or Ordinance which has already expired by passing order by exercise of power under Art. 22 (7) (a) and (b) read with this Article—See Preventive Detention (Extension of Duration) Order (1950).

AIR 1950 Cal 274=51 Cr L J 1110 (SB).

——Order signed by Governor-General — Value for purposes of adaptation of Constitution Act — See Preventive Detention (Extension of Duration) Order, 1950—Validity of.

AIR 1950 Pat 265=51 Cr L J 1081.

—Art. 374.

——Arts. 374 (2) and 141 — Retrospective effect — F. C. decisions—If binding on Courts not subject to its jurisdiction, after commencement of Constitution.

Up to the date of the Constitution neither the judgments of the Federal Court nor those of the Privy Council were binding on the Mysore High Court. Both were of persuasive and not authoritative value and decisions of the Mysore High Court were final, not subject to appeal

CONSTITUTION OF INDIA (1950), Art. 374

or judicial interference from any tribunal. Under the Constitution of India the decisions of the Mysore High Court are subject to appeal to the Supreme Court and that Court is bound by the law declared by the Supreme Court. This cannot be construed as giving retrospective force to previous decisions of the Federal Court so as to bind Courts not formerly subject to its jurisdiction. (Venkataramaiya, Balakrishnaiya and Mallappa JJ.) Abdul Khader v. State of Mysore.

AIR 1951 Mys 72=ILR (1951) Mys 284 = 52 Cr L J 992 (FB).

——Arts. 374 (2), 141, 372, 395 — Federal Court judgments reversed by P. C. — If binding after commencement of Constitution — Abolition of Privy Council Jurisdiction Act (1949), S. 8.

In those cases in which judgments of the Federal Court were reversed by the Privy Council what determines the rights of parties and to be given effect to is the decision of the Privy Council because of Arts. 372 and 395 of the Constitution of India. (Venkataramaiya, Balakrishnaiya and Mallappa JJ.) Abdul Khader v. State of Mysore

AIR 1951 Mys 72=I L R (1951) Mys 284 = 52 Cr L J 992 (FB).

——Art. 374 (4) — Power of Nizam to hear appeals—Abolition of—See Appeals to H. E. H. the Nizam Regulation (XXI of 1358 F.)

AIR 1951 Hyd 96=52 Cr L J 922.

——Arts. 374 (2), 141 — Federal Court — Decisions of—Binding effect after 26-1-1950—Precedents.

The decision of the Federal Court on points of law given prior to the 26th January 1950 are binding on all the Courts within the territory of India after 26-1 1950. (Govinda Menon and Basheer Ahmed Sayeed JJ.) Arumugam v. State of Madras.

AIR 1951 Mad 115 = 64 M L W 116=1951 M W N 88=1951-1 M L J 169 = 1951 M W N (Cr) 28=52 Cr L J 396.

—Art. 376.

——Art. 376 (2) — Person over 60 years if disqualified from holding office as Judge—See Travancore and Cochin High Court Act (5 of 1125) ME S. 9 (1).

AIR 1951 T-C 45.

—Art. 379.

——Art. 379 (1) — Provisional Parliament—Powers of—See Essential Supplies (Temporary Powers) Act 1946, S. 1 (3).

AIR 1953 S C 63=1953 Cr L J 515 (SC).

—Art. 382.

——Member of legislative assembly ipso facto becomes member of House of Legislature after 26-1-1950. (Govinda Menon and Krishnaswami Nayudu JJ.) In the matter of Pillalamarri Venkateswarlu,

AIR 1951 Mad 269=(1950)-2 M L J 207=63 M L W 1035=1950 M W N 718 =1950 M W N Cr 242= I L R (1951) Mad 135.

—Art. 392.

——Powers of President.

Article 392 does not confer upon the President any power to abridge any of the fundamental rights conferred upon a citizen of India under Part III of the Constitution. (Hemeon and Mudholkar JJ.) Trimbak v. The State,

AIR 1950 Nag 203=1951 N L J 1=51 Cr L J 1372.

——Time upto which Governor-General can make adaptations in Constitution—Effect of order passed after Constitution — See Preventive Detention (Extension of Duration) Order, 1950—Validity of.

AIR 1950 Pat 265=51 Cr L J 1081.

CONSTITUTION OF INDIA (1950) —Art. 394.

——Commencement of Constitution — Power of Constituent Assembly — See Essential Supplies (Temporary Powers) Act (1946), S. 1.(3).

AIR 1953 S C 63=1953 Cr L J 515 (SC).

—Art. 395.

——Effect of Art. 372 — See Essential Supplies (Temporary Powers) Act (1946).

AIR 1952 Pat 185=1952 Cr L J 493 (FB).

——Federal Court judgment reversed by P. C.—If binding after commencement of Constitution—See ibid, Art. 374 (2).

AIR 1951 Mys 72=52 Cr L J 992 (FB).

——S. 6, General Clauses Act would apply not only to laws repealed under Art. 395 but also to those laws which have become void as a result of their being inconsistent with the provisions of Part III of the Constitution — See General Clauses Act (1897), S. 6.

AIR 1951 Bom 188=52 Cr L J 30.

—Sch. 6, Para. 19.

——Existing law — See Khasi States (Administration of Justice) Order, 1950, Rule 1.

AIR 1952 Assam 3=1952 Cr L J 104.

—Sch. 6, Para. 20.

——Tribal areas — See Khasi States (Administration of Justice) Order (1950), R. 1.

AIR 1952 Assam 3=1952 Cr L J 104.

—Sch. 7, List 1 Entry 9.

——Preventive detention— Power of Parliament to enact law—See ibid, Art. 22.

AIR 1950 S C 27=51 Cr L J 1383 (SC).

——Sch. 7, List 1 Entry 9 and List 3, Entry 3 —Preventive detention—Meaning of.

There is no anthoritative definition of the term 'Preventive Detention' in Indian Law. The word 'preventive' is used in contradistinction to the word 'punitive.' The object is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing it. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) A. K. Gopalan v. State of Madras,

AIR 1950 S C 27=1950 S C R 88=1950 M W N (Cr) 127= 1950-2 M L J 42 = 63 M L W 638 = 1950 S C J 174= 1950 M W N 495=51 Cr L J. 1383 (S C).

—Sch. 7, List 1, Item 14.

——Competency to make laws whereby citizens of India may be expelled from country—See ibid, Art. 19.

AIR 1952 Punjab 309=1952 Cr L J 1313 (FB).

—Sch. 7, List 1, Entry 18.

——Power to make laws in regard to "extradition" and "admission into and emigration and expulsion from India" —Nature of—See ibid, Art. 19 (1) (d).

AIR 1952 Punjab 309=1952 Cr L J 1313 (FB).

—Sch. 7, List 1, Item 19.

——Competency to pass laws whereby citizens of India may be expelled from country—See ibid, Art. 19.

AIR 1952 Punjab 309=1952 Cr L J 1313 (FB).

—Sch. 7, List 1. Entry 41.

——'Import,' interpretation of—See Government of India Act (1935), Sch. 7 List. 1 Entry 19.

AIR 1951 S C 318=52 Cr L J 1361 (SC).

—Sch. 7, List 1, Item 54.

——Competency of Union Legislature to enact laws for Mining and Mineral Development—See Mysore Mines Act.

AIR 1952 Mys 84=1952 Cr L J 1348.

—Sch. 7, List 1, Entry 81.

——Free movement of Indian citizen throughout Indian Union —Discrimination against— See ibid, Art. 19 (1) (d).

AIR 1950 S C 27=51 Cr L J 1383 (SC).

CONSTITUTION OF INDIA (1950)
—Sch. 7, List 2, Entry 1.
——Power to legislate measures relating to public safety —See ibid, Art. 246 (3).
AIR 1953 Trav-Co 540=1953 Cr L J 1786.
——"Public order."
"Public order" signifies that state of tranquillity prevailing among the members of a political society as a result of the internal regulations enforced by the Government which they have instituted. (Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjea and S. R. Das JJ.) Ramesh Thappar v. The State of Madras,
AIR 1950 S C 124= 1950 S C R 594 = 1950 M W N (Cr) 115= 1950 M W N 435 = 1950 A L J 485 = 1950 S C J 418=1950 2 M L J 390=63 M L W 929 = 51 Cr L J 1514 (SC).
—Sch. 7, List 2 Entry 8.
——"Possession and sale," interpretation of—See Government of India Act (1935), Sch. 7, List 1, Entry 19.
AIR 1951 S C 318=52 Cr L J 1361 (SC).
——'Liquor' meaning of—See Government of India Act (1935), Sch. 7, List. 2 Entry 31.
AIR 1951 S C 318=52 Cr L J 1361 (SC).
—Sch. 7, List 2, Item 23.
——Competency of state legislature to enact laws for Mining and Mineral development—See Mysore Mines Act.
AIR 1952 Mys 84=1952 Cr L J 1348.
—Sch. 7, List 2, Item 26.
——Scope—See Punjab Trade Employees Act (X of 1940, as amended in 1943), S. 7 (1).
AIR 1951 S C 315=52 Cr L J 1237 (SC).
——Sch. VII, List II, Entries 26, 27 and List III. Entry, 3—Entries whether mutually exclusive — 'For reasons connected with"— Detention under Preventive Detention Act (1950), S. 3 (1) (a) (iii).
It is wrong to say that because production, supply and distribution of goods or trade and commerce within the State are separate entries in the State List, namely, Entries 26 and 27, List II of Sch. VII, Constitution of India, therefore, the expression used in S. 3 (1) (a) (iii), Preventive Detention Act, 1950, has a narrow or restricted meaning. For, the entries in the Legislative Lists are not to be treated as water-tight compartments. It is worthy of note that Entry 3, List III of Sch. VII, Constitution of India, talks of preventive detention for reasons (inter alia) connected with the maintenance of supplies and services essential to the community. The expression 'for reasons connected with" is important: it means that the detention is for reasons connected with the maintenance of supplies and services essential to the community. Such detention may affect the supply of goods, but that does not mean that the detention is for an object other than what is contemplated by Entry 3 of that List. (Das and Narayan JJ.) Dayanand Modi v. State of Bihar,
AIR 1951 Pat 47=30 Pat 630=52 Cr L J 406.
—Sch. 7, List 2, Entry 27.
——Entry whether mutually exclusive of other entries—See ibid, Sch. 7, List 2, Entry 26.
AIR 1951 Pat 47=52 Cr L J 406.
—Sch. 7, List 2, Item 54.
——Legislation under — Validity — See Madras General Sales-tax Act (9 of 1939), Pre.
AIR 1953 S C 274=1953 Cr L J 1105 (SC).
——Connotation of 'Sale'—See Madras General Sales tax Act (9 of 1939), S. 2 (b).
AIR 1953 S C 274=1953 Cr L J 1105 (SC).
—Sch. 7, List 3, Entry 3.
——"For reasons connected with" — Interpretation of — See ibid, Sch. 7, List 2 Entry 26.
AIR 1951 Pat 47=52 Cr L J 406.

CONSTITUTION OF INDIA (1950)
—Sch. 7, List 3, Item 5.
——Powers of state legislatures extend to affect personal laws—See Madras Hindu (Bigamy Prevention and Divorce) Act (VI of 1949).
AIR 1952 Mad 193=1952 Cr L J 434.
—Sch. 7, List 3. Item 24.
——Scope—See Punjab Trade Employees Act, (X of 1940, as amended in 1943), S. 7 (1).
AIR 1951 S C 315=52 Cr L J 1237 (SC).
—Sch. 7, List 3, Item 33.
——Scope—See Punjab Trade Employees Act 1940. (as amended in 1943), S. 7 (1).
AIR 1951 S C 315=52 Cr L J 1237 (SC).

CONSTRUCTION OF STATUTES
See Interpretation of statutes.

CONTEMPORANEOUS AGREEMENT
—Evidence of any facts varying terms of document.
See Evidence Act (1 of 1872), S. 99.

CONTEMPT
—Apology.
See (1) Contempt of Courts Act (1926), S. 3.
(2) Criminal P. C. (1898), S. 484.

CONTEMPT OF COURTS
See also (1) Constitution of India, Art. 215.
(2) Contempt of Courts Act, 1926.
(3) Criminal P. C., 1898, Ss. 476-482.
(4) Penal Code, 1860, Ss. 172-190; 228.

SYNOPSIS

1. Apology.
See Contempt of Courts Act, S. 3.
2. Communication to Judge.
3. Gross contempt.
4. Jurisdiction.
See Contempt of Courts Act (1926), S. 2.
5. Matter sub judice.
(a) Criticism of executive authority.
(b) Pendency of proceedings whether necessary.
(c) Proceedings when pending.
(d) Sufficiency of adverse comments.
6. Motive.
7. Nature of proceedings.
See Contempt of Courts Act (1926), S. 2.
8. Newspaper Comment.
(a) Contempt of Court—Illustrations.
(b) Construction of articles.
(c) Defence.
(d) Liability of editor.
(e) Liability of printer and publisher.
(f) Privilege.
(g) Test.
9. Procedure.
See Contempt of Courts Act (1926), S. 2.
10. Right of contemner.
See Contempt of Courts Act (1926), S. 2.
11. Scandalizing Court.
12. Test.
13. What is.
(a) Civil and Criminal contempt.
(b) Contempt by counsel.
(c) contempt must be of the Court.
(d) Disobedience of orders.
(e) Interference with receiver's possession.
(f) Object of contempt proceedings.
(g) Resolutions of bar associations.

CONTEMPT OF COURTS

(h) Threat to opposite party.
(i) Withholding of documents addressed to High Court.
(j) Illustrations.
14. What is not.
(a) Criticism of executive officer.
(b) Criticism of judicial acts.
(c) Disobedience of orders of Courts.
(d) Insult to opposing counsel or party.
(e) Miscellaneous.

1. Apology.

——See Contempt of Courts Act (1926), S. 3.

2. Communication to Judge.

——See also Constitution of India, Art. 215.

——Communication with Presiding Officer of Court and the Administrative head, regarding the pending case—Course to be adopted by presiding officer suggested—Communication amounts to contempt of Court—Actual danger or prejudice to party is not essential—Mens rea is not necessary.

Any private communication by a party to a case or even a stranger to a cause addressed or made to the presiding officer of a Court, which is calculated to influence his decision in pending case, constitutes a most serious form of contempt.

A person is presumed in law to have the intention conveyed by his words and to intend the consequences which are bound to follow from his own acts. The test of the offence of the contempt of Courts does not lie in mens rea. Whatever the intention of the contemner might have been, he is brought within the clutches of law as soon as the Court finds that by his word or by his conduct he has set into motion a chain of events which is by its very nature likely to interfere with the course of justice. The crucial test of the offence lies not in the object within the mind of the contemner but in the tendency which his manifest and outward acts inherently possess, to interfere with the uninterrupted flow of justice in an impartial manner.

The gravamen of the offence consists in robbing the Court of that confidence which it is the duty of the Court to inspire and the corresponding obligation of the public to repose in the same. The essence of the offence lies not in the prejudice that it might cause to the parties but in the damaging nature of the act itself qua the administration of justice in the State. In other words, the essence of the offence lies not so much in the capacity of the impugned act to cause damage to the cause of a party as in its tendency to cause damage to the cause of justice itself.

Ignorance of law cannot be an excuse specially when the perpetrator of the offence is a literate man holding a responsible position of a manager of a big estate.

The manager of an estate which was under the Court of Wards, wrote to the Deputy Commissioner, that a certain tenant in the estate was about to file an application under S. 145, Criminal P. C. before the S. D. O. and that the S. D. O. should be asked to look into the matter carefully and do the needful. Subsequent to the filing of the application, the manager again wrote to the Deputy Commissioner to look into the matter and consider his previous letter. Upon this the Deputy Commissioner wrote that he would speak to the S. D. O. and the manager was asked to bring this fact to the notice of the S. D. O. The manager therefore wrote to the S. D. O. and suggested that the attachment of crop in the case was absolutely necessary. On the same date the S. D. O. passed a preliminary order in the case ordering attachment of the crop. The opposite party moved the High

CONTEMPT OF COURTS — 2. Communication to Judge

Court for taking contempt proceedings against the manager and for transfer of the case to another Court outside the jurisdiction of Deputy Commissioner.

Held, that the manager was guilty of contempt of Court. (Conduct of the Commissioner and the S. D. O. criticised). (The case was transferred to another District). (P. L. Bhargava and Beg JJ.) Lal Behari v. State,

A I R 1953 All 153=1953 Cr L J 402.

——Private communication to Judge — When interferes with due course of justice — Judge expressing adverse opinion in respect of Attorney's conduct — Letter by Attorney to Judge explaining his conduct — Held did not amount to contempt.

The conduct of a person may tend to interfere with the due course of justice in one of two ways. It may tend directly to interfere with the course of justice and such a case would be conveying private information to a Judge hearing a matter which would tend to benefit the person sending such information. A communication to a Judge might also tend to interfere with the due course of justice in that the communication was calculated to bring the Court of the particular Judge into contempt or to lower the authority. Such is an indirect interference with the due course of justice. Both forms, however, would amount to contempt of Court.

While hearing a certain application in a pending suit, the Judge severely criticised the conduct of the attorney for the party but did not record that opinion nor was the order passed on the application affected by it. A week after passing of the order, the Attorney addressed a private letter to the Judge explaining his conduct and bringing certain facts to his notice which were not placed before him during the hearing. He also included certain other matter in the letter such as his relationship with the Judge's family and his importance as a political and professional figure and expected a reply from the Judge.

'Held' (by Harries, C. J. and Banerjee J.) — that the Attorney was not guilty of contempt of Court as the letter did not tend either directly to interfere with the decision in the suit or in any proceedings connected therewith or indirectly to interfere with the due course of justice by reason of scandalising the learned Judge or lowering the dignity and prestige of the Judge and the Court.

Further that, writing to a learned Judge privately concerning anything which he has said in open Court is conduct which the High Court strongly deprecated. The proper course to follow, if any one believes himself to have been harshly and unjustly criticised, is to move the Judge in open Court and to explain to him that the true facts were not placed before the Court.

Per Chakravartti J.—It is intolerable and outrageous that an Attorney acting in a pending suit, whose conduct has been judicially commented on, should subject the Judge to private correspondence on the merits of the remarks and invite him to join in it, for the purpose of settling the matter, as it were, privately and amicably. Such conduct is not merely improper but is contempt, for, it tends to divert the due course of justice, not only by seeking a revision of the particular judicial act in a manner and on grounds which the approved rules of justice could never countenance. (Harries, C. J., Chakravartti and Banerjee JJ.) Sudhir Chandra Ray Choudhuri, In the matter of,

A I R 1952 Cal 258=56 C W N 51=1952 Cr L J 666 (SB).

——Pending case—Private Letter to Magistrate.

Where a report is sent by the Station Officer to the Magistrate the fact that it did not reach the latter does not matter. The mere fact that the report was lost does

CONTEMPT OF COURTS — 2. Communication to Judge

not mean that there was no pending case. If in anticipation of a case, a party writes a letter to the Court in advance it cannot be said that he has not tried to influence the mind of the Court. In his executive capacity a Magistrate can have information from any source he likes, but once a matter has come before a Magistrate in his judicial capacity the proper course for a party is to move the Court in the ordinary way, that is, by means of a formal application. Private communication, or communications in the form of private letters, are totally out of place in Courts. (Malik C. J. and Bind Basni Prasad J.) Baij Nath v. Madan Mohan,

A I R 1952 All 108.

——Private communication by witness to Judge.

A private communication by a stranger or witness addressed to a Judge calculated to influence its decision in a pending case constitutes the grossest form of contempt : A. I. R. 1948 Oudh 114, Foll. (Misra and Beg JJ.) State v. Krishna Madho,

A I R 1952 All 86.

——Contempt of Court by addressing communications to Court—Duty of Court.

Where a contempt of Court is committed by a person addressing a communication to the Court with an intention to influence it in the trial of a case, the Court should take a serious view of the matter and should immediately report the case to the High Court for speedy and quick action. In the larger interest of the administration of justice such cases should never be allowed to go unnoticed. (Misra and Beg JJ.) State v. Krishna Madho,

A I R 1952 All 86.

——Grounds on which order can issue.

Proceeding for contempt should be taken only in cases where a Court is satisfied that something has been done, which it is necessary in the larger interests of the administration of justice, that the Court should take notice of, as when the trial of a case has been interfered with, or an atmosphere has been attempted to be created when a case cannot be properly tried, or when something is said or done, which is likely to lower the prestige of the Court or shake the confidence of the public, in the administration of justice. But where an interim injunction order which was disobeyed was a doubtful order in that it could not be properly interpreted, and it could not be said that there was deliberate disobedience of the order and where the Court which had issued injunction had refused to proceed under O. 39, R. 2, simply because a party considered that he had been aggrieved by some action which he considered high-handed, it would not be proper to issue notice for contempt to show cause, when the injunction order had been vacated. (Malik C. J.) Surendra Nath Koley v. A. R. Sinclair Day,

A I R 1950 All. 285 = I L R (1950) All. 674 = 1950 A W R 28 = 1950 All Cri Cas 10 = 1950 A L J 31=51 Cr L J 595.

——Communication made to Sub-divisional Officer in his executive capacity is not contempt. (Agarwala C. J. and Meredith J.) Ram Prasad Mandal v. The King,

A I R 1949 Pat. 435=50 Cr L J 935.

——Superior executive officer writing to trying Magistrate to adjourn case pending before him and dictating order to be passed, if contempt—See Criminal P. C. (1898), S. 344

A I R 1949 Pat. 233=50 Cr L J 488 (FB).

—— Contempt, what amounts to — Communication with Judge.

A private communication by a stranger or a witness, addressed to a Judge which is calculated to influence his decision in a pending case constitutes the grossest form of contempt : (1849) 41 E R 1207 and (1865) 4 W R 86, Rel.

CONTEMPT OF COURTS — 2. Communication to Judge

on. (Ghulam Hasan C. J. and Misra J.) Addl. Sessions Judge, Hardoi v. Banwari Lal,

A I R 1948 Oudh 114 = 1947 O W N C C 548=1947 O A C C 371=1947 A W R C C 371 = 23 Luck 37=49 Cr L J 108.

——Letter sent by party to Judge held amounted to gross contempt of Court.

Where a letter was sent by a party to a Judge seised of the case while he was still exercising jurisdiction in respect of it, containing an imputation that the Judge acted unlawfully and with a view to cause him a loss and containing also a threat and an imputation against the Judge's impartiality :

Held, that it amounted to contempt of a serious nature. (Bose J.) Sub-Judge, First Class, Hoshangabad v. Jawaharlal,

A I R 1940 Nag 407 =13 R N 209=1940 N L J 425= I L R (1941) Nag 304=191 I C 671=42 Cr L J 237.

——During pendency of proceedings under S. 107, Criminal Procedure Code (Act V of 1898), against certain persons, a M. L. A. writing to Magistrate to withdraw proceedings against one of them.

No member of the Legislative Assembly has any right to interfere in the course of administration of criminal justice.

While proceedings under S. 107, Criminal P. C., against certain persons were pending in the Court of a Magistrate a member of the Legislative Assembly wrote a letter to the Magistrate with the intention that the proceedings against one of the persons should be withdrawn :

Held, that the letter grossly offended against the law of contempt of Court. (Thomas C. J. and Radhakrishna J.) District Magistrate, Sultanpur v. Ramjas Yadava,

A I R 1940 Oudh 178 = 1940 A W R (C C) 372=12 R C 280=185 I C 754=41 Cr L J 233.

——Every private communication to Judge for influencing his decision on pending matter is contempt of Court.

Every private communication to a Judge for the purpose of influencing his decision upon a pending matter is contempt of Court as tending to interfere with the course of justice :

Held, on facts that the letter in question was not written with the intention of influencing the Magistrate. Moreover, there were no proceedings pending under S. 107, Criminal P. C., before the Magistrate when he received the letter and, therefore, there was no contempt of Court. (Zia-ul Hasan and Yorke JJ.) Ram Shankar v. V. N. Shukla,

A I R 1939 Oudh 182 = 1939 O W N (C C) 522=11 R O 307=1939 A W R (C C) 82=14 Luck 649=181 I C 466=40 Cr L J 566 (2).

——Member of Legislative Assembly, issuing instructions to District Magistrate in respect of pending criminal case.

No member of the Legislative Assembly has any right to interfere in the course of the administration of criminal justice. Where, therefore, a member of a Legislative Assembly taking advantage of his position issues instructions to a District Magistrate in respect of a pending criminal case, which can only be issued by the High Court, he is guilty of contempt of Court. (Bennet and Verma JJ.) Emperor v. Gajadhar Prasad,

A I R 939 All. 247=11 R A 575=(1939) A L J 99= 1939 A W R (C C) 128=181 I C 558.

——Criminal proceedings against some persons pending before Sub-Divisional Officer — Member of Legislative Assembly, writing letter to Sub-Divisional Officer requesting not to proceed with case — Copy of letter sent to Deputy Commissioner.

CONTEMPT OF COURTS — 2. Communication to Judge

A member of Legislative Assembly wrote a letter to Sub-Divisional Officer in respect of proceedings pending before him against certain tenants under S. 107, Criminal P. C., requesting the Sub-Divisional Officer not to proceed with the case. A copy of the letter was forwarded to Deputy Commissioner as well :

Held, that the writing of the letter grossly offended against the law of contempt of Court. It was in the clearest terms an attempt to prejudice the mind of the Magistrate in regard to the trial of the case pending before him and the writer was, therefore, guilty of contempt of Court. (Ziaul Hasan and Yorke JJ.) Mahabir Prasad v. C. B. Gupta,

A I R 1939 Oudh 180 = 1939 O W N (C C) 525=11 R O 323 (2)=1939 A W R (C C) 84=14 Luck 653=181 I C 714 = 1939 A Cr C 89 = 1939 O L R 363 = 1939 O A 487.

3. Gross contempt.

——Subordinate Judicial Officers — Imputation of dishonest motives in their judicial determination — Publication of, constitutes contempt of serious character. (Muhammad Munir C. J.) Crown v. Editor, Printer and Publisher, Daily Zamindar

A I R 1950 Lah 158=Pak Cas 1950 Lah 350 = Pak L R 1950 Lah 311=51 Cr L J 1243.

——Sub-Inspector of Police done to death by number of persons in Bazar in broad daylight and in presence of senior Police Officer—Deceased alleged to have criminally assaulted girl previous night — This fact, however, not affecting seriousness of crime relating to his death—Writer of report on this incident aware of all this—Writer instead of helping Police in investigating case proclaiming that every one of arrested persons in connection with murder was innocent—Writer even announcing that Police had decided, under directions of their Chief, to arrest every prominent Hindu and some Congressmen because of communal considerations — Contempt of Court held was not only technical but was of a very serious kind. (Teja Singh C. J., Passey and Kartar Singh JJ.) Crown v. Brish Bhan

A I R 1950 Pepsu 9=1 Pepsu L R 253 = 51 Cr L J 1219 (S B).

——Procedure—Guilty party cannot escape consequences of his act by traversing allegations — Nature of evidence in contempt cases indicated.

A party guilty of a contempt of Court cannot escape the consequences of his act by merely traversing the allegations even though on affidavit and thus making the matter a hotly contested issue of fact. Facts in contempt cases are generally admitted or are established beyond controversy. It is generally speaking not necessary to take oral evidence in Court in such cases and the evidence generally consists of sworn affidavits. In most cases, it is not desirable to do more than this because the proceedings for contempt are necessarily of a summary character. No hard and fast rule, however, can be laid down. (In this case, the High Court varied the normal procedure by calling for an affidavit from the Magistrate in whose Court the incident complained of took place and also by allowing him to be cross-examined as his veracity itself was challenged, because the Magistrate was easily available.) (Ram Lall and Khosla JJ.) Nand Lal Bhalla v. Kishori Lal

231 I C 234=48 Cr L J 757 (Lah).

——Making allegation that once Magistrate knew that Government had instituted prosecution there was bound to be conviction amounts to gross contempt.

CONTEMPT OF COURTS—3. Gross contempt

There cannot be contempt of Court more gross than an allegation that as the Magistrate was told that Government was behind the prosecution, there was not and there could not be any proper judicial trial, that the proceedings before the Magistrate were an empty formality, that the Magistrate had made up his mind to convict the accused even before the trial was over with a view to conform to what he believed to be the wishes of the Government, in other words, that once the Magistrate knew that the Government had instituted the prosecution there was bound to be a conviction. The High Court cannot allow attacks of this nature to be made against the Subordinate Courts without taking serious action.

[In view of unqualified apology the accused was sentenced to pay a fine of Rs. 250 and in default of payment to undergo simple imprisonment for a period of two months.] (Leach C. J., Lakshmana Rao and Krishnaswami Ayyangar JJ.) Advocate-General, Madras v. Sri Ramanatha Goenka

A I R 1942 Mad 711 = (1942) 2 M L J 622 = 55 M L W 799 (2) = 1942 M W N 722 = 15 R M 729= I L R (1943) Mad 26=204 I C 167=44 Cr L J 162 (S B).

——Allegation by legal practitioner that Judge acted with prejudice and dishonestly to please some one—Allegations contained in notice under S. 80, Civil Procedure Code.

There can be no grosser contempt than to allege that a Judge has acted with prejudice, bias and malice in the course of his judicial duties, that he decided a case not according to his own convictions but to please somebody else and that he abused his powers as a Judge and acted dishonestly and in bad faith. The fact that these allegations were contained in a notice under S. 80, does not prevent them from being contempt of Court. (Broomfield and Wassoodew JJ.) Tulsidas Amanmal, In re

A I R 1941 Bom 228=43 Bom L R 250 = 14 R B 39 = I L R (1941) Bom 548=195 I C 359=42 Cr L J 723.

——Publication of plaint reflecting severely on defendant's conduct—Whether amounts to contempt.

The publication of a plaint may amount to contempt where it amounts to publication of a document reflecting severely on the conduct of the defendant. In such case, a serious contempt is committed, a contempt of a scandalous nature, and a form of contempt which, if allowed to flourish, might become a serious danger. (Monroe and Din Mohammad JJ.) Bennett Coleman and Co., Ltd. v. G. S. Monga

A I R 1936 Lah 917=9 R L 305 = 38 P L R 1166= I L R (1937) Lah 34=165 I C 813=38 Cr L J 73.

4. Jurisdiction.—See Contempt of Courts Act (1926), S. 2.

5. Matter sub judice.

(a) Criticism of executive authority.
(b) Pendency of proceedings whether necessary.
(c) Proceedings when pending.
(d) Sufficiency of adverse comments.

5. Matter sub judice.—(a) Criticism of executive authority.

Criticism of the executive authority like the Police, however bitter, cannot be treated as contempt of Court, but when such criticism is in connection with the conduct of the said authority in respect of the investigation of a pending case, or a case that is likely to be placed before a Court for decision, and it is calculated substantially to interfere with the due course of justice by creating prejudice for or against a party, it cannot but amount to contempt of Court. (Teja Singh C. J., Passey and Kartar Singh JJ.) Crown v. Brish Bhan

A I R 1950 Pepsu 9=1 Pepsu L R 253 = 51 Cr L J 1219 (SB).

CONTEMPT OF COURTS

5. Matter sub judice.—(b) Pendency of proceedings whether necessary.

——Contempt of Court, what amounts to — Interference with course of justice.

If a person making a publication, or responsible for the act, which is likely to interfere with the fair trial of the case, is aware that a proceeding is imminent, then the offence is complete and it is not essential that the case must be pending. (Jagannadhadas C. J. and Mohapatra J.) State v. Radhagobinda Das

A I R 1954 Orissa 1 = I L R (1953) Cut 246 = 1953 Cr L J 1906.

——Contempt, what constitutes — (Contempt of Courts Act (1926), S. 1).

To constitute a contempt, adverse comment on a party need not refer to the subject-matter of pending proceedings. It is sufficient if it is clear that the comment tends to prejudice the trial of the action. (Panigrahi C. J. and Mohapatra J.) Bijoyananda Patnaik v. Balakrushna Kar

A I R 1953 Orissa 249=I L R (1953) Cut 283 = 1953 Cr L J 1491.

The offence of contempt may be committed even if there is no proceeding or cause actually pending provided that such a proceeding or cause is imminent and that the writer of the offending publication either knew it to be imminent or should have known that it was imminent. (Harries C. J., Munir and Teja Singh JJ.) Subramaniyan, In re

A I R 1943 Lah 329=16 R L 238=I L R (1944) Lah 111=212 I C 17=45 Cr L J 445 (F B).

——Contempt, if can arise except in respect of a case which has been heard or is pending.

It is wrong to say that there can be no contempt of Court except in respect of a case which has been heard or is pending. (Derbyshire C. J., Mukerji, Costello, Lort Williams and Jack JJ.) Tushar Kanti Ghosh, In the matter of

A I R 1935 Cal 419=39 C W N 770 = 8 R C 53=61 C L J 376=63 Cal 217=156 I C 1055 = 36 Cr L J 1053 (F B).

5. Matter sub judice—(c) Proceedings when pending.

——Publication of news or articles.

Contempt proceedings cannot be taken in connection with the publication of news or articles as long as a criminal case is during the course of investigation and has not actually come to the Magistrate's Court for enquiry or trial. A case does not come to Court by the issue of a warrant of arrest. (Raghubar Dayal and Chaturvedi JJ.) Dwarka Prasad Agrawal v. Krishna Chandra,

A I R 1953 All 600=1953 A W R (H C) 236=1953 Cr L J 1337.

——Publication of article during pendency of proceeding.

In India the same Magistrate who has directed the investigation and has been informed of its result is authorised to try the case himself. Hence, whenever the accused is taken before a Magistrate or papers are sent to him concerning a case, any order passed by a Magistrate cannot be taken to be an order passed by a criminal Court. Further, it is not correct to say that as soon as a person has been arrested as a result of a report made against him, the case starts and any matter published with respect to that incident must be taken to have been published during the pendency of proceedings in a Court of law. In this respect the procedure in England being different from that in India, the English decisions bearing on this question cannot be followed and held that proceedings in Court start as soon as a warrant has been issued or an arrest

CONTEMPT OF COURTS—5. Matter sub judice —(c) Proceedings when pending

made. (Raghubar Dayal and Chaturvedi JJ.) Dwarka Prasad Agarwal v. Krishna Chandra,

A I R 1953 All 600=1953 A W R (H C) 236=1953 Cr L J 1337.

——Comment on pending proceedings.

An action for contempt for publication of comments over pending criminal trial, interfering with administration of justice can be taken when the original trial is either over or almost over and all that is pending is an appeal arising out of the judgment of the first Court or the original case for judgment without any further evidence to be led. But in such a case the contempt may not be very serious for a jury or witness are more susceptible to outside influences than a Judge : (1945) 1 K B 435, Foll.; (1903) 1 K B 77 and (1922) 1 Ch. 276, Disting. (Hemeon and Hidayatullah JJ.) T. B. Hawkins v. D. P. Mishra,

A I R 1952 Nag 259=I L R (1949) Nag 640

——Public discussion of case before it starts.

Where a case relating to an offence is registered and investigation is going on, and arrests are made in connection with the offence public discussion of the facts of the case which have the tendency to interfere with the course of justice by prejudicing the world against or in favour of one party amounts to contempt of Court in the same manner as if the case was actually pending before the Court. (Teja Singh C. J., Passey and Kartar Singh JJ.) Crown v. Brish Bhan,

A I R 1950 Pepsu 9=1 Pepsu L R 253=51 Cr L J 1219 (SB).

——Article on pending criminal case — When proceeding can be said to be pending.

As a general rule, the essence of the contempt of Court by commenting on a proceeding in a Court is that proceedings should be pending when the offending publication appears. In criminal cases, for a proceeding to be pending, so as to give jurisdiction to punish for contempt, it is not necessary that the accused should be committed for trial or even brought before a Magistrate. It would be sufficient if he had been arrested and was in custody.

(Quære) Whether the offence of contempt may be committed by a publication at a time when proceedings are imminent but not yet begun. (Biswas, Roxburgh and Akram JJ.) Emperor v. J. Choudhury,

A I R 1947 Cal 414=51 C W N 700=I L R (1948) 1 Cal 441 (SB).

——Article commenting on incident under Police investigation—Editor having neither knowledge nor reasonable grounds for believing that proceedings were imminent—No contempt — Fact that the matter was under Police investigation is not sufficient to prove either actual knowledge of or reasonable grounds for believing in the imminence of any criminal proceedings. (Biswas, Roxburgh and Akram JJ.) Emperor v J. Choudhury,

A I R 1947 Cal 414=51 C W N 700=I L R (1948) 1 Cal 441 (SB).

——Application under S. 100, Criminal Procedure Code, 1898, against opposite party—Allegation that applicant's wife was kept in wrongful confinement by opposite party —Application ordered to be filed for want of address of woman — Complaint by opposite party under S. 500, Penal Code and application for taking proceedings under S. 182, Penal Code—Complaint and application pending—Opposite party issuing notice demanding damages for defamation—Whether contempt of Court.

In an application under S. 100, Criminal P. C., the applicant alleged that his wife was kept by opposite party in wrongful confinement. On a letter written on the direction of the Magistrate, it was found that the woman was

CONTEMPT OF COURTS — 5. Matter sub judice—
(c) Proceedings when pending

not with the opposite party. Thereupon the application was ordered to be filed as the woman's correct address was not available. The opposite party feeling aggrieved by certain remarks in the application, that the applicant's wife was kept in wrongful confinement against her will by the opposite party in the Ashram, filed a complaint against the applicant under S. 500, I. P. C. He also filed an application under S. 195, Criminal P. C. for taking proceedings against the applicant under S. 182 of the I. P. C. The opposite party followed it with a legal notice sent through a Counsel in which he claimed Rs. 5,000 as damages for the alleged defamatory statement asking the applicant to comply with the notice within a month of its receipt failing which he would take such legal action against him as he shall be advised. The applicant made an application under S. 2 of the Contempt of Courts Act.

Held, that application under S. 100 of the Criminal P. C., was ordered to be filed and the proceedings under S. 100 of the Criminal P. C., had terminated for the time being and there was no case pending in Court which was liable to be prejudiced by anything done by the opposite party afterwards. Hence in issuing notice, the opposite party made no attempt to restrain the applicant from proceeding to take such legal steps as he might be advised to recover his wife and there was no case to take action against the opposite party under S. 2, Contempt of Courts Act. (Thomas C. J. and Ghulam Hasan J.) Mahadeo Prasad v. Tej Narain,

AIR 1944 Oudh 14=16 R O 109=1943 O W N (C C) 331=19 Luck 303=209 I C 212=45 Cr L J 108.

5. Matter sub judice—(d) Sufficiency of adverse comments.

——In the absence of any interim prohibitory order from the Court, or of an undertaking by a party, it is not contempt for the party to do any act resulting in some proceedings pending before the Court being rendered infructuous. A party should not anticipate order of the Court even in his legitimate actions. (Shinde C. J., Dixit and Chaturvedi JJ.) Malojirao Shitole v. C. G. Matkar,

A I R 1953 Madn. B. 245=1953 Cr L J 1675 (FB).

——A criminal case was pending against the accused for having conspired and caused mischief by fire to a mine. The Managing Director of the mine while addressing the Annual General Meeting of the company stated : "The regrettable outbreaks of fire which have occurred in the Mine since the close of the period under review have cast a shadow over this year's working. These outbreaks were undoubtedly due to sabotage and have resulted in loss to the company, labour and Government and, though loss of life in fact did not take place this might well have been the case. The police have instituted criminal proceedings against certain persons accused of being connected with these acts of sabotage". On the question whether this expression amounted to contempt of Court :

Held, that there was no doubt some room for complaining that the respondent had, by saying that the incidents of fire were undoubtedly due to sabotage, given expression to an opinion on a matter which was 'sub judice' and this might well have been avoided. But under the circumstances the statement did not prejudice the fair and impartial trial of the case and did not therefore amount to contempt of Court. (Medapa C. J. and Vasudevamurthy J.) K. S. Vasan v. Arthur H. E. Taylor,

A I R 1953 Mys 103=I L R (1953) Mys 137=1953 Cr L J 1154.

——Contempt of Court — Comments on pending judicial proceedings — Knowledge or intention of contemner—Relevancy.

CONTEMPT OF COURTS — 5. Matter sub judice—
(d) Sufficiency of adverse comments

Per Das C. J. — In considering whether certain newspaper comments on pending judicial proceedings amount to contempt of Court, what the Court is concerned with in the first instance is not the intention of the contemners, nor even the specific and direct knowledge of the pendency of the proceedings, except probably as an aggravating or mitigating circumstance. What is more important to decide first in such cases is their tendency to affect the pending proceedings and then only the relevancy of knowledge or intention.

Per Narasimbam J.—It will be a dangerous innovation in the Law of Contempt to say that a comment on a pending proceeding which has a tendency to interfere with the due course of justice will not amount to contempt unless it is affirmatively established that the commentator had knowledge of such pendency.

The essence of the offence of contempt lies on the tendency to interfere with the due course of justice, and motive, good faith or absence of knowledge of the pendency are immaterial. (Jagannadhadas C. J. and Narasimham J.) State v. Editors and Publishers of Eastern Times and Prajatantra,

A I R 1952 Orissa 318=I L R (1952) Cut 1=1952 Cr L J 1605.

——Comment on pending proceeding—Every libel on party to proceeding is not contempt — It must be intended or calculated to prejudice trial — Motive is immaterial — Tendency of the comment is to be judged reasonably—Comments held did not amount to contempt of Court. (Hemeon and Hidayatullah JJ.) T. B. Hawkins v. D. P. Mishra,

AIR 1952 Nag 259=ILR (1949) Nag 640.

——Comments—Comments on case—Naming of party.

What is punishable under the law is comment on a case while it is pending actually prejudicing or calculated to prejudice any party. If the party is named it adds to the gravity of the offence but the naming of the party is not an essential ingredient (Blank and Lahiri JJ.) Bankim Chandra Paira v. Ananda Bazar Patrika,

A I R 1950 Cal 129=ILR (1951) 1 Cal 94=51 Cr L J 610.

——Proceedings under Ss. 182 and 211, Penal Code, by A (President, District Congress Committee) against B —Publication of news-item in newspaper, during pendency of investigation, describing B as 'Shahid Congress leader" held amounted to contempt of Court. (Harnam Singh J.) Diwan Chand v. K. Narender,

AIR 1950 E P 366.

——Criminal case under S. 406, Penal Code—Publication during pendency in heading of news-item in newspaper, that sensational disclosures are expected after investigation —Held that publication was contempt as mankind had been prejudiced before the cause was heard and thereby the fair trial of cause was prevented. (Harnam Singh J.) Diwan Chand v. K. Narender,

AIR 1950 E P 366.

——Interference with course of justice—Prejudicial publication during pendency of suit.

The question whether the publication by the other party during the pendency of a suit has resulted in any prejudice to the applicant's defence is immaterial. What is essential under the law is that the publication should be calculated to create an atmosphere of prejudice against a party or such prejudice as may interfere with the course of a fair trial.

A, a taluqdar, sued B for declaration of his title to certain plots as part of his estate. While suits in respect of such plots were pending C, the Superintendent of the estate and D, their standing counsel, issued a public

CONTEMPT OF COURTS — 5. Matter sub judice— (d) Sufficiency of adverse comments

notice in papers asserting that the land within the boundary given (which included the plots in suits) belonged to the estate and that the persons entering into transactions with B did so at their own risk. Four more suits against B for similar declaration were also filed by A for other plots transferred by B from the same land. In an application under S. 3 by B against C and D that the publication of the said notices amounted to contempt of Court :

Held, that the action of C and D in publicising the assertion of title while the matter was sub judice amounted to contempt of Court, caused real prejudice to B and substantially interfered with due course of justice : Case law discussed. (Ghulam Hasan C. J. and Misra J.) Mohd. Ibrahim v. Bhopal Singh,

AIR 1948 Oudh 131=23 Luck 182=1947 O W N C C 549=1947 O A C C 373=1947 A W R C C 373=49 Cr L J 212.

——Prejudicing fair trial of pending case.

It is of great importance to the administration of justice that it should be allowed to take an unfettered course and not be sullied and besmirched in any manner. The essence of an offence of contempt of Court lies in the fact that the person complained of has done something which might have the effect of prejudicing the fair trial of a pending case.

L applied to the Insolvency Court praying that N should be adjudged insolvent and in this application made certain statements defamatory of N. N instituted a complaint against L under S. 500, I. P. C., in order to vindicate his character and integrity :

Held, that N was not guilty of contempt of Court, as nothing was done by N from which it could be gathered that if L withdrew the allegations which he had made against N's character in the insolvency proceedings, N would drop the complaint which he had preferred under S. 500, I. P. C.

Held, also that threat by N before the institution of the insolvency proceedings that if L filed insolvency proceedings against N, he would file a complaint for defamation against L, amounted only to a warning so that an unguarded action may not be taken and did not amount to contempt of Court. (Collister and Bajpai JJ.) Radhey Lal v. Niranjan Nath,

A I R 1941 All 95=(1940) A L J 798=1940 A W R (H C) 584=13 R A 400=193 I C 260=42 Cr L J 370.

——Uncle of minor applying in Allahabad Court for his appointment as guardian — Objector making imputation against character of applicant in affidavit—Court finding that it had no jurisdiction returning application for presentation to proper Court — Application presented before Benares Court — Applicant moving Allahabad Court for action under S. 476, Criminal Procedure Code (Act V of 1898), on ground that allegations in objector's affidavit were false and also filing complaint before Magistrate at Allahabad under S. 500, Penal Code (Act XLV of 1860)— Objector contending that action amounted to contempt of Court — Institution of these proceedings against objector during pendency of guardianship proceedings.

The uncle of the minors made an application in the Allahabad Court for his appointment as guardian of the minors. The objector to the application made in his affidavit various imputations against the character and the conduct of the applicant. The Allahabad Court, however, found that it had no jurisdiction to entertain the application. It was, therefore, returned for presentation to proper Court. The application was then filed in Benares Court. The applicant alleging the allegations in the

CONTEMPT OF COURTS — 5. Matter sub judice— (d) Sufficiency of adverse comments

affidavit to be false, moved the Allahabad Court under S. 476, Criminal P. C., and also filed a complaint under S. 500, I. P. C., before a Magistrate at Allahabad. The objector contended that the action of the applicant amounted to contempt of Court :

Held, as regards the application under S. 476, Criminal P. C., that it did not amount to a contempt. So far as the complaint under S. 500, I. P. C., was concerned, whatever the applicant's real motive might have been there was nothing in his action to suggest to the objector, that, if he withdrew any of his pleas regarding the opposite party's character, the latter would drop the complaint which he had preferred under S. 500, and so it could not be said that pressure was being exerted upon the applicant in respect to the guardianship proceedings. Nor would the objector necessarily be handicapped in the proceedings before the District Judge at Benares by the circumstance of a complaint under S. 500, having been filed in a Magistrate's Court at Allahabad; a proceeding which upon a motion by the applicant would almost certainly be stayed by any Court competent to do so. The mere act of preferring a complaint in the Court of a Magistrate at Allahabad under S. 500, in respect to allegations which had been made against him in a guardianship proceeding which was pending in the District Judge's Court at Benares did not amount to a contempt of Court. (Collister and Bajpai JJ.) Hrishikesh Sanyal v. A. P. Bagchi,

AIR 1940 All 497=(1940) A L J 579=13 R A 283= =1940 A W R (H C)) 532=I L R (1940) All 710=191 I C 641=42 Cr L J 211.

——Speeches made in order to influence decision of pending criminal case and induce complainant to withdraw complaint.

The question in all cases of comment on pending proceedings is not whether the publication does interfere but whether it tends to interfere with the due course of justice, and on the same principle it is a contempt of Court to make a speech tending to influence the result of a pending trial whether civil or criminal, or to deliver a speech at a meeting. It is contempt of Court to address public meetings, to influence the decision of the Criminal Court and prevent witnesses from giving evidence and to bring pressure on the complainant to withdraw his complaint.

[The accused were convicted for contempt of Court but discharged as they tendered an unqualified apology and gave an assurance that in future they would not commit such an offence. But they were made to pay costs incurred by the applicant, (Thomas C. J. and Radha Krishna J.) Radha Krishna v. Raja Ram,

AIR 1941 Oudh 14 = 1940 A W R (C C) 238 = 1940 O W N (C C) 491 = 12 R O 431 = 16 Luck 61 = 188 I C 408 = 41 Cr L J 584.

——Criminal proceedings by mokhasadar against ryots — Pending proceedings, person issuing pamphlet accusing mokhasadar of having deliberately filed false case and oppressed ryots.

Nothing is more incumbent upon Courts of Justice than to preserve their proceeding from being misrepresented ; nor is there anything of more pernicious consequence than to prejudice the minds of the public against persons concerned as parties in causes, before the cause is finally heard. It is no excuse to urge that the mind of the trial Judge would not be affected by the statements.

A mokhasadar filed criminal proceedings against his ryots. While these proceedings were pending, a person issued a pamphlet accusing the mokhasadar of having deliberately launched false cases against his ryots and in other ways oppressing them :

CONTEMPT OF COURTS — 5. Matter sub judice—

(d) Sufficiency of adverse comments

Held, that the contempt was of a very grave nature. (Leach C. J. and Krisnaswami Ayyangar J.) Bapayya Naidu v. Peta Bappayya,

AIR 1938 Mad 975 = (1938) M W N 1008= 11 R M 521 = (1938) 2 M L J 520 = 179 I C 91 = 40 Cr L J 169.

——Comment on pending case.

All proceedings in suits pending in a Court of Justice are privileged, and any comment on the subject-matter of the suit, and any abuse of the parties or holding them up to ridicule and contempt in the eyes of the public whilst the suit is pending, are not allowed. (B. J. Wadia J.) Demibai Gengji v. Rowji Sojpal,

AIR 1937 Bom 305=39 Bom L R 471=10 R B 108= 170 I C 631 = 38 Cr L J 942.

——High Court's jurisdiction to punish—Notice to defendant in pending suit to withdraw plea taken by him — Pleader sending it — Responsibility of.

Jurisdiction to punish for contempt of Subordinate Courts rests in the High Court.

It is the duty of Courts to protect defendants from being cowed down into submission and under pressure of threat and menace being made to abandon pleas which they can legitimately take in a pending action. Consequently, where an attempt is made to put pressure on the defendant to withdraw a plea which he had taken in the written statement, duly filed in Court, there can be no doubt that such an action would amount to a direct interference with the administration of justice in preventing the defendant from pressing his defence and putting forward the plea which might, if established, prove fatal to the suit and such an action would amount to contempt of Court. And the Counsel who not only advises his client to send such notice, but actually drafts it himself and sends the same under his own signature on behalf of his client, is also guilty of contempt, for, a Counsel is not expected to act blindly and allow himself to be dictated to by his client and in that way make himself a mere instrument or a tool in his hands. He has to exercise his own judgment and discretion and even in cases where scandalous or defamatory matters are to be communicated, he has to warn his client, much more so where the offence would amount to one of contempt of Court. A Counsel's capacity is not inviolable, and his privileges cannot possibly extend to interference with the administration of justice. Counsel are expected to help in the administration of justice and not to be an impediment thereto. (Sulaiman C. J. and Harris J.) Rajender Singh v. Uma Pershad,

AIR 1935 All 117 = 4 A W R (H C) 1280 = (1935) A L J 29 = 8 R A 404 = 57 All 573 = 159 I C 193.

——Judicial proceedings—Publication of disputed will in newspaper—Contempt.

Where during the pendency of a suit in which the genuineness of a will was seriously disputed, the creditor of a newspaper published a certified copy of the will as a paid advertisement, and the object of the publication was to make the public believe that it was genuine :

Held, that the editor was guilty of contempt of Court. (Sulaiman Actg., C. J. and Bajpai J.) Guru Charan Prasad v. A. J. Newspaper, Benares,

AIR 1931 All 420 = (1931) A L J 647 = 53 All 712= Ind Rul (1932) All 170=136 I C 282=33 Cr L J 259 (2).

6. Motive.

——Contempt of Court, what amounts to — Interference with course of justice.

For contempt proceedings, the intention or motive of the contemner is not essential if really the writing has a tendency, or, is calculated to impede the fair trial of the case. (Jagannadhadas C. J. and Mohapatra J.) State v. Radhagobinda Das

AIR 1954 Orissa 1 = ILR (1953) Cut 246 = 1953 Cr L J 1906

——Intention—Whether necessary ingredient of offence of contempt.

Intention is not the gist of the offence of contempt. What is to be seen is the effect of the offending publication. Absence of an intention may, however, be considered in deciding the final order. (Vakil J. C.) Ramniklal Nanalal v. Shah Pranlal Nanchand,

AIR 1952 Kutch 74 = 1952 Cr L J 1482.

——Criminal contempt — Proof.

In the proceedings in contempt of the kind of a criminal nature the proof offered must establish the charge beyond any reasonable doubts. When the words used clearly indicate that a contempt has been committed, proof of the fact that it was not intended to commit contempt may mitigate the gravity of the offence but it will not have the effect of showing that no contempt was committed : (Kidwai and Chandiramani JJ.) Rex v. B. S. Nayyar,

AIR 1950 All 549 = 51 Cr L J 1500.

——Interference with due course of justice.

The essence of the offence of contempt of Court consists of doing an act or publishing a writing which is calculated to interfere with due course of justice. Merely holding an inquiry into the facts of a pending case cannot be said to interfere with the due course of justice unless the result of the inquiry is published. The fact that the writer or the publisher had no such intention and he was actuated with the best of motive is not material and all that has to be seen is whether the writing has tendency to interfere with the due course of justice or it is likely to do so. (Teja Singh C. J., Passey and Kartar Singh JJ.) Crown v. Brish Bhan,

AIR 1950 Pepsu 9 = 1 Pepsu L R 253 = 51 Cr L J 1219 (SB).

——Contempt without intention.

A person may be guilty of contempt even though there was no intention to commit contempt. The question in such cases is not what was the intention of the offender but what was the effect of publication. If the effect of the publication is to create prejudice for or against a party or to interfere with the due course of justice, it is contempt. (Teja Singh and Bhandari JJ.) Emperor v. Khushal Chand,

AIR 1945 Lah 206 = 47 P L R 148 = 1946 Lah Rul 87 = 221 I C 195 = 47 Cr L J 115.

——Contempt of Court—Defence—Truth of allegations.

Nobody is allowed to scandalise a Court and make allegations against it even if they are true. The truth of the allegation is no defence in proceedings for contempt. (Allsop and Mulla JJ.) M. G. Kadir v. Kesri Narain Jaitly,

AIR 1945 All 67 = 1944 O W N 287 = ILR (1945) All 7 = 18 R All 7 = 1945 A Cr C 17 = 1945 A L J 26 = 1944 A L W 606 = 1945 A W R (H C) 15 = 218 I C 320 = 1945 O A H C 15 = 46 Cr L J 458.

——Intention to commit contempt.

A person may be guilty of contempt though there was no intention to commit contempt. It is sufficient if the effect of the article complained of is to create prejudice and to interfere with the due course of justice. (Harries C. J., Munir and Teja Singh JJ.) Subrahmanyan In re,

AIR 1943 Lah 329 = 16 R L 238 = ILR (1944) Lah 111=212 I C 17 = 45 Cr L J 445 (FB)

——Effect and not motive is to be considered.

In contempt of Court proceedings the Court is not concerned with the motives of the writer but is concerned

CONTEMPT OF COURTS — 6. Motive

with the effect which the publication is likely to cause. (Kania J.) Hargowandas v. Chimanlal Vadilal,

AIR 1942 Bom 86 = 44 Bom L R 95 = ILR (1942) Bom 151 = 14 R B 384 = 199 I C 856 = 43 Cr L J 583

——Intention of the writer.

An intent to commit contempt is not necessary to maintain a conviction. The writer of an article can be guilty of contempt without intending to interfere with the due course of justice. An article written with the deliberate intention of interfering with the due course of justice would be an extremely serious matter meriting very serious punishment. He can, however, be guilty of writing an article which tends to interfere with the course of justice without intending so to interfere. The test has always been not what the writer intended but what effect the words would have upon readers.

The question of intention is irrelevant in considering whether the offence has been committed, though, of course, it is most important matter in considering the appropriate sentence to be imposed. An expression of an intention not to repeat an offence cannot affect the question whether the offence committed is a serious one requiring action on the part of the Court. The fact that no prejudice could result from the articles because of the warnings which are given to the jurors by the presiding Judge at the trial cannot afford the opposite party any assistance. (Harries C. J. and Dhavle J.) Superintendent, Legal Affairs, Bihar v. Murli Manohar

A I R 1941 Pat 185 = 7 B R 261 = 13 R P 399 = 21 P L T 980=20 Pat 306=191 I C 834=42 Cr L J 225.

7. Nature of proceedings.

See Contempt of Courts Act (1926), S. 2.

8. Newspaper Comment.

(a) Contempt of Court—Illustrations.
(b) Construction of articles.
(c) Defence.
(d) Liability of editor.
(e) Liability of printer and publisher.
(f) Privilege.
(g) Test.

8. Newspaper Comment — (a) Contempt of Court — Illustrations.

——Contempt of Supreme Court — Newspaper article attributing improper motives to Judges—See Constitution of India, Art. 129

AIR 1953 S C 75=1953 Cr L J 519 (SC).

——Comments on pending judicial proceedings — Newspaper comment on pending proceedings for leave to appeal to Supreme Court.

Per Das C. J. (Narasimham J. contra.) — The question as to whether a question of law sought to be raised on an appeal to the Supreme Court is of public importance and hence substantial, is not a matter which relates to the appreciation of any evidence or the facts of a particular pending case, about which newspaper comments might have tendency to create prejudice on the merits thereof. It is hardly to be supposed that in deciding the point, whether or not the question raised on appeal to the Supreme Court is a substantial question of constitutional law, or is otherwise a fit one for appeal, any Court will be prejudiced, or any litigant can reasonably apprehend that he will be prejudiced, by the opinion expressed by the daily newspapers.

Per Narasimham J.—Where the editorials are intended to deter the parties from opposing the leave petition and to embarrass the Judges also in considering judicially whether leave should be granted or not, the editorials have a tendency to prejudice the very issue which has to be decided by the High Court while passing orders on the

CONTEMPT OF COURTS—8. Newspaper Comment —(a) Contempt of Court — Illustrations

leave petitions and as such clearly amounts to interference with the due course of justice and as such constitute contempt of Court.

Even on pure questions of law, parties are entitled to make their submissions before the Justice finally makes up his mind.

Comments by newspapers on pending proceedings have always a tendency to interfere with the due course of justice and have been treated as an aggravated form of contempt and it is immaterial whether the comments affect pure questions of law or fact,

(But as the actual effect of the editorials in this case in interfering with the due course of justice was almost negligible though they undoubtedly had such a tendency, this might legitimately be taken as an extenuating circumstance for not taking serious notice of the contempt.) (Jagannadhadas C. J. and Narasimham J.) State v. Editors and Publishers of Eastern Times and Prajatantra

AIR 1952 Orissa 318 = I L R (1952) Cut 1 = 1952 Cr L J 1605.

——What amounts to.

Two complaints were filed in the Panchayati Adalat against one S on the allegation that several tenants had paid rent to him and that he had not granted receipts to them. The Adalat took cognizance of the complaints and summoned S for trial. Subsequently, an article was published in a newspaper by one to the effect that the Sarpanch of that village had informed that S had told all tenants who had become Bhumidars that he would issue receipts to them only on their paying full rent to him and that the tenants were also being threatened that if they did not pay full rent they would be ejected from the land :

Held, that the publication of the article would certainly interfere with the due course of justice and prejudice S. The article made no reference to the cases pending and did not purport to be a record of the proceedings held in the Panchayati Adalat. As a matter of fact nothing had been done in the cases before the publication. The questions whether S had refused to grant receipts to his tenants and whether he was justified in doing so were under investigation before the Panchayati Adalat, but the article took them to be established facts and thus poisoned the atmophere in which the trial was to take place. So also the reference to the demand for unpaid balance of rent and the threat to eject the tenants if they did not pay the balance. All these matters related to S. It could not be said that the fact that the Panchayati Adalat had the power to receive any evidence which it thought necessary and that it was its duty to ascertain facts of the cases by every lawful means in its power, made the publication no contempt. The Panchayati Adalat could ascertain the facts by lawful means. It would not be lawful to ascertain them from an article published in a paper. Moreover, administration of justice is prejudiced not only by poisoning the atmosphere in which the trial is held, on account of which persons may not readily come forth to give true evidence. In the present case there was likelihood of the danger that nobody would depose in favour of the applicant. (Dayal and Desai JJ.) Sukhdeo v. Brij Bhushan

AIR 1951 All 667 = 1951 A L J 305 = ILR (1951) 2 All 521=52 Cr L J 984 (2).

——Publication of version of one side of pending case.

The publication of the version of one side relating to a pending case can under certain circumstances amount to contempt of Court. But where an article merely describes the alleged rape of a girl by a Sub-Inspector who was murdered, the article cannot be characterised as a defence

CONTEMPT OF COURTS—8. Newspaper Comment —(a) Contempt of Court—Illustrations

version of the incident of murder which alone could be the subject-matter of the proceeding in Court. Moreover, even if it be considered that it did amount to contempt, it was of a very mild nature and technical. (Teja Singh C. J., Passey and Kartar Singh JJ.) Crown v. Brish Bhan

AIR 1950 Pepsu 9 = 1 Pepsu L R 253 = 51 Cr L J 1219 (SB).

——Criticism of judgment of Court when amounts to contempt stated — Article criticising judgment of High Court — Article tending to impair confidence of public in impartiality and competency of judge and grossly misrepresenting Court proceedings—Article held amounted to contempt of High Court. (Abdul Rashid C. J., Munir and Muhammad Sharif JJ.) Crown v. Amin-ud-Din Sahrahi

AIR 1949 Lah 266=51 Cr L J 35 (FB).

——Proceedings in High Court under S. 491, Criminal Procedure Code, 1898 — Report of proceedings in newspaper and publication of paras. from application under S. 491.

Per Full Bench. — If a party to proceedings publishes before those proceedings are heard a plaint, a petition or such like with a view to prejudicing the minds of the public against the other party, such can amount to contempt of Court.

On the arrest of a newspaper reporter Mr. 'B' under R. 129 of the Defence of India Rules, an application under S. 491,Criminal P. C., was presented to the High Court by a Counsel on behalf of the manager of the newspaper. A report of the proceedings before the High Court on the petition under S. 491, Criminal P. C., was printed under the following heading : "Arrest of Mr. B. 'Habeas corpus' petition. Notice issued to Crown Counsel." The first part of this report, set out the arguments of the Advocate for the petitioner and certain observations of the Judge, and after the report of the arguments certain of the paragraphs contained in the application were set out. It was suggested that in the account of the proceedings, certain statements appeared which constituted contempt, and that the following remarks, namely, "Mr. R Advocate, brought to his Lordship's notice the fact that the order of the arrest of Mr. B issued by the District Magistrate, was illegal, improper and 'mala fide'," was a comment on a pending matter inasmuch as it assumed that the order of arrest was in fact illegal, improper and 'mala fide'. Further, it was alleged that an observation of the Judge had been published in such a form as to give the reader an impression that it was a clear case for his intervention. The remark was : "Yes that is what distinguishes this case from others where reasons are not known. But I want to see the actual order made under R. 129." It was further suggested that the publication of certain of the paragraphs of the petition under S. 491, Criminal P. C., constituted contempt of Court :

Held, that as the report of the remark of the Judge was correct it could not amount to any comment by the newspaper on a pending matter. The reproduction of the paragraphs forming the basis of the Advocate's submission did not amount to contempt as there was nothing in the paras. which it could be said was likely to interfere with the due course of justice and the case for the Crown was in no way prejudiced. (Harries C. J., Munir and Teja Singh JJ.) Subrahmanyan, In re.

AIR 1943 Lah 329 = 16 R L 238=I L R (1944) Lah 111=212 I C 17=45 Cr L J 445 (FB).

——Newspaper comment that Chief Justice was acting under influence of executive, amounts to contempt of Court. (Iqbal Ahmad C. J. and Collister J.) Emperor v. Debi Prasad Sharma,

1942 O W N 6 (All.)

CONTEMPT OF COURTS—8. Newspaper Comment —(a) Contempt of Court—Illustrations

——Object of proceedings for contempt—Article in newspaper containing comments on finding of Magistrate.

The principle underlying the cases in which persons have been punished for attacks upon Courts and interferences with the due execution of their order is not the protecting of either the Court as a whole or the individual Judges of the Court from a repetition of them, but the protecting of the public and especially those who either voluntarily or by compulsion are subject to its jurisdiction, from the mischief they will incur if the authority of the tribunal be undermined or impaired.

An article in a newspaper containing comments on the finding of the Magistrate in an inquest under S. 176, Criminal P. C., into the death of a person which are tantamount to imputations of deliberate perversity, incapability and partiality to the Police on the part of the Magistrate are calculated to bring into contempt, the Magistrate, in his capacity as such and for the publication of such article the editor and the publisher of the newspaper are liable to be dealt with for contempt of Court. The mere fact that an apology has been tendered by the accused is not a sufficient reason for securing immunity from punishment. (Mya Bu and Mosely JJ.) Advocate-General, Burma v. Maung Chit Maung.

AIR 1940 Rang 70 = 12 R Rang 330=187 I C 308= 41 Cr L J 445.

——Complaint of abduction against certain persons — During pendency of matter in Courts, complainant taking copy of complaint to editor of newspaper — Editor publishing it with square headlines and comments.

A person filed a complaint complaining that his wife had been enticed away by several persons. While the matter was pending in the Courts, the complainant took a copy of his complaint to an editor of a newspaper. Without making the least enquiry as to what had happened the editor proceeded to publish the complaint with square headlines. The headline consisted of the following : — "a case of abduction against.....and his father ..." "A sensation of extreme type has been created in the educated circle...on account of a case" :

Held, that the publication was bound to tend to prejudice the hearing of the case and, therefore, amounted to contempt of Court. (Young C. J. and Monroe J.) Vidya Sagar Kapur, In the matter of.

AIR 1938 Lah 815=40 P L R 791=11 R L 512=178 I C 990=40 Cr L J 156 (2).

——Article in newspapers suggesting that prosecution evidence in action either contemplated or proceeding is obtained unfairly.

It is well-settled that any act done or writing published which is calculated to obstruct or interfere with due course of justice or the legal process of the Court is contempt of Court although the Court will not take action for contempt unless it thinks that the conduct of the respondent is calculated seriously to interfere with the course of justice. Proceedings in contempt are not taken merely in respect of technical offences. To suggest in a newspaper article that evidence intended to be used in a prosecution which is either proceeding or is plainly contemplated, has been obtained by improper means and is unreliable or to suggest that admissions by the accused have been improperly obtained is conduct calculated to interfere with the due course of justice. (Beaumont C. J. and Wassoodew J.) Government Pleader, Bombay v. Shankar Dattatraya.

AIR 1938 Bom 198 = 40 Bom L R 73 = ILR (1938) Bom 176=10 R B 476=174 I C 523=39 Cr L J 424.

——Publication of mere summary of pleading in pending suit—No imputation to personal character of defendant.

CONTEMPT OF COURTS — 8. Newspaper Comment—(a) Contempt of Court—Illustrations

It is a matter of considerable risk to publish the summary of a pleading in a pending case in newspaper, and journalists are liable to get themselves into serious trouble if they publish articles of this class.

A newspaper published merely a resume of the allegations made in the plaint against the defendant and no attack on the personal character of the defendant was made :

Held, that the defendant was not justified in saying that the publication could be read as an attack upon his personal character and was, therefore, likely to prejudice him in the eyes of the Court or the public.

The publication could not be called what is sometimes called 'trial by newspaper' for trial by a Court of Justice. There was nothing in the article from which a reasonable person could draw the conclusion that the defendant was not prepared to meet the plaintiff's case, or that there was any likelihood of the defendant being embarrassed in the conduct of the proceedings by the publication, nor of witnesses being deterred. (Panckridge J.) Atindra Narayan v. Hemanta Kumari.

AIR 1934 Cal 606=7 R C 326=38 C W N 330 = 152 I C 900.

——Any act or publication of a writing likely to obstruct or interfere with justice or lawful process of the Courts is a contempt of Court. Reference as to the consistency of some person's conduct was made by District Judge to the Registrar of the High Court. The editor of a newspaper published the reference with his comments thereon before its determination—Held, it was contempt of Court. Without the previous permission nobody can comment or publish extracts from pending proceedings as the publication amounts to contempt of the Court. High Courts can exercise their power to protect inferior Courts and those of the moffusil under their supervision. (Marten, Hayward and Kajiji JJ.) Mohandas Karamchand Gandhi, In re,

22 Bom L R 358=58 I C 915=21 Cr L J 835.

——Contempt of Court, what constitutes.

Where an article in a newspaper reflects upon a witness —not only a witness but also a party—during his cross-examination in the Court the article does constitute contempt of Court. (Fletcher J.) Weston v. Editor Printer and Publisher of the Bengalee,

15 C W N 771=11 Ind Cas 499 (2).

8. Newspaper Comment—(b) Construction of articles.

——Contempt of Court — High Court — Scandalizing the Court—News items and editorial comments imputing 'unusual zeal' in relation to a case and attributing improper action to High Court—Conclusions based on irresponsible appreciation of judgments and orders of High Court and on careless assumption of incorrect facts—Suggestion that judgment of High Court merited ignoring — Articles conceived to whip up undue sensationalism — Articles held constituted Contempt of Court.

The press owes a duty to itself, to the public and to the Court not to impute impropriety to the action of the highest Court in the State when there is, to say the least, another reasonable construction that ought to have been put upon its action.

For the purpose of ascertaining whether the editorial comments amount to a contempt of Court or not, one has to scrutinize them closely and to understand the purport, implication and tendency thereof taken as a whole.

In certain news item and editorial comments published in certain newspapers, relating to the action of the High Court in proceedings concerning certain University affairs, improper action had been attributed to the High Court in

CONTEMPT OF COURTS — 8. Newspaper Comment—(b) Construction of articles

imputing "unusual zeal". Improper action had also been insinuated in saying that the students had succeeded in securing passes through the intervention of the High Court. The High Court had been incorrectly represented as having interfered with the internal affairs of the University, and wrongly stated as having been unique in so doing. These conclusions were based on an irresponsible appreciation of the judgment and the order of the High Court and on a careless assumption of incorrect facts. It had been improperly suggested that the public and the Universities would refer the verdict of the Syndicate to that of the High Court without even noticing that according to the findings of the High Court the verdict of the Syndicate was one arrived at without the exercise of due care and caution. The implication of this suggestion was that the judgment of the High Court merited ignoring. It had been luridly painted that the case had created a big sensation and that the members of Parliament were contemplating agitation in the Parliament in some form or other and that a very serious problem for the University and for the State of Orissa had arisen and that the University in question was faced with the problem of "to be or not to be" and that a crisis had developed and that public sympathy would be no doubt with the University in the crisis :

Held that the news item and the editorial comments, under consideration had definitely crossed the bounds of fair inference and legitimate comment and criticism. They had been conceived in a spirit of hasty and irresponsible appreciation of the action of the High Court and out of a hasty impulse to whip up undue sensationalism thereof. The news item and the editorial comments had the clear tendency to affect the dignity and prestige of the High Court and thereby disturbing the confidence of the public in its capacity to administer justice even handedly and with a due sense of responsibility for any larger issue that might be involved or affected thereby. There was no doubt, therefore, the publication of the news items and of the editorial comments taken together constituted contempt of High Court.

(But it was held that the exercise of the punitive jurisdiction of the Court was not called for, by the award of any punishment as there was nothing like the scurrilous abuse or the sweeping condemnation of the Judges or of the Court.) (Jagannadhadas C. J. and Narasimham J.) State v. Editors and Publishers Eastern Times and Prajatantra,

AIR 1952 Orissa 318=ILR (1952) Cut 1=1952 Cr L J 1605.

——Article in newspaper headed "Arrest made on flimsy grounds."

B, a reporter of a newspaper was arrested and detained on 3rd September 1943 under R. 129, Defence of India Rules, for misreporting remarks made by the Deputy Commissioner regarding the A. R. P. organisation, at a press conference attended by B which was convened by the Deputy Commissioner to consider the situation resulting from the issue of a milk control order passed by him. On the morning of 6th September, an article appeared in the newspaper of which B was the reporter, commenting on the arrest of B which was as follows : "Arrest made on flimsy grounds. Uncalled for step, Press comments on action against Mr. B. Lahore, 5th September : It is an uncalled for action, taken in anger, on flimsy grounds; it will jeopardize the relations of the press with the Govt.; it will engender ill-feelings between the parties who stand for democratic principles. Every, fair-minded person will be shocked at such a drastic step taken by the D. M., who in his calmer moments is apt to realise that jailing for doing one's duty fearlessly is a heavy price on the head of

CONTEMPT OF COURTS — 8. Newspaper Comment—(b) Construction of articles

a responsible journalist. Such an action cannot go unchallenged, and cannot, for a moment, stand the test of Law Courts. There is the comment made by the Indian languages newspapers of Lahore, on the arrest of Mr. B": Then followed certain excerpts translated into English, from articles which appeared in the vernacular newspapers in connection of B's arrest. On the same day, a petition under S. 491, Criminal P. C., was presented before the High Court at 11-30 a. m. on behalf of the manager of the newspaper, questioning the legality of B's arrest on the ground that the reason stated by the D. M. for the arrest of B, was not a legal justification for taking action under R. 129, and that the detention of Mr. B was illegal, improper and mala fide. But as B was released on September 7, the petition under S. 491 was dismissed on the ground that it had become infructuous. In the proceedings for the contempt of Court against the editor of the newspaper for publication of the article in the issue of 6th September 1943 :

Held, Per Harries, C. J. and Teja Singh J., Munir J. contra. — That the article read as a whole would not be said to have a tendency substantially to interfere with the due course of justice. Even if it amounted to contempt, it did not amount to contempt of which the High Court should take notice in the circumstances of the case because the whole proceedings had become infructuous, a few hours after the publication of the article. Moreover, the publication could not amount to contempt of Court because at the time of the publication, no proceedings were imminent to the knowledge of the editor and the publisher.

Per Munir J. — The D. M.'s decision to release B might have been influenced by the outcry in the press and if that be so it must be said that due course of justice was actually interfered with. The article presented one-sided version of the arrest and was calculated to produce in the minds of the public the impression that the arrest of B was illegal. Since the article in question had undoubtedly the tendency to prejudice the public mind in favour of B and against the D. M. who had taken the action the legality of which was being called in question before the High Court it clearly amounted to contempt of Court. (Harries C. J., Munir and Teja Singh JJ.) Subrahmanyan In re,

AIR 1943 Lah 329 = 16 R L 238=I L R (1944) Lah 111=212 I C 17=45 Cr L J 445 (FB).

——Report in newspaper under heading "Lawyer insulted" held was not comment on pending case and did not amount to contempt.

Per Full Bench.—One J was being prosecuted in the Court of a Magistrate and was defended by an Advocate. It was said that during the course of the case, the Magistrate referred to some questions of the Advocate as nonsense and latter said that he could not allow "any more of this nonsense." Counsel was supposed to have protested when the Magistrate was said to have remarked : "Then prove it is not nonsense". It was said that the Advocate felt insulted and withdrew from the case informing the Magistrate that he had been insulted. This incident gave rise to a transfer application in the High Court filed by J. The petitioner was represented by Counsel who referred to an affidavit of J. setting out the facts stated above. The Judge who heard the application for transfer ordered notice to issue to the Crown and a report of the proceedings which appeared in the issue of the newspaper was headed "Lawyer insulted, proceedings stayed in the Magistrate's Court." The phrase "Lawyer insulted" was in somewhat bolder capitals than the remainder of the heading. It was suggested that the use of the phrase "Lawyer insulted" as a heading to the paragraph amounted to a comment by the newspaper on a pending case and, therefore, constituted contempt of Court :

Held, that the heading could not be divorced from the remainder of the paragraph and every one reading the whole article would realise at once that the phrase "Lawyer insulted" merely meant that the lawyer in that particular case had in the circumstances complained that he had been insulted. Further, the phrase "Lawyer insulted" appeared in inverted commas which made it tolerably clear that it was merely a quotation from what appeared below and was not some independent comment of the newspaper upon the incident in question. The editor was entitled to use the phrase "Lawyer insulted" in inverted commas to draw the attention of readers to this report in which it appeared that the Advocate had walked out of the Magistrate's Court remarking that he had been insulted by the Magistrate.

The mistake in the report that the affidavit was filed by the Advocate, which was not intentional and which was later on corrected in the subsequent edition of the newspaper could not render the report contempt of Court when it was otherwise wholly unobjectionable. (Harries C. J. Munir and Teja Singh JJ.) Subrahmanyan, In re

AIR 1943 Lah 329=16 R L 238=ILR (1944) Lah 111=212 I C 17=45 Cr L J 445 (FB).

——Newspaper article—Construction of.

Not only the article must be read as a whole but it must be considered in a fair, free and liberal spirit. And, while dealing with it, one should not pause upon an apparently objectionable sentence here or a strong word there, but the article should be dealt with in the spirit of freedom and not viewed with an eye of narrow criticism. The whole case should be considered in a free, bold, manly and generous spirit towards the petitioner. (Addison, Monroe and Agha Haidar JJ.) Zamindar Newspaper Lahore, In the matter of,

AIR 1934 Lah 219=35 P L R 40=6 R L 669=149 I C 370=35 Cr L J 966 (SB).

8. Newspaper Comment—(c) Defence.

——Defence — Proceedings for contempt of Court—That article in question merely consists of quotations from other sources is no defence.

Per Full Bench —In contempt of Court proceedings the fact that the article alleged as amounting to contempt merely consists of quotations from other papers, would afford no defence if the article amounted to contempt because a person may be as much guilty of contempt from quoting from some source as writing the matter himself. (Harries C. J., Munir and Teja Singh JJ.) Subrahmanyan Editor Tribune, In re

A I R 1943 Lah 329=16 R L 238=I L R (1944) Lah 111=212 I C 17=45 Cr L J 445 (F B).

——Righ of public to criticise administration of justice.

Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt or to lower his authority, is a contempt of Court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court. The former class belongs to the category characterised as 'scandalising a Court or a Judge.' That description of that class of contempt is to be taken subject to one and an important qualification. Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court. And in applying these principles, the Court will not lose sight of local conditions. But whether the authority and position of an individual

CONTEMPT OF COURTS—8. Newspaper Comment —(c) Defence

Judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way; the wrong-headed are permitted to err therein provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue, she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.

The writer of an article is perfectly justified in pointing out what is obvious, that sentence do vary in apparently similar circumstances with the habit of mind of the particular Judge. If to say that the human element enters into the awarding of punishment be contempt of Court, it is to be feared that few in or out of the profession would escape.

The liberty of the press is no more than the liberty of any member of the public to criticize temperately and fairly but freely any episode in the administration of justice.

The writer had taken for his theme, the perennial topic of inequality of sentence under the text: "The Human Element" using as the occasion for his article, the two sentences which were awarded in two cases, of apparently same type. He expressly disclaimed the suggestion that one of the particular Judges was habitually severe, the other habitually lenient:

Held, that it is very seldom that the observer has the means of ascertaining all the circumstances which weigh with an experienced Judge in awarding sentence and in this particular case there was no evidence upon which the Court could find that the writer had exceeded the right of criticising or that he acted with untruth or malice, or with the direct object of bringing the administration of justice into disrepute. (Lords Atkin and Maugham and Sir Sydney Rowlatt) Indre Paul Terence Ambard v. Attorney-General of Trinidad Tobago

A I R 1936 P C 141 = 8 R P C 229=38 P L R 541= 40 C W N 801=(1936) A L J 671=(1936) M W N 619 =44 M L W 15=38 Bom L R 681=1936 A W R (HC) 600=64 C L J 36=71 M L J 665=162 I C 92 (P C).

8. Newspaper comment—(d) Liability of editor.

——Contempt of Court — News agency disseminating news through its representatives — Managing Director if ipso facto liable for news amounting to contempt of Court.

Per Jagannadhadas C. J. (Narasimham J. contra.)—In the case of a limited Company whose main function is the dissemination of news through the process of sale to its customers, the Managing Director thereof would not, ipso facto and as a matter of law, be liable for any news amounting to a contempt of Court, circulated through its agency by any of its representatives, in the absence of any evidence or proof which shows his connection with or responsibility for the news item objected to and supplied by the representative of the Company.

Per Narasimham J.—The fact that he is the managing director and the managing editor, is sufficient to fix him with liability for contempt unless of course he can show by affidavit or otherwise that the office of the representative is completely autonomous and that he has absolutely nothing to do with the editing or transmission of the news in question. (Jagannadhadas C. J. and Narasimham J.)

CONTEMPT OF COURTS—8. Newspaper Comment —(d) Liability of editor

State v. Editors and Publishers of Eastern Times and Prajatantra

A I R 1952 Orissa 318 = I L R (1952) Cut 1 = 1952 Cr L J 1605.

——Per Munir, J. — The editor of a newspaper is resposible for what is published in newspaper and if he wishes to absolve himself from any liability that would otherwise attach to him by the publication, it is for him to show that he had nothing to do with the publication in question. The usual presumption of the editor being aware of the contents of a publication is not rebutted by a vague and general statement that the editor was on leave on the day that the article was published. (Harries C. J., Munir and Teja Singh JJ.) Subrahmanyan, In re

A I R 1943 Lah 329=16 R L 238=I L R (1944) Lah 111=212 I C 17=45 Cr L J 445 (FB).

8. Newspaper comment —(e) Liability of printer and publisher.

——Article in newspaper amounting to contempt — Printer's and publisher's liability.

The printer and publisher of a newspaper in which an article amounting to contempt of Court appears, is liable for the contempt of the Court even if the article is written by some one else and he dissociated himself from it and disapproved it. (Davis C. J. and Lobo, Weston and Tyabji JJ.) Emperor v. P. C. Tarapore

A I R 1940 Sind 239=13 R S 143=I L R (1941) Kar 3=191 I C 519=42 Cr L J 1 (FB).

——Liability of printer and publisher for publication.

It is an unfortunate state of affairs if the official printer of newspapers printed in English has only an imperfect acquaintance with the English language. He like the Editor, has a duty to see that a contempt of Court is not committed by the paper he prints and publishes. (Derbyshire C. J. Mukerji, Costello, Lort-Williams and Jack JJ.) Tushar Kanti Ghosh, In the matter of

A I R 1935 Cal 419 = 39 C W N 770 =8 R C 53=63 Cal 217=61 C L J 376=156 I C 1055 = 36 Cr L J 1053 (F B).

——Publication of pending proceedings.

As all proceedings pending before a Court are privileged, they must not be published until the case comes on for hearing before it. (Macleod, C. J. and Heaton, J.) Kalidas v. Jarveri In re

22 Bom L R 31=58 I C 462=44 Bom 443=21 Cr L J 782.

8. Newspaper comment—(f) Privilege.

——Contempt, what constitutes — (Contempt of Courts Act (1926), S. 1).

No extraordinary privilege can be claimed for the Press. If a journalist does not take reasonable care to ascertain the accuracy of facts which he broadcasts, or if he tortures facts and vilifies an individual, he exceeds the limit of fair comment and becomes accountable to the law. (Panigrahi C. J. and Mohapatra J.) Bijoyananda Patnaik v. Balakrushna Kar

A I R 1953 Orissa 249 =I L R (1953) Cut 283=1953 Cr L J 1491.

——Contempt of Court — Newspaper —Rights and privileges—Reports of proceedings.

The publication in newspapers of reports of proceedings before a Court of law must be true and accurate and it must be without malice. The privilege quite obviously does not extend to the publication of false opinion on the facts of the case which may operate prejudicially to a party to the proceedings before the Court. The right of a newspaper even to publish a faithful account of the proceedings before a Court of law is subject to the condition that the publication does not tend to prejudice

CONTEMPT OF COURTS—8. Newspaper Comment —(f) Privilege.

materially the fair trial of a case before a Court of law. (Hemeon Ag. C. J. and Mudholkar J.) Wasudeoraoji Sheorey v. A. D. Mani

A I R 1951 Nag 26=I L R (1951) Nag 266=52 Cr L J 452.

——Newspaper comment—Criticism of public administration—When contempt.

A criticism of an executive officer, no matter how severe, cannot amount to contempt of Court, but if such criticism contains matter which is calculated to interfere with the due course of justice it would amount to contempt. Proprietors and publishers of newspapers who set out to criticise the public administration in respect of matters which are sub judice or are about to be adjudicated upon do so at their peril, for, if such criticism falls within the ambit of expression 'contempt,' they are liable to incur the displeasure of the Court and to be punished for the offence. (Teja Singh and Bhandari JJ.) Emperor v. Khushal Chand

A I R 1945 Lah 206 = 47 P L R 148= 1946 Lah Rul 87=221 I C 195=47 Cr L J 115.

——Chamber proceedings — Publication of reports of — Contempt—Newspaper article.

It is not right for newspapers to show a partisan spirit in respect of a pending litigation, and an article prepared and published in a partisan spirit, does not fall within the functions of an honest journalist.

Reports of Chamber matters in the High Court are not to be published in newspapers except with the express permission of the Judge concerned. (Kania J.) (Hargowandas v. Chimanlal Vadilal,

A I R 1942 Bom 86=14 R B 384=44 Bom L R 95 = I L R (1942) Bom 151=199 I C 856=43 Cr L J 583.

——Comment on incident which had resulted in committal of person.

The writer is entitled to comment and comment severely upon incidents which he thinks deserve comment. If his comment is unjustified, persons injured by such comment have ample redress under the law of India. Where the articles consisted of criticism, no matter how severe, of what had happened in the past and what was then happening, no offence of contempt would have been committed. Where, however, there are references to the incident which has resulted in the commitment of a person and these references do tend to prejudice the case of such a person and do tend to interfere with the due course of justice, it amounts to contempt. To say that a certain incident has horrified the entire province, must prejudice the person who is standing his trial as a result of this incident.

There can be no doubt that a Court need not and should not interfere in all cases of contempt. It is a very arbitrary method of dealing with an offence and contempt proceedings should be sparingly instituted and a person should not be convicted unless it is essential in the interests of justice that he should be. A mere technical contempt of Court is not sufficient to warrant High Court interfering and convicting the opposite party. There must be something more than a mere technical contempt, there must be substantial contempt: that is something which tends in a substantial manner to interfere with the course of justice or tends substantially to prejudice the public against the person who is standing his trial. (Harries C. J. and Dhavle J.) Superintendent and Remembrancer of Legal Affairs, Bihar v. Murli Manohar Prasad,

A I R 1941 Pat 185 = 7 B R 261 = 13 R P 399 =21 P L T 980=20 Pat 306=191 I C 834=42 Cr L J 225.

CONTEMPT OF COURTS—8. Newspaper Comment —(f) Privilege

——To suggest to Court to take certain course in case which is sub judice.

It is fundamental that a discussion in a newspaper of the rights and wrongs of a case when pending before a Court is improper and constitutes contempt of Court. This does not mean that reference cannot be made to pending cases or that items of news which are connected with pending cases should not be published. No objection can, for instance, be taken to the publication in the press of a statement that the creditors of the company in respect of which a winding up order has been passed have put forward a scheme for reconstruction, but what cannot be permitted is a discussion of the attitude which the Court should adopt when considering the scheme. The intention and the bona fide nature of action have an important bearing on the question whether the Court should take action on the petition, but good intention is not the deciding factor in a matter of contempt. To comment on a case which is sub judice or to suggest that the Court should take a certain course in respect of a matter before it, undoubtedly constitutes contempt and honesty of motive cannot remove it from this category. If this were to be allowed, persons in a position to assist the Court by their evidence might be prevented from coming forward, and persons appearing as witnesses, might be influenced in their testimony. The criterion is not whether the Court will be influenced, but whether the action complained of is calculated to prejudice the course of justice. Similarly to comment on a case which is about to come before the Court with knowledge of the fact, is just as much a contempt, as a comment on a case actually launched. (Leach C. J., Madhavan Nair and Gentle JJ.) Tulja Ram Rao v. Governor of Reserve Bank of India,

A I R 1939 Mad 257=49 M L W 29=(1939) M W N 113 = 11 R M 813 = I L R (1939) Mad 466=(1939) 2 M L J 843=181 I C 451=40 Cr L J 533 (S B).

8. Newspaper comment—(g) Test.

——Articles in newspaper pending case.

An assertion that a fact exists and has been established as correct when the existence of that fact is in dispute in a pending case and its existence is yet to be determined, is likely to prejudice a fair trial of the case when the assertion assumes the shape of the opinion of persons unconnected with the case, like the editor of a newspaper. (Raghubar Dayal and Agarwala JJ.) Lakhan Singh v. Balbir Singh,

A I R 1953 All 342 = 1953 A W R (H C) 170=1953 A L J 376=I L R (1953) 1 All 796=1953 Cr L J 733.

——Contempt of Court — Publication of article pending trial—Prejudice to fair trial—Intention.

Publication of an article in which there is an assumption concerning the guilt of the applicant in regard to offences which are still sub judice, amounts to contempt of Court. The reason is that such an article has a tendency to prejudice fair trial of the applicant.

The intention of the contemner is not material where a publication tends to prepossess the minds of the public, the Judge or the jury: Duncan v. Sparling, (1894) 10 T L R 353, Expl.

The intention would be material only if the comment were intended to prejudice the fair trial, though the converse of this is not the law.

Where there was no reasonable likelihood of the applicant being prejudiced in his trial by reason of the publication of the article :

Held that there was no ground for taking action against the publisher, as the case was on the border line. (Hemeon

CONTEMPT OF COURTS — 8. Newspaper Comment—(g) Test

Ag. C. J. and Mudholkar J.) Wasudeorao v. Gopal Dattatraya,

A I R 1951 Nag 368 = I L R (1951) Nag 214 = 1951 A W R (Sup) 77=52 Cr L J 663.

——Press publication pending trial — Intention of contemner.

Before a person can be committed for contempt qua press publication the Court has to be satisfied with regard to the following matters: (a) that something has been published which either is clearly intended, or at least is calculated to prejudice a trial which is pending; (b) that the offending matter was published with the knowledge of the pending cause, or with the knowledge that the cause was imminent; (c) that the matter published tended substantially to interfere with the due course of justice or was calculated substantially to create prejudice in the public mind.

The gist of the offence does not lie in the intention of the author; the guilt is to be determined from the effect of the article published.

The gravamen of the offence of contempt of Court is any interference or the likelihood of interference with the course of justice. If the flow of the stream of justice is obstructed for any reason, that obstruction whether resulting from a proper motive or from indifference or from disregard of the consequences or from accidental omission, cannot be excused. Motive of the contemner cannot be considered in determining his guilt.

The headline in a newspaper stated that a notorious gang of gamblers was arrested. It was followed by a news item which stated that one S had been keeping a gaming house for nearly 10 years and that some of the police officers were in league with the gamblers. It was proved that the publishers published the offending matter with the knowledge that the cause was imminent:

Held, that those statements were clearly calculated not only to create an atmosphere of prejudice but also to obstruct the course of justice and tended to prejudice the minds of the public and persons connected with the case. The publisher was guilty of contempt. (Shinde and Abdul Hakim Khan JJ.) Sunnulal v. Yeshwantsingh,

A I R 1951 Madh B 98=52 Cr L I 632.

——Contempt of Court — Newspaper — Rights and privileges—Publication of documents.

When a newspaper publishes an account of a pending proceeding, it does so at great peril. If in any case prejudice to a party is apprehended or results from publication or where a Court is scandalised, however innocent be the persons in charge of the publication of the newspaper, they would run the risk of incurring the penalty of the law.

The publication of a document filed in a pending case would amount to contempt if it was published with the clear intention of causing prejudice or if it was calculated to cause prejudice to a trial which is pending.

(Held on facts that reproduction of some portions of a document filed in a criminal case did not prejudice a fair trial of the case.) (Hemeon Ag. C. J, and Mudholkar J,) Wasudeoraoji Sheorey v. A. D. Mani,

A I R 1951 Nag 26 = I L R (1951) Nag 266 = 52 Cr L J 452.

——Matter sub judice— Newspaper comment — Apology —(Saurashtra) Ordinance II of 1948, S. 31.

Held that statements made and published with respect to pending prosecution calculated to prejudice the issues pending before the Court, amounted to contempt of Court;

Held further that the contempt did not deserve to be penalized and a mere unqualified apology would meet with ends of justice, considering that the contempt of Court

CONTEMPT OF COURTS — 8. Newspaper Comment—(g) Test

proceeding in the United State of Saurashtra was the first of its kind. (Chudgar and Shukla JJ.) United State of Saurashtra v. Lavanprasad Fulchand Shah,

1 Sau L R 69.

——References by newspapers to pending cases should exclude everything tending to prejudice or prepossess mind of judicial officer concerned—Facts of pending cases should be expressed in form of allegations made in suit and not in form of statement of facts by newspaper itself.

If the tendency or object of references by newspapers to proceedings pending before a Court is to deprive the Court of the power to administer justice duly, impartially and with reference only to the facts judicially brought before it and to reduce the Court, which is to try the case, to impotence, as regards the effectual elimination of prejudice and prepossession, it amounts to contempt or Court. The editors of newspapers should, therefore, see that everything is excluded from their columns in reference to pending cases, whether criminal or civil, which might possibly result in prejudicing or prepossessing the mind of any judicial officer, juryman or potential witness who might be or become concerned with it. When writing about the facts of a pending proceeding, the editor should express the facts rather as representing the substance of allegations made in the proceeding than in a form in which they might conceivably be mistaken as statements of fact by newspaper itself. (Iqbal Ahmad, C. J. and Braund J.) Emperor v. Tushar Kanti Ghosh,

A I R 1946 All 298 = 1946 O W N (H C) 60 = 1946 A L J 119 = 222 I C 624 = 1946 A W R (H C) 62=47 Cr L J 333.

——Publication of articles in newspaper tending to prejudice party to proceeding, if amounts to contempt—Reasons.

Per Munir J. — The reason of the rule that contempt may be committed by publishing articles in newspapers tending to prejudice the public in favour of or against a party to a proceeding in a Court, is that such article tends to prejudice the mind of the jurors, to deter witnesses from giving evidence, to induce the parties to withdraw from the cause or abandon their defence and possibly to affect the decision of the Court and is thus an interference with the due course of justice. Another reason for the rule is that if the atmosphere has been prejudiced by a publication which by propagating one-sided version of a matter incubates among the public a definite opinion about that matter, the public confidence in the Court itself is destroyed if the decision goes against the opinion formed by the public. (Harries C. J., Munir and Teja Singh JJ.) Subrahmanyan, In re.

AIR 1943 Lah 329 = 16 R L 238=I L R (1944) Lah 111=212 I C 17 = 45 Cr L J 445 (FB).

——Articles in newspaper—Test.

In considering whether articles published in newspaper amount to contempt of Court, what the Court has to see is, whether the publications had a tendency to prejudice the public or the Court for or against any party before the cause was finally heard. If they had such a tendency, the editor is guilty of contempt of Court. (Yorke and Agarwal JJ.), Anis Ahmad Abbasi v. Hakim Qari Nasir Ahmad,

AIR 1941 Oudh 399=1941 O W N (C C) 683 = 1941 A W R (C C) 172=16 Luck 758 = 13 R O 567 = 194 I C 158=42 Cr L J 524.

——Publication of comment on pending proceedings when amounts to contempt of Court.

In the cases of contempt of Court by comment on pending proceedings, the simple question is whether the writings published is calculated to obstruct or interfere with the

CONTEMPT OF COURTS—8. Newspaper Comment —(g) Test

due course of justice. If it is, it amounts to a contempt of Court. There is a special responsibility affecting the editor of a newspaper, namely that he is in duty bound always to bear in mind the danger of prejudicing the course of justice by the publication of articles in his newspaper which though innocent in appearance may easily be so read by members of the public as to prejudice the course of litigation. The question is not whether the publication does interfere, but whether it tends to interfere with due course of justice. The fact that the comments do not relate to proceedings between third parties but between parties one of whom is the newspaper itself, makes no difference. (Thomas C. J. and Yorke J.) Qari Nasir Ahmed v. Anis Ahmad Abbasi,

A I R 1941 Oudh 67 = 1940 O W N (C C) 1197=1941 A W R (C C) 7 = 16 Luck 506 = 13 R O 299=191 I C 726=42 Cr L J 221.

——Publication of pamphlet during pendency of proceedings is contempt of Court, if (1) it assumes the truth of certain facts which are connected directly or indirectly with the matters under consideration and awaiting decision in the appeal itself, (2) the document contains reflections of the gravest possible nature upon the conduct and the character of certain of the persons in the appeal, and (3) the pamphlet purports to predict that the appellants will be or are likely to be successful in the appeal and adds the comment in effect that if they are successful, law and justice will be defeated. (Costello, Biswas and Lodge JJ.) Bibhabati Devi v. Ramendra,

A I R 1939 Cal 672 = I L R (1939) 1 Cal 399 = 43 C W N 333=12 R C 354 = 185 I C 286 = 41 Cr L J 148 (SB).

——Abuse of parties holding them up to ridicule or contempt — Editor publishing articles — Libel on parties to suit not interfering with administration of justice — Remedy of aggrieved party.

Where the question is only whether the editor has been guilty of abusing and vilifying the parties to a pending suit in relation to their defence and thereby prejudicing a fair trial for them at the hearing, the test is not whether the writings have in fact obstructed or interfered with the administration of justice or will obstruct or interfere with the administration of justice, but whether they are calculated to do so, or whether it is likely that they will have that effect. The intention of the writer may often be of secondary importance; the question is, what is the effect of the articles, and have they a tendency to obstruct and interfere with the due and proper course of administration of justice. Whether the articles will in fact prejudice the defendants or not, or scare away their witnesses, or lead them to compromise the suit is not the real and proper test in such a case. The Court has to read the articles and see whether the articles may have that effect and thereby tend to interfere with the proper course of justice.

A libel on the parties to a suit which does not amount to an interference with the course of administration of justice is a matter in respect of which the aggrieved party can have his remedies elsewhere. He may either prosecute the writer in a Criminal Court of Law, or he may bring an action for defamation in a Civil Court. But he cannot proceed in contempt against the author of the libel. (B. J. Wadia J.) Demibai Gengji v. Rowji Sojpal.

AIR 1937 Bom 305—39 Bom L R 471=10 R B 108= 170 I C 631=38 Cr L J 942.

——Article undermining authority of Court of Justice.

Any act or writing tending to undermine the authority of Courts of Justice, or to influence the result of pending litigation, is a most serious offence.

CONTEMPT OF COURTS—8. Newspaper Comment —(g) Test

The gravamen of the article in question was that judgment after judgment was being given in the High Court arbitrarily, and that neither law nor facts were discussed, before judgment was delivered. It further said that it was necessary "to restore the confidence of the public that law is discussed and facts are digested before cases are disposed of." It alleged that summary justice was being administered :

Held, that there could be no doubt that the article was as gross a contempt of Court and misrepresentation of proceedings in Court as it was possible to imagine. Nothing could have been more calculated to bring the Court into contempt and to lower its authority with the general public. (Young, C. J., Addision and Dalip Singh JJ.) Contempt of High Court, In the matter of,

A I R 1935 Lah 212 = 16 Lah 266=37 P L R 73=7 R L 765=155 I C 695=36 Cr L J 837 (SB).

——Writer believing what he states to be true—Whether justifiction—Evidence to establish truth of allegations—Election manifesto slandering judiciary — Printer and publisher acting on Advocate's words — Absence of intention—Unqualified apology — (Constitution of India, Art. 215)—(Contempt of Courts Act (1926), S. 3).

There can be no justification of contempt of Court even assuming that the writer of an election manifesto believed all he stated therein to be true. If anything in the manifesto amounts to contempt of Court he is not permitted to lead evidence to establish the truth of his allegations. Contempt of Court is saying or writing anything about the Court which may lower the prestige of the Court or bring it into contempt.

It is not uncommon to attack abuses and to attack persons in an election manifesto whether the abuses be existent or not, or whether the persons deserve the vituperation which is often showered upon them in these productions, but to slander the whole Judiciary of a Province in an attempt to secure votes at a Bar Council election, is not only contemptible but almost criminal in its purpose.

The passage in respect of which notice was issued was as follows : "I believe you must have seen my name prominently in the press in connection with a contempt of Court case and again under the Legal Practitioners Act last year. I was conducting my private case. It was not a case of a client and was not a case of moral turpitude but even then I was punished twice over for the same alleged offence. We are helpless. Being a fighter and having suffered for the strength of my convictions I can assure you that I will fight for your rights as well :

Held, that the passage was a clear reflection upon the High Court and that it could not be regarded merely as a technical contempt but the casting of the aspersion amounted to serious contempt of Court.

On the proprietor and printers of the press in which the manifestoes containing the above passage were printed, stating that they had no intention to make any aspersion either against the High Court or the Subordinate Judiciary and that they were unaware that what they were printing contained a contempt of Court and further that if they had unwittingly committed contempt of Court they offer an unconditional apology :

Held, that although no doubt they relied entirely upon the Advocate who gave instructions that nothing was being printed that was contempt of Court, it was not unreasonable that they should have relied upon the fact that they had been instructed to do the printing by an Advocate and though undoubtedly guilty of contempt, in view of the unqualified apology tendered by them, no

CONTEMPT OF COURTS—8. Newspaper comment — (g) Test

punishment was necessary. (Thom and Harries JJ.) Ram Mohan Lal Agarwala, In the matter of,

A I R 1935 All 38=(1935) A L J 46=7 R A 858=4 A W R (H C) 1269=155 I C 33=36 Cr L J 620.

9. Procedure—See Contempt of Courts Act (1926), S. 2.

10. Right of contemner—See Contempt of Courts Act (1926), S. 2.

11. Scandalizing Court.

——Scandalising a Judge—Ordinary right of criticism.

Though scandalising a Judge constitutes contempt of Court, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public, the public act done in the seat of justice. (Harries C. J., Chakravartti and Banerjee JJ.) Sudhir Chandra Ray Chaudhuri, In the matter of

A I R 1952 Cal 258=56 C W N 51=1952 Cr L J 666 (SB).

——Contempt of Court — What amounts to — False and mischievous allegations accusing the entire judiciary and Courts of V. P. of corruption and that the level of the standard of the judicial department has fallen very low amount to contempt of Courts as they are calculated to lower the entire judiciary in the estimation of public and obstruct the fair administration of justice. (Krishnan J. C.) Vindhya Pradesh State v. Baijnath Dube,

A I R 1951 Vindha P. 14.

——Contempt known as scandalizing Court.

An allegation by a solicitor engaged in a case that a Judge has prejudged an issue of fact, before any evidence whatever has been called on either side, amounts to charging the Judge with grossly improper conduct and amounts to contempt of Court known as scandalizing the Court. Contempt proceedings of the nature known as scandalising the Court are not taken in order to relieve a particular Judge's feelings; they are taken because it is essential in the public interest that the confidence which should be reposed in Judges be not shaken by their being subjected to abuse. (Beaumont C. J.) A firm of Solicitors, In re,

A I R 1942 Bom 331=44 Bom L R 796=15 R B 254 =203 I C 514=44 Cr L J 93.

——Person scandalizing Judges—If can show that allegations are true.

Where a person has scandalised the Court or the Judges by broadcasting a publication imputing injustice, dishonesty, corruption or improper motives to them in their judicial capacity it is not open to him to show that the allegations are true and any attempt to justify a libel on a Judge by attempting to show that the libel was justified would itself be a fresh contempt.

A book which contains most scandalous allegations of improper and even corrupt motives against Judges of the High Court is deliberately calculated to interfere with and bring into contempt the administration of justice in the province and to lower the prestige of the Court.

The technique employed by the accused in his book was to attack and abuse all judicial officers, who in accordance with their duty had to decide cases in which he was interested and thus hoped to intimidate any Judge who may have to decide cases in which he was involved :

Held, that this by itself was a gross contempt of Court. (Young C. J', Monroe and Muhammad Munir JJ.) Gauba K. L., Lahore, In re,

A I R 1942 Lah 105=44 P L R 206=14 R L 449= ILR (1942) Lah 411=200 I C 182=43 Cr L J 599 (FB).

——Criticism of Court.

It is not possible to say that criticism of a Court is protected and can be justified where there is no good faith, where there are mis-statement and mis-representation and where necessarily the Court is brought into contempt and disrepute. The writer cannot claim to act in good faith when he ignores the sources of the truth which were open to him. (Davis C. J. and Lobo, Weston and Tyabji JJ.) Emperor v. P. C. Tarapore,

A I R 1940 Sind 239=13 R S 143=I L R (1941) Kar 3=191 I C 519=42 Cr L J 1 (FB).

——Scandalizing the Court amounts to contempt of Court. It is immaterial whether the attack on the Judge is with reference to a case about to be tried or actually under trial or recently adjudged : in each instance the tendency is to poison the fountain of justice, to create distrust and destroy the confidence of the people in the Courts which are of prime importance to the public in the protection of their rights and liberties. And the offence is in no way mitigated when the attack is not upon a particular Judge but upon the Court as whole, indeed, upon all the Judges. Contempt may be committed not only as regards pending cases but also as regards cases which may be filed, and contempt is not only committed when there is a detailed discussion of the facts and merits but when, for instance, some presumptuous person states that the case of one party is sound in law and fact before such case is heard and decided. (Davis C. J. and Lobo, Weston and Tyabji JJ.) Emperor v. P. C. Tarapore,

A I R 1940 Sind 239=13 R S 143=I L R (1941) Kar 3=191 I C 519=42 Cr L J 1 (FB).

——Speech showing contempt for all Courts of Justice and not any particular Court — It should not be dealt with by process for contempt.

The process of contempt of Court for scandalizing the Court, a process in which the Court is in effect both prosecutor and Judge and in which respondent is deprived of the ordinary methods of trial, is one which should be sparingly used. The process should be used in this country only where attacks are made on the personal character of a Judge, or where base or improper motives in the decision of a case are attributed to a Judge.

Where the speech contains matter which shows that the speaker entertains in the popular sense of the word contempt of all Courts of Justice, not making any attack on any particular Judge or comment on any particular case, this is a general expression of opinion hostile to the utility of Courts of Justice not likely to affect the public and need not disturb the equanimity of Judges, and the speech does not amount to such a contempt of Court as should be dealt with by the process for contempt. (Beaumont C. J. and Wassoodev J.) Government Pleader, Bombay v. Tulsidas Subhanrao,

AIR 1938 Bom 197=40 Bom L R 75=I L R (1938) Bom 197=10 R B 457=174 I C 492=39 Cr L J 440.

——Election manifesto slandering judiciary — Contempt.

To slander the whole judiciary of a province in an attempt to secure votes at a Bar Council Election is not only contemptible but also criminal in its purpose. (Thom and Harries JJ.) Ram Mohanlal Agarwal, In the matter of,

AIR 1935 All 38= (1935) A L J 46 = 7 R A 858 = 4 A W R (H C) 1269=155 I C 33=36 Cr L J 620.

——Fact that large population resorting to Court is illiterate, whether important in considering question of contempt.

In a newspaper, an article was published headed "A scandalous situation — The Bar Council Election." It contained a passage as follows : "In this connection, it is amusing to note that when a comparatively undeserving lawyer is raised to the Bench, which is a fairly frequent occurrence in our judicial history, it is generally claimed, etc." Proceedings for contempt of Court were

taken against the author of the article and the editor and the publisher of the newspaper :

Held, that the words in the passage convey unwarranted and defamatory aspersion on the character and ability of a number of Judges of the High Court who have recently been elevated to the Bench. The remarks of the writer of the article cannot in any sense be regarded as legitimate criticism of the High Court or of any of the Judges of the High Court in the discharge of their duties. The passage in question does not contain a fair criticism or comment. It is nothing more or less than an insulting reference to the character and capacity of His Majesty's Judges in an article in which any reference to the High Court was entirely out of place and the passage clearly constituted a contempt of Court of which the High Court in the interests of the administration of justice was bound to take cognizance :

Held, also that the fact that a large proportion of the population who resort to the Court for the decision of their disputes are illiterate is of little importance in considering this matter. Once the impression gains ground that the High Court is to a certain extent composed of lawyers who are deficient in character or capacity, that impression will soon be conveyed to the section of the populace which is illiterate. (Thom and Harris JJ.) Advocate of Allahabad, In the matter of

AIR 1935 All 1= (1935) A L J 125 = 7 R A 827 = 4 A W R (H C) 1155=154 I C 955.

——Need for special protection.

A Judge by reason of his office is precluded from entering into controversy in the columns of the public press. Whether the comments be of a permissible or of an improper character, he cannot enter the arena and do battle with his adversary upon equal terms. The Judge of a superior Court is moreover precluded by considerations of decency from having recourse to the remedy available to any other citizen, of whom defamatory words are spoken or written, of taking proceedings for libel or slander before the ordinary tribunals which are subject to his own jurisdiction and he requires therefore in the exercise of his office a special protection in order that his authority and dignity may be maintained. (Courtney-Terrell, C. J, and Adami, Ross, Kulwant Sahay and Fazl Ali JJ) Emperor v. Murli Manohar,

AIR 1929 Pat 72=9 P L T 837 =8 Pat 323 =117 I C 180= 30 Cr L J 741 (FB).

——Judge—Public acts—Free comment—See Judge.

AIR 1914 P C 116=15 Cr L J 309 (PC).

——What amounts to— Judges and Courts are alike open to criticism ; and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, it is not a contempt of Court. (Basil Scott C. J., and Batchelor J.) In re Narsinha Chintaman Kelkar,

10 Bom L R 1040 =4 M L T 359 = 33 Bom 240 = 2 Ind Cas 288=8 Cr L J 426.

12. Test.

——Contempt, what constitutes—(Contempt of Courts Act (1926), S. 1).

In order to constitute contempt of Court, it is not necessary that the Court or an individual Judge should be attacked. The policy of the law is that the public should be protected from attacks. (Panigrali C. J. and Mohapatra J.) Bijoyananda Patnaik v. Balakrushna Kar,

AIR 1953 Orissa 249=ILR (1953) Cut 283= 1953 Cr L J 1491.

——What constitutes.

It is extremely difficult to define the term "contempt of Court." Generally, however, it may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere, with or prejudice the parties litigating or their witnesses during litigation.

In dealing with the question of contempt the Court should proceed with care and caution and a person should not be held guilty of contempt of Court unless the Court is satisfied that his conduct has directly or indirectly tended substantially to interfere with the due course of justice. (Harries C. J., Chakravartti and Banerjee JJ.) Sudhir Chandra Ray Chaudhury, In the matter of,

AIR 1952 Cal 258=56 C W N 51 = 1952 Cr L J 666 (SB).

——What is—Words amounting to contempt—Importance of context.

In considering whether the words used amount to contempt of Court the context in which these words are placed must be considered. (Kidwai and Chandramani JJ.) Rex v. B. S Nayyar,

AIR 1950 All 549=51 Cr L J 1500.

——Three sorts of contempt — Writing calculated to interfere with due course of justice — Comments on pending action—Knowledge of writer — Criticism of executive officer, when amounts to contempt.

There are three different sorts of contempt. One kind of contempt is scandalising the Court itself. There may be likewise a contempt of Court in abusing parties who are concerned in causes there. There may be also a contempt of Court in prejudicing mankind against persons before the cause is heard. Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt or to lower his authority is a contempt of Court. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court.

Before a person can be committed for contempt, the Court should be satisfied; (a) that something has been published which either is clearly intended, or at least is calculated, to prejudice a trial which is pending ; (b) that the offending matter was published with the knowledge of the pending cause, or with the knowledge that the cause was imminent ; and (c) that the matter published tended substantially to interfere with the due course of justice or was calculated substantially to create prejudice in the public mind. A person may be guilty of contempt even though there was no intention to commit contempt. The question in such cases is not what was the intention of the offender but what was the effect of the publication. If the effect of the publication is to create prejudice for or against a party or to interfere with the due course of justice, it is contempt. It is a contempt of Court to prejudice mankind for or against the party to the cause before the cause is heard. Where the articles are deliberately designed to create an atmosphere of sympathy for the offenders and to mobilise public opinion in their favour and are calculated to produce the impression that the offenders are not to blame and that they are being persecuted as they happen to belong to a particular community, the articles amount to contempt of Court.

It is not necessary in the case of a criminal trial that the accused should have been committed for trial or even that he should have been brought before a Magistrate, provided he has been arrested and is in custody.

The offence of contempt may be committed if the writer of the offending publication either knows such a proceeding or cause to be imminent or should have known that it was imminent. The Courts would not be prepared to go to the extent of holding that even if it is found as a fact that the writer had no actual knowledge

of the institution of the case, it is his duty to make enquiries in this behalf. But if he knew that a report had been made to the Police and the investigation had been followed by the attachment of property and arrest of the offenders, he should have known that a case was almost certain to be filed and hence is guilty of contempt.

A criticism of an executive officer, no matter how severe, cannot amount to contempt of Court, but if such criticism contains matter which is calculated to interfere with the due course of justice it would amount to contempt.

Proprietors and publishers of newspapers who set out to criticise the public administration in respect of matters which are sub judice or are about to be adjudicated upon, do so at their peril, for, if such criticism falls within the ambit of the expression 'contempt,' they are liable to incur the displeasure of Courts and to be punished for the offence. (Teja Singh and Bhandari JJ.) Emperor v. Khushal Chand,

AIR 1945 Lah 206 = 47 P L R 148 = 1946 Lah Rul 87=221 I C 195=47 Cr L J 115.

——Essentials for committing a person for contempt.

Before a person can be committed for contempt the Court should be satisfied (a) that something has been published which either is clearly intended or at least is calculated to prejudice a trial which is pending: (b) that the offending matter was published with the knowledge of pending cause, or with the knowledge that the cause was imminent; and (c) that the matter published tended substantially to interfere with the due course of justice or was calculated substantially to create prejudice in the public mind.

When articles are deliberately designed to create an atmosphere of sympathy for the offenders and to mobilise public opinion in their favour, and are calculated to produce the impression that the offenders are not to blame and that they are being persecuted as they happen to belong to a particular community, the articles would amount to contempt of Court because it is contempt of Court to prejudice mankind for or against the party to the cause before the cause is heard. (Teja Singh and Bhandari JJ.) Emperor v. Khushal Chand,

AIR 1945 Lah 206 = 47 P L R 148 = 1946 Lah Rul 87=221 I C 195=47 Cr L J 115.

——Definition.

For words or action used in the face of the Court or in the course of proceedings, for they may be used outside the Court, to be a contempt, they must be such as would interfere or tend to interfere with the course of justice. (Lords Macmillan, Goddard and Sir Madhavan Nair) Parashu Ram Deta Ram v. Emperor,

A I R 1945 P C 134=(1945) M W N 371=49 C W N 733=58 M L W 347=(1945) 2 M L J 109=47 Bom L R 733 = (1945) A L J 335 = 72 I A 189=26 P L T 176= I L R (1945) Kar P C 294=1946 A W R P C 63=ILR 1945 Bom 950=(1945) M W N (Cr) 67=1946 O A P C 63=1945 Pesh L J 134 (PC).

——Test to be applied — Defamation of Judge not affecting administration of justice—Judge has ordinary remedy for defamation—(Constitution of India, Art. 215).

The cases of contempt which consist of "scandalising the Court itself" require to be treated with much discretion. Proceedings for this species of contempt is a weapon to be used sparingly and always with reference to the administration of justice.

In cases of contempt of Court, the test to be applied is whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the law.

There is no contempt of Court when there is no criticism of any judicial act of a Judge; or any imputation on him for anything done or omitted to be done by him in the administration of justice. No doubt it is galling for any judicial personage to be criticised publicly as having done something outside his judicial proceedings which was ill-advised or indiscreet. But judicial personages cannot afford to be too sensitive. A simple denial in public of the alleged untrue allegations would at once allay the trouble. If a Judge is defamed in such a way as not to affect the administration of justice, he has the ordinary remedies for defamation if he should feel impelled to use them.

A daily newspaper published a news item received from its correspondent which was followed by an editorial comment on that news. The Chief Justice of the Allahabad High Court was alleged, untruly as was subsequently admitted, to have committed an ill-advised act in writing to his Subordinate Judges asking (as the news item said) enjoining (as the comment said) them to collect for the War Fund. The printer and publisher, the editor and the correspondent of the paper were found by the High Court to be guilty of the contempt of the Court:

Held, that the comment did not contain any criticism of any judicial act of the Chief Justice or any imputation on him for anything done or omitted to be done by him in the administration of justice. Nor was there any criticism of him in his administrative capacity. There was, therefore, no contempt of the Court. (Lord Atkin, Lord Thankerton, Lord Porter, Sir George Rankin and Sir Madhavan Nair) Debi Prasad Sharma v. Emperor,

A I R 1943 P C 202=(1943) A L J 527=1943 O W N (P C) 465=48 C W N 44=56 M L W 702=(1943) 2 M L J 568=10 B R 256=16 R P C 133 = 46 Bom L R 11 =24 P L T 405=1944 M W N 20 = 70 I A 216=1943 A W R (PC) 28=ILR (1944) All 32=I L R (1944) Kar (PC) 7=210 I C 111=46 Cr L J 318 (PC).

——Contempt of Court — What amounts to—Essence of offence.

Per Full Bench—One kind of contempt is scandalising the Court itself. There may be likewise a contempt of Court in abusing parties who are concerned in causes. There may be also a contempt of Court in prejudicing mankind against persons before the cause is heard. Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt or to lower his authority is a contempt of Court. That is one class of contempt. Further any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Court, is a contempt of Court. Anything which is calculated to interfere with the due course of justice or is likely to prejudice the public for or against a party amounts to contempt. In this class of cases, the essence of the matter is the tendency to interfere with the due course of justice. Any publication which is calculated to poison the minds of jurors, intimidate witnesses or parties or to create an atmosphere in which the administration of justice would be difficult or impossible, amounts to contempt.

But before a Court will take notice of such a publication, the Court must be satisfied that the matter published tended substantially to interfere with the due course of justice or was calculated substantially to create prejudice in the public mind. The Court will not take action where the offending matter amounts to what is sometimes referred to as a technical contempt e.g., upon a mere question of propriety where the tendency of the article to do harm is slight and the character and circumstances of the comment are otherwise such that it can properly be ignored.

It is, however, of the very essence of the offence that proceedings should be pending when the offending publication appears. (Harries C. J., Munir and Teja Singh JJ.) Subramanyan Editor Tribune, In re,

A I R 1943 Lah 329=16 R L 238=I L R (1944) Lah 111=212 I C 17=45 Cr L J 445 (FB).

——Any act done or writing published, which is calculated to interfere with due course of justice, is a contempt of Court; and writings prejudicing the public for or against a party are similarly contempt. No intent to interfere with the due course of justice or to prejudice the public need be established, if the effect of the article or articles complained of is to create prejudice or is to interfere with the due course of justice. It is of the very essence of the offence that proceedings should be pending when the articles were published. It is not necessary that the accused should have been committed for trial or even for him to have been brought before a committing Magistrate provided that he had been arrested and was in custody when the articles were published. (Harries C. J. and Dhavle J.) Superintendent and Remembrancer of Legal Affairs, Bihar v. Murali Manohar Prasad,

A I R 1941 Pat 185 = 7 B R 261 = 13 R P 399 = 21 P L T 980=20 Pat 306=191 I C 834=42 Cr L J 225.

——Hampering due administration of law and interfering with course of justice.

The law of contempt covers the whole field of litigation itself. The real end of a judicial proceeding, civil or criminal, is to ascertain the true facts and dispense justice. Various persons have their respective contributions to make in the proper fulfilment of that task. They are necessarily the Judges or the Magistrates, the parties to the proceedings, or their agents or Pleaders or Advocates, the witnesses and the ministerial or menial staff of the Court. All these persons can well be described as the limbs of the judicial proceeding. For proper administration of justice, it is essential that all these persons are, in the performance of their respective duties, ensured such fulness of freedom as is fair and legitimate. Anything that tends to curtail or impair the freedom of the limbs of the judicial proceeding must, of necessity, result in hampering the due administration of law and interfering with the course of justice. It must, therefore, be held to constitute contempt of Court. (Niyogi J.) Telhara Cotton Ginning Co., Ltd. v. Kashi Nath Ganga Dhar Namjoshi,

A I R 1940 Nag 110=1939 N L J 461 = I L R (1940) Nag 69=13 R N 43=189 I C 58=41 Cr L J 709.

——Publications, when constitute contempts — Three kinds of offences stated — Publishing injurious misrepresentations holding up party to action to hatred or contempt affects course of justice—Fact that trial Court Judge would not be affected by article has no bearing on matter — Belief of publisher while publishing article does not protect him from consequences, if his publication disturbs free course of justice.

All publications which offend against the dignity of the Court, or are calculated to prejudice the course of justice, will constitute contempts. Offences of this nature are of three kinds — namely, those which (1), scandalise the Court; or (2) abuse the parties concerned in causes there; or (3) prejudice mankind against persons before the cause is heard. Under the first head fall libels on the integrity of the Court, its Judges, officers, or proceedings, under the second and third heads anything which tends to excite prejudice against the parties, or their litigation, while it is pending. For example, attacks on or abuse of a party, his witnesses or solicitor, constitute contempts though a mere libel on a party, not amounting to an interference with the course of justice, does not, the party being left to his remedy by action.

Nothing is more incumbent upon Courts of Justice, than to preserve their proceedings from being misrepresented, nor is there anything of more pernicious consequence, than to prejudice the minds of the public against persons concerned as parties in causes, before the cause is finally heard. To publish injurious misrepresentations directed against a party to the action, especially when they are holding up that party to hatred or contempt, is liable to affect the course of justice, because it may, in the case of a plaintiff, cause him to discontinue the action from fear of public dislike, or it may cause the defendant to come to a compromise which he otherwise would not come to, for a like reason.

The fact that the trial Judge would not be affected by the article has no bearing on the matter. Whatever might have been the belief of the publisher at the time he published the articles, that belief will not protect him from the consequences, if his publication has been of such a nature as to disturb the free course of justice.

Where, therefore, while a suit for an injunction was pending in the Court, an article was published which stated the defendants' case and inferred it to be true, made accusations against the plaintiff as having ruined the defendants and of having concocted false criminal cases against them and further accusations of plaintiff using his influence maliciously and to the detriment of the defendants and ended in an appeal for assistance for the defendants:

Held, article constituted gross contempt of Court. (Leach C. J. and Madhavan Nair J.) Krishna Yachendra Bahadur v. Rama,

A I R 1938 Mad 248=(1937) M W N 1193=10 R M 589=ILR (1938) Mad 545 = (1938) 2 M L J 81=48 M L W 444 (2)=173 I C 455=39 Cr L J 328.

——Essence — Conduct calculated to produce an atmosphere of prejudice.

The essence of the offence of contempt of Court is conduct calculated to produce an atmosphere of prejudice in the midst of which the proceedings must go on, even where the proceedings do not involve trial by Jury and no one would imagine that the mind of the Magistrates or Judges charged with the case would or could not be induced thereby to swerve from the straight course. (Beasley C. J. and Cornish J.) Sathapa Chettiar v. Ramachandra Naidu

A I R 1932 Mad 26=(1931) M W N 1058=34 M L W 727=61 M L J 848=Ind Rul (1932) Mad 279=55 Mad 262=136 I C 311=33 Cr L J 270.

13. What is.

(a) Civil and criminal contempt.
(b) Contempt by Counsel.
(c) Contempt must be of the Court.
(d) Disobedience of orders.
(e) Interference with receiver's possession.
(f) Object of contempt proceedings.
(g) Resolutions of bar associations.
(h) Threat to opposite party.
(i) Withholding of documents addressed to High Court.
(j) Illustrations.

13. What is—(a) Civil and criminal contempt.

——Distinction between criminal and civil contempts.

There is a fundamental distinction between contempts that are criminal and those that are civil. The former consist in a conduct that offends the Majesty of Law and undermine the dignity of the Court. A civil contempt, on the other hand, is a failure to obey a Court's order issued for the benefit of the opposite party, and the principal object of a civil contempt is to secure the enforcement of

CONTEMPT OF COURTS — 13. What is—(a) Civil and criminal contempt

the order. The Courts do not ordinarily interfere unless the disobedience is shown to be wilful. (Das and Narayan JJ.) State v. Dasrath Jha

A I R 1951 Pat 443=52 Cr L J 558.

——Criminal contempt — Proceedings for criminal contempt.

In a proceeding started for criminal contempt of Court, the first thing to be considered is whether, assuming that meaning of the words is such that they would bring a Court into contempt, they have the effect of interfering with the administration of justice.

If the words used do not have the tendency of interrupting or interfering with the administration of justice they do not justify interference by "the summary and arbitrary process" of contempt. (Kidwai and Chandiramani JJ.) Rex v. B. S. Nayyar

A I R 1950 All 549=51 Cr L J 1500.

——Contempt of Court — Civil contempt — Advocate advising his party to disobey procedural direction.

An order giving a procedural direction by a Court in a suit if disobeyed will constitute only civil contempt. But where the Court specifically asks the advocate to produce his party for being examined and the advocate says that he would not do so till after the plaintiff's evidence was over, this is more than a civil contempt. No Court can ever function properly if parties or advocate are permitted to take up this contemptuous stand as against the legitimate direction given by the Court for purposes of trial. (T. M. Krishnaswami Aiyar C. J., K. Sankarasubba Aiyar and K. C. Abraham JJ.) T. K. Alexander v. R. F. H. Crowther

36 T L J 19 (FB).

——Administration of justice — An act obstructing or having tendency to obstruct constitutes contempt.

In so far as criminal contempts are concerned, the offence is committed if, among other things, the acts complained of either obstruct or have a tendency to obstruct the administration of justice. (Bose and Sen JJ.) Balkrishna Narayan v. Col. N. S. Jatar

A I R 1945 Nag 33 = I L R (1945) Nag 74 = 1945 N L J 30.

——Disobedience of order passed by Civil Court in suit between party and party — Proceedings under S. 188, Penal Code by Civil Court — Propriety — See Penal Code (1860), S. 188.

3 Cr L J 151 (Kathiawar).

13. What is—(b) Contempt by Counsel.

——Relations between Bar and Bench—Rights and obligations of lawyers appearing before Court.

It is difficult to lay down any hard and fast rule as to what expressions a lawyer can use with impunity while addressing the Court and what should ordinarily be tolerated by it. A lawyer should always conduct himself properly in a Court of Law, and exert his best at all times to maintain the dignity of the Court, but the Court has also a reciprocal duty to perform and should be not only not discourteous to a lawyer but should also try to maintain his respect in the eyes of his clients and the general public with whom he has to deal in his professional capacity. Hyper-sensitiveness on the one side or rudeness on the other must be avoided at all costs. Both the Bench and the Bar are the two arms of the same machinery and unless they work harmoniously, justice cannot be properly administered. Therefore mutual adjustment and not mutual antagonism should be the end in view on both sides, eliminating all ideas either of domination or of servility.

Without failing in respect to the Bench, it is the duty of the members of the Bar to assert their just rights to be

CONTEMPT OF COURTS — 13. What is—(b) Contempt by Counsel

heard by the tribunal before which they are practising. They should be fearless and independent in the discharge of their duties; they would be perfectly right in protesting against irregular procedure on the part of any Judge; and if the advocate is improperly checked or found fault with —that is, not, if any observations are made on the merits of the case, but if the Advocate himself is improperly dealt with—he should vindicate the independence of the Bar. He should be perfectly justified in insisting on getting a proper hearing, and he would have the right to object to any interruption with the course of his argument such as to disturb him in doing his duty to his client. Plenary powers no doubt vest in a Presiding Officer of the Court in this respect but apart from the fact that they have rarely been used against members of the legal profession so far, they should only be used to vindicate the honour of the Court or to satisfy the necessities of public justice and not as a matter of course. (Din Mohammad J.) Hakumat Rai v. Emperor

A I R 1943 Lah 14 = 44 P L R 511 = I L R (1943) Lah 791=15 R L 254=204 I C 299=44 Cr L J 181.

——Contempt by Advocate by publishing articles in his newspaper as editor—He is guilty of professional misconduct—See Letters Patent (All), cl. 8

5 Cr L J 152 (All) (FB).

13. What is—(c) Contempt must be of the Court.

——Court—Meaning of—(Words and Phrases — Court — Meaning).

Per Chakravartti J. — The Court is not confined to the Court rooms but is present, at least when in session, in all parts of the place set apart for its own use or the use of its Judges and officers and of persons attending as witnesses, suitors or jurors. (Harries C. J., Chakravartti and Banerjee JJ.) Sudhir Chandra Ray Chaudhuri, In the matter of

A I R 1952 Cal 258=56 C W N 51=1952 Cr L J 666 (SB).

——Contempt in 'facie curiae' and 'ex facie'—Distinction —Letter received by Judge in Chamber.

Per Chakravartti J.—Contempt of Court does not mean contempt in Court. All that is required is contemptuous conduct directed towards the person or character of a Judge acting in a judicial capacity or in relation to his proceedings in the course of the administration of justice. It is not necessary that he should be actually and physically sitting in Court.

Moreover there is no distinction in the case of Courts of Record, punishing for their own contempt, between contempts in 'facie curiae' and those 'ex facie.' If the act of writing the letter is otherwise contempt, the fact that the Judge received it in Chambers and not when sitting in Court, does not make it any the less contempt or contempt in 'facie curiae' or contempt punishable by summary process. (Harries C. J., Chakravartti and Banerjee JJ.) Sudhir Chandra Ray Chaudhuri, In the matter of

A I R 1952 Cal 258=56 C W N 51=1952 Cr L J 666 (SB).

——Person criticised must be a Court — Sub-Deputy Collector acting under Assam Land and Revenue Regulation, S. 142 imposing fine—Appeal pending against his order—Public meeting held condemning his action—No contempt of Court.

A Sub-Deputy Collector wrote to the Secretary of a Ladies' club that he had to inspect the records of the Club in his official capacity and that he would inspect the same the next day. Next day he visited the Club premises and finding the Secretary of the Club absent, he ordered in her absence to pay a fine of Rs. 10 under S. 142 of the Assam Land and Revenue Regulation. An appeal was

CONTEMPT OF COURTS—13. What is—(c) Contempt must be of the Court

filed against this order in the Court of the Deputy Commissioner. While this appeal was pending a public meeting was held in hich the action taken by the Sub-Deputy Collector was criticised. This meeting was convened by a public notice issued over the signatures of the eleven persons. On an allegation that the contents of the notice and the speeches delivered at the meeting constituted contempt of Court :

Held (1) that having regard to the relevant provisions of the Rules framed under the Assam Land and Revenue Regulation, neither the enquiry and report called by the Deputy Commissioner on the application of the Samiti from the Sub-Deputy Collector nor his action taken or purporting to have been taken under Ss. 141 and 142 of the Regulation were proceedings of a judicial nature ;

(2) that having regard to the relevant provisions of the Assam Land and Revenue Regulation, the Deputy Commissioner was not a Court in which the appeal preferred against the order of the Sub-Deputy Collector was pending :

(3) that whatever was done with respect to the public notice and said in the meeting by the eleven persons could not be regarded as contempt of Court. (Thadani Ag. C. J. and Ram Labhaya J.) Deputy Commissioner, Goalpara v. Upendra Saran Sanyal

A I R 1950 Assam 25=54 C W N 268=I L R (1949) 1 Assam 244=51 Cr L J 247.

——Kinds of contempt—Contempt of Court, significance of—Court, meaning of.

Per Mukherji, J. — There are three different sorts of contempts. One kind of contempt is scandalising the Court itself. There may likewise be a contempt in abusing parties who are concerned in causes. There may be also a contempt of the Court in prejudicing mankind against persons before the cause is heard. There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters.

By the word 'Court,' is meant the Judges who constitute it and who are entrusted by the constitution with a portion of jurisdiction defined and marked out by the common law, or Acts of Parliament. Contempt of the Court involves two ideas, contempt of their powers and contempt of their authority. The word 'authority' is frequently used to express both the right of declaring the law which is properly called jurisdiction and of enforcing obedience to it, in which sense it is equivalent to the word 'power,' but by the word 'authority' is not meant that coercive power of the Judges, but the deference and respect which is paid to them and their acts, form an opinion of their justice and integrity. (Derbyshire C. J., Mukherji, Costello, Lort-Williams and Jack JJ.) Tushar Kanti Ghosh In the matter of.

AIR 1935 Cal 419 = 39 C W N 770 = 8 R C 53=61 C L J 376=63 Cal 217=156 I C 1055 = 36 Cr L J 1053 (FB).

13. What is—(d) Disobedience of orders.

——Interference with civil process.

No executive officer high-handedly interfering with civil process, can escape the penalty for such contempt. The fact that he may have done so without being influenced by anybody is of no consequence. (Jagannadhadas C. J. and Mohapatra J.) S. S. Roy v. State.

AIR 1953 Orissa 266=ILR (1952) Cut 467 = 1953 Cr L J 1578.

CONTEMPT OF COURTS — 13. What is—(d) Disobedience of orders

——Contempt—What constitutes—Disobedience of order of Court. (Hemeon and V. R. Sen JJ.) Pitrus Lahra v. R. V. Dalal.

AIR 1953 Nag 179=1953 M L J 38=ILR (1952) Nag 950=1953 Cr L J 1025.

——Disobedience of stay order or order of that nature.

If an officer or a person against whom a stay order or some order of that nature is passed by a Court is to be made liable for contempt of Court, it is the duty of the party intending to make him liable to satisfy the Court that the officer or the person concerned had information of the order. This question will depend generally on the facts of each case. But the mere fact that a party informs an officer or the person concerned of the order would not be generally enough, and there must, at any rate, be some information from the counsel appearing in the Court passing the order that the stay order had been passed in his presence: Case law reviewed. (K. N. Wanchoo C. J. and D. S. Dave J.) Bhawani Singh v. Sugan Chandra Sub-Divisional Magistrate, Sirkar.

1953 Raj L W 406.

——Litigants cannot be allowed to break their undertaking to Court with impunity — 'Held' there was contempt of Court.

Though it is true that the Court ought not to be vindictive in matter of its contempt, at the same time, the Court cannot allow itself to be trifled with. Litigants before the High Court ought to understand that they will not be permitted to give undertakings to the Court and then break them with impunity; far less will they be permitted to have recourse to such dubious means as arming themselves with the orders of a subordinate Court in prosecution of a scheme to flout the orders of the High Court.

In a Rule, taken out by A against an order of possession, A gave an undertaking to vacate the premises occupied by him, by certain date. Instead of vacating the house by that date, A moved the Small Cause Court for an order of stay of execution against him and continued to occupy the house even after that date. In a rule issued by High Court against A for its contempt :

'Held' that A was guilty of contempt of Court. (Chakravartti and P. N. Mookerjee JJ.) Lajuklata v. Nrishingha Prosad.

AIR 1952 Cal 669=1952 Cr L J 1385.

——Contempt of Court of Session.

Intentional disregard of the orders of the Sessions Judge by a Magistrate amounts to contempt of his Court. (Raghubar Dayal and Sapru JJ.) State v. C. M. L. Bhatnagar.

AIR 1952 All 56 = 1951 A L J 663 = 1952 A W R (HC) 41=ILR (1953) 2 All 332=1952 Cr L J 223.

——Contempt—What amounts to.

When an order of stay or other such prohibitory order has been made by the High Court and when the Subordinate Judge or Magistrate is informed of the order by an advocate or pleader, he ought ordinarily to accept what is stated by the advocate or pleader, and stay further proceeding. Certainly, he ought to do so, if the advocate or pleader is in a position to satisfy him as to the source of his information and is prepared to support it by an affidavit. If the Subordinate Judge or Magistrate disregards such information and continues the proceeding, he may find it a matter of difficulty to satisfy the High Court that he believed in good faith that no prohibitory order had been made. It cannot, however, be said that when a subordinate Judge or Magistrate neglects to take such steps to satisfy himself as to the correctness of the information supplied to him that

CONTEMPT OF COURTS—13. What is—(d) Disobedience of orders

a prohibitory order has been made, he is liable to be committed for contempt of Court. (Shearer and Jamuar JJ.) Har Kishun Singh v. Chhotan Mahton.

AIR 1951 Pat 494=52 Cr L J 638.

——Failure to carry out orders of Court — When contempt—Intention if material — Calcutta Municipal Act (III of 1923), S. 535, Sch. 18 (3).

If a party obtains an order from the Court for getting certain relief and the Court has passed an order which, if carried out, would give him instant relief, and because of somebody's failure to carry out the Court's orders he is unable to obtain relief for such a long period as almost four years that is a result which is bound to bring into discredit the administration of justice in the country. That is very serious contempt of Court, in spite of the fact that the officers concerned who had to carry out the Court's orders had no intention to flout the orders of the Court.

[Case of delay on the part of administrative officers in carrying out orders of Court for removal of nuisance under the Calcutta Municipal Act, S. 535 and Sch. 18 (3).] (Das Gupta and P. N. Mookerjee JJ.) Taradas Dutt v. Administrative officer of Corpn. of Calcutta.

AIR 1951 Cal 397.

——Court cancelling bail and remanding accused to jail custody—Flouting of such order by responsible officer of Court—Contempt of Court.

A bail granted to an accused was cancelled and a warrant for intermediate custody of the accused to a sub-jail was handed over to the Court Sub-Inspector. Instead of complying with this order the Court Sub-Inspector approached the Sub-Divisional officer to get an order for 'detention of the accused in the Court lock-up. The Sub-divisional officer without even varifying the statements contained in the petition filed on behalf of the accused purported to pass an order merely for the asking of the Court Sub-Inspector under Rr. 9 and 164A of the Rules for the Superintendence and Management of the Jails, directing that the accused may be sent either to the Central Jail or in the Court lock-up. The Court Sub-Inspector then sent the accused to the Court lock-up.

Held that the act of the Court Sub-Inspector amounted to a clear disregard of the Court's order and amounted to a contempt of Court :

Held also that the action of the Sub-divisional officer also amounted to a contempt of Court. (Jamuar and Rai JJ.) The State v. Vishwanath Prasad.

AIR 1951 Pat 451 (2).

——Direction by District Judge that accused was to remain on bail — Magistrate circumventing or avoiding order—Contempt—See Criminal P. C. (1898), S. 498.

AIR 1950 Dacca 19=51 Cr L J 1561.

——Prior invalid order of detention — Detenu released—Subsequent camouflaged order on substantially same ground — See Orissa Maintenance of Public Order Act, (1948), Ss. 2 and 3.

AIR 1950 Orissa 107=51 Cr L J 891 (FB).

——Contempt of Court—Detention of accused after order of release if amounts to contempt — See Criminal P. C. (1898), S. 491.

AIR 1949 Pat 247=50 Cr L J 518.

——Proceedings for — Consent prohibitive order in presence of parties — Breach of order by opponent—Non-service of order on opponent—Effect.

Where in the presence of and with the consent of both the parties the Court passes a prohibitive order but the same is not served on the opponent after it has been completed and the other party subsequently takes out a motion for contempt against the opponent for breach of the consent order, then if he can prove to the satisfaction of the Court that notwithstanding the non-service of the completed order personally on the opponent it was his intention to enforce the prohibitive order against the opponent mere non-service would be of no avail to the opponent in opposing the motion : (1884) 25 Ch D 778, Rel. on.; (1811) 18 Ves. 522 and (1820) 2 Jac and W 264, Ref. (Bhagwati J.) C. P. Syndicate, Ltd. v. K. P. Ghiara.

AIR 1947 Bom 468=49 Bom L R 450.

——Disobedience of Court's order.

Per Das J. — Disobedience of an injunction order passed under O. 39, R. 1, by a Court subordinate to the High Court can be punished by it as a contempt of Court. (Manohar Lall and Das JJ.) Sita Ram Sahu v. Lachminarain Sah.

AIR 1946 Pat 47=24 Pat 606=1946 P W N 20=227 I C 619.

13. What is—(e) Interference with receiver's possession.

——Possession of Receiver disturbed by levying execution —Whether contempt of Court—Proper order.

A person, whether a party to the suit or an outsider who interferes with the possession of a Receiver by levying execution is guilty of a contempt of Court.

No decree-holder is competent to seek execution of a property of which a Receiver has been appointed unless that appointment is cancelled by the Court and if this is done, it amounts to contempt of Court.

The proper order, held was one directing the status quo as at the time the contempt took place. (O'Sullivan J.) Ramzan Moosa Khan v. Abubucker Sakhi Mohd.

AIR 1945 Sind 75=ILR (1944) Kar 395=1946 Sind Rul 104=222 I C 288=47 Cr L J 408.

——Obstruction of Court's officer — Personal service of order appointing officer—Receiver's possession — Attempt to interfere with.

In a case for contempt of Court, the necessity for personal service of the order of the Court appointing the officer does not exist when the contempt complained of is obstruction of the Court's officers.

Attempts to interfere with a Receiver's possession and to intercept the rents properly payable by the tenants to the Receiver amount to contempt of Court. (Panckridge and M. C. Ghose JJ.) Dharnidhar Singha v. Satish Chandra Giri.

AIR 1932 Cal 705=36 C W N 645 = Ind Rul (1932) Cal 690=140 I C 140=33 Cr L J 945.

13. What is—(f) Object of contempt proceedings.

——Contempt, what constitutes — Policy is that public should be protected from attacks — See Constitution of India, Art. 215.

AIR 1953 Orissa 249=1953 Cr L J 1491.

——Purpose of contempt proceeding.

The purpose of a contempt application is to see the honour of the Court respected and its orders obeyed. The sole object of the Court wielding its power to punish for contempt is always for the cause of administration of justice. That is its only interest in contempt jurisdiction and to that end such power is dedicated. In this respect neither pique nor vindictiveness at all enters into its consideration. (P. B. Mukharji J.) Sambhu Charan Nundy v. Gopi Mohan,

AIR 1951 Cal 507=88 C L J 196.

——The object of proceedings in contempt is not so much to vindicate the dignity of the Court or the person of the Judge, as to ensure that every litigant in a Court of Justice has a fair and unprejudiced hearing at the trial on

CONTEMPT OF COURTS—13. What is—(f) Object of contempt proceedings

the merits of his case. (B. J. Wadia J.) Demibai Gengji v. Rowji Sojpal,

AIR 1937 Bom 305=39 Bom L R 471=10 R B 108=170 I C 631=38 Cr L J 942.

13. What is—(g) Resolutions of bar associations.

——Criticism of judicial acts.

Executive Committee of Bar Association criticising Magistrate and Revenue officer in resolution—Resolution forwarded to District Magistrate and to three Government authorities — Held criticism amounted to contempt of Courts and that it was published. (Wali Ullah, Mootham and Wanchoo JJ.) State v. Brahma Prakash,

AIR 1950 All 556=ILR (1952) 1 All 131=1950 A L J 458=52 Cr L J 1062 (FB).

——Where in a resolution passed by a Bar Association it was asserted that by inflicting undeserved insults and persistently treating the members of the Bar in a contemptuous manner, the Chief Judge was making it impossible for the advocates to present their cases adequately and that if there was a further repetition of this behaviour, the Association would be forced to take measures :

Held that the passing of the resolution and its publication constituted a contempt of Court. (Tyabji C. J., Constantine Agha, Vellani and Mohd. Bachal JJ.) Crown v. Sayed,

AIR 1950 Sind 1=Pak Cas 1950 Sind 9 = 51 Cr L J 810 (FB).

13. What is—(h) Threat to opposite party.

——Letter by party to proceedings to third party to bring pressure on other party — Held, that the letter tended to interfere with due course of justice and amounted to contempt of Court.

A filed a complaint against B charging him of an offence under Ss. 420 and 406, Penal Code. The complaint was dismissed and B was discharged. A then moved the High Court in revision and obtained a rule against B. In the meanwhile A wrote to the President of the local Congress Committee that certain criminal proceedings were pending against B who was a candidate for certain election and requested him to settle A's claim to save B as a Congress eandidate from illfame :

Held (1) that the letter was an attempt by A to bring pressure on B who was a party to the proceeding to admit A's claim and was clearly contempt of the High Court as it tended to interfere with the due course of justice in the Court :

(2) But as it was a first case of the kind a sentence of fine of Rs. 75 would be sufficient. (Harries C. J. and S. R. Das J.) Nalin Chandra Pal v. Bejoy Ranjan Ganguly

AIR 1953 Cal 53=56 C W N 537=1953 Cr L J 214.

——What amounts to — Law stated — Party to legal proceeding issuing notice to opposite party offering settlement if proceeding is withdrawn and threatening to take legal steps—Notice of filing of counter proceedings do not amount to contempt of Court.

The law with regard to the kind of threat contained in a communication to a party to a proceeding which amounts to a contempt of Court, so far settled, may be stated as follows :

(1) If there is a threat held out against a party to a legal proceeding not to proceed with the proceeding or to drop a plea which he had legitimately taken and the threat is that, if this is not done, then some harm will be caused to that party, either by way of a bodily injury or injury to reputation, or in some other way, the threat constitutes an interference with the administration of justice and is contempt of Court.

(2) If the threat is not express, but is implied in the fact of a party instituting a criminal complaint or taking some civil proceeding which puts the former party to loss,

CONTEMPT OF COURTS—13. What is—(h) Threat to opposite party

there is no interference with the administration of justice because everybody is entitled to take recourse to law.

(3) If there is a simple demand for payment of damages because of the use of some defamatory expression in a pending proeeeding, and the demand is not coupled with a request for the withdrawal of the pending proceeding, or a plea taken therein, the demand for damages does not amount to interference with the administration of justice.

(4) If there is a demand for the withdrawal of certain words or expressions used in a pending proceeding coupled with a threat that action will be taken if the words or expressions used are not withdrawn then if the words or expressions were scandalous, unnecessary or irrelevant, such a threat does not amount to interference with the administration of justice.

(5) If the threat is that, unless a certain pending proceeding or plea taken therein is withdrawn, a counteraction will be taken to protect one's own interest in the exercise of one's own right in the property or to take recourse to law upon a cause of action which has already accrued, or in the vindication of one's own honour, there is no interference with the administration of justice.

Where, therefore, an accused in criminal proceedings under S. 406, Penal Code, addresses a notice to the opposite party giving his version of facts and offering an amicable settlement of the dispute provided the proceedings are withdrawn and states that if this was not done, he would proceed civilly and criminally as he may be legally advised, and on not receiving any reply, filed counter-complaints under Ss. 420 and 500, Penal Code, it was held that neither the notice nor the filing of counter cases constituted an interference with the administration of justice so as to amount to contempt of Court. (Raghubar Dayal and Agarwala JJ.) Kamta Prasad v. Ram Agyan,

A I R 1952 All 674=ILR (1950) All 530=1952 A L J 616=1952 Cr L J 1160.

——Person addressing threatening notice to Counsel demanding withdrawal of certain allegations of fact made in written statement of his client, held guilty of contempt of Court. (Niyogi J.) Telhara Cotton Ginning Co. Ltd. v. Kashinath Gangadhar,

AIR 1940 Nag 110=ILR (1940) Nag 69=1939 N L J 461=13 R N 43=189 I C 58=41 Cr L J 709.

13. What is—(i) Withholding of documents addressed to High Court.

——Interference with course of justice

Interference by executive—Application (Habeas Corpus) addressed to High Court delayed by executive authority—Contempt of Court is committed. (Falshaw and Soni JJ.) The Registrar of the High Court of Judicature, E. P. v. N. M. Patnaik.

A I R 1950 E P 259=52 P L R 135=51 Cr L J 1316.

——Administration of justice — An act .obstructing or having tendency to obstruct, constitutes contempt.

In a case where the good faith of the head of a department is being challenged and where the complaint is that a document addressed to the High Court is being deliberately withheld not to hand it over to the Court at the earliest possible opportunity it is inexcusable, and to hand over partial copies of other documents is equally inexcusable.

The Jail Superintendent deliberately and intentionally, on three separate occasions, withheld the application from the High Court and declined to forward it :

Held, that he interfered with the administration of justice and was guilty of criminal contempt. (Bose and Sen JJ.) Balkrishna Narayan v. Col. N. S. Jatar,

AIR 1945 Nag 33=ILR (1945) Nag 74=1945 N L J 30.

CONTEMPT OF COURTS—13. What is—(i) Withholding of documents addressed to High Court

——Application by detenu to High Court under S. 491, Criminal Procedure Code—Withholding of application held constituted technical contempt—Withholding of application, when amounts to punishable contempt—(Criminal P. C., S. 491).

Petitions addressed by detained persons to the High Court under S. 491, Criminal P. C., must be forwarded without any delay. Whether the petition has in the events that have happened become infructuous is a matter in every case for the High Court to decide and no one has the right to take upon himself that responsibility. It is no business at all of any official to form any conclusion about an application addressed to the High Court. Withholding any application addressed to the High Court under S. 491, Criminal P. C., does amount to a technical contempt even when such withholding does not tend substantially to interfere with the due course of justice. In order to amount to a punishable or serious contempt of Court, the withholding of the application must tend substantially to interfere with the due course of justice. The fact that it might possibly interfere with the course of justice is not sufficient. There must be a tendency substantially so to interfere :

The detenu was arrested on November 9, 1943. On November 12, the detenu handed over an application for his release under S. 491, Criminal P. C., to the Sub-Inspector B for forwarding the same to the High Court. B kept the application with him till November 13, on which date he communicated about the application to his superior officer R who told B that no action was necessary as the detenu was to be released immediately and that the application of the detenu may be destroyed. B carried out the instructions of R by destroying the application. On November 10, the Bar Association had already moved the High Court for the release of the detenu and the High Court had ordered the issue of notices on such application and B and R were aware of the fact and knew that the withholding of the detenu's application could not prevent the High Court from inquiring into his arrest and detention :

Held that (1) as the withholding of the application of the detenu by B and R was not intended to prevent the High Court from making an inquiry and did not tend substantially to interfere with the due course of justice, B and R were not guilty of substantial or punishable contempt but were guilty only of technical contempt ;

(2) the destruction of the document was reprehensible though it could not in the circumstances amount to a punishable contempt even if it amounted to a technical contempt as the original withholding of the document did not amount to a punishable contempt. (Harries C. J., Abdul Rashid and Abdur Rahman JJ.) Homi Rustomji v. Sub-Inspector, Baig,

AIR 1944 Lah 196=217 I C 78=46 Cr L J 174 (SB).

13. What is.—(j) Illustrations.

——Contempt of Court what amounts to — Interference with course of justice.

The letter, expressing the opinion of a superior Officer of the position of the Deputy Secretary to the Government, that it was a spectacular case in which a large quantity of clothes was hoarded by the accused by fabricating a false account of sale, with the endorsement of the District Magistrate "Show this to S. D. M. Sadar for needful", and further containing similar endorsement of the Sub-divisional Magistrate, when it reached the Trying Magistrate, was bound to embarrass the Magistrate and had a definite tendency of seriously affecting the fair trial of the case. District Magistrate in having forwarded the letter to the Sub-divisional Magistrate when it is manifest from its contents that the filing of the case was at least imminent, if cognisance had not already been taken, knowing that the Sub-divisional Magistrate was to exercise a judicial discretion under S. 204, Criminal P. C., in taking cognisance of the case and that it is quite likely that the Sub-divisional Magistrate may himself try the case, "has undoubtedly committed the offence of contempt of Court". Held further that the Sub-Divisional Magistrate is also guilty of the offence of contempt of Court in having forwarded the letter to the Trying Magistrate. (Jagannadhadas C. J. and Mohapatra J.) State v. Radhagobinda Das

A I R 1954 Orissa 1 = I L R (1953) Cut 246 = 1953 Cr L J 1906.

CONTEMPT OF COURTS—13. What is—(j) Illustrations

——Contempt of Court, what amounts to—Comments on pending proceedings.

Where the inevitable effect of the facts mentioned in the newspaper report would be to incline anybody who reads them to become prejudiced against the accused during the pendency of a criminal proceeding, the publication of the report would amount to contempt of Court. (Reuben C. J. and Misra J.) State v. Ram Briksh Benipuri

A I R 1953 Pat 364=1953 B L J R 350=1953 Cr L J 1779.

——Contempt of Court—(Constitution of India, Art. 215)—(Patiala Contempt of Courts Act, S. 1).

Held that the party approached the Magistrate in Court with the object of influencing his decision in the matter of bail in favour of certain accused — The conduct of the party was both audacious and reprehensible and constituted a Contempt of Court. (Passey and Chopra JJ.) State v. S. Gurdial Singh

A I R 1953 Pepsu 79 = I L R (1952) Patiala 531= 1953 Cr L J 919.

——Contempt of Court—Publication calculated to obstruct or interfere with due course of justice — Suit for possession—Plaintiff endeavouring to take possession by making collections from tenants by publication of his title — If contempt of Court.

Nothing is more incumbent upon the Courts of justice than to preserve their proceedings from being misrepresented for there may be a contempt of Court in prejudicing human mind against a party before his cause is heard.

Any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court.

Publicising does not consist merely in publishing something through the medium of a newspaper or in making a speech from a public platform. The rule extends to any conduct which tends to inculcate a belief in the public or any section of it that a particular state of affairs prejudicial to the other party to the litigation in fact exists which affairs are in issue between the parties to the cause.

In spite of the pendency of his suit for possession, the plaintiff endeavoured to take possession of the estate by making collections from tenants, and in order to facilitate his doing so he sent out his men to spread the belief in the tenantry that he was the person who was held entitled to the estate. The plaintiff was himself responsible for the collections and the issue of receipts to the tenants describing him as the owner of the estate villages inculcating the belief that the defendant's possession was found to be without any right :

Held, that the aforesaid acts of the plaintiff were calculated to create an atmosphere of prejudice against the defendants and to interfere with the course of justice and fair trial of the suit. Whether or not any actual prejudice had been caused or actual interference had taken place

CONTEMPT OF COURTS—13. What is—(j) Illustrations

was immaterial, for the test is not whether the actions or the conduct of the party which is accused of contempt have in fact caused any obstruction or interference to the administration of justice but whether they are calculated to do so or are likely to have that effect.

The grave consequences which must follow on the acts, and conduct of the plaintiff in making the collections and publicising his title in negation of the title of the defendants amounts to a deliberate contempt and it should not be allowed to go unpunished simply because the defendants can make their loss good by filing suits for rent against those who have paid rents to the plaintiff. The adoption of a cool and calculated conduct in defiance of the law cannot be regarded as a merely technical offence and ought not to be overlooked. (Plaintiff fined Rs. 1000 in addition to costs). (Misra and Chandiramani JJ.) Rex v. Mohd. Etizad Rasul Khan

A I R 1953 All 266 = I L R (1951) 1 All 80 = 1953 Cr L J 630.

——Criticism of High Court's decision by inferior judicial officer or Magistrate—Amounts to Contempt—(Precedent).

A decision of the High Court may not appear to the subordinate judicial officers and Magistrates as laying down the correct law. It may be subsequently overruled by the High Court or set aside by the Supreme Court. But so long as it has not been so overruled or set aside, it is binding on all. Judicial Officers and Magistrates have not the liberty of criticising the decisions of the High Court. Much less can they deliver to the High Court a homily on the matters it should take into consideration while examining the correctness of any decision. If they do so, their act is, no doubt, in common parlance an act of insubordination, but in law it amounts to a contempt of Court and they are liable to be dealt with as such for that act. The fact that the criticism or the suggestions have been made by a judicial officer or a Magistrate in the course of judicial proceedings cannot alter the nature of the act. (Dixit J.) Mahabir Prasad v. State

A I R 1953 Madh B 60=1953 Cr L J 570.

——Contempt—What is — Publication of article tending to prejudice fair trial of pending case.

A filed a complaint against B for defamation by publishing an article alleging that A had pulled the braid of B's wife in a public meeting. During the pendency of the case B published another article referring to that incident and suggesting that A was 'a goonda hired by congressmen to pull the braids of ladies'. On an application by A to commit B for contempt :

Held, that such a publication was prejudicial as it tended to prejudice fair trial of the case by influencing the mind of the public and also of the Court against the applicant and hence constituted contempt of Court. (Vakil J. C.) Ramniklal Nanalal v. Shah Pranlal Nanchand

A I R 1952 Kutch 74=1952 Cr L J 1482.

——What is — Order under S. 144, Criminal P. C., preventing process-server from serving process on judgment-debtor—Magistrate and S. I. held guilty of contempt of Court.

In execution of his decree against B, A, the decree-holder obtained a warrant of arrest and finding B appearing as an accused in a criminal case, sought to arrest him. B however applied under S. 144, Criminal P. C., and the Magistrate passed an order restraining the process-server from arresting B till B reached his home and directed the notice of the order to be served on the process-server. On B's way back home, the process-server showed the warrant of arrest to B and detained him. While some crowd gathered near them, C, a Sub-Inspector of Police, got the record, showed the original order to the process-server and thus allowed B to go home unarrested. In the proceedings against the Magistrate and the Sub-Inspector of Police C :

Held (1) As there was no mention of apprehension of breach of peace either in B's application or in the order, the order passed under S. 144, Criminal P. C. was improper and was not passed in good faith.

(2) That the power of a Magistrate under S. 144, Criminal P. C. is meant to prevent imminent breach of peace and not for conferring immunity on a judgment-debtor under S. 135, Civil P. C. The order here was intended to have the effect and, in fact, had the effect of preventing a process-server of the civil Court from executing the process issued to him by the Munsif and as such amounted to contempt of Court on the part of the Magistrate.

(3) That the Sub-Inspector was also guilty of contempt of Court as his action facilitated B's escape from the custody of the process-server of a civil Court.

(4) That the order of the Magistrate passed under S. 144, Criminal P. C. could not justify his action as done in good faith as the order was not duly promulgated in Form No. XXI of Sch. V of the Code nor was the Sub-Inspector asked by the Magistrate to serve it on the process-server. (Panigrahi and Narasimham JJ.) State v. Sankar Charan Sahu

A I R 1952 Orissa 215=18 Cut L T 75=1952 Cr L J 1106.

——Contempt of Court—High Court when would refuse to exercise its jurisdiction in contempt.

The accused published an article headed "Budget Session of the Punjab Assembly" in his daily newspaper. The main object of the Article was an attack on the ministry accusing them as supporters of corruption which was prevalent in the Administration. As an instance, there was an incidental reference to an inquiry against a public servant for the alleged corruption pending before the Chief Justice of the High Court in which one Minister and the chief whip of the Congress party had appeared as defence witnesses :

Held, that the publication of the Article which implied or assumed the guilt of the person against whom the enquiry was pending amounted to a contempt of Court. But as the tendency of the Article to prejudice the course of justice was very slight the High Court refused to exercise the jurisdiction in contempt. (Khosla and Falshaw JJ.) Kapur Singh v. Jagat Narain

A I R 1951 Punjab 49=53 P L R 178=I L R (1951) Punjab 362=52 Cr L J 950.

——Newspaper report amounting to expression of opinion on matters sub judice by suppressing or misrepresenting material steps in proceedings constitutes contempts of Court—High Court to take summary action — Court not to take action unless misrepresentation is substantial. (Mohd. Munir C. J., Muhammad Sherif and Cornelius JJ.) The Crown v. Faiz Ahmed Faiz

A I R 1950 Lah 84 = Pak Cas 1950 Lah 268 = Pak L R 1950 Lah 75=51 Cr L J 801 (FB).

——Publication in newspaper — Comments referring to accused in pending case as communists and desiring cancellation of bail bonds—Publication held had effect of discouraging evidence in favour of defence and amounted to interference with course of justice — Offence held was not technical and called for action — Contempt of Court : A. I. R. 1943 Lah. 329 (F. B.), Foll.; (1907) 2 Ir R 260 and A. I. R. 1931 Cal. 257, Disting. (Blank and Lahiri JJ.) Bankim Chanda Paira v. Ananda Bazar Patrika

A I R 1950 Cal 129 = I L R (1951) 1 Cal 94 = 51 Cr L J 610.

CONTEMPT OF COURTS—13. What is—(j) Illustrations

——Contempt of Court, what amounts to.

Where after the trying Magistrate had rejected an application under S. 495, Criminal P. C. and directed prosecution to be continued by Court Inspector, the Judicial Secretary of the State Government, instead of instructing the Court Inspector to apply under S. 494 for leave to withdraw from the prosecution, wrote a letter to the Additional District Magistrate telling him to order the Court Inspector to retire and to inform the trying Magistrate accordingly the letter tends to interfere with the due course of justice and amounts to contempt of Court. (Harries C. J. and J. P. Mitter J.) Ramlal Rajghoria v. S. K. Sen

A I R 1950 Cal 545.

——Person brought to Court under writ of habeas corpus and ordered to be released from detention under R. 26, of D. I. Rules which was held to be illegal, re-arrested under Regulation III of 1818 in Court corridor after the Judges had risen but while other Courts were sitting or in Court room after Court hours — Such re-arrest held, would not by itself constitute contempt of Court, but such arrest would be contempt although Regulation III of 1818 authorises arrest "anywhere" in the province, if it is made in the face of the Court or elsewhere in the Court premises so as to disturb the Court proceedings, or if it is a fraudulent proceeding designed to evade or frustrate the order of release. (Derbyshire C. J., Mitter and Khundkar JJ.) Niharendar Dutta v. A. E. Porter

A I R 1945 Cal 107 = I L R (1944) 1 Cal 489 = 47 C W N 854 (S B).

——Tampering with a document addressed to High Court constitutes contempt.

An application dated September 22, 1943, was handed over to the Superintendent, Central Jail, on 23rd for being forwarded to the High Court. Underneath the figure 22 a line was put and underneath the figure, figure 23 was put by the Jail authorities :

Held, that tampering with a document addressed to the High Court was improper and was in itself a contempt. The jail authorities could endorse the date of receipt by them separately if they so desired but they had no business to alter or add or tamper with any portion of a document intended for and addressed to the High Court. It was most objectionable to add a figure to the date so as to make it appear that the document bore a different date to the one which it originally bore. (Bose and Sen JJ.) Balkrishna Narayan v. Col. N. S. Jatar,

A I R 1945 Nag 33 = I L R (1945) Nag 74 = 1945 N L J 30.

——Arrest of Counsel proceeding to file or appear in case by Police when amounts to contempt of Court — Justifiable arrest — Arrest honestly made though unjustifiable in law.

In cases where a Counsel who is proceeding to file or appear in a case is arrested by the Police, to constitute contempt, there must be something more than arrest without legal justification. There must be something in the nature of mala fide, that is, an intention directly or indirectly to interfere with the due course of justice. The arrest must have been intended to interfere with the due course of justice or calculated to interfere with the due course of justice. An honest, though mistaken arrest, though it might interfere with the due course of justice, cannot amount to contempt. The arrest of a Counsel by the Police in order to prevent him from filing an application to the High Court under S. 491, Criminal P. C., for the release of a detenu and appearing on behalf of the detenu or to prevent other Counsel from so appearing and to prevent the Counsel from obtaining an order from the High Court for an interview with the detenu in jail

CONTEMPT OF COURTS—13. What is—(j) Illustrations

amounts to interference with the due course of justice and constitutes contempt of Court. (Harries C. J., Abdul Rashid and Abdur Rahman JJ.) Homi Rustomji v. Sub-Inspector, Baig,

A I R 1944 Lah 196 = 217 I C 78 = 46 Cr L J 174 (SB).

——Innocuous word—Effect of tone.

Even if the words used are innocuous, the tone employed may change their innocent character. (Din Mohammad J.) Hakumat Rai v. Emperor,

A I R 1943 Lah 14 = 44 P L R 511 = 15 R L 254= I L R (1943) Lah 791=204 I C 299=44 Cr L J 181.

——Publication defamatory of parties.

Although the publication may be defamatory of the parties, it does not necessarily call for the intervention of the Court unless it is likely to interfere with the trial of the suit :

Held, that the publication was not fair and honest and would interfere with progress of suit. (Kania J.) Hargowandas v. Chimanlal Vadilal,

A I R 1942 Bom 86 = 44 Bom L R 95=I L R (1942) Bom 151=14 R B 384=199 I C 856=43 Cr L J 583.

——Publication of anything that tends to excite prejudice against parties or their litigation.

The essence of the offence of contempt of Court is conduct calculated to produce, so to speak, an atmosphere of prejudice in the midst of which the proceedings must go on. The publication of anything which tends to excite prejudice against the parties or their litigation while it is pending is a contempt of Court.

During the pendency of the suit, the plaintiffs published a notice stating that the disputed land which was being used by the general public from time immemorial was under the risk of being closed and calling upon the general public to attend a meeting for determining the course of action to be followed by residents of the quarter in order that the general public may use the said road in accordance with established usage. A resolution in the meeting so convened and an article in newspaper also asserted that the land was being used by the public and protested against an attempt of the defendants to close it:

Held, that the notice, the resolution and the article in the newspaper would prejudice the public against the defendants and, therefore, amounted to contempt of Court. (Jack and Khundkar JJ.) Suresh Chandra v. Biswa Nath,

A I R 1938 Cal 772=42 C W N 952=I L R (1938) 2 Cal 447=11 R C 405=178 I C 744.

——Advocate threatening Judge that suit for damages will be filed if execution be not stayed — Whether constitutes contempt—Intention—Test in such cases—Apology —(Contempt of Courts Act (XII of 1926), S. 3.)

Where an Advocate wrote to a Judge threatening him that if he did not stay all future actions in respect of an execution application, a suit for damages would be brought against him :

Held, that the intention was obviously to influence the mind of the Judge by the threat held out to him and to prevent him from passing orders in the execution case which might in his free and independent judgment, appear to be most just and proper, and that the Advocate was liable to be convicted under S. 3.

The main question in such cases is whether or not there has been an interference or a tendency to interfere with the administration of justice.

[The High Court, in view of the unconditional apology made by the Advocate, directed that the punishment be remitted under the proviso to S. 3.] (Sulaiman C. J. and Kendall J.) V. an Advocate Allahabad, In the matter of,

A I R 1934 All 317=6 R A 524=(1934) A L J 145=3 A W R (HC) 384=147 I C 330=35 Cr L J 433.

CONTEMPT OF COURTS—13. What is—(j) Illustrations

——Comments prejudicial to persons under trial—Aspersion on Advocate — Absence of substantial prejudice — Interference.

One form of contempt which the Court always watches very narrowly is the contempt that takes the form of prejudicing mankind against persons who are on their trial raising an atmosphere of prejudice against them by comment which is addressed to the public at large.

If aspersions are cast upon a particular Advocate's party by reason of the fact that the Advocate had undertaken to defend certain clients, these aspersions have certainly an effect in tending to deter the Advocate from continuing with his duties for his clients, and in certain circumstances in embarrassing him in the discharge of those duties.

Unlike a Judge, an Advocate is quite entitled to be engaged in politics as much as he likes, and comment upon an Advocate's political opinions and activities would in no way be contempt of Court; but comment upon an Advocate which has reference to the conduct of his cases may amount to contempt of Court on exactly the same principle that while criticism of a Judge and even of a Judge's judgment in Court is permissible, criticism is not permissible if it is made at a time and in such circumstances or is of such a character that it tends to interfere with the due course of justice. (Sir George Claus Rankin, Kt. C. J. and Costello J.) Ananta Lal Singh v. Alfred Henry Watson,

A I R 1931 Cal 257= 35 C W N 189 = 58 Cal 884= Ind Rul (1931) Cal 443=131 I C 267=32 Cr L J 675.

14. What is not.

(a) Criticism of executive officer.
(b) Criticism of judicial acts.
(c) Disobedience of orders of Courts.
(d) Insult to opposing Counsel or party.
(e) Miscellaneous.

14. What is not — (a) Criticism of executive officer.

——Criticism of executive officer, when amounts to contempt.

Per Harries C. J. and Teja Singh J.—A criticism of an executive officer, no matter how severe, cannot amount to contempt of Court unless such criticism contains matter calculated substantially to interfere with the due course of justice. It is one thing to say during the pendency of proceedings that an executive officer should not have taken a certain course; it is quite a different thing to say that the course he took was wholly illegal. (Harries C. J., Munir and Teja Singh JJ.) Subramanyan, Editor, Tribune, In re,

A I R 1943 Lah 329=16 R L 238=I L R (1944) Lah 111=212 I C 17=45 Cr L J 445 (FB).

14. What is not — (b) Criticism of judicial acts.

——Criticism of judicial acts—Its limits—Citizen's right to make representation to executive authorities in respect of judicial act.

No Judge is immune from criticism, but the criticism must take the form of reasonable argument or expostulation, it must be made in good faith, and it must be free from the imputation of improper motives. The right of public or private criticism within these limits is the right possessed by every citizen. Criticism of a judicial act which cannot reasonably be said to be within these limits will however be contempt and it matters not through what medium that criticism finds expression, whether it be in the press, a speech, a resolution or representation. A citizen has a right to make a representation to the executive authorities in respect of a judicial act. And criticism of a Judicial Officer which takes the form of a

CONTEMPT OF COURTS — 14. What is not — (b) Criticism of judicial acts

representation to the Government expressed in terms which do not overstep the limits referred to above is not contempt; it is only when those limits are transgressed that the question of contempt can arise. (Wali Ullah, Mootham and Wanchoo JJ.) State v. Brahma Prakash,

A I R 1950 All 556=1950 A L J 458=I L R (1952) 1 All 131=52 Cr L J 1062 (FB).

——Mere statement in letter that view taken by Court had emboldened opposite party to commit wrong.

The owners of two adjoining estates, A and B between which a river ran, on both sides of which embankments had been constructed by the respective owners, had given an undertaking to the Government that they would not add to or alter the embankments without permission of Government. On a breach having occurred on the embankment of estate B, a new embankment was constructed in a semi circular fashion thus increasing the length. Thereupon the owner of the estate A complained to the Magistrate about the breach of the undertaking. While this was pending, the manager of B estate wrote a letter to the Collector. On receiving a copy of this, the manager of estate A wrote to the Collector referring to the breach of the undertaking and stating that the Collector's view of the case had emboldened the people of estate B :

Held, there was nothing in the nature of a criticism of a judicial decision and nothing in the statement which would tend to bring the Court into contempt or diminish its authority and hence it did not constitute contempt of Court. (Courtney-Terrell C. J. and James J.) Emperor v. Girindra Mohan Mishra,

A I.R 1937 Pat 124 = 18 P L T 113 = 9 R P 413=3 B R 305=167 I C 646=38 Cr L J 412.

——Judge—Public acts—Open to criticism by the public.

No privilege or protection attaches to the public acts of a Judge which exempt him, in regard to these, from free and adverse comment. (Lord Shaw) Channing Arnold v. Emperor,

A I R 1914 P C 116 = 41 Cal 1023 = 41 I A 149=18 C W N 785 = 26 M L J 621 = 1 L W 461=7 Bur L T 167 = (1914) M W N 506 = 16 M L T 79 = 12 A L J 1042=20 C L J 161 = 16 Bom L R 544=23 I C 661=8 L B R 16=15 Cr L J 309 (PC).

14. What is not — (c) Disobedience of orders of Courts.

——Contempt of Court—Knowledge of order disobeyed.

A contempt cannot be spelt out by mere inference from doubtful circumstances. The essence of a contempt is that even after the communication of the order of the Court there has been deliberate disregard of such order. There can never be a contempt of an order of Court by a person who was not aware of such order at the time when he is supposed to have acted contrary to what was directed by the order. Knowledge of the order of the Court, therefore, is a fundamental postulate for contempt. (Chakravartti and P. B. Mukharji JJ.) Tarafatullah Mandal v. S. N. Maitra

AIR 1952 Cal 919=56 C W N 387=1953 Cr L J 136.

——Injunction against State—Disobedience—Liability of officer in charge.

When an injunction is granted against a corporation, which afterwards does or permits an act in breach of the injunction, there is a wilful disobedience of the order and it will be no answer for the corporation to say that the act was done or the omission allowed to occur unintentionally, or through carelessness, or through dereliction of duty on the part of servants of the corporation. The same principle, would apply in the case of a Government, or a State, but before an individual officer of the Government can be held to be liable, it must be established that

CONTEMPT OF COURTS — 14. What is not —
(c) Disobedience of orders of Courts

he was the person in charge of the subject-matter to which the injunction or order, alleged to have been disobeyed, related and unless that is established, no case against an individual officer can succeed.

Where the complaint is that a tube well was sunk and that certain trees were cut down, these are not acts incidental to any proceeding for acquisition of lands, but are acts done in exercise of ownership or a claim of ownership. In such a case the application of the West Bengal Land Development and Planning Act, 1948, has passed the stage of acquisition and reached the stage of development, in other words, has passed from the charge of the Land and Land Revenue Department to the charge of the Relief and Rehabilitation Department. As the lands are being developed by the prescribed authority under the supervision and control of the Relief and Rehabilitation Department if any violation of the interim orders on an application under Art. 226, Constitution of India took place, the responsibility therefor would not in any event be on the Secretary, Department of Land and Land Revenue. It is also not possible to hold that the Collector qua Collector or otherwise has any concern with acts done by the prescribed authority under the direction of the Relief and Rehabilitation Department. (Chakravartti and P. B. Mukharji JJ.) Tarafatullah Mandal v. S. N. Maitra

AIR 1952 Cal 919=56 C W N 387=1953 Cr L J 136.

——Ejectment suit—Order on bailiff to deliver possession —Soon after possession was delivered sub-tenant, not party to proceeding, retaking possession — Offence of contempt, whether committed.

In an ejectment proceeding against the tenant the Court passed the following order : "The bailiff of the Court to give possession of the property to the applicant on July 2, 1951." When the possession was being delivered to the applicant, no resistance was offered to the bailiff. But as soon as the bailiff went away after giving the possession the opposite party 2, who was all the while standing there retook the possession. Opposite party 2 was not a party to the proceedings. He, however, claimed to be the subtenant of the opposite party 1, who was the tenant and against whom the ejectment proceedings were taken. On the question whether the opposite parties committed contempt of Court :

'Held' that (1) the opposite party 1 did not commit any contempt, since there were no allegations of any kind against him.

(2) Since there was no order on the contemner to do anything it could not be said that there was any wilful disobedience of the order.

(3) Moreover, the opposite party 2, not being a party to the ejectment proceeding could not be held bound by any order passed therein. Such an order would be binding on him only in circumstances mentioned in O. 21, R. 35, Civil P. C., but not in such a case.

(4) It could not be said that the order for giving possession had been executed and exhausted as soon as the bailiff went away and that therefore there was no obstruction to the bailiff. The retaking of possession followed so soon after the delivery of possession as in reality and substance to amount to being part of the delivery of possession and therefore to obstructing the bailiff in carrying out the order. Prima facie, it would therefore appear that the opposite party 2 was guilty of contempt by obstructing the course of justice. It would make no difference that he was no party to the action, for a stranger has no more right than a party, wilfully and wrongfully to oust the Court's officer from possession or prevent him from carrying out the Court's order.

(5) But a person bona fide claiming to be rightfully in possession of property is entitled in law to resist a Court Officer from ousting him from such possession in execution of an order of Court passed in a proceeding to which he was not a party. Indeed in such a case the Court's officer has no right to oust him until his claim is adjudicated upon in appropriate proceedings. The provisions of O. 21, R. 97 and the following rules of the Code of Civil Procedure would seem to contemplate the right of such a person to resist possession being taken from him.

(6) But where the tenant's tenancy has been terminated, this termination also normally brings to an end the sub-tenant's tenancy and the sub-tenant cannot lawfully resist the Court officer in executing a decree in ejectment against his landlord. Such termination of the sub-tenant's tenancy, however, is not necessarily always the case, such as in the cases of surrender and under some rent laws where upon termination of tenancy the sub-tenant became a direct tenant of the landlord. In such cases the sub-tenant can rightly resist the execution of the ejectment order and he cannot be committed for contempt. In the absence of anything to show in what right the opposite party 2 held his sub-tenancy, he could not be committed for contempt. Such an order can never be made in a case of doubt for committal is a serious matter and "involves in most cases an exceptional interference with the liberty of the subject, and that too by a method or process which would in no other case be permissible, or even tolerated."

It was impossible, therefore, to hold the opposite party 2, guilty of contempt. (Das Gupta and Sarkar JJ.) Kripalani, P. K. v. Mahabir Ram

AIR 1952 Cal 452=1952 Cr L J 971.

——False report by serving peon that summons on witness was served but he refused to take it—No contempt proceeding can be started against witness for not attending Court.

Where it was found that the summons was not served upon a witness but a false report that it was served but refused was made by the serving peon and relying upon the report, the witness was convicted for contempt, on his failure to attend the Court on the required date :

'Held' that considering the falsity of the report and also the fact that even if the summons was served, the witnesses could not attend the Court in a short time available to him, the conviction was set aside. (Das and Sarjoo Prosad JJ.) Kabindra Narain Singh v. State

AIR 1952 Pat 243=1952 Cr L J 796.

——Contempt of Court, what amounts to.

Where a consent order passed in an application by one party for the issue of a writ of mandamus restraining the other from taking possession of the former except in due course of law provided that the latter will take possession only after the purchase to which the latter claimed to be entitled had been legally completed and vacated the interim order of injunction :

Held that taking of possession by the latter before the purchase was legally completed did not amount to contempt of Court as in the consent order there was an undertaking given by the latter to the former but there was no undertaking given to the Court. (Reuben and Das JJ.) Bukhtiarpur-Bihar Light Rly. Co. Ltd. v. State of Bihar

AIR 1951 Pat 231.

——Per Majority—Presumption attaches to the orders to superior Courts that they are with jurisdiction and an ouster of jurisdiction of Civil Courts is not to be readily inferred but if, as a matter of construction of the Statute creating a special tribunal, the Civil Court comes to the conclusion that its jurisdiction in the matters entrusted to that tribunal has been ousted by the Legislature, its

CONTEMPT OF COURTS — 14. What is not —
(c) Disobedience of orders of Courts

order interfering with the proceeding of that tribunal where no excess of jurisdiction is found must be held to be without jurisdiction, and if the special tribunal disobeys any such order it commits no contempt, however improper or discourteous its conduct may be, because an order without jurisdiction is void and a void order binds nobody.

Cornelius J., contra—The Lahore High Court, being a Court of record constituted by Letters Patent, is a "chartered High Court" within the meaning of Part IX and O. 49 of the Civil P. C. By virtue of the superiority of status of such Court, it becomes incumbent on all persons and authorities within the jurisdiction, to whom an order may be addressed from such a Court, to respect that order and sumbit to it at least in the first instance : (1948) 1 K. B. 195, Rel. on. (Munir A. C. J., Cornelius and Muhammad Khurshid Zaman JJ.) In re Sultan Ali Nanhiana

A I R 1949 Lah 131 = Pak L R (1949) Lah 215 = Pak Cas (1949) Lah 162=50 Cr L J 598 (FB).

——Disobedience of injunction decree — Equity acts in personam—Disobedience not by persons named as defendants but by those claiming through them—They cannot be proceeded against in contempt.

Equity acts in personam and an injunction is a personal matter. The ordinary rule is that it can only be disobeyed in contempt by persons named in the writ. Persons who were not defendants in the suit in which injunction was granted nor were named in the decree cannot be proceeded against in contempt for disobeying the injunction, even if such persons claim through the person against whom the injunction was granted.

In such a case, when there is no principal offender, the defendant against whom the decree was passed having died, there can be no question of aiding and abetting and principles of Avery v. Andrews, (1882) 51 L J Ch 414 and Sea Ward v. Paterson, (1897) 1 Ch 545, have no application. (1882) 51 L J Ch 414; (1897) 1 Ch 545, Disting; AIR 1938 P C 295, Foll.

Quaere—Whether the decree-holder can proceed against such persons by way of execution under O. 21, R. 32, Civil P. C. (Agarwala C. J., Meredith and Narayan JJ.) Pratap Udai Nath Shahi Deo v. Sara Lal Durga Prasad Nath Shahi Deo

AIR 1949 Pat 39 = 1949 P W N 31 = 27 Pat 414 = 29 P L T 247=49 Cr L J 639 (SB).

—— Suit by lessor against lessee for ejectment—Suit compromised — Under compromise lessee undertaking to remove certain objectionable matter—Compromise presented to Court and decree passed—Lessee not acting according to undertaking — Lessee held could not be committed for contempt of Court.

One A, the owner of certain premises brought a suit for ejectment against the lessee B on the ground that the latter had installed certain image on the premises without A's consent. The suit was compromised. Under the compromise, B undertook to remove the image before giving up possession of premises or at any time prior thereto on demand by A. The compromise was presented to the Court and a decree was passed in terms of the compromise. B however subsequently declined to remove the image on demand by A and therefore A applied to commit B for contempt of Court on the ground that he had broken an undertaking given to the Court :

Held that on the true construction of the compromise the mere use of the word "undertake" did not mean a promise to Court. It was simply a solemn promise by B to A and the nature of that promise or undertaking could never be changed by reason of the compromise being accepted by the Court and a decree passed in its terms.

CONTEMPT OF COURTS — 14. What is not —
(c) Disobedience of orders of Courts

Hence B could not be committed for contempt of Court : 42 C. W. N. 203, Dissent. (Harries C. J. and Mukherjee J.) Nishakanto Roy v. Saroj Bashini Goho,

AIR 1948 Cal 294 = ILR (1948) 2 Cal 239 = 49 Cr L J 567.

14. What is not —(d) Insult to opposing counsel or party.

——Contempt of Court — Counsel—Publication of his remarks.

It is the duty of the Magistrate to see that counsel did not overstep the limits of propriety by levelling cheap abuse, and that too without provocation, on the opposite party. Even so, the reproduction of such remarks by the counsel in a newspaper would not, apart from proof of intention or of a tendency to prejudice a fair trial, call for action. (Hemeon Ag., C. J. and Mudholkar J.) Wasudeoraoji Sheorey v. A. D. Mani,

AIR 1951 Nag 26=ILR (1951) Nag 266 = 52 Cr L J 452.

——Insult to counsel or to opposing litigant is not contempt of Court.

It must be rare indeed for words used in course of argument, however irrelevant, to amount to a contempt when they relate to an opponent whether counsel or litigant. An insult to counsel or to the opposing litigant is very different from an insult to the Court itself or to members of jury who form part of tribunal. (Lords Macmillan, Goddard and Sir Madhavan Nair) Parashu Ram Deta Ram v. Emperor,

AIR 1945 P C 134 = 1945 M W N 371 = 49 C W N 733 = 58 M L W 347 = (1945) 2 M L J 109 = 47 Bom L R 733 = (1945) A L J 335 = 26 P L T 176 = 72 I A 189 =ILR (1945) Kar P C 294=1946 A W R P C 63= ILR (1945) Bom 950 = 1945 M W N (Cr) 67 = 1946 O A P C 63 = 1945 Pesh L J P C 134 (P C).

— Words used by appellant in respect of Bar, held not contempt of Court.

The appellant, in the course of proceedings, said : "I do not keep anything back at all; my fault is that I disclose everything, unlike members of the Bar, who are in the habit of not doing so and misleading the Court." This caused a protest from the opposing counsel whereupon the appellant immediately apologised and expressed his regret for having used an unfortunate expression in heat of argument :

Held, that the words used by the appellant respecting the Bar and which must have been taken to have been intended by him to refer to opposing counsel did not and could not amount to a contempt of Court. (Lord Macmillan, Lord Goddard and Sir Madhavan Nair) Parashu Ram Deta Ram v. Emperor,

AIR 1945 P C 134 = 1945 M W N 371 = 49 C W N 733=58 M L W 347 = 47 Bom L R 733=(1945) A L J 335=(1945) 2 M L J 109=26 P L T 176= 72 I A 189= ILR (1945) Kar P C 294 = 1946 A W R P C 63=ILR (1945) Bom 950= 1945 M W N (Cr) 67=1946 O A P C 63=1945 Pesh L J P C 134 (P C).

14. What is not — (e) Miscellaneous.

——Contempt with respect to proceedings imminent.

The extending of the punishment for contempt to cases which are only imminent, is not justified on the circumstances as they exist in this country. (Raghubar Dayal and Chaturvedi JJ.) Dwarka Prasad Agarwal v. Krishna Chandra,

AIR 1953 All 600 = 1953 A W R (H C) 236 = 1953 Cr L J 1337.

——Contempt of Court, what amounts to : Cr. Misc. No. 17 of 1950, D/- 16-4-51 (All), Reversed.

CONTEMPT OF COURTS — 14. What is not — (e) Miscellaneous

Proceedings under S. 145, Criminal P. C., pending before Sub-Divisional Magistrate— Opposite party filing counter application with recommendatory letter of Congress Secretary before District Magistrate — District Magistrate as a superior officer transmitting such application together with the letter to the Sub-Divisional Magistrate concerned for report in the usual and normal course of official practice — Such action of District Magistrate cannot amount to contempt of Court of Sub-Divisional Magistrate even if the application contains material which had a tendency to interfere with course of justice. Cri. Misc. No. 17 of 1950, D/- 16-4-1951 (All), REVERSED. (Mahajan and S. R. Das JJ.) Rizwan-Ul-Hasan v. State of U. P.

AIR 1953 S C 185 = 66 M L W 429 = 1953 S C J 255=1953 S C R 581 = 1953 S C A 546 = 1953 MWN 491 = 1953 A W R (H C) 351 (2) = ILR (1953) 2 All 904=1953 Cr L J 911 (SC).

——Contempt of Court, what amounts to — (Criminal P. C. (1898), S. 528) : Cr. Misc. No. 17 of 1950, D/- 16-4-1951, (All), Reversed.

Where an application containing allegations against a trial Magistrate is made by a third party to the District Magistrate the latter is entitled to use his powers under S. 528, Criminal P. C. and send the application in the normal and usual course of his functions to the Magistrate concerned for remarks. There is nothing in such action of the District Magistrate which amounts to a contempt of Court. Cri. Misc. No. 17 of 1950, D/- 16-4-1951 (All), REVERSED. (Mahajan and S. R. Das JJ.) Rizwan-Ul-Hasan v. State of U. P.,

AIR 1953 S C 185 = 66 M L W 429 = 1953 S C J 255=1953 S C R 581=1953 S C A 546 = 1953 M W N 491 = 1953 A W R (H C) 351 (2) = ILR (1953) 2 All 904 = 1953 Cr L J 911 (SC).

——Contempt of Court, what amounts to.

Negligence or lack of knowledge of law or procedure does not necessarily make the person so guilty of it, guilty of contempt of Court.

Similarly, where a Magistrate shows gross carelessness in the discharge of his duty it cannot be said that in the eye of law he is guilty of contempt of Court. (Imam and Sinha JJ.) State v. Shakoor,

AIR 1953 Pat 99=1953 B L J R 37=1953 Cr L J 816.

——Notice to expunge scandalous words from plea threatening criminal complaint for libel on non-compliance is not contempt of Court.

Scandalous words in written statement by J against R, stranger to suit—Words irrelevant in defence— Notice by R to expunge scandalous words from plea threatening criminal complaint for libel on non compliance — Held, merely asking the offending words to be expunged from J's plea and merely filing a criminal complaint for libel preceded by a notice threatening to file it, did not at all interfere with due course of justice and hence R committed no contempt of Court — Held also that the Court was not precluded from going into question of the relevancy of J's allegation against R in J's defence in B's suit — Contempt of Courts Acts (1926), S. 1. (Harish Chandra and Desai JJ.) L. Jagannath Prasad v. Ram Chandra

AIR 1952 All 408 = 1949 A L J 297 = 1949 A W R (H C) 346 = ILR (1950) All 415 = 1952 Cr L J 786

——Suit against Vicar by Parishioner—Vicar forwarding Bishop's letter to plaintiff that he would be excommunicated if he did not withdraw the suit — Action whether contempt of Court.

Where the Vicar of a church forwarded a letter from his Bishop to a parishioner asking the latter to withdraw his suit against the Vicar and other persons for declaration that certain resolution passed by the yogam was null and void and for permanent injunction and it was found that the Vicar was not in any way responsible for the contents of that letter and had simply forwarded it in obedience to the Bishop's order :

Held that the Vicar's action did not amount to contempt of Court ;

Further that the threat to assert one's legal rights against another if he chose to continue an action started by him, would not amount to contempt. (Kunhi Raman C. J. and Subramania Iyer J.) Cheriyan Joseph v. Right Reverend Dr. James. Kalacherry.

AIR 1952 T-C 75 = 1951 K L T 149 = 1952 Cr L J 394.

——On information, complainant genuinely obtaining warrant against certain person on certain address but such person found to be wrong— Unsuccessful use of that warrant to influence that person — Complainant again obtaining another warrant on right person.

A person genuinely on the information given by another obtained a warrant against a person who lived at address given by the informant but had subsequently found out that that was a wrong person. Then an idea occurred to him to attempt to use this warrant as a lever for influencing that person. Having failed to do so, he went to the Court and applied for a warrant against the right person, without stating that the previous warrant had been obtained against a wrong person :

Held, that this was not a case of contempt of Court though it was possible that there might be some other offence committed such as criminal intimidation. (Blacker and Monroe JJ.) Abdul Hamid v. Iqbal Hussain,

AIR 1939 Lah 143 = 41 P L R 130 = 11 R L 893 = 181 I C 861 = 40 Cr L J 571.

——In criminal case complainant's witness making defamatory statements against accused — Accused, if entitled to file defamation complaint against witness during trial of case — Such complaint filed before same Magistrate after examination and cross-examination of witnesses before charge.

Where in a criminal case against an accused, a complainant's witness during the course of his examination makes a defamatory statement against the accused, the accused is not bound to sit silent and is entitled to make a complaint of defamation against the witness to protect his good name. Where such a complaint is made by him to the same Magistrate trying the original case after six months of the incident and after the whole of the witnesses in the original case were examined and cross-examined before charge, the complaint is a bona fide act and not an act aimed at putting pressure to bear on witnesses or in any way calculated to prejudice the trial of the original case against the accused. The accused is not, therefore, guilty of contempt of Court.

In such a case, however, it is undesirable that the hearing of the case of defamation should be taken up until such time as the original case against the accused has been disposed of. (Zia-ul Hasan and Yorke JJ.) Mohammad Yusuf v. Imtiyaz Ahmed Khan,

A I R 1939 Oudh 225=1939 O W N (C C) 467 = 11 R O 308=1939 A W R (C C) 79 = 181 I C 575=40 Cr L J 569.

——Interference with administration of justice — In criminal proceedings accused in written statement publishing defamatory matter in respect of third person not party to proceeding—Such third person sending notice to accused demanding withdrawal of remarks, public apology and damages within certain time on pain of being prosecuted for defamation.

Though it is not possible to give a comprehensive definition of what amounts to contempt of Court interfer-

CONTEMPT OF COURTS — 14. What is not — (e) Miscellaneous

ence with the administration of justice is one of the well-recognized heads of contempt. Courts, no doubt, have to be jealous to guard against any interference with their functions, but on the other hand they should not be too sensitive where no harm has been caused or was intended to be caused. Where in a criminal proceeding under Copyright Act, the accused in his written statement makes a defamatory statement against a person, who is not a party to the criminal case, and this person sends a notice to the accused asking him to withdraw the remarks within certain time and tender a public apology, and asks for certain damages, on the pain of being prosecuted for defamation and the remarks are irrelevant for the purposes of the criminal case, the notice does not amount to contempt of Court. Though it might be wiser if the aggrieved person had delayed action for some time until the criminal case had terminated he was not bound to do so, especially where the criminal case might go on for some time and a suit for defamation might finally be barred by limitation. (Gruer J.) Emperor v. V. B. Kolte,

A I R 1941 Nag 241=1941 N L J 368=14 R N 151=I L R (1942) Nag 506=197 I C 56=43 Cr L J 98.

——Where the Court comes to a decision that it will appoint a Receiver but does not name any officer or individual as Receiver, it is not a contempt of Court for a person who knows that that decision has been arrived at, to collect and disburse moneys which it is intended should fall within the powers of the Receiver. (Blagden J.) Narayan Chettyar v. Doraikhanu,

1941 Rang L R 747.

——Interrogatories served — Answers defamatory of the presiding officer — No proceedings under Contempt of Courts Act should be taken. (Sulaiman C. J.) Ziaul Hasan v. Aziz Ahmad,

A I R 1935 All 896 = 1935 A W R (H C) 934 = 8 R A 12 (1)=(1935) A L J 950 (1)=156 I C 542 = 36 Cr L J 967.

——Imputation of illegality in procedure.

If in an application for restoration of a case dismissed for default the plaintiff states that the order was against rules of law, no contempt of Court is meant. (Walsh J.) Radhory v. Emperor,

A I R 1919 All 46=42 All 26=17 A L J 898=52 I C 279=20 Cr L J 615.

——Pleader—Verbal explanation.

Where in proceedings for contempt of Court a pleader assured the Court that the words were not meant for the Court his assurance should suffice for his acquittal. (Knox J.) Rambali Rai v. Emperor,

11 A L J 955=21 I C 1007=14 Cr L J 687.

CONTEMPT OF COURTS ACT (XII of 1926)

See also (1) Constitution of India, Art. 215.
(2) Contempt of Courts.

—S. 2.

SYNOPSIS

1. Sub-section (1) (General).
2. Practice and procedure.
   (a) Affidavit.
   (b) Applicability of criminal procedure.
   (c) Application by private party.
   (d) Contested questions of facts.
   (e) Costs.
   (f) Defence.
   (g) Duty of complainant.
   (h) Duty of lower Courts.
   (i) Evidence and proof.
   (j) Jurisdiction.
   (k) Notice.

CONTEMPT OF COURTS ACT (XII of 1926), S. 2

   (l) Parties.
   (m) Proceedings when to be taken.
   (n) Right to be heard.
3. "Courts subordinate to them."
4. Appeals.
5. Sub-section (2).
6. Sub-section (3).

1. Sub-section (1) (General).

——Power to punish contempt of subordinate Court—See Constitution of India (1950), Art. 215.

A I R 1953 All 342=1953 Cr L J 733.

——Repeal of Act by Act 32 of 1952—Effect of, on offence already committed—(General Clauses Act (1897), S. 6).

Though the Contempt of Courts Act, 1926, is repealed by the Contempt of Courts Act (XXXII of 1950), the latter Act provides that S. 6, General Clauses Act, 1897, applied to the repeal of the old Act. Result is that for contempts committed prior to the commencement of new Act, action could be taken under the old Act. (Vakil J. C.) Ramniklal Nanalal v. Shah Pranlal Nanchand,

A I R 1952 Kutch 74=1952 Cr L J 1482.

——S. 2 (1) — Contempt of subordinate Court — Kutch Judicial Commissioner's Court — Jurisdiction of, to commit.

The Kutch Judicial Commissioner's Court which is established under the Kutch Province (Courts) Order, 1948, had no power, authority and jurisdiction to commit for contempt of Subordinate Courts till the Constitution of India came into effect. Under Art. 215 of the Constitution every High Court is a Court of record and has all the powers of such a Court including power to punish for contempt of itself. Under the Judicial Commissioner's Courts (Declaration as High Courts) Act, 1950, Art. 215 is made applicable to the Courts of the Judicial Commissioner. Thus from 26-1-1950 from which date the Judicial Commissioner's Courts (Declaration as High Courts) Act, 1950, came into force, the Kutch Court as the Court of record possessed powers, authority and jurisdiction to commit for contempt of Subordinate Courts. (Vakil J. C.) Ramniklal Nanalal v. Shah Pranlal Nanchand,

A I R 1952 Kutch 74=1952 Cr L J 1482.

——Action under, is not excluded by action for libel — See Penal Code (1860), S. 499.

A I R 1952 S C 149=1952 Cr L J 832 (S C).

——Contempt committed by presiding officer of Court — Jurisdiction of High Court to punish.

The mere absence of any reported case in which action has been taken for contempt of Court against presiding officers of Courts does not necessarily mean that no such jurisdiction ever existed or that no such jurisdiction exists. As a Court of record the High Court has an inherent power to punish. The jurisdiction which the High Court exercises in contempt of Court proceedings is a jurisdiction which inheres in it as the highest Court of appeal in the State. (Raghubar Dayal and Sapru JJ.) State v. C. M. L. Bhatnagar,

A I R 1952 All 56 = 1951 A L J 663 = 1952 A W R (H C) 41=I L R (1953) 2 All 332=1952 Cr L J 223.

——Magistrate committing contempt of Court of Sessions Judge Departmental enquiry whether proper procedure.

The mere fact that a Magistrate can be dealt with departmentally for his conduct in not showing proper respect to the orders of the Sessions Judge does not mean that the High Court should not take action against him for the contempt of Court which he has committed. It is not proper that the High Court, when exercising its powers as a Court of record with respect to the commission of contempt of Court, should act in cases against public servants as a mere recommendatory body to the

CONTEMPT OF COURTS ACT (XII of 1926), S. 2—
1. Sub-s. 1 (General)

authorities who have the necessary powers to take departmental action. (Raghubar Dayal and Sapru JJ.) State v. C. M. L. Bhatnagar,

A I R 1952 All 56 = 1951 A L J 663 = 1952 A W R (H C) 41=I L R (1953) 2 All 332=1952 Cr L J 223.

——Contempt of subordinate Court—Power of High Court to punish whether exists under Constitution of India, Art. 215.

Article 215 of the Constitution of India gives power to a High Court as a Court of record to punish for contempt of itself : it makes no provision for punishment by a High Court of contempts of Courts subordinate to it. But this does not mean that after 26th January 1950, it no longer has that power. The reason is that even prior to 26th January 1950 the power of the High Court to punish for contempt of Courts subordinate to it was not to be found in the Government of India Act, 1935, but in the Contempt of Courts Act and that Act has been preserved by the Constitution of India. (Wali Ullah, Mootham and Wanchoo JJ.) State v. Brahma Prakash,

AIR 1950 All 556=1950 A L J 458=ILR (1952) 1 All 131=52 Cr L J 1062 (FB).

——S. 2 (1) — Jurisdiction of High Court in contempt cases how far preserved by Art. 19 (2), Constitution of India.

Assuming that the expression "existing law" as used in Art. 19, cl. (2) of the Constitution of India, means only the written law and does not include the unwritten or case-law, there is nothing in that clause that affects the operation of the Contempt of Courts Act. The High Court has under S. 2 (1) of that Act exactly the same powers in respect of contempt of Courts subordinate to it as it has and exercises in respect of contempt of itself. It is not correct to say that though the power is there, it cannot be exercised because of the want of a definition of "contempt of Courts" in the Constitution of India or in the Contempt of Courts Act. The power of the High Court to punish for contempt both of itself and of the subordinate Courts has been preserved by Art. 19 (2) of the Constitution of India; it is open to the High Courts to draw upon the existing case-law to decide what "contempt of Court" is. For, it can never be the intention of the makers of the Constitution that the Court should be debarred from ascertaining in a judicial manner what is the meaning to be attributed to an expression used in the Constitution but neither defined therein nor in any written law. (Wali Ullah, Mootham and Wanchoo JJ.) State v. Brahma Prakash,

AIR 1950 All 556=1950 A L J 458=ILR (1952) 1 All 131=52 Cr L J 1062 (FB).

——S. 2 (1)—Contempt of subordinate Courts — High Court's power to punish—Patiala and East Punjab States Union Judicature Ordinance (X of 2005), S. 33.

When a person is guilty of a contempt of a subordinate Court, he can be dealt with and punished by the High Court in the same manner as if he has committed the contempt of the High Court itself. (Teja Singh C. J., Passey and Kartar Singh JJ.) Crown v. Brish Bhan,

AIR 1950 Pepsu 9 = 1 Pepsu L R 253 = 51 Cr L J 1219 (SB).

——The Codes of Civil and Criminal Procedure have not affected in any way the jurisdiction of the High Court to commit for contempt. (McNair J.) Chander Mal v. Sardari Lal,

ILR (1937) 1 Cal 345=40 C W N 1285.

——Right to punish by summary procedure — Summary procedure, object of—Contempt, essence of—(Constitution of India, Art. 215).

Per Derbyshire C. J. — The right to punish by summary procedure contempts of Court by scandalising the Court still exists.

CONTEMPT OF COURTS ACT (XII of 1926), S. 2—
1. Sub-s. 1 (General)

It is as much a contempt of Court to say that the judiciary has lost its independence by reason of something it is alleged to have done out of Court, as to say that as a result of a case it has decided, it is clear that it has no independence or has lost what it had. It is immaterial whether the attack on the Judge is with reference to a cause about to be tried, or actually under trial, or recently adjudged ; in each instance, the tendency is to poison the fountain of justice, to create distrust, and to destroy the confidence of the people in the Courts which are of prime importance to them in the protection of their rights and liberties.

Per Mukherji J. — Every form of contempt of Court is not to be dealt with in the summary form. The disadvantages that it causes to the party brought up before the Court to be dealt with, precluding him from taking a plea and depriving him of his defence, are obvious. These are not technical considerations but very serious considerations indeed. And unless the Court is sure that such a procedure has ever been adopted in any case similar in nature to the one before it, or the Court feels that no other efficient remedy is really available, the Court cannot justify its summary action in any given case. It is a clear contravention of the fundamental rights of an accused to be regularly tried to deal with him summarily if no real urgency to resort to a summary procedure is disclosed. Vindication of the dignity of the Court apart from any question of a tendency to obstruct justice or prejudice a trial in connection with any particular case has never been considered in any decision as justifying summary proceedings in contempt. It is this actual interference with justice which is involved in contempt of Court with regard to which Courts have chosen to take action in summary proceedings.

The object of the discipline enforced by the Court in case of contempt of Court is not to vindicate the dignity of the Court or the person of the judge but to prevent undue interference with the administration of justice. The object of the power to punish summarily is protective and admonitory; the reason of the Court's jurisdiction to commit for contempt is not for the protection of the dignity of the Court or of its individual members but for the protection of the public, though it may be and often is that the public are to be protected by the upholding and maintaining untarnished the glory and reputation of the Court as regards its authority, fairness and impartiality. The true point of view from which the question has to be looked at in order to ascertain whether a scandalisation of the Court is a contempt deserving of being dealt with summarily is to examine the circumstances of the case and see whether in reality there is a tendency in the offending publication to obstruct the ordinary course of justice or prejudice the trial. If the reality of the thing is to be regarded, the only cases in which such procedure would be justified would be cases where the offending publication has some relation to a cause or a proceeding either expected to come or is pending or has been disposed of. While the dignity of the Court must always be upheld and maintained it is only the class of cases in which it becomes necessary to uphold and maintain it for some immediate specific purpose that the summary jurisdiction can be legitimately exercised.

The essence of contempt is action or inaction amounting to an interference with or obstruction to or having a tendency to interfere with or to obstruct the due administration of justice. Lowering the dignity of the Court or shaking the confidence of the public in it, is undoubtedly reprehensible. But if general remarks impugning the independence of a Court are made, such remarks can tend to interfere with or obstruct the administration of

CONTEMPT OF COURTS ACT (XII of 1926), S. 2—
1. Sub-s. 1 (General)

justice, only indirectly and remotely and in an ideal sense. And in such cases there can be no warrant for the exercise of the extraordinary powers which the Court possesses to deal with contempts.

Simply because summary procedure is a convenient remedy, it should not be resorted to.

Per Costello J. — It cannot be gainsaid that the Courts of Record have an inherent power of punishing and in a summary way any act done or writing published calculated to bring the Court or a Judge of the Court into contempt or to lower its authority (i. e., the class of contempt characterised by Lord Hardwicke in St. James Evening Post Case, Roach v. Garvanor Hall as scandalising a Court or a Judge). That is part of the Common Law of England and was so at the time when that law was introduced into India in the eighteenth century, and thenceforward administered by the Courts in this country. Thus it comes about that the High Courts in India have inherited or acquired by charter a similar power. (Derbyshire C. J., Mukerji, Costello, Lort-Williams and Jack JJ.) Tushar Kanti Ghosh, In the matter of,

AIR 1935 Cal 419 = 8 R C 53 = 39 C W N 770=61 C L J 376=63 Cal 217=156 I C 1055 = 36 Cr L J 1053 (FB).

——Inherent power of Court to punish—Whether restricted by S. 194, Criminal Procedure Code (Act V of 1898).

The inherent power of the Court to punish for contempt of Court is a power which is essential in the interests of the administration of justice and that power is not restricted in any degree by the provisions in the Criminal P. C., relating to proceedings which may be instituted with the sanction of the Govt. where the Courts or His Majesty's Judges have been defamed. (Thom and Harries JJ.) Advocate of Allahabad, In the matter of,

AIR 1935 All 1 = (1935) A L J 125 = 7 R A 827=4 A W R (H C) 1155=154 I C 955.

——Nagpur Judicial Commissioner's Court has no power to punish contempt of Courts subordinate to it. Quaere—Whether the Judicial Commissioner's Court has power to punish for contempt of its own proceedings committed out of Court.

The Nagpur Judicial Commissioner's Court is not a Court of Record and has no power either by statute or otherwise, to punish contempt of Courts subordinate to it, either civil or criminal.

Quaere.—Whether the Judicial Commissioner's Court has power to punish for contempt of its own proceedings committed out of Court. (Staples, A. J. C.) Hirabhai v. Mangalchand,

AIR 1935 Nag 46=31 NLR 154=8 RN 3=156 IC 666.

——Contempt of mofussil Criminal Court — Jurisdiction of High Court to punish.

The High Court has no jurisdiction to punish, as an offence in a summary proceeding, conduct in relation to a proceeding in the moffussil Criminal Court, as such jurisdiction is neither derived from the Supreme Court or the Sudder Deewany, and the Sudder Nizamut Adaulats, nor is vested in the High Court by the Charter Act (1861), or the Letters Patent under that Act, and as such conduct is not contempt of the High Court. (Jenkins C. J., Stephen and Mookerjee JJ.) Governor of Bengal v. Motilal Ghosh,

41 Cal 173=18 C L J 452=20 I C 81=17 C W N 1253=14 Cr L J 321.

— Nature of proceedings for contempt.

Proceedings by a Court in the exercise of its inherent power to punish for contempt do not come under S. 244, and no order to which the definition of decree as given in S. 2, Civil P. C. is passed. (Burkitt and Aikman JJ.) Godu Ram v. Suraj Mal,

27 All 380=2 A L J 18=1905 A W N 10.

CONTEMPT OF COURTS ACT (XII of 1926), S. 2
2. Practice and procedure.

(a) Affidavit.
(b) Applicability of criminal procedure.
(c) Application by private party.
(d) Contested questions of facts.
(e) Costs.
(f) Defence.
(g) Duty of complainant.
(h) Duty of lower Courts.
(i) Evidence and proof.
(j) Jurisdiction.
(k) Notice.
(l) Parties.
(m) Proceedings when to be taken.
(n) Right to be heard.

2. Practice and procedure—(a) Affidavit.

——Affidavit by Officers.

Officers in the position of a District Magistrate, swearing affidavits personally for the purpose of the same being used in the High Court, ought to be extremely careful as to what language they use and what statements of fact they make. (Chakravartti and P. B. Mukharji JJ.) Tarafatullah Mandal v. S. N. Maitra,

AIR 1952 Cal 919=56 C W N 387=1953 Cr L J 136.

——Distinction in position of contemner and accused.

The position of an alleged contemner is not exactly that of an accused person, and unlike the latter he can always file an affidavit or make a statement on oath. (Das and Narayan JJ.) State v. Dasrath Jha,

AIR 1951 Pat 443=52 Cr L J 558.

——Nature of proceedings—Right of contemner to make affidavit.

Though proceedings for contempt of Court are in the nature of criminal proceedings, there is nothing to preclude an alleged contemner from making an affidavit because he is not placed under the same disability as an accused person. So, when an alleged contemner does not deny on affidavit an allegation made by the applicant he runs the risk of the applicant's statement being accepted and acted upon. (Hemeon Ag. C. J. and Mudholkar J.) Wasudeoraoji Sheorey v. A. D. Mani,

AIR 1951 Nag 26=I L R (1951) Nag 266=52 Cr L J 452.

——Practice and procedure.

Where an applicant in a proceeding for contempt of Court avers in his affidavit that he has reliable information that the non-applicant was the legal correspondent of a neswspaper but does not indicate the source of his information, the affidavit is worthless and must be disregarded. (Hemeon Ag. C. J. and Mudholkar J.) Wasudeoraoji Sheorey v. A. D. Mani,

AIR 1951 Nag 26=I L R (1951) Nag 266=52 Cr L J 452.

——Contempt of Court—Court's power to move without affidavit.

If doubtful questions of fact are involved it may be that the Court will refuse to issue notice to a person charged with contempt without satisfying itself by means of an affidavit that there is reasonable ground for thinking that an offence of contempt has been committed. But there is no rule of law which prevents the Court from proceeding against a person who has been guilty of contempt without first obtaining an affidavit from some person. (Allsop and Mulla JJ.) M. G. Kadir v. Kesri Narain Jaitley,

AIR 1945 All 67=1944 O W N 287=I L R (1945) All 7=18 R All 7=1945 A Cr C 17=1945 A L J 26=1944 A L W 606=1945 A W R (H C) 15=218 I C 320=1945 O A H C 15=46 Cr L J 458.

CONTEMPT OF COURTS ACT (XII of 1926), S. 2 —2. Practice and procedure—(a) Affidavit

——Position of contemner.

Per Munir J. — While it is true that proceedings for contempt are in the nature of criminal proceedings, it is not quite correct that the position of the alleged contemner is that of an accused person who cannot file an affidavit or make a statement on oath. (Harries C. J., Munir and Teja Singh JJ.) Subrahmanyan, Editor Tribune, In re,

AIR 1943 Lah 329=16 R L 238=I L R (1944) Lah 111=212 I C 17=45 Cr L J 445 (FB).

——Petition by Legal Remembrancer — Affidavit in support thereof, should not be sworn by clerk—Petition by Legal Remembrancer on behalf of Government—Propriety of—Powers of Legal Remembrancer in this behalf — Powers of High Court — If can deal with matter suo motu—Contempt of Subordinate Court — High Court on its own motion can issue rule.

Where a petition for prosecution of a person for contempt of Court is made by the Legal Remembrancer and is presented by the Advocate-General, the affidavit in support of the petition should be sworn to by some responsible officer. It is not proper that an affidavit in a case of this kind should be the affidavit of a clerk.

In the Province of Bihar, the position of the Legal Remembrancer is governed by certain rules which have been published by the Govt. He is the Chief Law Officer of the Govt. and it is his duty to superintend and advise on the conduct of all litigation, criminal and civil, to which Govt. may be a party or with which Govt. is in any way concerned. He is also ex officio Public Prosecutor in all cases coming before the High Court of Judicature at Patna or before any other Court in the province. Further, as Chief Law Officer of the Govt., it is the duty of the Legal Remembrancer, in criminal matters to instruct the Govt. Advocate when necessary in relation to cases coming before the High Court. The definition of his duties given in the Govt. Rules is wide enough to empower him in a case of contempt of Court to move on behalf of the Govt., or the Governor and to instruct the Advocate-General to carry on proceedings for contempt in the High Court. But in any event under Cl. 28 of the Letters Patent (Patna) Divisional Bench has power to issue a rule to show cause on its own motion against committal for contempt. The powers of the High Court with regard to the contempts of Subordinate Courts are precisely the same under S. 2 (1), Contempt of Courts Act as its powers with regard to contempt of itself.

Consequently, even if the application by the Legal Remembrancer is not a properly constituted application, the High Court can take notice of the contempt alleged and of its own motion issue the rule. As the Court can issue a rule of its own motion the rule would be effective even if the reason for its issue is an application filed by a person not entitled to file it. (Harries C. J. and Dhavle J.) Superintendent and Remembrancer of Legal Affairs, Bihar v. Murli Manohar Prasad,

A I R 1941 Pat 185=7 B R 261=13 P R 399=21 P L T 980=20 Pat 306=191 I C 834=42 Cr L J 225.

——Delay in filing affidavit—Nagpur High Court Rules—Chap. 4, R. 16.

In a summary proceeding of the nature of contempt of Courts, the High Court would ordinarily act on affidavit evidence. Large contempt proceedings are of a summary nature and promptness is ordinarily of the essence. Therefore, any delay in filing the affidavit should normally be regarded as fatal, though there may be exceptional cases when the delay may be overlooked, but that kind of case should be regarded as rare, and in any event the reason for the delay should always be fully explained.

CONTEMPT OF COURTS ACT (XII of 1926), S. 2 —2. Practice and procedure—(a) Affidavit

The explanation that the Magistrate had to obtain the permission of his District Magistrate and the District Magistrate in turn had to move the State Government and that Government Departments move slowly is no excuse, because matters of contempt are primarily the concern of the High Court. They are not offences in which the State or an individual or a party has a right to a decision. Every stage of such a proceeding is in the absolute discretion of the High Court. Therefore, it is not necessary to wait and obtain the permission of the State Government or of any other persons to come to the High Court. The proper procedure is to send in a report at once. This is all the more necessary when political personages are involved. The non-applicant cannot fairly meet a case when an affidavit is not there, especially when all turns on one man's word against another. Every day of delay is important in such a case because each succeeding day makes it that much the more difficult for the non-applicant to rebut a case of this nature by citing the evidence of those who could be depended upon to know and remember what had happened. (Vivian Bose C. J. and Hemeon J.) State Government M. P. v. Vinaya Kumar Parashar,

A I R 1952 Nag 34=I L R (1951) Nag 803=1951 N L J 499.

2. Practice and procedure—(b) Applicability of criminal procedure.

——Nature of contempt proceeding — Whether criminal proceedings—(Constitution of India, Art. 134 (1) (c)).

Obiter.—Whether the case of contempt of Court comes within Art. 134 (1) (c) depends upon whether an order or sentence passed in a proceeding for contempt can be regarded as a sentence in a criminal proceeding within the meaning of Cl. (1) (c) of Art. 134. A proceeding for contempt cannot be regarded as a criminal proceeding merely because it ends in imposing a punishment on the contemner. Contempts have been divided broadly into two classes according to the purpose which is subserved by the proceeding. Contempt which is punished for disobedience of an order of the Court with a view to enforcing the rights of private parties is distinguished from contempt which is punished for vindicating the dignity of the Court. The latter is regarded as criminal and punitive while the former is regarded as civil and remedial. Whatever be the purpose of the proceeding, a proceeding for punishing contempt has been regarded as 'sui generis' and of an anomalous nature. A proceeding for contempt is not regulated by the ordinary law of criminal procedure. (R. Kaushalendra Rao and Deo JJ.) Zikar v. State,

A I R 1952 Nag 130=I L R (1952) Nag 130=1952 Cr L J 749.

——Procedure — Summons procedure prescribed in the Criminal P. C., has no application — These proceedings are in a special category : Observation in I L R (1945) Nag 74 held obiter and dissented from.; 10 I A 171; I L R (1942) Lah 411 ; A. I. R. 1945 P. C. 134, Rel. on. (Hemeon and Hidayatullah JJ.) T. B. Hawkins v. D. P. Mishra,

AIR 1952 Nag 259=I L R (1949) Nag 640.

2. Practice and procedure—(c) Application by private party.

——S. 2 (1)—Application under—Who can make.

It is not necessary that the High Court be moved by the Public Prosecutor for taking action. Where the alleged contempt is constituted by an article regarding a pending criminal trial, the complainant in that case may move the Court. (Vakil J. C.) Ramniklal Nanalal v. Shah Pranlal Nanchand,

A I R 1952 Kutch 74=1952 Cr L J 1482.

CONTEMPT OF COURTS ACT (XII of 1926), S. 2—

2. Practice and procedure — (c) Application by private party

——S. 2 (1) — Contempt of moffusil Court — Absence of jurisdiction —Application to High Court—Division Bench —Receiver —Obstruction—Contempt.

Where a Receiver appointed by a moffusil Court has been obstructed and it is intended to take proceedings for contempt against the party causing obstruction, ordinarily, the application should be made by that one of the litigants who is or alleges that he is damaged by the actions of the other party, who have interfered with the arrangements made by the Receiver, and that application must be made to the High Court direct, supported by the necessary affidavits and asking that a Rule shall be issued calling upon the other side to show cause why they should not be committed for contempt. The same procedure, with regard to notice to personal service, and otherwise, must be followed as in applications in contempt to the High Court on the original side. In exceptional cases, for example, when the Receiver or the parties refuse to apply, the Court may take action of its own accord.

The High Court may, however, treat a petition made to the lower Court as a petition to itself.

The Division Bench cannot entertain such applications unless the Bench has been appointed by the Chief Justice to deal with such cases. (Lort-Williams and S. K. Ghose JJ.) Amulya Chandra v. Satish Chandra,

A I R 1932 Cal 254 = 35 C W N 1265 = Ind Rul (1932) Cal 281=137 I C 238=33 Cr L J 444.

2. Practice and procedure—(d) Contested questions of facts.

——Proceedings for contempt—Nature of.

Proceedings for contempt of Court are of a summary nature; such proceedings are not suitable for the decision of a hotly contested question of fact. (Das and Narayan JJ.) State v. Dasrath Jha,

A I R 1951 Pat 443=52 Cr L J 558.

——Nature of—Hotly contested question of fact.

Proceedings for contempt of Court are of a summary nature. That being so such proceedings are not suitable for the decision of a hotly contested question of fact. (Harries C. J., Abdul Rashid and Abdur Rahman JJ.) Homi Rustomji v. Sub-Inspector Baig,

A I R 1944 Lah 196 = 217 I C 78 = 46 Cr L J 174 (SB).

2. Practice and procedure—(e) Costs.

——Proceedings initiated by private parties—Costs—Civil P. C. (1908), S. 35.

Although contempt of the High Court is a matter between the Court and the party in contempt, proceedings in contempt must be allowed to be initiated by a motion made by private parties, because that is one of the ways in which cases of breaches of the Court's orders may come to the Court's notice. But at the same time, this liberty or privilege of private parties cannot be allowed to be abused and no person can be allowed to arraign others in a proceeding for contempt without exercising due care and responsibility. The High Court is and has always been jealous of its authority in public interest and will always continue to be so. It will regard persons who bring to its notice cases of violation of its orders as persons who aid the administration of justice. But it cannot tolerate being misled by accusations against wrong parties and cannot allow its time to be wasted by proceedings which ought not to have been initiated at all in respect of the parties against whom they are directed. Where the person charged with contempt is proved to have done the act complained of and the question merely is whether it amounted to contempt or not, it may not always be proper to make an order for costs, even if the decision be

CONTEMPT OF COURTS ACT (XII of 1926), S. 2—

2. Practice and procedure—(e) Costs

in favour of the respondent. But where no connection with the persons charged with the acts complained of has been attempted to be established, it is obviously fair and proper that the persons so unreasonably treated should be indemnified in costs. (Chakravartti and P. B. Mukherji JJ.) Tarafatullah Mandal v. S. N. Maitra,

A I R 1952 Cal 919=56 C W N 387=1953 Cr L J 136.

——Cornelius J. — Special Tribunal (Election Petitions) Commission wilfully and consciously disobeying stay order issued by High Court, believing in good faith that it was not bound to obey same and with a view to have it settled to what extent it was bound by such order — No intention to commit contempt — Commission held guilty of contempt—But committal for contempt was not called for — Members of commission were ordered to pay costs. (1876-77) 4 Ch B 98, Applied, (Munir A. C. J., Cornelius and Mohammad Khurshid Zaman JJ.) In re Sultan Ali Nanghiana,

A I R 1949 Lah 131=Pak L R (1949) Lah 215=Pak Cas (1949) Lah 162=50 Cr L J 598 (FB).

——Where the Crown appears to uphold a conviction in a criminal case, it is not the practice to award costs to the appellant in the event of the appeal succeeding. Criminal contempt obviously is in a different category from an ordinary criminal case. But where the Chief Justice and another Judge of the Court of which the appellant is alleged to be in contempt are of the opinion that no contempt is committed but the executive deems it necessary not only to appear but endeavours to uphold the order, the appellant should be given costs of the appeal. (Lord Macmillan, Lord Goddard and Sir Madhavan Nair) Parashu Ram Deta Ram v. Emperor,

A I R 1945 P C 134=1945 M W N 371 = 49 C W N 733=58 M L W 347=(1945) 2 M L J 109 = 26 P L T 176=47 Bom L R 733=(1945) A L J 335 = ILR (1948) Kar P C 294=1946 A W R P C 63=I L R (1945) Bom 950 = 1945 M W N (Cr) 67 = 1946 O A P C 63=1945 Pesh L J P C 134=72 I A 189 (PC).

——Accused in case under Contempt of Courts Act (XII of 1926), directed to pay costs — Costs not paid within time allowed — Power of High Court to consider the matter — Costs, if can be realized as fine — Inherent jurisdiction to order recovery of costs.

The High Court has jurisdiction to direct a person punished under the Contempt of Courts Act to pay the costs of the Crown. When the costs directed to be paid have not been paid within the time allowed, the High Court has power to consider the matter and inherent jurisdiction to order its recovery. The proper method by which these costs should be recovered, should be on the lines on which decrees are executed by the Civil Court and a warrant can be issued to the Collector authorising him to realise the amount by execution against the property of the defaulter. (Allsop and Bajpai JJ.) Emperor v. Wahid Ullah Ahrari.

A I R 1935 All 1013=8 R A 300=1935 A W R (HC) 1092 = (1935) A L J 1153 = 58 All 374=158 I C 428=36 Cr L J 1365.

2. Practice and procedure—(f) Defence.

——Practice and procedure—Technical objection.

A person charged with committing contempt of Court by disobeying its order is entitled to raise any technical objection which might stand in his favour on the question as to whether there had been actual disobedience of the order of the Court. (Imam and Sinha JJ.) State v. Shakoor,

AIR 1953 Pat 99=1953 B L J R 37=1953 Cr LJ 816.

——Contempt of Court—Defence—Plea of justification.

'Per Narasimham J.' — Any attempt to justify contempt is itself contempt.

CONTEMPT OF COURTS ACT (XII of 1926), S. 2—

2. Practice and procedure—(f) Defence

The plea of justification which is a good defence in an ordinary action for libel cannot be applicable in an action for contempt. (Jagannadhadas C. J. and Narasimham J.) State v. Editors and Publishers Eastern Times and Prajatantra,

A I R 1952 Orissa 318 = I L R (1952) Cut 1 = 1952 Cr L J 1605.

2. Practice and procedure—(g) Duty of complainant.

——Government Officer—Leave of Court.

Per Mukharji J.—It is not necessary that any leave of the Court is required to proceed against a Government Officer in contempt. It is enough to state in the petition for Rule as against the particular officer of the State that he has disobeyed an order of the Court in a particular manner (Chakravartti and P. B. Mukharji JJ.) Tarafatullah Mandal v. S. N. Maitra,

A I R 1952 Cal 919=56 C W N 387=1953 Cr L J 136.

——Contempt — Duty of complainant to allege grounds specifically.

In proceedings for contempt, the practice of the Court is to enable the parties concerned to know what are the points they have got to answer and the practice has always been that the parties charged with contempt cannot be called upon to answer to anything which is not set out specifically in the grounds used before the Court at the time when the Rule was issued. The fact that the grounds are matters of record and that a Rule has been issued is immaterial. (C. C. Ghose and Pearson JJ.) Amulya Chandra v. Satish Chandra,

AIR 1932 Cal 255=35 C W N 1267=Ind Rul (1932) Cal 253=136 I C 901=33 Cr L J 369 (2).

——Procedure—Name of opposite party.

Proceedings in contempt are of a quasi-criminal character and all the rules of Court must be observed in strictness. Where a private party applies for a rule against the editor, printer and publisher of a newspaper, alleging contempt of Court, it is his duty to supply the names of the printer, publisher and editor to the Court. It would be intolerable that the Court should of itself find out the names of the parties to the rule. For omission to name them respectively the rule is liable to be discharged. Where in such a case the opposite party is not anxious to have that course taken in order to save further rule being issued against him and offers apology which is accepted by Court, the rule will be discharged with costs. (Fletcher J.) Weston v. Editor, Printer and Publisher of the Bengalee,

15 C W N 771=11 I C 499 (2).

2. Practice and procedure —(h) Duty of lower Courts.

——Duty of Magistrates to bring to notice of Chief Court attempt made to bring improper influence on them in connection with magisterial work.

It is the duty of all Magistrates who receive letters attempting to prejudice their minds in regard to the pending trials before them or upon whom any attempt is made to bring improper influence to bear in connection with their magisterial work to bring the fact to the notice of the Chief Court. (Ziaul Hasan and Yorke JJ.) Mahabir Prasad v. C. P. Gupta,

A I R 1939 Oudh 180 = 1939 O W N 525 = 11 R O 323 (3)=14 Luck 653=1939 A W R (C C) 84=181 I C 714=1939 A Cr C 89=1939 O L R 353=1939 O A 487.

2. Practice and procedure —(i) Evidence and proof.

——Contempt proceedings — Practice — (Contempt of Courts Act (1926), S. 2).

CONTEMPT OF COURTS ACT (XII of 1926), S. 2—

2. Practice and procedure—(i) Evidence and proof

In Cuttack High Court there is no prescribed or settled practice for marking of the documents as exhibits for the hearing of contempt applications. (Held, however, that the documents used were marked as exhibits and the contemner had enough notice of them, to enable him to produce evidence in rebuttal). (Jagannadhadas C. J. and Mohapatra J.) S. S. Roy v. State,

A I R 1953 Orissa 266 = I L R (1952) Cut 467=1953 Cr L J 1578.

——Proceedings for contempt—Requirements.

Per Mukharji J. — It is always essential even in India that an individual or an officer who is not a party to the proceeding resulting in the order alleged to have been disobeyed but who is sought to be proceeded against in contempt, must be served with a copy of the order or judgment to be enforced. It is proper course to insert the names of the individuals or the officers in the Rule nisi and so serve it on him specifying the nature of the contempt with which the individual or officer served is charged. Before a proceeding for contempt can succeed, it is of paramount importance to establish first, the service of the order of the Court said to have been disobeyed upon the person alleged to have committed contempt thereof, secondly the precise act of contempt, thirdly the precise responsibility of the contemner in the act of contempt, and fourthly the date of the alleged contempt being subsequent to the service of the order said to have been disobeyed. These are the four indispensable requisites and failure to establish any one of them must mean dismissal of the petition for contempt. (Chakravartti and P. B. Mukharji JJ.) Tarafatullah Mandal v. S. N. Maitra,

A I R 1952 Cal 919 = 56 C W N 387 = 1953 Cr L J 136.

——Contempt of Court — Evidence — Refusal to disclose fact specially within contemner's knowledge — Inference.

Per Das C. J. (Narasimham J. contra.) — Contempt proceeding being criminal in nature the contemner's silence cannot be treated as supplying the lack of prima facie evidence, notwithstanding that unlike in a regular criminal trial the contemner is free to give evidence on his own behalf by means of an affidavit.

Per Narasimham J. — Though contempt proceedings are of a quasi-criminal nature the contemner is permitted to give evidence and an adverse inference may be drawn from his refusal to disclose facts specially within his knowledge. (Jagannadhadas C. J. and Narasimham J.) State v. Editors and Publishers Eastern Times and Prajatantra,

A I R 1952 Orissa 318 = I L R (1952) Cut 1 = 1952 Cr L J 1605.

——Disobedience of order of Court—Constructive liability.

In cases where persons have to be committed for contempt of Court for the reason that they disobeyed the orders of Court, (not to cut and remove the crops standing on a certain piece of land) no question of constructive liability would arise. On the other hand, it is absolutely essential that it should be proved beyond doubt that the persons who were charged with contempt did really disobey an order validly passed by Court and which was brought home to them, and a copy of which was personally served in the manner required by the procedure. Where the Court instead of giving a finding that the defendants charged with contempt before him have been proved to have committed contempt by disobedience of the order of Court has simply proceeded on certain inferences and surmises, such procedure is not warranted. If the commissioner's report upon which the proceedings were based is not conclusive and does not help in bringing home the guilt of disobedience to the defendants they

CONTEMPT OF COURTS ACT (XII of 1926), S. 2—

2. Practice and procedure—(i) Evidence and proof are entitled to be acquitted of any such offence. Simply because defendants were the owners and simply because they stated that they were interested in the crop, it could not be presumed that they should have instigated the people who actually cut away the crops, unless there was direct relationship established between the defendants and persons who were actually responsible for the act of cutting and removing the crops. (Basheer Ahmed Sayeed J.) Sadhu Venkayya v. Colla Meenakshamma,

A I R 1952 Mad 180=1952 M W N (Cr) 14=1951-2 M L J 583=64 M L W 1062 = 1952 M W N 66=1952 Cr L J 389.

——Contempt of Court—Civil contempt—Breach of order of Court—Standard of proof.

Proceedings of contempt of Court, though not criminal, are of a quasi-criminal nature and therefore where there is any reasonable doubt, the persons charged with contempt are entitled to the benefit of such doubt.

Where the contempt alleged is a civil contempt (breach of an order of the Court) the Court has to be satisfied beyond all reasonable doubt that notice of the Court's order had been received before the acts complained of were committed, as the liberty of the subject was involved: 72 I A 226, Expl.; (1879) 13 Ch D 110; A I R 1944 Lah 196, Rel. on. (Harries C. J. and Das J.) Nripendra Narayan v. Beda Bala,

A I R 1952 Cal 702=55 Cal W N 479.

——Benefit of doubt.

Proceedings for contempt of Court, though not criminal, are of a quasi-criminal nature and, therefore, where there is any reasonable doubt, the person charged with contempt is entitled to the benefit of such doubt. (Das and Narayan JJ.) The State v. Dasrath Jha,

A I R 1951 Pat 443=52 Cr L J 558.

——Quasi criminal — Person charged with contempt is entitled to benefit of doubt.

Proceedings for contempt of Court though not criminal are of a quasi-criminal nature and, therefore, where there is any reasonable doubt, the persons charged with contempt are entitled to the benefit of such doubt. (Harries, C. J., Abdul Rashid and Abdur Rahman JJ.) Homi Rustomji v. Sub-Inspector, Baig,

AIR 1944 Lah 196=217 I C 78=46 Cr L J 174 (SB).

——Evidence—Receiver appointed by Court—Obstruction to — Order appointing Receiver — Service of, on person committing contempt, if to be proved.

The case of interference with or obstruction to a Receiver appointed by the Court is treated as a contempt of a criminal nature. Therefore, the fact that the order appointing him was improperly procured is no justification for interference or disturbance to his possession. The Court jealously guards the possession of its officer and, therefore, cases in which an action of ejectment is brought against a Receiver without the leave of the Court that appointed him or taking forcible possession of estates of the rents and profits of which a Receiver has been appointed or by issuing without the leave of the Court a sequestration of the profits of a living of which a Receiver has been appointed previously, or levying an execution upon partnership assets in the possession of a Receiver or taking management out of his hands are considered contempts of a criminal nature. It is not necessary to prove that the order appointing the Receiver was served on the person committing the contempt. It is enough if he was aware of the appointment of the Receiver and that to his knowledge the Receiver had taken possession of the property with which he had attempted to interfere.

CONTEMPT OF COURTS ACT (XII of 1926), S. 2—

2. Practice and procedure—(i) Evidence and proof (Kania J.) Kilachand Devchand & Co. v. Ajodhyaprasad Sukhanand,

A I R 1934 Bom 452 = 36 Bom L R 992=7 R B 288 =59 Bom 10=154 I C 162.

——Order to pay money—Disobedience of order—Default by Receiver—Notice of motion — Personal service, necessity of—Service on attorney not sufficient—Notice should set out breaches of order—Power of High Court to punish its own officers for contempt—(Constitution of India, Art. 215).

In an action for contempt of Court where the contempt consists in disobedience of an order of Court, personal service of the order on the person charged with contempt should be proved. Service on the party's attorney is not sufficient.

Before a notice of motion for contempt can properly be taken out, personal service of the order must have been effected and in the notice of motion the precise nature of the breach of the judgment or order must be set out. Where it is not so set out the notice of motion is defective.

In the case of an administrator or executor or trustee, however, proceedings by way of contempt for failure to comply with an order to pay money would be bad in law and the order can be enforced by execution.

But the High Court is empowered to punish on proceedings for contempt one of its own officers for failure to comply with the Court's order, whatever that failure may be even if it does amount to failure to comply with an order to pay money, and it is open to the Court, therefore, to commit a Receiver who has been guilty of failure to comply with the Court's order to pay money as such Receiver.

The mere fact that an order calling upon a Receiver to pay money into Court on a certain date, provided that in case of default, another person will be liable to make the payment, does not enable the Receiver to protect himself against proceedings for contempt. (Blackwell J.) Jayantilal v. Waman,

A I R 1932 Bom 638 = 34 Bom L R 1416 = Ind Rul (1933) Bom 90=141 I C 411.

2. Practice and procedure — (j) Jurisdiction.

——Person brought within jurisdiction of High Court — Question of legality or illegality of arrest is irrelevant.

Once a person has been brought within the jurisdiction of the High Court the question whether his arrest at a place which was outside the jurisdiction of the High Court was legal or illegal becomes irrelevant. It cannot affect the jurisdiction of the Judges of the Allahabad High Court to try him for contempt of Court. (Thomas C. J. and Kaul J.) P. L. Jaitley v. Chief Justice, Allahabad.

AIR 1945 Oudh 266 = 1945 O W N (C C) 169=1945 A W R (C C) 153 =20 Luck 442=1944 Oudh Rul 69= 222 I C 260 = 47 Cr L J 294.

——Offence of contempt by publication outside Court does not come within Penal Code nor Criminal Procedure Code nor under any other law within S. 5 (2), Criminal Procedure Code — Power of Police — (Criminal P. C. (1898), S. 5 (2).)

Contempt of Court itself by publication outside Court is not an offence which is dealt with by the I. P. C., or the Criminal P. C., nor is it an offence under any other law, within S. 5 (2) of the Criminal P. C. This follows from the nature of proceedings in contempt. No doubt, an act may amount to contempt of Court, and may also amount to an offence under some Act. There may be contempt of Court by breach of an injunction, which can also be dealt with under the Civil P. C., but those two aspects of the matter could be kept entirely separate. Same is true in cases of criminal contempt alleged to fall within the Cri-

CONTEMPT OF COURTS ACT (XII of 1926), S. 2 — 2. Practice and procedure — (j) Jurisdiction

minal P. C. Hence no warrant of arrest can be issued under the Criminal P. C. for the arrest of a person charged with contempt of Court by the publication of an article out of Court. (Beaumont C. J. and Sen J.) Benjamin Guy Horniman, In re,

AIR 1944 Bom 127 = 46 Bom L R 94=1944 O W N (Bom H C) 32 = 17 R B 30 = (1944) A W R 11 Sup= ILR (1944) Bom 333=212 I C 631=45 Cr L J 647.

——No warrant of arrest can be issued under the Criminal P. C. for the arrest of a person charged with contempt of Court by publication of an article out of the jurisdiction of that Court. (Beaumont C. J. and Sen J.) Benjamin Guy Horniman, In re,

AIR 1944 Bom 127 = 1944 O W N (Bom H C) 32 = 46 Bom L R 94 = 1944 A W R 11 Sup = 17 R B 30= ILR (1944) Bom 333 = 212 I C 631=45 Cr L J 647.

——The High Court has jurisdiction to hear a notice of motion for contempt against a person not residing within the ordinary original jurisdiction of the Court but is a resident in British India. (Kania J.) Kilachand v. Ajodhyaprasad,

AIR 1934 Bom 452=36 Bom L R 992= 7 R B 288= 59 Bom 10=154 I C 162.

2. Practice and procedure — (k) Notice.

——Contempt of Court—Procedure—Proceedings concerning news item—First notice specifying certain extracts as amounting to contempt — Subsequent notice drawing attention to entirety of news item as constituting contempt—No irregularity in procedure.

In contempt of Court proceeding concerning a news item, it is always fair both to the party proceeded against and to the Court also that a particular passage complained of is considered and understood in relation to the entire matter of which it is a part and not in its isolated context.

Where the notice to show cause issued in the first instance specifies only certain extracts of the news item as amounting prima facie to contempt of Court and at a later date a fresh notice is issued drawing attention to the entirety of the news item as amounting prima facie to contempt of Court, and no prejudice has been caused by such procedure, the procedure adopted is not irregular and there is no reason why the entirety of the news item should be excluded from consideration. (Jagannadhadas C. J. and Narasimham J.) State v. Editors and Publishers, Eastern Times and Prajatantra,

AIR 1952 Orissa 318=ILR (1952) Cut 1 = 1952 Cr L J 1605

——Notice of motion—Whether a proceeding of a criminal nature.

A notice of motion for contempt of Court is a proceeding of a criminal nature and it is obligatory on the party who applies to the Court to state the precise acts complained of in the notice of motion. (Kania J.) Kilachand Devchand and Co. v. Ajodhyaprasad Sukhanand

AIR 1934 Bom 452 = 36 Bom L R 992=7 R B 288= 59 Bom 10 = 154 I C 162.

——Proceedings are quasi criminal — Procedure for contempt must be strictly followed — Notice of motion must be personally served and must contain statement as to specific breach.

Proceedings for committal for contempt are in the nature of quasi criminal proceedings and in such proceedings established practice must be strictly followed, not only in substance but also in form. In an application for committal for contempt, the notice of motion must be served personally before it comes into the list, even for the first time. There is no known procedure for serving copy subsequently. The notice must contain a statement as to

CONTEMPT OF COURTS ACT (XII of 1926), S. 2 — 2. Practice and procedure — (k) Notice

the specific breach complained of for which the respondents are sought to be committed. (D. N. Sinha J.) Hembala Dassi v. Sundar Shaw,

(1951) 88 C L J 70.

2. Practice and procedure — (l) Parties.

——Proceeding against State— Representation — Constitution of India, Art. 300.

Per Chakravartti J. — The practice of impleading the State as represented by some particular individual is becoming common in contempt proceedings. Nothing can be less accurate or more ridiculous than to ask that a particular State should itself be committed to prison, or that the State should be regarded as personified in some individual officer nominated by the complainant, and should be committed to prison in the person of that officer. The State is not a minor, or a lunatic, or a Hindu deity. Nor is it a body corporate. Even when the Union of India, or one of the component States is sought to be made a party, it is to be impleaded in the manner and in the name indicated in the Constitution itself. To implead the Union, or one of the States as represented by some particular officer, whether in civil or criminal proceedings, is not warranted by any provision of law, and so far as criminal proceedings are concerned, is particularly inappropriate.

If it is sought to enforce an order, made against a corporation, or a Government by the attachment or committal of a member of the corporate body, or an officer of the Government, the correct procedure to follow is to make an application to the Court concerned for leave to proceed against the particular individual who is sought to be arraigned and to make out to the satisfaction of the Court that he was the person on whom the duty lay to see that the order previously made was carried out or not disobeyed and further that he had knowledge of the order.

Per Mukharji J. — A proceeding in contempt is by its nature a proceeding in personam. A contempt proceeding, therefore, cannot be allowed to acquire the character of a representative proceeding. Where one of the respondents described in the petition is in the form : "The State of West Bengal represented by S. Banerjee, Secretary, Department of Land and Land Revenue." that is wholly an unjustified procedure and cannot be permitted. A State as such cannot be said to commit contempt. In the case of the State, the allegation must be against a particular officer or officers of the State. Where an order was obtained against the State in a civil proceeding restraining certain acts of the State, and it is alleged by the complainant or the petitioner that there has been a contempt by breach of that order, the petitioner for contempt will have to take out the Rule for contempt against the particular officer or officers who has or have disobeyed that order. In such a petition for contempt, the Rule must be asked against an individual and not against the State. Article 300 of the Constitution of India provides for proceedings by way of suit against the State or the Union of India and cannot be extended to apply to contempt proceedings. (Chakravartti and P. B. Mukharji JJ.) Tarafatullah Mandal v. S. N. Maitra,

AIR 1952 Cal 919 =56 C W N 387=1953 Cr L J 136.

——Disobedience of injunction decree— Equity acts in personam — Disobedience not by persons named as defendants but by those claiming through them— They cannot be proceeded against in contempt—(Agarwala C. J., Meredith and Narayan JJ.) Pratap Udai Nath Shahi Deo v. Sara Lal Durga Prasad Shahi Deo,

AIR 1949 Pat 39 = 29 P L J 247=1949 P W N 31= 27 Pat 414 = 49 Cr L J 639 (SB).

CONTEMPT OF COURTS ACT (XII of 1926), S. 2

2. Practice and procedure—(m) Proceedings when to be taken.

——Exercise of jurisdiction — (Contempt of Courts Act (1926), S. 1).

The jurisdiction in respect of contempt proceedings should be exercised only when the case is clear and beyond reasonable doubt. The petitioner is not entitled to invoke this special jurisdiction for a decision on the important and complicated collateral question as to when a certain notification became operative. (Shinde C. J. Dixit and Chaturvedi JJ.) Malojirao Shitole v. C. G. Matkar,

AIR 1953 M B 245 = 1953 Cr L J 1675 (FB).

——Jurisdiction of Court.

The jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice. The Court will not exercise its jurisdiction upon a mere question of propriety. (Mahajan and S. R. Das JJ.) Rizwan-ul-Hasan v. State of U. P.

AIR 1953 S C 185 = 66 M L W 429 = 1953 S C J 255 = 1953 S C R 581=1953 S C A 546=1953 M W N 491 = 1953 A W R (H C) 351 (2) = ILR (1953) 2 All 904 = 1953 Cr L J 911.

—— Technical contempt if justifies proceedings.

There must be a real likelihood of an interference with the due course of justice to justify institution of contempt proceedings. A technical contempt is no ground for the invocation of the Court's jurisdiction. (Wali Ullah, Mootham and Wanchoo JJ.) State v. Brahma Prakash,

AIR 1950 All 556 =1950 A L J 458 = ILR (1952) 1 All 131 = 52 Cr L J 1062 (FB).

——Proceeding in contempt — Precautions to be taken in starting.

The jurisdiction vested in the Court in a case of a contempt of Court is to be exercised with scrupulous care. Proceedings in contempt ought not to be instituted unless there is a real likelihood of an interference with the due course of justice. A technical contempt is no ground for the invocation of the Court's jurisdiction. (Wali Ullah, Mootham and Wanchoo JJ) State v. Brahma Prakash,

AIR 1950 All 556 = 1950 A L J 458 = ILR (1952) 1 All 131 = 52 Cr L J 1062 (FB).

—— Proceedings for contempt of Court.

No proceedings should be taken for contempt, even though a Judge or a judicial act is criticised, except in so far as it interferes with the administration either by shaking public confidence in the Court or in any other manner. Criticism of any kind, even though it may amount to libel, of the actions of an Executive Officer, or a policeman or a member of the Legislature or even of a Minister cannot be dealt with in proceedings for contempt. (Kidwai and Chandiramani JJ.) Rex v. B. S. Nayyar,

AIR 1950 All 549=51 Cr L J 1500.

——Use of summary power of punishing for contempt by Court.

Summary power of punishing for contempt should be used sparingly and only in serious cases. It is a power which a Court must of necessity possess, its usefulness depends on the wisdom and restraint with which it is exercised and to use it to suppress methods of advocacy which are merely offensive is to use it for a purpose for which it was never intended. (Lord Macmillan, Lord Goddard and Sir Madhavan Nair) Parashu Ram Deta Ram v. Emperor,

AIR 1945 P C 134 = (1945) M W N 371=49 C W N 733=58 M L W 347=(1945) 2 M L J 109=47 Bom LR 733=(1945) A L J 335=26 P L T 176=ILR (1945) Kar P C 294=1946 A W R P C 63=ILR (1945) Bom 950= 1945 M W N (Cr) 67 = 1946 O A P C 63 = 1945 Pesh L J 134=72 I A 189 (P C).

CONTEMPT OF COURTS ACT (XII of 1926), S. 2

—2. Practice and procedure—(m) Proceedings when to be taken

——Nature of proceedings.

Per Harries, C. J. and Teja Singh J. — Contempt proceedings are summary and a very arbitrary method of dealing with an offence. That being so, contempt proceedings should be sparingly instituted and a person should not be convicted unless his conviction is essential in the interests of justice. There must be something more than a technical contempt. There must be a substantial contempt, that is something which tends in a substantial manner to interfere with the course of justice or to prejudice the public against one of the parties to a proceeding. (Harries C. J. Munir and Teja Singh JJ.) Subrahmanyan, In re

AIR 1943 Lah 329=16 R L 238 =I L R (1944) 111= 212 I C 17 =45 Cr L J 445 (FB)

——Institution of proceedings by private parties and by Court — Principles governing stated.

Per Munir J. — The principle that the summary proceedings for contempt of Court should not be instituted in respect of what amounts to technical contempt after the proceedings in the Court have been disposed of and there is no possibility of interference with the due course of justice applies only to applications for proceedings in contempt made by private parties and not to institution of proceedings by Court. The jurisdiction of the Court exists not only to prevent the mischief in particular case, but also to prevent a similar mischief arising in other cases. Hence the Court even when the proceedings before it have been disposed of can institute proceedings to see whether an article published in connection with the proceedings before it was on the date of its publication calculated to interfere with the due course of justice and to prevent repetition of the same if it amounted to contempt. (Harries C. J., Munir and Teja Singh JJ.) Subrahmanyan, In re,

AIR 1943 Lah 329=16 R L 238 = I L R (1944) Lah 111=212 I C 17=45 Cr L J 445 (FB).

——Summary jurisdiction.

Summary jurisdiction in contempt is a powerful weapon in the hands of the Court and is to be used sparingly. But its use must in large part depend upon those who by their misconduct invite its application. (Davis C. J. and Lobo, Weston and Tyabji JJ.) Emperor v. P. C. Tarapore,

AIR 1940 Sind 239=ILR (1941) Kar 3=13 R S 143= 191 I C 519=42 Cr L J 1 (FB).

——The power to commit for contempt of Court is not to be lightly used and should be reserved for cases where the contempt is deliberate and of such a nature that committal is called for. (Leach, C. J., Madhavan Nair and Gentle JJ.) Tuljaram Rao v. Governor of Reserve Bank of India,

AIR 1939 Mad 257=49 M L W 29 = (1939) M W N 113=11 R M 813 = I L R (1939) Mad 466 = (1939) 2 M L J 843=181 I C 451=40 Cr L J 533 (SB).

——The Court's jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice. Court will not exercise its jurisdiction upon a mere question of propriety where the tendency of the article to do harm is slight and the character and circumstances of the comment are otherwise such that it can properly be ignored. (Rankin, C. J. and Costello J.) Ananta Lal Singh v. Alfred Henry Watson,

AIR 1931 Cal 257 = 35 C W N 189=Ind Rul (1931) Cal 443=58 Cal 884=131 I C 267=32 Cr L J 675.

2. Practice and procedure—(n) Right to be heard.

——Party in contempt — Order challenged as without jurisdiction — Right to be heard.

The general rule is that a party in contempt is not entitled to be heard but this rule does not apply to a case

CONTEMPT OF COURTS ACT (XII of 1926), S. 2

—2. Practice and procedure—(n) Right to be heard in which the order, for the breach of which contempt is alleged, is challenged on the ground of want of jurisdiction. (Beaumont, C. J. and Mirza J.) David Sasoon Ezekiel v. Najia Noori Reuben,

A I R 1931 Bom 402=Ind Rul (1931) Bom 486=55 Bom 803=33 Bom L R 725=134 I C 550.

——Case under Hong Kong Ordinance (3 of 1873)—Contempt proceedings against witnesses.

As an alternative to the course of charging a witness for perjury it is left open to the judge under the Hong Kong Ordinance No. 3 of 1873 to commit the witness for contempt and adopt a summary proceeding on the spot not involving a statement or trial of specially formulated issues. But all the same the necessity of giving the witness, before passing sentence, an opportunity of explaining or correcting any misapprehension about what has been said or meant is not done away with. Where in such a proceeding it is found difficult by nature of the charge the Judge was making to formulate it in a series of specific allegations of perjury a gist of the accusations could be given provided that from the language employed it was sufficiently clear to the accused. (Lords Macnaghten, Atkinson, Collins and Arthur Wilson). In matter of Lai Hing Firm Chan Hang Kin.

4 Ind Cas 539=6 M L T 9=19 M L J 324=13 CWN 685=11 Cr L J 277 (PC).

3. "Courts subordinate to them."

——S. 2 (1)—Contempt of revenue Court — (Constitution of India, Art. 215.)

Per Wali Ullah J.—The object of the provisions of S. 2 (1) is to provide for the protection of the position of Courts subordinate to the High Court against unlawful interference with their judicial functions. For such a purpose, and in such a context, the position of an inferior Court i.e., a subordinate Court must be considered in its totality in relation to the High Court and not with reference to a particular Act or provision of law under which it may happen to be acting at the time when an alleged interference with its judicial activity occurs.

Wali Ullah J. (agreeing with Mushtaq Ahmad J.; Dayal J. contra): High Court has jurisdiction under S. 2 (1) to protect against unwarranted attacks all inferior Courts, including a revenue Court acting under the Land Revenue Act. Thus, the Court of an Assistant Collector, First Class, functioning under the Land Revenue Act is subordinate to the High Court for the purposes of S. 2 (1). (Wali Ullah J. on difference between Raghubar Dayal and Mushtaq Ahmed JJ.) Satdeo Pandey v. Baba Raghav Das

A I R 1953 All 419 = I L R (1953) 1 All 84 = 1953 Cr L J 943.

——In S. 2 (1), subordination of a Court to the High Court refers to 'judicial subordination'. (Wali Ullah J. on difference between Raghubar Dayal and Mushtaq Ahmed JJ.) Satdeo Pandey v. Baba Raghav Das,

A I R 1953 All 419 = I L R (1953) 1 All 84 = 1953 Cr L J 943.

——Court, meaning of—(Words and Phrases).

The term "Court" is used in S. 2 in a wide sense, as including a tribunal, legally authorized to deal with a particular matter judicially. It is enough if the tribunal is entrusted with certain judicial functions which include the function of deciding litigated questions according to law — Deciding them not arbitrarily, but according to certain rules and procedure which ensure that the person called upon to decide them acts with fairness and impartiality. (Wali Ullah J. on difference between Raghubar Dayal and Mushtaq Ahmed JJ.) Satdeo Pandey v. Baba Raghav Das,

A I R 1953 All 419 = I L R (1953) 1 All 84 = 1953 Cr L J 943.

CONTEMPT OF COURTS ACT (XII of 1926), S. 2

—3. "Courts subordinate to them"

——Subordinate Court — Meaning — Contempt of Sub-Divisional Magistrate's Court—Power of High Court.

The words "subordinate Court" in S. 2 seem to have been used in a wide sense so as to inculde any Court over which the High Court has appellate jurisdiction, though as a matter of fact an appeal may not lie to the High Court in any particular case. The term "appellate jurisdiction" is not to be understood in the narrow technical sense in contradiction to revisional jurisdiction. The appellate jurisdiction implies a resort from an inferior tribunal of justice to a superior for the purpose of revising and correcting the judgment of the inferior tribunal. There is, therefore, no doubt that after the passing of the Act of 1926, the High Court has jurisdiction to punish contempt of Court of a Sub-Divisional Magistrate. A I R 1940 Rang 68, Rel. on. (Misra and Beg JJ.) State v. Krishna Madho,

A I R 1952 All 86.

——Magistrates of first class and Revenue Officers are subordinate to High Court — Chapter VI of Part VI of Constitution of India whether deals with judicial subordination.

Judicial Magistrates of the first class whose judgments come before Sessions Judges and the High Court in appeal and revision and Revenue Officers, many of whose judgments come before the District Judges and the High Court in appeals are Courts subordinate to High Court within the meaning of S. 2, Contempt of Courts Act. In this respect Chap. VI of Part VI of the Constitution of India entitled "Subordinate Courts" has nothing to do with the subordination of Courts for judicial purposes. (Wali Ullah, Mootham and Wanchoo JJ.) State v. Brahma Prakash,

A I R 1950 All 556=1950 A L J 458=I L R (1952) 1 All 131=52 Cr L J 1062 (FB).

——Constitution of India, Art. 227.

Panchayati Adalats constituted under the U. P. Panchayat Raj Act (Act No. XXVI of 1947), are "Courts" within the meaning of the Contempt of Courts Act. The High Court has now under Art. 227 of the Constitution the same power of superintendence which it had up to the passing of the Government of India Act of 1935. In exercise of it it can check the assumption or excess of jurisdiction by Panchayati Adalats or compel them to exercise their jurisdiction and do their duty. They are, therefore, judicially subordinate to the High Court. (Dayal & Desai JJ.) Sukhdeo v. Brij Bhushan,

AIR 1951 All 667 = 1951 A L J 305=I L R (1951) 2 All 521=52 Cr L J 984 (2).

——'Subordinate Court'—Commissioner appointed under Public Servants Inquiries Act (1850) — Contempt of — Power of High Court to punish— Constitution of India, Art. 227.

A Commissioner appointed to hold an inquiry under the Public Servants Inquiries Act, 1850, is a Court subordinate to the High Court for purposes of S. 2, Contempt of Courts Act.

The word 'superintendence', in Art. 227, Constitution of India, would include the power to deal with a contempt of Court of a kind not punishable by the Court itself, and for the purpose of the Contempt of Courts Act the word "subordinate" would include all Courts and tribunals over which the High Court is given the power of superintendence under Art. 227 of the Constitution. (Khosla and Falshaw JJ.) Kapur Singh v. Jagat Narain,

A I R 1951 Punjab 49=53 P L R 178= I L R (1951) Pun 362=52 Cr L J 950.

——Commissioner acting under Public Servants Inquiries Act, if Court—Evidence Act (1872), S. 3—Public Servants Inquiries Act (1850), S. 8.

CONTEMPT OF COURTS ACT (XII of 1926), S. 2—

3. "Courts subordinate to them"

A Commissioner appointed to hold an inquiry under the Public Servants Inquiries Act, 1850, is a Court as he is given all the powers of a Court regarding the summoning of witnesses and other matters. The mere fact that he can give no final decision but has merely to draw up a report giving his findings on the charges which is to be forwarded to the Government is not sufficient to make him anything other than a Court. The definition in S. 3, Evidence Act, is wide enough to include him as a Court. (Khosla and Falshaw JJ.) Kapur Singh v. Jagat Narain,

AIR 1951 Punjab 49=53 Pun L R 178=ILR (1951) Punjab 362=52 Cr L J 950.

——In absence of definition of 'Court' in the Act that word is to be interpreted in its general sense.

The word "Court" has not been defined in the Contempt of Courts Act. In the absence of any definition of the word in that Act, the word has got to be interpreted in its general sense. A I R 1935 Mad 673 and A I R 1940 Cal 286, Rel. on. (Thadani Ag. C. J. and Ram Labhaya J.) Deputy Commissioner, Goalpara v. Upendra Saran Sanyal,

AIR 1950 Assam 25=54 C W N 268=ILR (1949) 1 Assam 244=51 Cr L J 247.

——Sub-Divisional Magistrate holding enquiry under S. 176, Criminal Procedure Code (Act V of 1898), is Court subordinate to High Court.

The words 'Subordinate Court' in the Contempt of Courts Act were used in a wide sense as including any Court over which the High Court has superintendence for the purpose of S. 85, Govt. of Burma Act, 1935, that is to say, all Courts subject for the time being to its appellate jurisdiction. The Sub-Divisional Magistrate when holding an inquiry under S. 176, Criminal P. C, is acting as a Court subordinate to the High Court for the purposes of the Contempt of Courts Act. (Mya Bu and Mosely JJ.) Advocate-General v. Maung Chit Maung,

AIR 1940 Rang 68=12 R Rang 337=1940 Rang L R 188=187 I C 573=41 Cr L J 470.

——S. 2 (1)—Contempt of Commissioners' Court—Jurisdiction of High Court to entertain application—Absence of proper signature — Secretary to Government signing for Governor-in-Council—Delay in applying—Termination of proceedings before application—Whether a proper defence —Comments tending to prejudice minds of Judges.

A Court of Commissioners appointed under the Bengal Criminal Law Amendment Act is a Court subordinate to the High Court within the meaning of S. 2 (1), Contempt of Courts Act, and the High Court is, therefore, competent to punish persons who are guilty of contempt of such Court, although the right of appeal from Commissioners is less extensive than the right of appeal from the ordinary Criminal Courts. The fact that the rule-making power with regard to Commissioners' Court is vested in the Local Govt. is immaterial, for, under S. 107 the rule making power is something different from and additional to the right of superintendence.

Although the rules and practice of the Court require that petitions for action to be taken for contempt under the Contempt of Courts Act are to be signed by or on behalf of person presenting them, where the Court has before it evidence which is legally admissible and which shows prima facie that contempt has been committed, the Court should of its motion issue the Rule. Absence of a proper signature does not however entitle the opposite party to get a Rule already granted discharged, as it was open to the Court to grant the Rule suo motu.

Where the petition under the Contempt of Courts Act is made by the Governor in Council but the affidavit appended to it is signed by an Assistant Secretary, the latter must be presumed to be acting within the scope of the authority conferred upon him until the contrary is shown.

Improper comments on pending proceedings tending to create prejudice must be stopped at once in a summary way and belated applications for the exercise of the summary procedure should not be encouraged. It is no answer to an application for process for contempt that the proceedings had terminated when the Court was moved in the matter.

Contempt can be committed when there is technically speaking no case pending.

Although in a case for contempt of Court the danger or absence of danger of actual prejudice is an important consideration, it is not an actual consideration inasmuch as the jurisdiction of the Court exists not only to prevent mischief in the particular case but to prevent similar mischief arising in the cases.

Comments in the press by way of approval or disapproval of the judgments of Courts of Session or of Commissioners in capital sentence cases made pending their disposal by the High Court constitute contempt as it amounts to a preliminary trial by a newspaper when a trial by a regular tribunal is pending and becomes an affront to the dignity of the Court and merits punishment as such.

Head-lines in a newspaper of reports of a case pending at the time, constitute contempt of Court when they would appear to a casual reader as comment, or when they amonnt to a criticism of the prosecution case under the guise of a summary of the day's proceedings. (Panckridge and Patterson, JJ.) Tushar Kanti v. Governor of Bengal,

AIR 1933 Cal 118=37 C W N 276 = Ind Rul (1933) Cal 485=60 Cal 603=143 I C 790=34 Cr L J 662.

——Commitment — Official Reference — Disobedience to order—Madras High Court Rules (Original Side), R. 119—A Judge sitting on the original side of the High Court has power to commit a person for contempt of disobeying an order of the official referee of the Court to produce certain accounts in his possession. (Wallis C. J. and Napier J.) Venkatrathnam v. K. Dasikachari,

36 M L J 461=52 I C 448=(1919) M W N 368.

4. Appeals.

——Criminal contempt — Conviction — Leave to appeal under Art. 133 cannot be granted. — See Constitution of India, Art. 133.

AIR 1953 Orissa 266=1953 Cr L J 1578.

——Criminal contempt — Power of High Court to grant leave to appeal.—See Constitution of India, Art. 134 (1) (c).

AIR 1953 Orissa 266=1953 Cr L J 1578.

——Conviction for contempt—Prejudice—Leave to appeal to Supreme Conrt. — See Constitution of India, Art. 134.

AIR 1953 Orissa 266=1953 Cr L J 1578.

——Contempt of Court.

Criminal contempt — Extent of High Court's power to grant leave to appeal—Nature of grounds on which leave can be granted.—See Constitution of India, Art. 134 (1) (c).

AIR 1953 Orissa 266=1953 Cr L J 1578.

——Contempt of Court—Criminal contempt — Leave to appeal against conviction under Art. 133 cannot he granted —Distinction between criminal and civil contempt—See Constitution of India, Art. 133.

AIR 1953 Orissa 266=1953 Cr L J 1578.

——Contempt proceedings — Appeal to Supreme Court—Magistrate exercising official position without care interfering with process of civil Court—Question whether High Court should check him by proceedings in contempt if amounts to a question of importance for deciding which

CONTEMPT OF COURTS ACT (XII of 1926), S. 2 —4. Appeals

leave to appeal can be granted.—See Constitution of India, Art. 134.

AIR 1953 Orissa 266=1953 Cr L J 1578.

——Contempt of Court — Civil and Criminal contempt— Appealability of order passed in either case under Cl. 15, Letters Patent — Refusal to commit for civil contempt— Order amounts to 'judgment' under Cl. 15, Letters Patent and appeal lies.—See Letters Patent (Cal), Cl. 15.

AIR 1953 Cal 627=1953 Cr L J 1414.

——Contempt of Court — Jurisdiction of High Court — Nature of — Application for certificate under Art. 134 (1) (c) for leave to appeal against conviction for contempt of High Court — Standard of scrutiny to be adopted in deciding whether certificate is to be granted.—Constitution of India, Art. 134 (1) (c).

AIR 1953 Madh B 206=1953 Cr L J 1323.

——Jurisdiction of Courts.

The jurisdiction in contempt though very necessary and very salutary, is to be used only when there are strong grounds for doing so because if a person is dealt with in this jurisdiction he has no statutory right of appeal. (Hemeon Ag. C. J. and Mudholkar J.) Wasudeoraoji Sheorey v. A. D. Mani,

AIR 1951 Nag 26=ILR (1951) Nag 266=52 Cr L J 452.

——Person convicted of contempt by High Court Judge acting alone in summary proceeding — No appeal lies under S. 411A, Criminal P. C.—Nor has High Court inherent jurisdiction to entertain appeal — Remedy is by application to His Majesty. (Macklin and Sen JJ.) Murray Gow Purdy v. Emperor,

AIR 1947 Bom 184=48 Bom L R 752=230 I C 408= ILR (1947) Bom 613=48 Cr L J 628.

——Constitution of India, Arts. 134 (1) (c) and 215—Leave to appeal to Federal Court — Refusal by High Court — Contempt of Court.

Even if the refusal of High Court to grant certificate under S. 205, Govt. of India Act of 1935, were malicious, perverse, deliberate, illegal, oppressive and for the purpose of preventing the petitioner from having a hearing before the Federal Court, it is doubtful whether proceedings by way of contempt of Court can ever be the appropriate remedy against the High Court. (Gwyer C. J., S. Varadachariar and Zafrulla Khan JJ.) Gauba K. L. v. Chief Justice and Judges of Lahore High Court,

AIR 1942 F C 1=55 M L W 3=1942 M W N 48=44 P L R 48=(1942) 1 M L J 74=1942 A W R (FC) 1= 8 B R 358=23 P L T 101=1942 O W N 82=14 R F C 6=ILR (1941) Kar (FC) 176=46 C W N (FC) 7 = 75 C L J 153=(1941) F C R 54=I L R (1942) Lah 712= 198 I C 1=43 Cr L J 311 (FC).

——Appeal to Privy Council.

The jurisdiction which the High Court exercises in proceedings for contempt of Court is a jurisdiction of a criminal nature and not of a civil nature at all. Where, therefore, the High Court refused to punish a party for contempt the provisions of S. 109, Civil P. C., have no application. (Collister and Bajpai JJ.) Radhay Lal v. Niranjan Nath,

A I R 1941 All 211=14 R A 3 = (1941) A L J 265= 1941 A W R (H C) 120=1941 O W N (HC) 455=ILR (1941) All 364 = 194 I C 606 = 1941 A Cr C 98=1941 AL W 319 (2)=1941 O A Sup 193.

5. Sub-section (2).

——S. 2 (1) and (2)—Chief Court—It has inherent power to protect Subordinate Courts and prevent interference with course of justice — Such power is not negatived by Section 2.

CONTEMPT OF COURTS ACT (XII of 1926), S. 2 —5. Sub-s. (2)

The Contempt of Courts Act is an Act which creates no fresh powers at all, but merely recognises the fact that such powers already do exist and seeks to define and limit them. In the first place sub-s. (1) of S. 2, Contempt of Courts Act does not define the powers of the High Courts in respect of contempts of themselves at all, but merely speaks vaguely of the jurisdiction, powers and authority which the High Courts already have and exercise in respect of such contempts. In the second place sub-s. (2), which relates to Chief Court, contains a patent inconsistency. The Contempt of Courts Act cannot be held to negative the existence of an inherent jurisdiction in the Chief Court to deal with contempt of Subordinate Courts. The Contempt of Courts Act far from being an exhaustive enactment, indeed contains provisions consistent with the view that it does not negative the powers and authority of the Chief Court to deal with contempts of inferior Courts, and cannot, therefore, be said that it would be contrary to the canons of construction for summary powers to be exercised in the name of inherent powers in disregard of the machinery contemplated by the Act.

The Chief Court is, by virtue of Ss. 8 and 9 of the Oudh Courts Act, and Ss. 219 and 220 of the Govt. of India Act, 1935, the High Court of Oudh and the one and only Court of Record, and by virtue of its position it is a superior Court of Record with a position akin to that of the Court of King's Bench. It is, therefore, to be conceived from its being the one and only superior Court of Record and from its enacted power of superintendence over all inferior Courts, whether criminal or civil, to have an inherent power and authority to protect its Subordinate Courts and to prevent interference with the course of justice in any way which may be necessary. Its powers in that respect are defined and limited by the Contempt of Courts Act of 1926. That Act is silent as to the power of the Chief Court to deal with contempt of Courts subordinate to it but such a power cannot be negatived by silence and is to be inferred from the wording of sub-s. (2) of S. 2 in which the words "subject to the provisions of sub-s. (3)" would otherwise be meaningless, and in fact contradictory. It is in the highest degree necessary that the Chief Court should have such authority, and should, in proper circumstances, not hesitate to exercise it. The Chief Court has, therefore, jurisdiction in respect of contempt of Courts subordinate to it. (Thomas C. J., Zia ul Hasan and Yorke JJ.) Mohammad Yusaf v. Imtiaz Ahmad Khan

AIR 1939 Oudh 131=1939 O W N (C C) 296=1939 A W R (C C) 59=14 Luck 492=11 R O 248=180 I C 745=40 Cr L J 421 (FB).

——S. 2 (2)—Oudh Chief Court, if can punish contempt of subordinate Court.

Section 2 (2), Contempt of Courts Act, leaves intact the inherent jurisdiction of the Oudh Chief Court as a Court of Record to punish contempts of subordinate Courts : A I R 1939 Oudh 131 (FB), Rel. on. (Ghulam Hasan C. J. and Misra J.) Addl. Sessions Judge, Hardoi v. Banwari Lal

AIR 1948 Oudh 114=1947 O W N (C C) 548=1947 O A (C C) 371=1947 A W R (C C) 371=23 Luck 37= 49 Cr L J 108.

6. Sub-section (3).

——S. 2 (3)—Applicability.

There is no bar to the taking cognizance of the contempt even though prima facie it may be actionable as a distinct offence under the Penal Code. Thus, a libel punishable under the Penal Code can be dealt with, if it

CONTEMPT OF COURTS ACT (XII of 1926), S. 2 —6. Sub-s. (3)

amounts to interference with justice, under the Act. (Vakil J. C.) Ramniklal Nanalal v. Shah Pranlal Nanchand

AIR 1952 Kutch 74=1952 Cr L J 1482.

——S. 2 (3)—'Punishable under Penal Code'—Meaning.

The words "where such a contempt is an offence punishable under the Indian Penal Code" in sub-s. (3) of S. 2 should be construed as not extending to offence punishable under the Penal Code otherwise than as contempt. Where the act complained of amounts to an offence under S. 186, I. P. C. the High Court has jurisdiction to punish the contempt of Courts subordinate to it. (Panigrahi and Narasimham JJ.) State v. Shankar Charan Sahu

AIR 1952 Orissa 215=18 Cut L T 75=1952 Cr L J 1106.

——S. 2 (3) — Contempt of subordinate Court—Jurisdiction of High Court — When excluded : 45 Cr L J 407= AIR 1943 Nag 334, Overruled.

Sub-s. (3) of S. 2 excludes the jurisdiction of High Court only in cases where the acts alleged to constitute contempt of a subordinate Court are punishable as contempt under specific provisions of the Indian Penal Code but not where these acts merely amount to offences of other description for which punishment has been provided for in the Indian Penal Code. This is clear from the language of the sub-section which uses the words "where such contempt is an offence" and does not say "where the act alleged to constitute such contempt is an offence." There are offences which are punishable as contempt under the Indian Penal Code and as subordinate Courts can sufficiently vindicate their dignity under the provisions of criminal law in such cases the Legislature deemed it proper to exclude them from the jurisdiction of the High Court under S. 2 (3), Contempt of Courts Act; but it would not be correct to say that the High Court's jurisdiction is excluded even in cases where the act complained of, which is alleged to constitute contempt, is otherwise an offence under the Indian Penal Code : 45 Cr L J 407= A I R 1943 Nag 334, Overruled. (Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. S. Das and Chandrasekhara Aiyar JJ.) Bathina Ramakrishna Reddy v. State of Madras

AIR 1952 S C 149=1952 S C J 137=1952 S C R 425 =1952 M W N 393 = 1952 M W N (Cr) 97 = 1952-1 M L J 736=65 M L W 514=1952 Cr L J 832 (SC).

——S. 2 (3)—Other remedy open.

In a case where the party really aggrieved has an alternative remedy there is no sufficient justification for three Judges of the High Court devoting their time and labour in an enquiry to establish the necessary facts to warrant the committal of the respondents for contempt, especially when the Magistrate concerned or his immediate superior, the District Magistrate has not chosen to move the High Court. Whether there is another remedy available is a matter for the Court to consider when exercising its discretion whether to commit, or not, a person for contempt of Court. In cases where an alternative remedy is open it is with a view to award prompt punishment that proceedings for contempt are initiated :

Where the petitioner's complaint was that notwithstanding the prohibitory order under S. 144, Criminal P. C., the respondents actually held a meeting to which the members of the opposite faction were excluded with the active support of responsible police officers.

'Held' that the Magistrate concerned could have prosecuted the offenders under S. 188, Penal Code; that the purpose behind the petition was more to obtain a pronouncement of the High Court about the validity or otherwise of the meeting alleged to have been held in

CONTEMPT OF COURTS ACT (XII of 1926), S. 2 —6. Sub-s. (3)

violation of the Magistrate's order than to uphold the dignity and prestige of the Court; and that this was not a 'bona fide' motion but one calculated to harass the respondents. (Koshi, Govinda Pillai and Joseph Vithayathil JJ.) Ukkan Chakku Thomas v. Thomokutty

AIR 1952 Trav-Co 113=1952 K L T 21=1952 AWR (Sup) 35=1952 Cr L J 658 (FB).

——S. 2 (3) — Offence punishable under Penal Code — Meaning of.

Section 2, sub-s. (3), Contempt of Courts Act applies only to cases in which the alleged contempt is punishable under the Penal Code as a contempt. The words "offence punishable under the Penal Code" do not mean an offence of any description punishable under that Code. (Wali Ullah, Mootham and Wanchoo JJ.) State v. Brahma Prakash

AIR 1950 All 556 = 1950 A L J 458 = ILR (1952) 1 All 131=52 Cr L J 1062 (FB).

——S. 2 (3)—"Where such contempt is an offence."

The only possible interpretation of S. 2 (3) is that where the acts alleged to have constituted the contempt are punishable as contempt under the Penal Code, then only the High Court shall not take cognizance of that contempt under the Contempt of Courts Act and not that if by the act by which a party is said to have committed contempt of a subordinate Court an offence punishable under the Penal Code is committed, then the High Court shall not take cognizance of the alleged contempt. (Das Gupta and P.N. Mookerjee JJ.) Naresh Kumar v. Umraomal Agarwalla

AIR 1951 Cal 489 = 55 C W N 331 = ILR (1952) 1 Cal 312=52 Cr L J 1030.

——S. 2 (3)—Scope.

Quaere — Whether S. 2 (3), Contempt of Courts Act only prohibited the High Court from dealing with offences punishable under the I. P. C., as contempt. (Lords Thankerton, Porter and Sir Madhavan Nair) Ali Mohd. Adam Alli v. Emperor

A I R 1945 P C 147 = 1945 M W N 564 = (1945) 2 M L J 356 = 1946 P C Rul 38 = (1945) A L J 505 = 59 M L W 1 = 50 C W N 107 = 72 Ind App 226 = 48 Bom L R 116=221 I C 67=47 Cr L J 61 (PC).

——S. 2 (3) — High Court Judges, when can entertain proceedings for contempt — Duty of Judge before relinquishing jurisdiction—Intention of Act.

The idea underlying the Contempt of Courts Act is that if a person can be sufficiently punished by some other tribunal, then the High Court should not entertain summary proceedings for contempt.

A Judge of the High Court can entertain proceedings for contempt unless the act constitutes an offence under any section of the I. P. C. It is, therefore, necessary for the Judge to decide whether such offence has been committed or not, or rather whether the acts alleged constitute such offence, before he can consent to relinquish his jurisdiction for contempt. (Bose J.) Kisan Krishnaji v. Nagpur Conference of Society of St. Vincent De Paul

AIR 1943 Nag 334=1943 N L J 505=16 R N 203= 211 I C 442=45 Cr L J 407.

[Overruled in A I R 1952 S C 149=1952 Cr L J 832.]

—— S. 2 (3)—Prohibition in—Scope of.

The prohibition contained in S. 2 (3) of the Contempt of Courts Act refers to offences punishable as contempt of Court by the I. P. C. and not to offences punishable there otherwise than as contempt, and so that forms no bar even if the subject-matter of the proceedings amounts to an offence punishable under the I. P. C. (Bose J.) Sub-Judge, First Class, Hoshangabad v. Jawaharlal Ramchand

AIR 1940 Nag 407=13 R N 209=1940 N L J 425= I L R (1941) Nag 304=191 I C 671=42 Cr L J 237.

CONTEMPT OF COURTS ACT (XII of 1926), S. 2—6. Sub-s. (3)

——S. 2 (3)—Acts of contempt also constituting offence of defamation — High Court, if still has jurisdiction to take proceedings under Act.

The words "is an offence punishable under the Penal Code" in cl. (3) of S. 2, Contempt of Courts Act, are preceded by the words "such contempt." This shows that the clause is applicable only to cases in which the offence referred to in that clause is punishable under the Penal Code, as contempt. The offence of defamation is made punishable by the Penal Code, not as an offence of contempt of Court but as an offence of defamation. If, therefore, the acts alleged to constitute contempt also constitute an offence of defamation punishable under the Penal Code, the jurisdiction of the High Court to take proceedings under the Contempt of Courts Act is not barred. (Iqbal Ahmed and Harries JJ.) Emperor v. Jagan Nath Prasad

AIR 1938 All 358=(1938) A L J 430=1938 A W R (H C) 275=11 R A 46=I L R (1938) All 548=176 I C 110=39 Cr L J 677.

——S. 2 (3)—Meaning of.

Section 2 (3) means that the contempt must be punishable as a contempt under the Penal Code, and not only because it otherwise is an offence. (Monroe and Din Mohammad JJ.) Bennett Coleman & Co. Ltd. v. G. S. Monga

AIR 1936 Lah 917 = 9 R L 305 = 38 P L R 1166 = ILR (1937) Lah 34=165 I C 813=38 Cr L J 73.

——S. 2 (3)—Meaning of — Single act, if may be offence under Penal Code as well as a contempt of Court.

Section 2, Sub-S. (3), Contempt of Courts Act, means that where under the Penal Code there is already a provision for punishing a contempt of Court as a contempt of Court, the Contempt of Courts Act itself shall have no application. It does not mean that when the act which has constituted the contempt of Court also constitutes an offence under the Penal Code, it may not be punished under the Contempt of Courts Act. (Courtney-Terrell C. J. and Rowland J.) Kaulashia v. Emperor,

A I R 1933 Pat 142 = 14 P L T 605=12 Pat 1=Ind Rul (1933) Pat 231=144 I C 351=34 Cr L J 770.

——S. 2 (3) — Obstruction to public servant in carrying out order of Court — Offences committed — High Court's power to take notice of offence of contempt.

Under the Contempt of Courts Act, superior Courts are enabled to punish contempts of the inferior Courts notwithstanding that such contempt as is complained of is not an offence against any of the sections of the Penal Code and the object is that as to contempts considered as contempts of the Court which are punishable by the Penal Code, they shall not be taken cognisance of by the High Court.

The offence of striking or resisting a public servant is an offence whether that public servant is the public servant of a Court or whatever his capacity be, provided he be a public servant. If that public servant is carrying out an order of a Court, the offender commits another offence, namely offence of contempt of the Court whose order the public servant is carrying out.

The proviso to S. 2, excepts those cases of contempt which are punishable under the Penal Code as contempt and not if they are punishable independent of that contempt.

Where the naib nazir who is directed by a Subordinate Judge to deliver possession of a house to a decree-holder goes to the spot but is obstructed by a person in possession :

Held, that the person was guilty of two offences one being obstruction to the naib nazir and the other contempt to the Subordinate Judge and that the High Court would take notice of the second offence under the Contempt of Courts Act. (Courtney-Terrell C. J. and Mohammad Noor J.) Jnanendra Prasad v. Gopal Prasad,

A I R 1933 Pat 204 = 14 P L T 77 = 12 Pat 172=6 R P 414=147 I C 1251.

—S. 3.

SYNOPSIS

1. Apology.
   (a) Apology at late stage.
   (b) Discretion of Court.
   (c) Unqualified apology.
2. Sentence.

1. Apology.
   (a) Apology at late stage.
   (b) Discretion of Court.
   (c) Unqualified apology.

1. Apology—(a) Apology at late stage.

——Nature and effect of.

An apology is not a weapon of defence forged to purge the guilty of their offences. It is not an additional insult to be hurled at the heads of those who have been wronged. It is intended to be evidence of real contritness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrong-doer's power. Only then is it of any avail in a Court of Justice. But before it can have that effect, it should be tendered at the earliest possible stage, not the latest, and even if wisdom dawns only at the appellate stage, the apology should be tendered unreservedly and unconditionally before the arguments begin and before the person tendering the apology discovers that he has a weak case and before the Judge has indicated the trend of his mind. Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology; it ceases to be the full, frank, manly confession of a wrong done which it is intended to be. Everything depends upon the circumstances as well as upon the nature of the apology and the manner in which it is tendered. (Bose J.) Sub-Judge, First Class, Hoshangabad v. Jawaharlal,

A I R 1940 Nag 407=13 R N 209=1940 N L J 425= I L R (1941) Nag 304=191 I C 671=42 Cr L J 237.

——S. 3, Proviso — Tendering of apology at late stage — Effect.

It is true that the proviso to S. 3 contemplates an apology at a late stage. But where the accused takes such action as any reasonable man must realise to be likely to prejudice the trial of a case and where instead of apologising at the earliest opportunity, he or his Counsel contends most strenuously that no contempt has been committed, his apology tendered at a later stage can only be regarded as an after-thought put forward in the hope of avoiding the wrath to come. (Thomas C. J. and Yorke J.) Qari Nasir Ahmad v. Anis Ahmad Abbasi,

A I R 1941 Oudh 67 = 13 R O 299 = 1940 O W N 1197 = 1941 A W R (C C) 7 = 16 Luck 506 = 191 I C 726=42 Cr L J 221.

1. Apology—(b) Discretion of Court.

——Where the apology is not unjustified Court should not be content with merely recording its displeasure. When the instances of contempt of Court are increasing, it would not do to create an impression that all that the offender has to do in order to get off is to tender apology. (Reuben C. J. and Misra J.) State v. Ram Briksh Benipuri,

A I R 1953 Pat 364=1953 B L J R 350=1953 Cr L J 1779.

——(Constitution of India, Art. 215)—(Patiala Contempt of Courts Act, S. 3).

CONTEMPT OF COURTS ACT (XII of 1926), S. 3 —1. Apology—(b) Discretion of Court

Apology tendered may or may not be accepted according to circumstances of particular case—Held that in the present case the Court was satisfied that the apology was to be accepted as it proceeded from a repentent mind and the party had abundantly realised his blunder. (Passey and Chopra JJ.) State v. S. Gurdial Singh,

A I R 1953 Pepsu 79=I L R (1952) Patiala 531=1953 Cr L J 919.

——Apology tendered, when can be accepted—See Constitution of India, Art. 215.

A I R 1953 All 153=1953 Cr L J 402.

——Acceptance of—Principles.

Under S. 3 of the Contempt of Courts Act, the High Court is not bound to accept the apology. The question whether the Court should or should not accept the apology depends upon the circumstances of each particular case. Even if the Court accepts an apology, it may still inflict punishment upon an accused person. Where an apology is not a free and frank confession of the guilt of the accused indicating a penitent attitude on their part, but is an attempt to justify their conduct under the cover of bona fides and amounts to a haulting, hesitating and vaccillating apology it deserves to be rejected and thrown out. (Misra and Beg JJ.) State v. Krishna Madho,

A I R 1952 All 86.

——Court's power to punish contempt—Apology.

It is not correct to say that the Court has no option but to punish a breach of an undertaking contained in a consent decree by committing the contemner to prison. Such committal is always discretionary with the Court, and the Court exercises such discretion on the facts of individual cases after their due consideration. Court's power to punish contempt always carries with it the power to pardon contempt if need be. (P. B. Mukharji J.) Sambhu Charan Nundy v. Gopi Mohan,

A I R 1951 Cal 507=88 C L J 196.

Editorial Note.— For discussion of the nature of an undertaking given to the Court by or on behalf of a party and the mode of enforcement, see Bajranglal v. Kapurchand,

A I R 1950 Bom 336.

——Where the opponent, who published an article in his paper criticising the conduct of the police in relation to the pending proceeding, was himself involved in the case and his intention in publishing the article was clearly to throttle the investigation by making some allegations against the police, and to prejudice the trial of the case, it is not a case of an innocent or an inadvertent publication in which the High Court should be satisfied with a mere apology; the High Court must impose a penalty in such a case: A. I. R. 1950 Pepsu 9, Ref. (M. C. Shah C. J. and Chhatpar J.) State v. Bhanushanker L. Joshi,

4 Sau L R 108.

——Discretion of Court to refuse or accept.

It does not follow that because an apology is offered, the Court must accept it and is disarmed. A Court can refuse to accept an apology which it does not believe is genuine; it can even, when it accepts the apology, commit an offender to prison or otherwise punish him. Furthermore, there cannot be both jurisdiction and apology. The two things are incompatible. (Davis C. J., Lobo, Weston and Tyabji JJ.) Emperor v. P. C. Tarapore,

A I R 1940 Sind 239=13 R S 143=I L R (1941) Kar 3=191 I C 519=42 Cr L J 1 (FB).

1. Apology—(c) Unqualified apology

——Where the contemner said that if the law finds him guilty of contempt he bows down to the judgment of Court, it was not an adequate expression of apology (case under Contempt of Courts Act (1952), S. 4). (Jagannadhadas C. J. and Mohapatra J.) State v. Radhagobinda Das,

AIR 1954 Orissa 1=ILR (1953) Cut 246=1953 Cr L J 1906.

——Contempt of Court — Apology tendered, when can be accepted.

In cases of contempt the Court is not bound to accept an apology or even an unqualified apology. The question whether it should do so or not would depend on circumstances of each particular case. A Court can refuse to accept an apology which it does not believe to be genuine, it can even, when it accepts the apology, commit an offender to prison or otherwise punish him. Furthermore, there cannot be both justification and apology. The two things are incompatible. Where the apology does not seem to be so much the outpouring of a penitent heart moved by feeling of remorse and overcome by a sense of ones own guilt, as a convenient device clutched up by a person driven and compelled by the logic of events to resort to a measure which seems to him to provide the only mode of escape from the impending doom or as a last desperate throw in a game of chance hazarded by him at a time when all else has failed and everything seems to be lost, it should be considered to be merely an apology for an apology. It deserves to be given short shrift at the hands of the Court. (P. L. Bhargava and Beg JJ.) Lal Behari v. State,

AIR 1953 All 153=1953 Cr L J 402.

——S. 3, 1st Proviso — Proviso gives Court power to review its judgment — Proviso is other law within S. 369, Criminal P. C.—(Criminal P. C. (1898), Ss. 369 and 561A).

Though the High Court has no inherent power under S. 561A to review its judgment, the first proviso to S. 3 of the Contempt of Courts Act gives the Court a power of reviewing its judgment awarding punishment to an accused under the Act in a case where the accused offers an apology to the satisfaction of the Court. The Proviso is "other law for the time being in force" within the purview of S. 369, which permits review. The power of review is discretionary. (Chowdhry J. C.) Mehar Chand v. State,

AIR 1953 Him-Pra 3=1953 Cr L J 92.

——Sentence—Contempt of trifling nature—First case of contempt in the Court — Opposite Party tendering unqualified apology — Held, apology should be accepted. (Atma Charan J. C.) Rattanlal v. Ghisulal Pandiya Publisher,

A I R 1952 Ajmer 33 (1) = 1952 A M L J 18 = 1952 Cr L J 1234.

——Contempt committed by presiding officer of Court — Seriousness of offence — Apology tendered by such officer if sufficient.

Commission of contempt of Court by a presiding officer of a subordinate Court is much more reprehensible than the commission of contempt of Court by another person. In the case of presiding officers of subordinate Courts it is committed by a person who, in the nature of things, is educated, who as a public servant should have known his duties and who has been discharging those duties normally in the right manner and just for some reason goes on the wrong path. He does it intentionally and, therefore, his conduct is very much open to objection. At the same time, it is to be expected that an apology from him would be a better index of his own feelings than an apology from another person. It is not usual for him to defend himself or to admit himself in the wrong. It is sufficient humiliation for a public servant, and specially for a presiding officer of a Court, to admit publicly that he had been in the wrong and that he had done wrong

CONTEMPT OF COURTS ACT (XII of 1926), S. 3 —1. Apology—(c) Unqualified apology

and, therefore, when an apology springs from such a person, it can be taken to be a genuine apology. (Raghubar Dayal and Sapru JJ.) State v. C. M. L. Bhatnagar,

AIR 1952 All 56 = 1951 A L J 663 = 1952 A W R (H C) 41=I L R (1953) 2 All 332=1952 Cr L J 223.

——Where the contempt is of a grave character, in the interest of administration of justice it is but proper that the contemner should be punished in spite of his unqualified apology. Case law discussed. (Shinde C. J. and Dixit J.) Railway Magistrate v. Rajjanlal,

AIR 1952 M B 176.

——Qualified expression of regret and unqualified apology through counsel—Sufficiency.

A qualified expression of regret or the apology tendered through the mouth of counsel could not be accepted as sufficient expiation of the offence of contempt and to accept it would inevitably create the impression that contempts of the kind as requesting the Judge to dismiss the suit in favour of one party, however much they may be condemned in theory, can in practice be purged by an expression of regret. Such interference should be visited with a prompt and deterrent punishment. (Ellis and Ispahani JJ.) The Crown v. Abdur Rashid,

54 C W N (2 D R) 107.

——Apology, if entitles the offender to discharge as of right—Contempt of grave nature—Offender sentenced.

An apology, though it often mitigates the offence, does not entitle the offender to a discharge as a matter of right, and where the contempt is of a grave character in that the offender addressed a private communication to the Judge in order to influence him in the decision of the case pending before him, in the interest of administration of justice the gravity of the offence requires that the offender should be punished, in spite of his unqualified apology. (Offender was sentenced to suffer a fine of Rs. 100 and pay Rs. 120 as costs to the Government Advocate or in default of payment of fine within two weeks to undergo one month's simple imprisonment.) (Ghulam Hasan C. J. and Misra J.) Addl. Sessions Judge, Hardoi v. Banwari Lal,

AIR 1948 Oudh 114 = 1947 O W N C C 548 = 1947 O A C C 371=1947 A W R C C 371= 23 Luck 37 =49 Cr L J 108.

——Effect of.

Except in scandalous and outrageous cases, an unconditional apology is ordinarily considered to purge the contempt. (Bose and Sen JJ.) Balkrishna Narayan v. Col. N. S. Jatar,

AIR 1945 Nag 33=I L R (1945) Nag 74=1945 N L J 30.

——In view of unqualified apology the accused was sentenced to pay a fine of Rs. 250 and in default of payment to undergo simple imprisonment for a period of two months. (Leach, C. J., Lakshmana Rao and Krishnaswami Ayyangar JJ.) Advocate-General, Madras v. Sri Ramanatha Goenka,

AIR 1942 Mad 711=44 Cr L J 162.

——The special privilege of the press is a timeworn fallacy, and the sooner the misconception that the press is not accountable to the law is removed, the better it will be. No editor has a right to assume the role of investigator or try to prejudice the Court against any person. Writing and publishing an article in a newspaper likely to prejudice the course of justice relating to a pending case amounts to a contempt of Court :

Held, that the article grossly offended against the law of contempt of Court. [The accused was, however, discharged on his tendering unqualified apology, under first Proviso to S. 3, Contempt of Courts Act.] (Thomas C. J. and Radha Kishna J.) District Magistrate, Kheri v. Hamid Ali Gardish,

AIR 1940 Oudh 137=12 R O 242=1939 O W N (C C) 1132=1940 A W R 21=15 Luck 268= 185 I C 342=41 Cr L J 169.

——Writer believing what he states to be true— Whether justification— Evidence to establish truth of allegations— Election manifesto slandering judiciary — Printer and publisher acting on advocate's words — Absence of intention— Held in view of unqualified apology no punishment was necessary. (Thom and Harries JJ.) Ram Mohan Agarwala in the matter of,

AIR 1935 All 38=36 Cr L J 620.

——Advocate expressing at meeting of Bar Association that the man in the street has lost confidence in the administration of justice in the province — Unconscious use of expression—Written apology.

Where at a meeting of a Bar Association, a leading Advocate in the course of a speech said "the man in the street has lost confidence in the administration of justice in the province :"

Held, that the use of the expression constituted contempt of Court, but that as the offence was committed unconsciously and as the Advocate tendered a written apology to the Court, the apology could be accepted as sufficient amends. (Wazir Hasan, C. J., and Smith J.) Muhammad Wasim, an Advocate, In re,

AIR 1933 Oudh 118=Ind Rul (1933) Oudh 220=144 I C 63 (2)=34 Cr L J 726 (2).

2. Sentence.

——Letter by party to proceeding to Third party to bring pressure on other party — Held tended to interfere with due course of administration of justice and amounted to contempt of Court— As regards punishment, held that since it was the first case of its kind a sentence of fine of Rs. 75 would be sufficient. (Harries C. J. and S. R. Das Gupta J.) Nalin Chandra v. Bejoy Ranjan,

AIR 1953 Cal 53=1953 Cr L J 214.

——Punishment — Considerations for — (Criminal P. C. (1898), S. 561-A).

If, in spite of repeated instructions from the High Court similar instances come to the notice of the High Court, it would be failing in its responsibility towards the criminal judicial administration of the State, if it took such instances lightly and dropped the proceedings without serious notice or merely accepted the assertion of bona fides and of absence of any deliberate intention. Neither the existence of dualism in common machinery containing both magisterial and executive, nor the inherent difficulty of an officer placed in that situation, can be taken to be an excuse or extenuation. On the other hand, it is a stronger reason for expecting from the executive officers greater discrimination and care, and for the Court to take effective steps to take serious notice of such instances so as to prevent the recurrences thereof. (Case under Contempt of Courts Act (1952) S. 4). (Jagannadhadas C. J. and Mohapatra J.) State v. Radhagobinda Das

AIR 1954 Orissa 1 = ILR (1953) Cut 246 = 1953 Cr L J 1906.

——Punishment—See Constitution of India, Art. 215.

AIR 1953 Orissa 249=1953 Cr L J 1491.

——Contempt by newspaper—Sentence.

Though the punishment for contempt by newspapers, is more severe than punishment for contempt by an ordinary citizen, at the same time the fact that the contempt was not an intentional one has to be taken into consideration :

Held that as it was for the first time that a case of this type had come before the Court and it did not appear

CONTEMPT OF COURTS ACT (XII of 1926), S. 3 —2. Sentence

that an action for contempt was even taken by the Highest Court of the State before integration, it was not expedient to compel the non-applicant to purge his contempt by payment of a fine or the undergoing of a sentence of imprisonment and the unqualified apology was accepted. (Vakil J. C.) Ramniklal Nanalal v. Shah Pranlal Nanchand,

AIR 1952 Kutch 74=1952 Cr L J 1482.

——Contempt of Court—Scandalizing the Court—Punishment.

Whether a contempt actually committed is to be followed by substantive punishment and if so, to what extent, must depend on the circumstances of the case.

Where the scandalising of the Court was of a grave nature, or was committed in circumstances which indicated a likelihood of repetition or where such other special circumstances existed, the punitive jurisdiction of the Court for this class of contempt may be exercised.

(Held that in this case, the exercise of the punitive jurisdiction of the Court was not called for, as there was nothing like the scurrilous abuse or sweeping condemnation of the Judges or of the Court in the editorial comments held to amount to contempt of Court). (Jagannadhadas C. J. and Narasimham J.) State v. Editors & Publishers of Eastern Times and Prajatantra,

AIR 1952 Orissa 318 = ILR (1952) Cut 1=1952 Cr L J 1605.

——Contempt of Court—Comments on pending proceedings—Responsibility of editor for publication of untrue news.

'Per Narasimham J.' — If the editor of a newspaper publishes a news item emanating from the local representative of that paper he cannot escape responsibility if an item of the news is untrue, especially wnen he is unwilling to disclose the name of that representative. His good faith or the fact that he trusted his representative can hardly be a ground for absolving him from guilt though they may be taken as extenuating circumstances in his favour, if when the truth came to the light the editor had immediately published a contradiction and expressed regret for the mistake. (Jagannadhadas C. J. and Narasimham J.) State v. Editors and Publishers, Eastern Times and Prajatantra,

AIR 1952 Orissa 318 = ILR (1952) Cut 1=1952 Cr L J 1605.

——Sentence.

Where certain literate persons holding some responsible posts in the Panchayat of their village address a written communication to a Magistrate with the intention to influence him in the trial of certain case and are under the impression that they have some sort of right to do so:

Held that in the ends of justice nothing less than a sentence of imprisonment should be awarded to them, as it was certainly a very sorry state of affairs and the sooner they were disillusioned the better it was for them as well as for the administration of justice in the State. (Misra and Beg JJ.) State v. Krishna Madho,

AIR 1952 All 86.

——Contempt of Court—Punishment—Summary power of punishment for contempt should be used very sparingly and only in serious cases. (Harnam Singh J.) Diwan Chand v. K. Narender,

AIR 1950 E P 366.

——Punishment—Measure of—Penal Code (1860), S. 53.

The measure of punishment depends on the facts and circumstances of each individual case. In principle, the real object of punishment is the prevention of crime and the measure of punishment varies according to the prevalence of a particular form of offence. Accordingly an

CONTEMPT OF COURTS ACT (XII of 1926), S. 3 —2. Sentence

amount of severity may be very appropriate at one time and would be uncalled for at another. (Teja Singh C. J., Passey and Kartar Singh JJ.) Crown v. Brish Bhan,

AIR 1950 Pepsu 9=1 Pepsu L R 253=51 Cr L J 1219 (SB).

——Other remedy available — Court's discretion whether to commit or not — Disobedience of order under S. 6A, Mussalman Waqf Act—Contempt of Court.

The fact that there is another remedy available is a matter for the Court to consider when exercising its discretion whether to commit or not to commit for contempt but, on the other hand, the desirability of speed and the necessity of ensuring that the orders of the Court should be obeyed are also matters of importance. Where a person disobeys an order under S. 6A, Mussalman Waqf Act, the Court may consider that after two years of disobedience, a heavier fine than that permitted by S. 10 of the Waqf Act should be imposed or in a proper case, that imprisonment should be awarded.

The failure to furnish information under S. 6A is an offence under the provisions of the Waqf Act yet it is not an offence punishable under the I. P. C. Consequently, the High Court is not prohibited from dealing with it by the terms of S. 2 (3) of the Contempt of Courts Act. (Lords Thankerton, Porter and Sir Madhavan Nair.) Ali Mohd. Adam Alli v. Emperor,

AIR 1945 P C 147=1945 M W N 564 = (1945) 2 M L J 356=1946 P C Rul 36 = (1945) A L J 505=59 M L W 1=50 C W N 107=72 I A 226 = 48 Bom L R 116=221 I C 67=47 Cr L J 61 (PC).

——No apology—Offence not serious.

Held, on facts, that the article amounted to contempt of Subordinate Court, but though the contempt was not of a serious kind yet in view of the fact that the opposite party had expressed no regret but insisted throughout that he had not committed any offence and no apology was offered, it was a case in which punishment must be inflicted.

[Opposite party was sentenced to pay a fine of one hundred rupees and also the costs of the proceedings and in default of payment of the fine, simple imprisonment for a period of one month.] (Harries C. J. and Dhavle J.) Superintendent, Legal Affairs, Bihar v. Murli Manohar,

AIR 1941 Pat 185=7 B R 261=13 R P 399=21 P L T 980=20 Pat 306=191 I C 834=42 Cr L J 225.

——It is imperative in the interest of ordered progress of society that the judicial independence of the presiding officers of the Courts below be maintained with a strong hand and scandalous attacks on those officers should not be allowed to pass unnoticed. It is further imperative in the interest of the administration of justice, that politics should be sternly kept out of the precincts of the Court and that the public must be made to feel that the Courts are not amenable to political or executive influence.

Where a person committing the contempt of Court is endowed with a somewhat excitable temper, this fact constitutes a justification for mitigation of maximum sentence. (Iqbal Ahmad and Harries JJ.) Emperor v. Jagannath Prasad,

AIR 1938 All 358=(1938) A L J 430=11 R A 46= 1938 A W R (H C) 275=ILR (1938) All 548=176 I C 110=39 Cr L J 677.

——Sentence of custody in jail for indefinite period.

There is no limitation imposed on the High Courts in the matter of punishment. Consequently, the High Court is competent to pass an order committing a person to custody in jail until he apologises to the High Court and pays into Court the moneys received by him in defiance

CONTEMPT OF COURTS ACT (XII of 1926), S. 3

—2. Sentence

of the orders of the Court. (Young C. J., Monroe and Din Mohammad JJ.) Harkishen Lal, In the matter of,

AIR 1937 Lah 497=ILR (1937) Lah 69=10 R L 103 (2)=39 P L R 733=170 I C 375=38 Cr L J 883 (SB).

——Particular type of contempt unprecedented—Whether ground for not punishing—Publication scandalising Court—Necessity of punishment.

To scandalise the Court is a contempt and hence any publication which scandalises the Court and lowers its prestige is clearly a contempt, even though there is no record that similar publications have been held by the Courts in the past to constitute contempt.

Because a particular type of contempt of Court is unusual or unprecedented it does not follow that the Court has no power to punish such a contempt if it is committed. It is true that the power to punish for contempt of Court is a drastic power exercisable summarily and should not, therefore, be resorted to lightly, but to argue that, because a particular act has not been punished in the past as contempt where there is no proof that the act has ever been committed or, at any rate, formed the subject of proceedings, it may not be puni-hable as contempt when the act has been committed and brought to the notice of the Court, is clearly to confuse the principle with the application of the principle. (Thom and Harries JJ.) Advocate of Allahabad, In the matter of,

AIR 1935 All 1=(1935) A L J 125=7 R A 827=4 A W R (H C) 1155=154 I C 955.

CONTEMPT OF COURTS ACT (XXXII of 1952)

See under Contempt of Courts Act (XII of 1926).

CONTEMPT OF LAWFUL AUTHORITY.

See (i) Contempt of Court.
(ii) Contempt of Courts Act (1926) and
(iii) Penal Code (1860), Ss. 172-190.

CONTENTS OF DOCUMENT

Secondary evidence — See Evidence Act (1 of 1872), S. 65.

Proof of—See Evidence Act (1 of 1872), S. 61.

CONTINUANCE OF RIGHT OF PRIVATE DEFENCE—See Penal Code (45 of 1860), Ss. 102 and 105.

CONTINUING NUISANCE AFTER INJUNCTION

—See Penal Code (45 of 1860), S. 291.

CONTINUING OFFENCE

See Penal Code, S. 363.

CONTRACT

—Breach of — See Workman's Breach of Contract Act (1859).

—Breach of trust by pawnee—See Contract Act (1872), Ss. 176 and 178.

—Minor—See Contract Act, S. 11.

—Public policy, contract against — See Contract Act (1872), S. 23.

—Reduced to document, how proved — See Evidence Act (1 of 1872), S. 91.

—Reduced to writing, extrinsic evidence — See Evidence Act (1 of 1872), S. 91.

—Stifling prosecution—See Contract Act (1872), S. 23.

—Wagering contract — See Contract Act (1872), S. 30.

CONTRACT ACT (IX of 1872).

See also under Criminal P. C. (1898), S. 145.

—S. 11.

——Contract of apprenticeship by minor — Enforcement of—Rights of guardian.

CONTRACT ACT (IX of 1872), S. 11

A minor can bind himself by entering into a contract of apprenticeship, if it is for his benefit. But the contract will not be enforced against him. If such a remedy is required, a covenant from the guardian is necessary, on which the guardian himself may be made liable. (Wallis J.) Pollard v. Rouse.

8 M L T 47 = 6 Ind Cas 754 = 33 Mad 288 = 1910 M W N 187=12 Cr L J 180.

—S. 23.

——Refund of deposit made in execution of option — See Food Grains (Futures and Options) (Prohibition) Order (1942), S. 3 (6).

1953 R L W 341.

——Stifling prosecution — Compoundable offence—Compromise to drop prosecution before proceedings are started —Validity.

A promissory note executed for the price of goods obtained by the executant by committing an offence of cheating and after report of the offence is made to police but before any criminal proceedings are actually started is not invalid on the ground that the consideration of the pronote was to stifle prosecution : A I R 1941 Mad 173, Rel. on. (Waliullah J.) Bishambhar Nath v. Parbhu Dayal.

1950 A W R 429=1950 A L J 379.

——Stifling prosecution — Compounding non-compoundable offence or abandonment of prosecution for such offence — Object is unlawful being against public policy — Agreement is void. Case law referred. (J. Sen J.) Mohanlal Jagannath v. Kashiram Gokul.

AIR 1950 Nag 71=1 L R (1950) Nag 105=1950 N L J 297.

——Prosecution — Object of agreement—Inference from conduct.

Whether agreements have stifling prosecutions as their objects, have to be interred from the conduct of the parties after the survey of the whole evidence : AIR 1930 P C 100 and A I R 1941 P C 95, Rel. on. (J. Sen J.) Mohanlal Jagannath v. Kashiram Gokul.

AIR 1950 Nag 71=I L R (1950) Nag 105=1950 N L J 297.

——Consideration whether unlawful—Test.

The principal test for determining whether the consideration for a certain contract is unlawful is the fact whether the real motive for executing the document was to escape from a criminal prosecution or to settle a dispute between the parties : AIR 1939 Lah 98 Foll.; AIR 1926 All 270 and AIR 1936 Mad 656, Disting. (Sharma and Bapna JJ.) Madanlal v. Ali Mohammad.

1946 J L R 327.

——Void contract—Public policy.

Where the permission of the Court is already obtained in a criminal proceeding, which is compoundable with the permission of the Court, an agreement to pay a certain sum of money in lieu of agreeing to drop the prosecution is not contrary to public policy. (20 C W N 946, AIR 1939 Lah 98 and AIR 1928 Bom 305, Foll. and AIR 1936 Mad 656, Dist.) (Sharma and Bapna JJ.) Madanlal v. Ali Mohammad.

1946 J L R 327.

——Non-compoundable offence.

Where A executes a pro-note in consideration of the payee undertaking not to prosecute B who had committed a criminal offence such as cheating which could not be compounded without the Court's leave, the consideration for the note so far as A is concerned is manifestly unlawful and hence the promissory note cannot be

enforced against him. (Leach C. J. and Lakshmana Rao J.) Venkatasubba Rao v. Chandanmal.

AIR 1942 Mad 662 (1) = 55 M L W 639 = (1942) 2 M L J 191=1942 M W N 487=ILR (1943) Mad 183 = 15 R M 639=203 I C 272=44 Cr L J 29.

——Stifling prosecution is a recognized head of public policy. Even if part of the consideration was the undertaking not to proceed with the prosecution, the entire agreement would be illegal. (Somayya J.) Chandanmal v. Ramakrishnayya.

AIR 1942 Mad 173=(1941) 2 M L J 827=54 M L W 571=15 R M 327=201 I C 91=43 Cr L J 734.

——Consideration, if must be shown to be unlawful to bring case under S. 23 — Bona fide debt owing by person against whom non-compoundable criminal case is pending — Such person giving security to creditor, entire consideration being pre-existing debt—No part of it referable to withdrawal of criminal case.

To bring a case within the purview of S. 23, Contract Act, it is necessary to show that the object or consideration of the agreement is unlawful. When there is a just and bona fide debt owing by the accused against whom a non-compoundable criminal case is proceeding, and he gives a security to his creditor, the entire consideration for which is the pre-existing debt, and no part of it is referable to the withdrawal of the criminal case, the transaction would be a perfectly good transaction. There, as between the debtor and the creditor, there is no trading on felony, which public policy condemns, and the law attempts at preventing. The creditor gets just what he was entitled to and there is no advantage, or emolument coming to him for withdrawing the prosecution against his debtor. (Derbyshire C. J. and B. K. Mukherjea J.) Sudhindra Kumar Rai v. Ganesh Chandra.

AIR 1938 Cal 840=11 R C 492 = 43 C W N 147=69 C L J 1=ILR (1939) 1 Cal 241=179 I C 210.

——Champerty, agreement by way of, by legal practitioner—See Legal Practitioners Act (1879), S. 13.

4 Cr L J 241 (Cal).

——Contract to indemnify surety for his bail bond.

Pending a criminal charge against the defendant his pleader stood bail for his appearance; and as an indemnity for the bail took from him a sale-deed and a rent note regarding his house, in the name of the plaintiff :

Held, that the contract for indemnifying the pleader for his bail-bond was illegal under S. 23, Contract Act ; and this illegality rendered the sale-deed void in law ; the sale-deed and the rent note were part and parcel of one single transaction and though the document was spoken of as rent note its real object was to secure interest on the principal sum. Therefore the rent note was tainted with the same illegality which affected the sale-deed. (Batchelor and Heaton JJ.) Laximan Lal K. Pandit v. Mulshankar Pitambardas,

10 Bom L R 553.

——S. 23—Agreement to stifle prosecution.

Where there is an agreement whereby the parties agree to settle their differences in consideration of compounding criminal charges which are not by law compoundable the object of the agreement is to stifle a prosecution and is bad. (Chandavarkar and Aston JJ.) Dalsukram Hargovindas v. Charles Debretton,

6 Bom L R 73=28 Bom 326.

——Stifling prosecution.

Where a bona fide debt exists and a promissory note is executed for the same, the note is not void as one made to stifle a criminal prosecution, though the transaction out of which the debt arises may involve a criminal liability on the part of debtor. (Stanley C. J. and Knox J.) Jai

Kumar v. Gauri Nath,

1906 A W N 212=28 All 718=3 A L J 506.

—S. 24.

See also ibid, S. 23.

—S. 25.

——Forbearance to sue, as consideration.

If an intending litigant bona fide forbears to exercise a right to litigate a question of law or fact which is not vexatious or frivolous he does give up something of value and this forbearance to sue forms a good consideration for the compromise between the parties. Miles v. New Zealand Alford Estate Co., (1886) 32 Ch. D. 266, Foll. (Teja Singh and Bhandari JJ.) Amin Chand v. Emperor,

230 I C 124 (Lah)=48 Cr L J 522.

—S. 30.

——Suit relating to recovery of deposit, winning or losses —(Penal Code (1860), S. 294A) — (Words and phrases — Lottery).

All chit transactions are not lotteries. The cardinal principle underlying lotteries is the distribution of prizes by lot or chance. Such distribution may, however, take a form which may remove the taint which attaches to lotteries. In a lottery only a few benefit while the many who subscribe are the losers. When it is so, the transaction is undoubtedly a lottery. But if an arrangement is made by which all in turn get a return of the amount of their contribution, such as in a chit fund, it cannot be denounced as a lottery. Where the agreement is unattended with the risk, speculation and uncertainty which make lotteries void, such a transaction can be held to constitute a good contract unaffected by the provisions of S. 294A, Penal Code. Case law reviewed. (Ramaswami J.) Vejju Narasimha Rao v. Jayalakshmi National Syndicate,

1953 Mad W N 721.

——Penal Code (Act XLV of 1860), S. 294-A — Transaction between definite number of persons — Each one getting his money's worth, though some get less and some more by lot—Transaction, whether offence or wager.

A dealer in gramophones got up a party of 120 persons. These 120 were to subscribe Re. 1 each for the first week. At the end of the week, prizes were drawn, prizewinner got a gramophone and he went out of the transaction altogether. The remaining 119 subscribed 4 annas more each for the next week and one of them got the prize. Similarly, the prize drawing continued for 20 weeks. Thereafter the remaining 101 people who by that time would have paid Rs. 67-8 annas each got one gramophone. The prize of each gramophone was about Rs. 80, and dealer was able to give for a less price as he had purchased a large number in a lot :

Held, as each subscriber got a gramophone and that for much less than the price at which it was sold in the market, the transaction was not void under S. 294-A, I.P.C.

Though there was an element of chance, each one got his money's worth and there was no invitation to the public to join and so no offence was committed. (Ramesam J.) Durga Venkatramana v. Kedari Setti Sanyasayya,

A I R 1934 Mad 136 = 66 M L J 76 = 6 R M 649= 149 I C 489.

——Ss. 30, 24, 23—Bombay Gambling Act (III of 1865), S. 1—Wrestling match—Agreement that party failing to appear should pay certain sum and winner should get gate-money—Separation of legal from illegal part.

The plaintiff and the defendant who were wrestlers agreed to wrestle on a certain day on the following conditions : The party failing to appear on that day was to forfeit Rs. 500 to the opposite party and the winner was to receive Rs. 1,125 of the gate money provided by the public. The defendant failed to appear and the plaintiff sued for Rs. 500 :

CONTRACT ACT (IX of 1872), S. 30

Held. (i) that the agreement was not a wagering contract and was not illegal ;

(ii) that even assuming that the portion of the agreement relating to payment to the winner was illegal, the clause for payment of Rs. 500 was not illegal but was a separate and enforceable clause. (Madgavkar and Barlee JJ.) Babasaheb Rahimsaheb v. Rajaram

A I R 1931 Bom 264 = 33 Bom L R 260 = Ind Rul (1931) Bom 366=133 I C 254.

—S. 70.

——Refusal of costs of witness in proceedings under S. 145, Criminal P. C.—Suit for recovery—See Civil P. C. (1908), Ss. 9, 11.

8 C W N 178.

—S. 126.

——"Guarantee," meaning of—See Companies Act (1913), S. 87D.

A I R 1953 Madh B 26=1953 Cr L J 253.

——S. 128—Principal and surety—Liability of surety.

Section 128 of the Act does not refer to the nature of the principal's obligation but only to the extent of the surety's liability. Where a person stands surety for attendance of another person before a Court and the latter fails to attend before that Court, the surety is liable under the bond. (Martineau J.) Chhajju Singh v. Emperor

3 U P L R (L) 77 = 2 Lah 204 = 63 I C 464 = 22 Cr L J 652.

—S. 160.

——Company depositing as security in respect of warehouse Government promissory note—Position of Government is of bailee—Return of note.

Where Government accepts a Government promissory note deposited by a company with the excise authorities as a security in respect of a private warehouse, the Government becomes, under S. 148, Contract Act, the bailee and must return the note to the bailor without demand after the termination of the license. The fact that some third person has interest in the note cannot be a ground for refusal to return it. (Panckridge J.) R. Ezekiel v. Province of Bengal,

A I R 1939 Cal 746=I L R (1939) 2 Cal 52=12 R C 350=185 I C 214=41 Cr L J 134.

—S. 171.

——Solicitor's lien — Extent of — See Legal Practitioner

A I R 1952 Himachal P 11.

—S. 172.

——Caveat Emptor—Pawning of bangles describing them as 'gold bangles'—Bangles found to be of alloy of gold :

Held, that the principle of caveat emptor applied. (Mosely J.) Maung Tin v. Emperor

A I R 1935 Rang 426 = 1935 Cr Cas 1201 (1) = 8 R Rang 283=159 I C 789=37 Cr L J 179.

——Scope.

In India the provisions of Ch. 9 of the Contract Act governs the subject of pawning and pawn brokers and the English law on the subject has no application. Under the Indian law there can be a pledge of goods even in a case where time has not been stipulated for repayment of loan. (Hartnoll JJ.) King Emperor v. Kannappa Chetty

4 L B R 8=6 Cr L J 118.

—S. 176.

——No date fixed for redemption of article pledged — Debtor, when should be deemed to be in default.

When no period is fixed for the redemption of the articles pawned, the debtor is not in default until notice is given by the creditor that he requires payment on a certain day and that day is past. The debtor is then in default in the same way as where a day for repayment is

CONTRACT ACT (IX of 1872), S. 176

fixed in the original contract. (Varma J.) Ramdaya Prasad v. Sayed Hasan

A I R 1944 Pat 135=10 B R 509=16 R P 321=212 I C 384=45 Cr L J 633.

——Rights of pawnee.

When the date fixed in the notice for payment has passed without the pawned articles being redeemed, then under S. 176, Contract Act, the pawnee is entitled to sell the ornaments pledged by giving a reasonable notice of the sale to the pawnor. (Varma J.) Ramdayal Prasad v. Sayed Hasan

A I R 1944 Pat 135 = 10 B R 509=16 R P 321=212 I C 384=45 Cr L 633.

——Sale by pledgee of pledged property to himself is void.

After the expiry of the period fixed for redemption, a sale by a pledgee to himself of securities pledged is void, but it does not put an end to the pledge so as to entitle the pledgor to recover them without payment of the amount thereby secured ; nor does it entitle him to damages : further, the pledgor is bound by re-sales duly effected by the pledgee to third persons after such abortive sales to himself, but where the pledgee has erroneously represented to the pledgor before such re-sales that the securities have been sold, they can no longer be regarded as pledged, and he becomes on such re-sales liable for the value thereof as for a conversion and the liability is only of a civil nature. (Varma J.) Ramdayal Prasad v. Sayed Hasan

A I R 1944 Pat 135=10 B R 509=16 R P 321 = 212 I C 384=45 Cr L J 633.

——Pledge by manager of firm — Conviction for criminal breach of trust — Pledgee acting bona fide — Validity of pledge—Criminal P. C. (Act V of 1898), S. 517.

The manager of a branch of a firm pledged certain ornaments belonging to the firm. The proprietors discovered the matter and the manager was prosecuted and convicted under S. 408, I. P. C. Though the ornaments were taken possession of by the Police from the possession of the pledgee and produced before the Magistrate, the latter ordered them to be delivered to the proprietors. It was found that the pledgee had acted in good faith and the Sessions Judge ordered them to be re-delivered to the pledgee :

Held, that all the essential elements required by S. 178, Contract Act, to render the pledge valid were present, and the pledgee had a good title against the proprietors and the order of the Sessions Judge was right.

The question whether a case falls within S. 178, Contract Act, depends on the circumstances of each case.

The word 'possession' in S. 178 means juridical possession as distinguished from mere physical possession or custody. (Tek Chand J.) Shara Din v. Gokal Chand

A I R 1931 Lah 526=12 Lah 304 = 32 P L R 724= Ind Rul (1931) Lah 675=132 I C 835=32 Cr L J 960.

—S. 178.

——Breach of contract—Assistance of Criminal Court.

The company, having given the sewing machine to a person whose position is that of an agent or factor to be disposed of for money, the company is not entitled to the assistance of a Criminal Court in recovering it from a person to whom it was disposed of. (Macgregor J.) Singer Sewing Machine Co. v. Yen Kum

A I R 1923 Rang 68 (1)=1 Bur L J 45=81 I C 163= 25 Cr L J 675.

——S. 178, proviso.

Right to goods pawned which were obtained fraudulently —See Criminal P. C. (1898), S. 517

8 Ind Cas 1204=12 Cr L J 88.

CONTRACT ACT (IX of 1872), S. 178

——Scope.

Jewel entrusted to the accused to be disposed of for money —Accused convicted for breach of trust—Order for delivery to owner — Questions of applicability of S. 178, Proviso 1 and whether power acted bona fide are for civil Court — Owner cannot obtain relief in Criminal Court—See Penal Code (1860), S. 517

4 L B R 25=6 Cr L J 135.

——Pawn broker—Right to sue in Civil Court.

An ornament was obtained by a person from its owner by means of fraud or offence as contemplated by the second proviso. He pledged it with a pawn broker from whom it was recovered. The Magistrate ultimately ordered its delivery to the owner.

Held that the pawn broker had the right to enforce his lien on the jewel by a suit brought in the Civil Court. (Fox C. J.) King Lone v. Ma Kay

4 L B R 13=6 Cr L J 125.

—S. 221.

——The accused was the karinda of the complainant and it was his duty to collect rents. He collected rents and spent the collections out of one property for the benefit of the estate. He was always willing to pay the collections from the other but the complainant was not willing to accept it unless the whole sum which he claimed to be due was paid. Some amount was due to the accused on account of his salary. The complainant filed a complaint under S. 408, I. P. C. :

Held, that under S. 221, Contract Act, as agent the accused was entitled to retain the collections until the amount due to him for services was paid. (Collister J.) Roshan Lal v. Emperor

A I R 1935 All 922=1935 A W R 930=8 R A 611 = 160 I C 382=37 Cr L J 308.

CONTRADICTORY ANSWERS

—Questions testing veracity — See Evidence Act (1 of 1872), S. 153.

CONTRADICTORY STATEMENTS

See (1) Criminal P.C., Ss. 161 and 162.
(2) Evidence Act, Ss. 144 and 145.
(3) Penal Code, S. 193.

CONTROLS

——Price control — Foot-wear — Exhibiting of prices in excess of controlled prices — Goods and Services (Price Control) Act, 1941 (Eng.) (C. 31), Ss. 1 and 20 (4) — General Foot-wear (Maximum Prices and Charges) Order, 1946 (Eng).

The accused, a proprietor of a shoe shop was tried for an offence of offering for sale a pair of shoes at a price which exceeded the maximum price, contrary to certain articles of the General Foot-wear (Maximum Prices and Charges) Order 1946 and contrary to S. 1 of the Goods and Services (Price Control) Act, 1941. The foot-wear in stock was kept in card board boxes on shelves against the wall and the price of the contents of the box was marked on each box:

Held, that the accused was guilty of the offence by merely exhibiting the prices on the boxes. (Humphrey, Lynokey and Byrn JJ.) Phillips v. Dalziel

1948-2 All E R 810.

CONVERSATION

—Statements forming part of, how to be proved — See Evidence Act (1 of 1872), S. 39.

CONVERSION

See Penal Code, Ss. 403, 404 and 405.
—Of property—See Penal Code, S. 425.

CONVICT

See Prisoners Act, 1900.
—Appeal from jail—See Criminal P. C., S. 420.

CONVICTION

—Conviction for offence, different from one charged—See Criminal P. C., S. 246.
—For several offences at one trial — See Criminal Procedure Code (5 of 1898), S. 35 (1).
—On evidence recorded by another Magistrate — See Criminal Procedure Code (5 of 1898), S. 350.
—Plea of guilty, conviction on — See Criminal P. C, S. 255.
—Setting aside of—See Criminal P. C., Ss. 423 and 439.
— Several convictions — One punishment — See Criminal P. C., S. 35.

COPY

—Of depositions of witnesses — See Criminal P. C. S. 362.
—Of judgment—See Criminal P. C., S. 371.
—Of police diary—See Criminal P. C., S. 172.
—Of proceedings—See Criminal P. C., S. 548.
—Of original—See Evidence Act, S. 65.
—Of statement to police in course of investigation—See Criminal P. C. S. 162.

COPYRIGHT ACT (20 of 1847)

—S. 3.

——Ss. 3 and 6 — Expunging entry from the catalogue of books kept in Bombay — Jurisdiction of High Court of Calcutta.

Under S. 6 of the Act, the Supreme Court in Calcutta had jurisdiction over the Book of Registry wherever it happened to be kept. By S. 9 of St. 24 and 25 Vic. Cap. 104, the High Court of Calcutta took over all the powers of the Supreme Court, including the powers exercised absolutely in respect of any copyright register. Therefore the Calcutta High Court has jurisdiction to order the expunging of an entry in the catalogue of books kept in Bombay under S. 18 of Act 25 of 1867. (Bodilly J.) Ismail bin Shaik Badal v. Ali Bhoy Sarafali

9 C W N 591=1 C L J 278.

—S. 6.

——Expunging entry from catalogue of books kept in Bombay—Jurisdiction of Calcutta High Court—See copyright Act (20 of 1847), S. 3

9 C W N 591=1 C L J 278.

—S. 24.

—— S. 3—Evidence Act, S. 114.

Absence of provisions in the new Act to grant to owners of existing copyright, right at least as valuable as the rights given under the old Act, does not bar the admissibility of evidence under S. 114 of the Evidence Act to prove such right. (Sadasiva Iyer and Phillips JJ.) Chellapaswamy v. Singaravelu Mudaliyar

A I R 1916 Mad 1015=30 I C 721=16 Cr L J 673.

COPYRIGHT ACT (III of 1914)

—S. 7.

——Where the criminal proceedings for infringement of copyright of books were started by an order from which it did not appear under which clause of S. 7 of the Copyright Act the accused was being tried and also the accused himself did not know it :

Held, that the accused did not have a fair trial. (Varma J.) Bihari Lal v. Rampirit Ram

A I R 1934 Pat 522=7 R P 158=1 B R 14=16 P L T 138=152 I C 248=36 Cr L J 30.

——S. 7 (a)—Copy right—Translation.

Though copyright might not include the exclusive right of translation, the author of a book, who made a transla-

COPYRIGHT ACT (III of 1914), S. 7

tion of it is entitled to copyright in it as if it were an original work. (Chamier, J.) Hira Lal v. Sarasvathi

A I R 1915 All 331 =13 A L J 636 = 30 I C 480=16 Cr L J 656.

—S. 10.

——So far as the order under S. 10 (1) of the Copyright Act is concerned, there is a special appeal provided by cl. (2). (Varma J.) Bihari Lal v. Rampirit Ram

A I R 1934 Pat 522 = 7 R P 158 = 16 P L T 138=1 B R 14=152 I C 248=36 Cr L J 30.

—S. 24.

——Prosecution for infringement of copyright — Burden of proof of subsisting copyright.

Where a person complaining of infringement of his copyright produces the book and the certificate of registration of the copyright, the burden of proving that the portion of the book which had been copied by the accused was also contained in a previous book published by the accused's father and that the complainant had, therefore, no subsisting copyright at the time of the infringement is on the defence.

Under S. 24 of the Copyright Act, 1914, a new copyright is substituted for the old copyright provided a copyright was in existence when the Act of 1914 came into force. In the case of a prosecution for alleged infringement of copyright of a book published before 1914 the question to be considered is, therefore, not whether the copyright under Act of 1847 was subsisting at the time of infringement but whether it was subsisting when Act III of 1914 came into force. (Bennet J.) Emperor v. Sheocharan Lal

A I R 1931 All 353=1931 A L J 304=Ind Rul (1931) All 433=131 I C 865=32 Cr L J 814.

CORONER

See Criminal P. C., S. 174.

CORONERS' ACT (IV of 1871)

—S. 24.

——Ss. 24, 25, 26, 27, 29 — Prisoners Act (3 of 1900), S. 11— Criminal Procedure Code (Act V of 1898), Ss. 213 (2), 214, 215, 477, 478, 498 — Inquisition by Coroner — Effect of commitment to High Court — Power of Presidency Magistrate to enquire or try — Effect of acquittal or discharge by such Magistrate — Jurisdiction of High Court to release on bail.

The drawing up of an inquisition by the Coroner does not of itself oust the Magistrate of the jurisdiction to inquire into or try the case of an accused person, though it may have the effect of valid commitment in view of the provisions of Ss. 24 to 27 and 29 Coroners Act read with S. 11 Prisoners' Act, upon which the High Court in the exercise of its Original Criminal Jurisdiction may act. But it has not that effect until it has been accepted by the High Court, and the officers of the Court have drawn up a charge in accordance with it. This view is not in conflict with S. 215 Criminal P. C. which refers to commitments under Ss. 213, 214, 477 or 478 of the Code. And until the High Court has accepted the inquisition drawn up by the Coroner as a commitment the Magistrate's order of acquittal or discharge that he may make will be operative, subject to the discretion of the High Court, when the time comes for it to consider, whether it should take action upon the Coroner's inquisition as an effective commitment.

After a Coroner has drawn up an inquisition and committed the accused to prison, it is only by the intervention of the High Court that he can be released on bail. (Banerjee and Handley JJ.) Emperor v. Jogeshwar Passi

7 C W N 889=31 Cal 1=1 Cr L J 13.

CORONERS' ACT (IV of 1871)

—S. 25.

——Ss. 24 to 27 and 29 — Inquisition by Coroner—Effect of — Commitment to High Court — Power of Presidency Magistrate to enquire or try — Effect of acquittal or discharge by such Magistrate —Jurisdiction of High Court to release on bail—See Coroners' Act (IV of 1871), S. 24

1 Cr L J 13 (Cal).

—S. 26.

——Ss. 24 to 27 and 29 — Inquisition by Coroner—Effect of — Commitment to High Court — Power of Presidency Magistrate to enquire or try — Effect of acquittal or discharge by such Magistrate—Jurisdiction of High Court to release on bail—See Coroners' Act (IV of 1871), S. 24.

1 Cr L J 13 (Cal).

—S. 27.

——Inquisition by Coroner—Effect of — Commitment to High Court — Power of Presidency Magistrate to enquire or try — Effect of acquittal or discharge by such Magistrate—Jurisdiction of High Court to release on bail — See Coroners' Act (IV of 1871), S. 24.

1 Cr L J 13 (Cal).

—S. 29.

——Inquisition by Coroner — Effect of—Commitment to High Court — Power of Presidency Magistrate to enquire or try — Effect of acquittal or discharge by such Magistrate—Jurisdiction of High Court to release on bail — See Coroners' Act (IV of 1871), S. 24.

1 Cr L J 13 (Cal).

CORPORATION

——Member—Expulsion of, from Committee — Rules of natural justice—(Constitution of India, Art. 226).

The Committee before expelling a member must make a fair enquiry into the truth of the alleged facts, after giving him notice that his conduct is about to be enquired into and giving him an opportunity of defending himself. To determine whether a tribunal, exercising a punitive jurisdiction on an alleged charge of misconduct, whereby a man may be deprived of his property, has given a sound decision, the Court has to investigate whether they have observed the rules of natural justice and the particular statutory or other rules, if any, prescribed for their guidance. The rules of natural justice demand that a man is not to be removed from the office or membership or otherwise dealt with, to his disadvantage without having an opportunity of making his defence, and that the decision must be arrived at in good faith with a view to the common interest of the institution concerned. And a Court of Justice will not interfere with their decision if the above conditions are satisfied. (Mookerjee and Fletcher JJ.) Mahomed Kalimuddin v. A. Stewart,

A I R 1920 Cal 223 = 47 Cal 623 = 56 I C 556 = 31 C L J 247.

CORROBORATION

See (1) Criminal P. C., S. 164.
(2) Evidence Act, Ss. 27, 30, 114, Ill. (b), 133 and 156-158.

—Child witness.

See Evidence Act, S. 118.

CORRUPTION

See (1) Penal Code, S. 161.
(2) Prevention of Corruption Act, 1947.

COSTS

See (1) Criminal P. C., S. 148.
(2) Criminal P. C. 1898, S. 423.
(3) Criminal P. C., S. 476.

COSTS

(4) Criminal P. C. (1898), S. 476-B.
(5) Criminal P. C., S. 544.

—Adjournment cost.
See Criminal P. C., S. 344.

—Compensatory.
See Criminal P. C., S. 250.

—Habeas Corpus proceedings.
See (1) Criminal P. C., S. 491 and S. 561A.
(2) Constitution of India, Art. 226.

—Inheren' power of Court to grant.
See (1) Criminal P. C., S. 561A and S. 491.
(2) Constitution of India, Art. 226.

—Legal practitioner's lien.
See Legal Practitioner.

—Maintenance proceedings.
See Criminal P. C., S. 488.

—Transfer of criminal case.
See Criminal P. C., S. 526.

COTTON CLOTH AND YARN (CONTRACTS) ORDINANCE (II of 1944).

——Retrospective effect.

The Ordinance has a retrospective effect and applies to all contracts made before or after the commencement of the Ordinance and to sales made on or after August 15, 1943, in pursuance of a contract made before or after the Ordinance. (Lionel Leach C. J. and Lakshmana Rao J.) Tar Mohd. Janoo v. Lakshmana Aiyar,

I L R (1945) Mad 848 = (1945) 1 M L J 436 = 1945 M W N 471.

COTTON CLOTH AND YARN (CONTROL) ORDER (1943).

——The provisions of the Order are made for the benefit of the people of the country and undue sympathy with those who contravene provisions of an Order of this nature will lead to considerable inconvenience to the people at large. (Allsop Ag. C. J.) Ram Sarup v. Emperor,

A I R 1947 All 250 = 1946 A L J 308=1946 A W R H C 433=228 I C 155=48 Cr L J 91.

——Publication of Order in Government of India Cazette —Affected persons duly informed.

The Cotton Cloth and Yarn (Control) Order, 1943 was duly published according to law in the Government of India Gazette, so as to affect the persons concerned with notice of the order. (Yorke J.) Bala Prasad v. Emperor,

A I R 1947 All 12=225 I C 255=1946 A L W 337 = 1946 A W R (H C) 432=I L R (1946) All 716 = 47 Cr L J 706.

——Publication of Order in Government of India Gazette — Sufficient notice to affected persons concerned.

When the Central Government published Cotton Cloth and Yarn (Control) Order, 1943, in the Government of India Gazette, it must be held to have been duly published according to the requirements of law i. e., R. 119, Defence of India Rules, so as to affect the persons concerned with the notice of order. (Fazl Ali C. J., Agarwala, Manohar Lall, Shearer and Sinha JJ.) Mahadeo Prasad v. Emperor,

A I R 1946 Pat 1 = 1945 P W N 478=24 Pat 781 = 223 I C 263 = 12 B R 367 = 27 P L T 112=47 Cr L J 497 (F B).

——Order not notified as required by Defence of India Rule 130-A (b)—R. 81 (2) under which the Order is made notified – Prosecution for contravention of Order — Applicability of Criminal P. C. in matter of granting bail.

Notification of Defence of India Rule 81 (2), cannot connote notification of an Order made thereunder. Where the Cotton Cloth and Yarn (Control) Order, 1943, was not notified in Local Gazette as required by R. 130-A (b) of Defence of India Rules, it cannot be deemed to have been notified by specification in the Gazette of only certain clauses of R. 81 (2), although the Cotton Cloth and Yarn (Control) Order is one made under R. 81 (2). Hence the person accused of contravening the Control Order must be dealt with according to the provisions of the Criminal P. C., subject to the requirements of R. 130-A (a) in the matter of granting bail under S. 498, Criminal P. C. (Hemeon J.) Maganmal v. Emperor,

1945 Nag L Jour 223.

—Cl. 3.

——Cl. 3 (b)—"Person carrying on the business"—Words include servant or salesman or owner.

There is nothing in the definition of the word 'dealer' involving or importing the idea of ownership or proprietorship as a necessary ingredient of the expression dealer. The words "a person carrying on the business of selling cloth or yarn or both" obviously include a salesman or a servant of the owner or proprietor of the business: **A I R 1945 Cal 319**, Rel. on. (Agarwala C. J. and Ayyar J.) Province of Bihar v. Imaman,

A I R 1948 Pat 266=26 Pat 683.

—Cl. 6.

——Cls. 6 and 12 — Sale of cloth in absence of master by servant at price higher than controlled price—Responsibility of dealer.

Where the servant effects sale of cloth in the absence of the dealer at a price higher than the controlled rate, the dealer is criminally responsible under Cls. 6 and 12 of the Cotton Cloth and Yarn (Control) Order, 1943. Servant effecting the sale would be guilty of abetting the offence.

[Law as to the extent of the liability of the master or principal for the criminal acts of servant or agent explained.] (Walford J.) Prem Narain v. Emperor,

A I R 1946 Oudh 53 = 1945 A W R (C C) 228=1945 O W N (C C) 374=20 Luck 529.

—Cl. 10.

——Contravention of Cl. 13 (c)—Notification under Cl. 10 not on record—Conviction—Legality.

Where the prosecution case is that the accused has contravened the provisions of Cl. 13 (c) of the Order but the notification made by the Textile Commissioner under Cl. 10 is not brought on record then in the absence of such notification there being no proof that there has been contravention of the provisions of Cl. 13 (c), the accused cannot be convicted. **A I R 1945 Pat 210**, Ref. (Imam J.) Dwarka Prasad v. Emperor,

A I R 1948 Pat 290=49 Cr L J 375.

——Clauses 10, 14 and 15A — Clause 14 provides that no person shall buy, sell or keep in his possession any cloth or yarn in unopened bales or cases for more than six months after the "said date" and the "said date" is said to be the last day of the month marked on the cloth or yarn in accordance with the directions of the Textile Commissioner under Cl. 10. But the other provisions of the Order and the notifications issued thereunder make it clear that the month that is to be marked, if the marking is put by the Provincial Government on the bales in possession of the dealers which had been surrendered by them or which have been seized by the Government, is to be the month and the year when the marking is done. By a private agreement entered into with the consent of the Textile Commissioner, the law as regards tex-marking contained in the Cotton Cloth and Yarn Control Order and in the notifications cannot be altered and an officer of the Government cannot be authorised to put in a false date that marking had been

COTTON CLOTH AND YARN (CONTROL) ORDER (1943), Cl. 10

done in a month other than the month in which it was actually done. (Malik J.) Emperor v. Nandram Agarwala.

AIR 1947 All 348=1947 A L J 34=1947 A W R H C 62=1947 O A H C B 38=I L R (1947) All 277.

—Cl. 12.

——Liability of cloth merchant for sale by his salesman at price in excess of controlled price in his absence.

Where cloth sold at a price in excess of the controlled price, is actually handed over to the customer and the money for it is received not by the cloth merchant but by his salesman in his absence from the shop, in law and in fact the sale is actually made by the merchant himself and he is criminally liable : A I R 1945 All 90, Rel. on; A I R 1946 Pat 30, Disting. (Shearer and Sinha JJ.) Narsingh Das Modi v. Emperor.

AIR 1948 Pat 110=13 Cut L T 47 = 1947 O A Sup 95=1947 A W R Sup 95=26 Pat 359=49 Cr L J 65 (2).

——Cl. 12 (1) — Offence under—Sanction for prosecution for that offence must be obtained.

Sanction for prosecution for charge under cl. 12 (4) or framing of charge under R. 8 of Bihar Cloth and Yarn Dealers Licensing and Control Order, 1944, will not validate conviction for offence under cl. 12 (1) : AIR 1945 Pat 375, Rel. on. (Agarwala J.) Jagmohan Lal v. Emperor.

AIR 1948 Pat 78=1947 P W N 31=229 I C 545=13 B R 400=48 Cr L J 448.

——Cl. 12 (1) — Maximum price fixed but not published as per Cl. 10—No offence. (Agarwala J.) Jagmohan Lal v. Emperor.

AIR 1948 Pat 78=1947 P W N 31=229 I C 545=13 B R 400=48 Cr L J 448.

——Cl. 12 (4) — Sind Cotton Cloth Dealers' Licensing Order (1944), Cl. 3 — Contravention of, by one partner of firm — Liability of other partners. (Davis C. J. and Thadani J.) Emperor v. Jayanti.

AIR 1947 Sind 130=I L R (1946) Kar 276 = 229 I C 599=48 Cr L J 419.

——Cl. 12 (5)—Dealer convicted for non-display of maximum prices in shop — Excuse that he was not informed as to where true copies of notifications issued by Textile Commissioner were to be obtained is no defence. (Walford J.) Sita Ram v. Emperor.

AIR 1947 Oudh 158=1947 O A C C 37 = 1947 A W R C C 37 = 1947 O W N 80 = 229 I C 107 = 48 Cr L J 235.

——Cl. 12 (5)—Servant of dealer cannot be convicted for non-display of maximum prices as the duty to display maximum prices is cast upon the 'dealer.' (Walford J.) Sita Ram v. Emperor.

AIR 1947 Oudh 158 = 1947 O A C C 37=1947 A W R C C 37 = 1947 O W N 80 = 229 I C 107 = 48 Cr L J 235.

——Cls. 12 and 23 — Bihar Cotton Cloth and Yarn Dealers' (Licensing and Control) Order, 1944, Cl. 8—Prosecution for selling cloth above control rates—Charge framed with reference to Cl. 8 of 1944 Order and not Cl. 12 of 1943 Order—Sanction of Provincial Government under Cl. 23 of 1943 Order, if necessary—Object of Cl. (8) of 1943 Order.

Where a person is sought to be prosecuted for selling cloth or yarn above the control rate, the fact that the charge was laid, not under the Cotton Cloth and Yarn (Control) Order of 1943, but under Cl. 8, Bihar Cotton Cloth and Yarn Dealers' (Licensing and Control) Order of 1944 cannot obviate the necessity of obtaining the sanction of the Provincial Government under Cl. 23, Cotton Cloth and Yarn (Control) Order, 1943. The reason

COTTON CLOTH AND YARN (CONTROL) ORDER (1943), Cl. 12

why Cl. 8 was inserted in the Bihar Licensing Order was to make it clear that the mere issue of license is not intended to exempt the licensee from the operation of the Central Government's Cotton Cloth and Yarn (Control) Order of 1943, that is to say, to make it clear that he is bound to keep his prices within the limits fixed by the Textile Commissioner in exercise of the powers conferred on him. (Agarwala and Meredith JJ.) Kapildeo Pandey v. Emperor.

AIR 1945 Pat 375 = 26 P L T 85 = 24 Pat 257=12 B R 130=221 I C 426=47 Cr L J 190.

—Cl. 13.

——Cls. 13 (1) (c) and 14—Applicability.

To ascertain the cloth possession of which is a contravention of Cl. 13 (1) (c) it is necessary to refer to any orders passed under Cl. 10 or Cl. 10B as the case may be. In the case of any particular piece of unmarked cloth found with a dealer, it would be almost always impossible to show that it belonged to the class referred to in orders made under Cls. 10 and 10B. To such cases Cl. 14 applies and not Cl. 13 (1) (c). Under Cl. 14, the question whether the cloth is held by the dealer for his bona fide personal requirements does not even arise. (Roxburgh and Ellis JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Makhan Chandra Roy.

AIR 1948 Cal 40=230 I C 426=48 Cr L J 646.

——Cl. 13 (1) (c)—Property in a house or a shop cannot be said to be in possession of a servant merely because of his presence there in connection with his work. Hence where unmarked pieces of cloth are found in a shop the servant working there cannot be convicted of having in possession unmarked pieces of cloth. (Walford J.) Sita Ram v. Emperor.

AIR 1947 Oudh 158=1947 O A C C 37 = 1947 A W R C C 37 = 1947 O W N 80 = 229 I C 107 = 48 Cr L J 235.

——Cls. 13 and 14 — One proprietor in management of shop — Unstamped cloth found on premises — Other co-proprietors not proved to have knowledge of such cloth being there—Such other co-proprietor cannot be said to be in actual control of the cloth.

No doubt where the shop is in the hands of a manager other than the managing proprietor it is possible that the proprietors may be criminally liable for the acts of their manager committed within the ordinary scope of his employment in the case of some criminal offences which involve no 'mens rea,' but that principle cannot be applied as between co-proprietors so as to make a co-proprietor liable for the acts of his co-proprietor.

Where it has not been proved that a co-proprietor either knew that an offence was being committed or was likely to be committed or that he had any reason to suppose that the unstamped cloth was on his premises or was likely to be there, it cannot be said that the cloth was actually under the control of the co-proprietor. (Beevor J.) Ramnarain Kedia v. Emperor.

AIR 1946 Pat 30 = 12 B R 485=1945 P W N 383= 224 I C 131=27 P L T 105=47 Cr L J 568.

—Cl. 14.

——Possession of cloth after 31st December 1944, not contravention of Cl. 14 and not punishable under Defence of India Rule 81 (4) : 48 Cr L J 853 : AIR 1947 All 394, Overruled.

Mere possession of cloth which was not to be possessed after 31st of December 1944 does not amount to a "contravention" of clause 14 of the Cotton Cloth and Yarn (Control) Order, 1943, so as to be punishable under Rule 81 (4) of the Defence of India Rules. Further, a mere breach of clause 14 sub-cl. (1) (a) of the Control

COTTON CLOTH AND YARN (CONTROL) ORDER (1943), Cl. 14

Order would not amount to a contravention of it as defined in R. 5 but the failure to comply with it would amount to a contravention if it is without lawful authority or excuse. Onus would lie upon the prosecution to show not only act or omission but also absence of lawful authority or excuse : 48 Cr L J 853 : 1947 All 394, Overruled.

The fact that the authorities did not, either in this Control Order or in directions issued thereunder, provide for the mode in which the dealers were to act in the event of such cloth remaining with them undisposed of, would itself amount to lawful excuse : AIR 1948 All 38 (FB) and AIR 1947 All 250, Not approved.

The existence of lawful excuse does not necessitate any active steps on the part of the dealers prior to December 31, 1944, for getting rid of the cloth either before the expiry of the period or afterwards. (Wali Ullah, Raghubar Dayal and Mushtaq Ahmad JJ.) Arbind Kumar Deb v. Rex.

AIR 1949 All 473=1949 A L J 383=ILR (1949) All 956=50 Cr L J 701 (FB).

——Cls. 14 and 15A — Possession after 31-12-1944 of cloth manufactured before 1-8-1943 — No notification by Textile Commissioner under cl. 15-A — Cl. 14 is contravened and possession is offence under R. 81 (4) of Defence of India Rules.

Clause 15-A of the Cotton Cloth and Yarn (Control) Order, 1943, is in the nature of a proviso and an enabling clause and it cannot, therefore, override the provisions of Clause 14 which are mandatory.

The prohibition in Clause 14 is absolute and is subject only to the condition that if the Textile Commissioner has issued a notification under Clause 15-A about the special markings etc., the dealer may retain the cloth for a further period of six months from the date of the m rking in accordance with the notifi ation. In case there is no such notification by the Textile Commissioner, the dealer has no right to retain it or to offer it for sale after 31st December 1944. AIR 1948 All 38 (FB) and AIR 1947 All 394, Ref. (Bind Basni Prasad J.) Kanhiya Lal v. Rex

AIR 1948 All 276 = ILR (1948) All 251=1948 ALJ 78 = 1948 A W R H C 83 = 1948 O A H C 83 = 49 Cr L J 338.

——Element of mens rea is ruled out.

The mere possession after 31-12 1944 of cloth manufactured before August 1943 has been made an offence by Cl. 14. The element of mens rea is thus ruled out by the necessary implication of the statutory provisions. Hence a person in possession after 31-12-1944 of cloth manufactured before August 1943 is guilty under R. 81 (4) of Defence of India Rules even if he had no guilty mind. AIR 1947 P C 135, Disting. (Bind Basni Prasad J.) Kanhiya Lal v. Rex,

AIR 1948 All 276 = ILR (1948) All 251 = 1948 A L J 78 = 1948 O A H C 83 =1948 A W R H C 83= 1949 Cr L J 338.

——Inability to dispose of cloth before 31st December 1944—Liability under Cl. 14, if affected : See Defence of India Rules (1939), R. 5,

AIR 1948 All 165 = 49 Cr L J 148.

——Intention of accused is not material.

For an offence under Cl. 14, intention of the accused is not material : AIR 1948 All 38 (FB) ; AIR 1947 All 250 and AIR 1947 All 394, Rel. on. (Mootham J.) Mithan Lal v. Emperor,

AIR 1948 All 165 = 1947 A L J 610 = 1947 A W R H C 393 = I L R (1948) All 20 = 49 Cr L J 148.

——(As amended in November 1944) and Cl. 15-A (introduced in January, 1944, and amended in January, 1944)

COTTON CLOTH AND YARN (CONTROL) ORDER (1943), Cl. 14

—Scope—Right of dealer to possess cloth or sell it after 31-12-1944.

Clause 15-A is in the nature of a proviso and an enabling clause and cannot override the provisions of Cl. 14 which are mandatory. Hence, a dealer has no right to retain possession of cloth or offer it for sale after the 31st December 1944, except in accordance with the conditions relating to marking etc,, mentioned in Cl. 15-A, and in case there is no such notification by the Textile Commissioner, the dealar has no right to retain it or to offer it for sale after the 31st December 1944. The Order may not be very well drafted, but it cannot be held that it is unworkable and should not, therefore, be enforced : AIR 1945 Nag 249, Dissent.; Case law discussed, (Verma C. J., Malik ond Mootham JJ.) Laljee v. Emperor,

AIR 1948 All 38 = 1947 A L J 536 = 1947 A W R H C 328 = ILR (1948) All 143 = 48 Cr L J 955 (FB).

——Cl. 15A meaningless if not read with Cl. 14 —Dealers in possession of certain undisposed of cloth and yarn — No notification by Textile Commissioner for disposal of remaining stock—Conviction of dealers if legal.

The reference to sub-cls. 14 (1) (b) and 14 (2) (b) in Cl. 15A is to the old Cl. 14. Unless the reference is so read Cl. 15A becomes meaningless. Surely the Crown cannot take advantage of the mistake in omitting to make consequential amendments in Cl. 15A after the recasting of Cl. 14.

Any possession of undisposed of cloth or yarn beyond the 31st December 1944, is not a contravention of Cl. 14. The sale of cloth or yarn depends on a large number of factors, some of which are beyond the control of the dealer concerned. There may be reasons beyond the control of the dealer which prevent a complete disposal of the stock of cloth or yarn manufactured before a certain date by a particular date. If possession after that date were a penal offence, then a large number of persons would be committing such an offence for reasons which were entirely beyond their control. Such an intention should not be inferred unless one is forced to do so by the words used in the different provisions of the Control Order.

The intention of the framers of the Control Order is made clear if Cls. 14 and 15A are read together. Clause 14 prohibits the buying, selling, or having in possession of any cloth or yarn manufactured in India before the 1st of August 1943 beyond a particular date. Clause 15A states that notwithstanding what has been stated in Cl. 14, such cloth or yarn may be kept and sold by a dealer subject to the conditions notified in that behal f by the Textile Commissioner. The only reasonable interpretation is that Cl. 15A overrides Cl. 14 and allows a dealer to remain in possession of undisposed of cloth or yarn after the 31st December 1944. Such possession being subject to the conditions notified by the Textile Commissioner, it can never be accepted that such possession will be illegal unless and until the Textile Commissioner notifies the conditions which should govern possession. Else it will be tantamount to holding that the Textile Commissioner can at his sweet will make the provisions of Cl. 15A completely nugatory. It was the duty of the Textile Commissioner to notify the conditions subject to which undisposed of cloth or yarn could be possessed after the relevant date. It cannot be accepted that the framers of the Control Order meant to legislate so unreasonably as to penalise dealers who for reasons beyond their control were not able to dispose of the cloth or yarn before the 31st of December 1944. It is well known that a penal clause has to be construed strictly. There is no provision in the Control Order for surrendering or taking over the undisposed of stock after the specified date and since no notification was issued by the Textile

COTTON CLOTH AND YARN (CONTROL) ORDER (1943), Cl. 14

Commissioner to that effect, people need not be convicted unnecessarily. (Sinha and Das JJ.) Sagarmal Poddar v. Emperor,

AIR 1947 Pat 181 = 12 Cut L T 46 = 25 Pat 487 = 1946 P W N 315 = 27 P L T 273 = 13 B R 444 = 230 I C 39 = 48 Cr L J 483.

——Cls. 14 and 15A — After the amendment of Cl. 14 of the Cotton Cloth and Yarn Control Order by Notification No. T. B. (1) 29/44, D/- 4-11-1944, and before the amendment of Cl. 15A by Notification No. T. B. (1) — 33/45, D/- 13-1-1945, the position was that while Cl. 14 had been amended so as to make mere possession of cloth specified in the clause after 31st December 1944 an offence, Cl. 15A still stood in the form in which it was introduced by Notification No. 36 Tex S. (1) 13/43 D/- 22-1-1944. After the amendment of Cl. 14 on 4th November 1944, Cl. 15A could have no application to it and was indeed a dead letter. The provisions of Cl. 14 could not be governed or controlled by Cl. 15A prior to its amendment on 13th January 1945 : A I R 1945 Nag 249 and AIR 1946 Oudh 234, Dissent. (Mulla and Yorke JJ.) Chhotey v. Emperor,

A I R 1947 All 394 = 1947 O A (H C) 'B' 15 = 1947 A W R (H C) 39 = 1947 A L J 103 = 229 I C 539=48 Cr L J 443.

——Cls. 14 (2) and 15A as inserted on 22-1-1944— Interpretation.

Clause 15A must be held to override cl. 14 (2) as in fact it explicitly states by the phrase "notwithstanding anything contained in Cl. 14 (2)." Its effect is that until the Textile Commissioner chooses to make conditions Cl. 15A really overrides Cl. 14 (2), and cloth or yarn can be kept or sold by the dealer. As soon as the Commissioner makes his condition, the condition must be complied with and then Cl. 15A will have been complied with. Moreover, assuming that Cl. 14 (2) and Cl. 15A can stand together, then the fact that possession of the cloth in question is certainly valid under Cl. 15A until conditions are made, provides a lawful excuse for a failure to comply with the provisions of Cl. 14 (2) in view of the definition in R. 5 of the Defence of India Rules : A I R 1945 Nag 249, Approved. (Roxburgh and Ellis JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Fate Chand Baid,

AIR 1948 Cal 39 = 228 I C 619 = ILR (1948) 1 Cal 41 = 48 Cr L J 267.

——Persons charged with contravention of Cl. 14 of the Order should not be convicted for being in possession of cloth against the provisions of the Order if they had a lawful excuse for such possession : A I R 1945 Nag 249, Approved. (Allsop Ag. C. J.) Ram Sarup v. Emperor,

A I R 1947 All 250 = 1946 A L J 308=1946 A W R (HC) 433=228 I C 155=48 Cr L J 91.

——Scope — Interpretation — Court not to question the policy of law—Its business is simply to enforce it as it is.

It cannot be believed that the order intended to say in Cl. 14 that a person should not be in possession of cloth of a certain kind and then in Cl. 15 that he might legally be in possession of it. It seems that these clauses read together clearly mean that no person is to be in possession of any kind of cloth unless the Textile Commissioner allows such person to be in possession of cloth of some kind on certain conditions.

It is not the business of the Court to question the policy of the law. Its business is only to enforce the law such as it is. Rules of this kind are easy to evade, and the Courts should enforce the rules with a certain strictness in order to prevent the hoarding of cloth and the sale of it in black markets. (Allsop Ag. C. J.) Ram Sarup v. Emperor,

A I R 1947 All 250 = 1946 A W R (H C) 433=1946 A L W 341=1946 ALJ 308=228 IC 155 = 48 CrLJ 91.

COTTON CLOTH AND YARN (CONTROL) ORDER (1943), Cl. 14

——Cls. 14 and 15A — Effect of various amendments considered—Clauses held unworkable—Retention of yarn on 1st January 1945 held was with lawful excuse and did not contravene Cl. 14.

Though the amendment of Cl. 15A in 1944 made that clause applicable to new Cl. 14 (dated 4 11-44) of the Order, there was no amendment of the rules framed under Cl. 15A by Notification No. T. C. (6) 2/44 (dated 27-11-44) which still related to the period specified in the old Cls. 14 (1) (b) and 14 (2) (b) and was, therefore, inapplicable to Cls. 14 and 15A as amended. Nor was there any notification under Cls. 10 and 15A specifying under what conditions cloth could be kept by the dealer after 31st December 1944. The dealers who had cloth or yarn in their possession on the morning of 1st January 1945, were left in an impossible position of not being able to retain the cloth or yarn themselves or handing it over to any one on their behalf after 31st December 1944 on account of Cl. 14 (3) (i). Clauses 14 and 15A are thus unworkable and a dealer having cloth or yarn in his possession on 1st January 1945, does not contravene Cl. 14 of the Order as he has, in these circumstances, lawful excuse for keeping the same in his possession. (Ghulam Hasan and Madeley JJ.) Murlidhar v. Emperor,

AIR 1946 Oudh 234=1946 O A C C 97=1946 A W R C C 97 = 1946 O W N C C 178—224 I C 384 = 47 Cr L J 609.

——If applicable to persons merely in charge of goods during transit.

Clause 14 (before its amendment on November 24, 1943) was not intended to apply to persons who were merely in charge of the goods during transit and who had no legal right to interfere with the packages. The clause related only to dealers or those who were the owners of the bales and had the legal right and authority to open them. (Malik J.) Bhikha Mal v. Emperor,

A I R 1945 All 214 = 1945 A L J 180=1945 A W R (H C) 174 = 1945 O W N (H C) 192 = 1946 All Rul 1 =ILR (1945) All 617=220 I C 324=46 Cr L J 678.

—Cl. 15A.

——Possession after 31-12-1944 of cloth manufactured before 1-8-1943—No notification by Textile Commissioner under Cl. 15A — Cl. 14 is contravened and possession is offence under R. 81 (4), Defence of India Rules : See ibid, Cls. 14 and 15A.

AIR 1948 All 276=49 Cr L J 338.

— Clause 15A practically nullifies Cl. 14 (2) unless it is shown that there are orders specifying conditions referred to in Cl. 15A : Government Appeal No. 1› of 1946, Rel. on. (Roxburgh and Ellis JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Makhan Chandra Roy,

AIR 1948 Cal 40=230 I C 426=48 Cr L J 646.

——(as amended in 1944), Cl. 14 must be read with Cl. 15A—Latter clause overrides former — Cl. 15A allows dealer to remain in possession of undisposed of cloth or yarn after prescribed date subject to conditions notified by Textile Commissioner — Any possession of such cloth or yarn after such date does not contravene Cl. 14 : See Cotton Cloth and Yarn (Control) Order, (1943) Cl. 14.

AIR 1947 Pat 181=48 Cr L J 483.

——Construction.

Clause 15A must be read as a whole and cannot be anything more than a proviso to Cl. 14 and an accused person who claims the benefit of that proviso must bring his case clearly within its purview by establishing that he had fulfilled the conditions prescribed by the Textile Commissioner under which alone possession of cloth was

COTTON CLOTH AND YARN (CONTROL) ORDER (1943), Cl. 15A

permissible in spite of the provisions of Cl. 14. (Mulla and Yorke JJ.) Chottey v. Emperor,

AIR 1947 All 394=1947 A W R (HC) 39=1947 A L J 103=1947 O A H C B 15=229 IC 539=48 Cr L J 443.

——Contravention of—When amounts to.

A mere breach of Cl. 15A is not 'contravening" it but the failure to comply with it would amount to a contravention of it only if it is without lawful excuse. Where, therefore, a dealer in cloth keeps certain loose cotton cloth in his possession after 21-9-45 which was manufactured before 1-8-43 as the Textile Commissioner issued no directions or instructions under Cl. 18B with a view to securing compliance with the various injunctions contained in the Order, the dealer cannot be held to have contravened the provisions of Cl. 15A and therefore he commits no offence under R. 81 (4), Defence of India Rules. (Lokur and Rajadhyaksha JJ.) Emperor v. Gokuldas,

A I R 1947 Bom 28=48 Bom L R 545=I L R (1946) Bom 901=229 I C 105=48 Cr L J 233.

—Cl. 18A.

——Order issued by Textile Commissioner directing delivery of yarn to persons of specified categories—Respondent company infringed the Order—No contract of sale—Goods seized — If justified — Application under S. 45, Specific Relief Act—If tenable.

The Textile Commissioner of Madras issued an order under Cl. 18B (1) (b) directing the appellant Mills to confine its delivery of yarn to three categories of persons, with a view to secure a proper distribution of cloth and yarn. In spite of the order, the appellant continued to deliver yarn to weaver S whose handlooms were situate outside mill premises. The yarn so delivered was not sold to the weavers. It was delivered to them on certain conditions. The Textile Commissioner considered this course to be an infringement of his order and seized certain quantities of yarn. This led the appellant to file a petition under S. 45 of Specific Relief Act :

Held, that the respondent had not travelled beyond his authority under Cl. 18B (1) (b). He gave appellant the right to supply yarn to specified persons, but these persons did not include outside handloom weavers. Admittedly the contracts entered into with those weavers were not contracts for sale, but were contracts of bailment. Anyway it was a delivery against the order under Cl. 18B (1) (b); so the action of respondent was quite justified. And hence an application under S. 45 of the Specific Relief Act did not lie. (Leach C. J. and Lakshmana Rao J.) Shree Meenakshi Mills v. Provincial Textile Commissioner Madras,

AIR 1947 Mad 82=(1946) 2 M L J 188=59 L W 461 =1946 M W N 569=230 I C 69.

—Cl. 23.

——Order sanctioning prosecution — Order signed by Under Secretary for Additional Under Secretary.

Where the order sanctioning the prosecution of the accused purported to be an order of Governor of Bihar, but the Under Secretary who signed the order did not purport to sign it in his capacity as Under Secretary but signed 'for the Additional Under Secretary".

Held, that such signature was not proper authentication of the order as laid down in R. 1 of the Notification and, therefore, the order sanctioning the prosecution of the accused was defective. (Das and Narayan JJ.) Province of Bihar v. Chheddilal Sharma,

AIR 1950 Pat 95=51 Cr L J 584.

——(Before its amendment in 1944) — Sanction of Provincial Government—Letter of cloth controller.

When sanction is necessary for starting criminal prosecution against a person, absence of such sanction is fatal to the criminal proceedings : **AIR 1945 F C 16, Rel. on :**

COTTON CLOTH AND YARN (CONTROL) ORDER (1943), Cl. 23

Held that a letter from the cloth controller (before the amendment of cl. 23 in 1944) sanctioning a prosecution was not an order by the Provincial Government sanctioning prosecution. (Imam J.) Dwarka Prasad v. Emperor,

AIR 1948 Pat 290=49 Cr L J 375.

——Charge need not follow exact terms of sanction.

The giving of sanction confers jurisdiction on the Court to try the case and the Judge or Magistrate having jurisdiction must try the case in the ordinary way under the Code of Criminal Procedure. The charge need not follow the exact terms of the sanction though it must not relate to an offence essentially different from that to which the sanction relates. (Lords Uthwatt, Du Parcq, Oaksey and Sir John-Beaumont) Gokulchand Dwarkadas Morarka v. Emperor,

AIR 1948 P C 82=52 C W N 325=1948-1 M L J 243 =61 M L W 257=1948 M W N 292 = 1948 A L J 170 =75 I A 30=50 Bom L R 399=49 Cr L J 261 (PC).

——Facts in respect of which sanction was given should either be referred to on face of sanction or it must be proved by extraneous evidence that they were placed before sanctioning authority—Sanction not doing this is invalid and defect cannot be cured under S. 537, Criminal P. C.

A sanction which simply names the person to be prosecuted and specifies the provision of the order which he is alleged to have contravened is not a sufficient compliance with Cl. 23. In order to comply with the provisions of Cl. 23 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the fact should be referred to on the face of the sanction, but this is not essential since Cl. 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction. They are not concerned merely to see that the evidence discloses a prima facie case against the person sought to be prosecuted. They can refuse sanction on any ground which commends itself to them, for example, that on political or economic grounds they regard a prosecution as inexpedient. Where facts are not referred to on the face of the sanction, nor is it proved by extraneous evidence that they were placed before the sanctioning authority, the sanction is invalid, and the trial Court would not be a Court of competent jurisdiction. This being so the defect cannot be cured under S. 537, Criminal P. C., as a defect in the jurisdiction of the Court can never be cured under S. 537. (Lords Uthwatt, Du Parcq, Oaksey and Sir John Beaumont) Gokulchand Dwarkadas Morarka v. Emperor

AIR 1948 P C 82 = 52 C W N 325 = 1948-1 M L J 243 = 61 M L W 257=1948 M W N 292=1948 A L J 170=75 I A 30=50 Bom L R 399=49 Cr L J 261 (PC).

——Sanction not mentioning nature of offence—Sanction defective.

The sanction for a prosecution for the contravention of any of the provisions of the Cotton Cloth and Yarn (Control) Order should either contain some specific details regarding the offence for which the prosecution is sanctioned, or at any rate, if these details are not given in the actual sanction, there should be placed on the file copies of the correspondence by which the sanction was procured which would relate the sanction to the offence with which the accused is charged. Where neither of these things is done, the sanction is defective, and the accused

COTTON CLOTH AND YARN (CONTROL) ORDER (1943), Cl. 23

should be acquitted : A I R 1944 F C 25, Rel. on; A I R 1947 Bom 151, Ref. (Cornelius and Falshaw JJ.) Emperor v. Kishori Lal

AIR 1948 Lah 92=49 Cr L J 170.

——Sanction must be legally proved before prosecution can be entertained — Charge-sheet purporting to contain sanction of District Magistrate under Cl. 23—No evidence that word "sanctioned" was affixed on charge-sheet by District Magistrate — No other evidence given to prove sanction — Sanction held not legally proved. (Khundkar and Chakravartti JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Moazzem Hossain

AIR 1947 Cal 318=48 Cr L J 815.

——Previous sanction — Words relate to prosecution for contravention—Government must show that sanction had been given—Sanction not specifying act of contravention —Sanction is insufficient.

The words "the previous sanction" in Cl. 23 relate to a prosecution for a contravention, and it is incumbent on Government in each case to show that such a sanction had been given. Where a resolution of Government, whereby the sanction is given does not specify any particular act of contravention in respect of which a breach of the Order is alleged, it cannot be regarded as a sufficient sanction within the meaning of Cl. 23. (Stone C. J. and Bavdekar J.) Emperor v. J. C. D'Souza

AIR 1947 Bom 151=48 Bom L R 754=230 I C 272= ILR (1946) Bom 111=48 Cr L J 588.

——Contravention of Order — Prosecution for, without previous sanction under Cl. 23 is wholly void — Subsequent sanction cannot validate it.

A prosecution for the contravention of the Order instituted without previously obtaining the sanction under Cl. 23 is wholly void. A sanction subsequently obtained cannot validate proceedings already taken. Fresh proceedings must be instituted after the sanction is obtained : A I R 1945 All 214; A I R 1945 F C 24 and A I R 1945 F C 16, Rel. on. (Sale J.) Hans Raj v. Emperor

AIR 1947 Lah 243 = 48 P L R 321 = 228 I C 35 = 1947 A W R Sup 19=1947 O A Sup 19=48 Cr L J 72.

——Issue of warrant without sanction—Subsequent submission of charge sheet—Validity of proceedings.

Where a Magistrate commences the prosecution of a case by issuing a warrant of arrest, the submission of a charge sheet subsequeutly would not have the effect of altering the date of the initiation of the prosecution; and if the prosecution has been commenced without sanction the entire proceedings are in contravention of Cl. 23 and must be regarded as null and void ab initio : A I R 1945 F C 16, Rel. on. (Sen J.) Hariram Agarwalla v. Emperor

AIR 1947 Cal 420.

——Notification under, authorising District Magistrates to sanction prosecutions for an offence under Order — Interpretation of—Sanction to prosecute under R. 81 (4), Defence of India Rules, is valid.

The Notification No. 9418-9218-VII-P. C., dated 9-12-1944 issued by the Provincial Government under Cl. 23, Cotton Cloth and Yarn (Control) Order, 1943, authorising District Magistrates 'to sanction prosecutions for an offence punishable under the said Order' was clearly intended to authorise the District Magistrates to sanction prosecutions for the contraventions of any of the provisions of that Order which was punishable under R. 81 (4), Defence of India Rules. The words 'for an offence punishable under the said Order,' in the notification being meaningless in that the Order did not provide for the punishment of the contravention of any of the provisions of that order, could very well be ignored as they did not

COTTON CLOTH AND YARN (CONTROL) ORDER (1943), Cl. 23

destroy the effect of the preceding part of the notification which was perfectly plain in meaning and capable of giving effect.

A conviction under R. 81 (4) for contravening the provisions of the order is not, therefore, liable to be set aside on the ground that the sanction to prosecute given under the said notification is invalid. (Niyogi and Bose J.) Provincial Govt., C. P. and Berar v. Habib Mohammad

AIR 1947 Nag 45 = 1946 N L J 487 = 226 I C 178= ILR (1946) Nag 930=47 Cr L J 840.

——Notification dated 9th December 1944—If valid.

In pursuance of Cl. 23, the Provincial Government authorized all District Magistrates in Central Provinces and Berar within their respective jurisdiction to sanction prosecution for an offence punishable under the said Order. The words "for an offence punishable under the said Order", found in the end of the notification are meaningless for the reason that the Cotton Cloth and Yarn (Control) Order 1943 does not provide for the punishment of the contravention of any of the provisions of that order. The contravention of any of the provisions of that Order is punishable under R. 81 (4) of the Defence of India Rules. The proper wording should have been 'for the contravention of any of the provisions of this Order punishable under R. 81 (4) of the Defence of India Rules.' The inartistic expression which occurs in the Provincial Government's Notification does not invalidate the whole thing. It is open to the Court to read the Notification leaving out the last meaningless clause, or to add to it certain words which would invest it with meaning, in view of the intention clearly conveyed, by the earlier part of the Notification. (Niyogi and Bose JJ.) Provincial Govt., C. P. & Berar v. Haji Habib

AIR 1947 Nag 45=1946 N L J 487=ILR (1946) Nag 930=226 I C 178=47 Cr L J 840.

——Sanction to prosecute — Sanction should be obtained against each individual accused.

It is the duty of the sanctioning authority to consider in the case of each accused whether a prosecution should be instituted or not. Prosecution must be sanctioned in respect of each accused person.

One A was the licensed owner of a cloth shop and B was the manager. A search was made of the shop and an application was made by police to the District Magistrate for sanction for prosecution of B. The District Magistrate sanctioned the prosecution. Before the case was taken up for hearing, an application was made to the District Magistrate for sanction of prosecution of A also. The District Magistrate did not decide that A ought to be prosecuted but directed that the prosecution should apply to the trying Magistrate for A's prosecution on the strength of the previous prosecution of B :

Held, that there was no sanction for prosecution of A as required by R. 23 and A's prosecution and conviction under R. 14 (2) were, therefore, without jurisdiction. (Derbyshire C. J. and Lodge J.) Pramatha Nath Mandal v. Emperor

AIR 1946 Cal 330 = 50 C W N 371 = 223 I C 322= ILR (1946) 1 Cal 539=47 Cr L J 510.

——Institution of prosecution—Sanction obtained subsequently—Effect.

Where sanction is obtained after the institution of the prosecution and it is not for the particular offence with which the accused were charged, the sanction cannot validate the trial. It is not open to the Courts to say that it is a mere irregularity which does not vitiate the proceedings. (Malik J.) Bhikka Mal v. Emperor,

A I R 1945 All 214=1945 A L J 180 = 1945 A W R (HC) 174=1945 O W N (HC) 192 = 1946 All Rul 1 = ILR (1945) All 617=220 I C 324=46 Cr L J 678.

COTTON CLOTH AND YARN (CONTROL) ORDER (1943), Cl. 23

——Previous sanction, necessity of.

Clause 23 of the Cotton Cloth and Yarn (Control) Order, 1943, must be strictly complied with and before a Magistrate can have any jurisdiction to entertain a case for the contravention of the Control Order, there must be previous sanction for the prosecution obtained from the Provincial Government. Conviction and sentence obtained without such sanction are illegal.

A carbon copy of a Government order in proof of the sanction is not admissible (Malik J.) Ahmad Mujtaba v. Emperor

I L R (1945) All 644=1945 A W R (HC) 175=1945 A L J 203=1945 O W N (HC) 165.

——Sanction — Conviction under Cls. 8 and 3 of Bihar Cotton Cloth and Yarn Dealers (Licensing and Control) Order, 1944.

Clause 8 of the Bihar Order does not create an offence. It has to be read along with and as supplemental to the Control Order. A prosecution under Cl. 8, therefore, without the previous sanction of the Provincial Government is illegal.

But a conviction under Cl. 3 is not bad for want of a sanction of the Provincial Government for such conviction is not covered by the Control Order. (Meredith and Sinha JJ.) Manohar Lal v. Emperor,

A I R 1945 Pat 477=24 Pat 487=27 P L T 46.

[Overrules

(1) Rek Chand v. Emperor, Cr. Misc. No. 322 of 1944 (Pat).
(2) Bishwa Nath Ram v. Emperor, Cr. Rev. Nos. 96 and 98 of 1945 (Pat).
(3) Johuri Mall v. Emperor, Cr. Rev. No. 1222 of 1944 (Pat).]

COTTON CLOTH AND YARN (CONTROL) ORDER (1945)

—Cl. 3.

——Cl. 3 (a)—Ready made clothing—Meaning of—(U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order (1945), Cl. 2 (a))—(Words and Phrases).

The expression 'ready-made clothing' must mean clothing which is ready for immediate use and which is meant for such use. It cannot mean an article which may not be meant for immediate use in the form in which it is, but just happens to be in the shape of any article of apparel.

The articles recovered from the accused's possession consisted of ten yards pieces of white cambric cloth roughly sewn together with a loop of markin (inferior cloth) at one end for passing through the waist-cord. In as many as 74 out of 133 loops did not even have the opening for putting in the waist-cord. The whole thing, if a lehnga, in that form and of that cloth was likely to be used, would have to be resewn :

Held that the articles recovered could not be said to be ready-made 'lehngas'. They did not, therefore, come within the ready-made clothing exempted from the definition of cloth. (Raghubar Dayal and Agarwala JJ.) Murlidhar Dalmia v. State,

A I R 1953 All 245 = 1952 A W R (HC) 664 = ILR (1953) 1 All 834=1953 A L J 129=1953 Cr L J 612.

— Cl. 12.

——Clause 12 (1) — Offence of profiteering — Sentence—Not only imprisonment but deterrent fine must be imposed — Sentence of one year's rigorous imprisonment and fine of two lakhs of rupees upheld—See Essential Supplies (Temporary Powers) Act (1946), S. 7,

A I R 1948 Bom 358=49 Cr L J 518.

COTTON CLOTH AND YARN (CONTROL) ORDER (1945)

—Cl. 13.

——Cl. 13 (1) (c)—Breach of — Conviction under Defence of India Rules — Property seized — Order for disposal — Propriety—See Criminal P. C. (1898), S. 439,

A I R 1953 All 245=1953 Cr L J 612.

—Cl 14.

——Provision forbidding possession of time-expired cloth is not unworkable.

The provision forbidding possession of time-expired cloth is not unworkable and the conviction of the accused for having been in possession of such cloth is proper, there being no lawful excuse for the continued possession of the time-expired cloth : A. I. R. 1945 Nag. 249, Not foll. (Davis C. J. and Constantine J.) Hukumal Asoomal v. Emperor,

A I R 1947 Sind 79=231 I C 80=48 Cr L J 674.

—Cl. 18,

——Cl. 18 (2) — "Normal requirements"—Meaning of — Factors to be taken into consideration — See Defence of India Rules (1939), R. 81 (4),

A I R 1950 Orissa 121=51 Cr L J 986.

——Cl. 18 (2)—Accused taking stocks of yarn to railway station — Accused not holding stocks which were held by his master— Clause held did not apply. (Das and Narayan JJ.) Province of Bihar v. Chhedilal Sharma,

A I R 1950 Pat 95=51 Cr L J 584.

——Cl. 18 (2) — Words "other person' do not include person who is not connected with trade or manufacture of cloth or yarn—Manufacturer of caps not dealing in cloth cannot come under clause. A I R 1948 Cal 78 (1) and A I R 1950 Cal 108 : 51 Cri L J 556, Ref. (Malik C. J.) Rex v. Balla Ram,

1949 All Cr Cas 99=1949 A W R H C 432.

——Cl. 18 (2)—'Normal requirements'—Person in possession of more than five yards of cloth.

It may be that a person is not entitled to get more than five yards of cloth for a particular period; but there is no rule, order, ordinance or any other kind of law which says that a person cannot accumulate cloth which he purchased over a long period of time or that he cannot receive as presents cloth legitimately purchased by his friends or relations. Hence a person found in possession of more than five yards of cloth does not contravene Cl. 18 (2). (Sen J.) Prag Das Lakhutia v. Emperor,

A I R 1948 Cal 78 (1)=49 Cr L J 31 (2).

—Cl. 22.

——Prosecution under Defence of India Rules for breach of Cotton Cloth and Yarn Control Order — Seizure of property—Order under Cl. 22—Propriety — See Criminal P. C. (1898), S. 439

A I R 1953 All 245=1953 Cr L J 612.

—Cl. 23.

——Sanction — Facts constituting offence not set out — Effect.

Where the facts constituting the offence are not set out in the order sanctioning the prosecution under Cl. 23 and where no extraneous evidence is let in to prove that the facts constituting the offence were placed before the sanctioning authority, the sanction is not validly granted under Cl. 23. (Chandra Reddi J.) In re Shah Vajanji Kasturchand,

A I R 1950 Mad 450=1951 M W N 369=1951 M W N (Cr) 97=1950-1 M L J 341 = 51 Cr L J 1061.

——Sanction for prosecution for contravention of Order — Sanction signed by Additional Under-Secretary on behalf of Provincial Government — Sanction is not properly authenticated—Conviction must be set aside.

A sanction for prosecution for contravening S. 18 (2) of the Cotton Cloth and Yarn Control Order, 1945 was pur-

COTTON CLOTH AND YARN (CONTROL) ORDER (1945), Cl. 23

ported to "be signed on behalf of the Provincial Government by an Additional Under-Secretary to Government" who was not one of the persons referred to in Notification No. 2094A, dated 1-5-1937 issued under S. 59, Government of India Act, 1935. The accused was tried and convicted upon such sanction.

Held that the sanction was not properly authenticated and, therefore, the conviction must be set aside. (Agarwala C. J.) Bilas Rai Bohit Ramla v. The King,

A I R 1950 Pat 75=30 P L T 330=51 Cr L J 549.

——Provincial Government delegating to District Magistrate its power to sanction prosecution relating to disposal of cloth — It is sufficient to cover three classes of cases referred to in Cl. 14.

Where the Provincial Government had delegated to the District Magistrate its power to sanction prosecution relating to the disposal of cloth :

Held that the word 'disposal' was used to cover the three classes of cases (i. e. buying, or selling or having in possession) relating to time expired cloth referred to in Cl. 14. (Davis C. J. and Constantine J.) Hukumal Asoomal v. Emperor,

A I R 1947 Sind 79=231 I C 80=48 Cr L J 674.

——Sanction for prosecution not on record — Complaint containing allegation that necessary sanction has been given — Giving of sanction not challenged in lower Courts —High Court will presume sanction in proper form and will not interfere in revision.

Though it is desirable, as a matter of routine, that a certified copy of the previous sanction required for prosecution for the contravention of any of the provisions of the Order should always be brought on record at the beginning of a case as the basis of the Court's jurisdiction, that does not mean that where this has not been done, no presumption that sanction was ever given can be raised. Where the complaint contains the allegation that the necessary sanction has been given and the giving of the sanction has not been challenged in the trial Court where ample opportunity existed for doing so or in the Court of Session, the High Court will not allow the point to be raised in revision but will presume the giving of sanction in proper form : A I R 1930 P C 193 and A I R 1934 P C 217, Rel. on; A I R 1944 F C 25, Ref. (Davis C. J. and Constantine J.) Hukumal Asoomal v. Emperor,

A I R 1947 Sind 79=231 I C 80=48 Cr L J 674.

COTTON DUTIES ACT (II of 1896)

—S. 16.

——Scope — Free access to godown is covered by the section.

Where the accused had notice to remove the lock and to give the complainant free access and he declined to do so:

Held, there was wilful obstruction on the part of the accused. (Shah Ag. C. J. and Fawcett J.) Mukundlal Bansilal v. King-Emperor,

A I R 1924 Bom 492=26 Bom L R 721 = 82 I C 353 =25 Cr L J 1281.

—S. 25.

——S. 25, Cl. 9—Wilful obstruction does not require any overt act.

The Inspector of cotton excise wanted access to the godown of the accused's mill for inspection of the goods or account books. The godown was locked. The requisition of the complainant to have it opened was not complied with. It was not suggested in the case that the accused had not the necessary control over the key and that he was not in a position to open the godown if he was minded to do so.

Held, under these circumstances if the accused refused to open the godown, he undoubtedly caused an obstruction to the free access to this godown to which the complainant was entitled. It does not matter as to what the object of the complainant was in asking the accused to open the godown. Obstruction is caused no less because the purpose for which it was wanted is not established as alleged by the complainant. (Shah Ag. C. J. and Fawcett J.) Mukundlal Bansilal v. King-Emperor,

AIR 1924 Bom 492=26 Bom L R 721=82 I C 353= 25 Cr L J 1281.

COTTON DUTIES ACT (II of 1896), S. 25

COTTON TEXTILE (CONTROL OF MOVEMENT) ORDER (1946)

—Cl. 3.

——Government of Bihar Notification No. 16100 S. T. dated 3-6-46, Cl. 3 (a)—Prosecution of accused for contravening notification—Sanction under Cl. 10 of order is not necessary. A. I. R. 1946 Pat 285, Rel. on; A. I. R. 1945 Pat 375 and A. I. R. 1946 Pat 285, Ref. (Ray C. J., Jagannadhadas and Narasimham JJ.) State v. Haricharan Rakshit,

A I R 1950 Orissa 114=15 Cut L T 123=I L R (1949) 1 Cut 787=51 Cr L J 914 (SB).

—Cl. 6.

——Order stating that notice would be given by publication in Gazette of India and by issue of Press note—Absence of Press note will not invalidate order—Effect of absence of Press note is that notice to accused will not be presumed and would require proof — Knowledge of accused can be inferred from their conduct. (Sapru and Wanchoo JJ.) State v. Sagar Mal,

AIR 1951 All 515=I L R (1952) 2 All 543=52 Cr L J 225.

—Cl. 10.

——Proof of sanction—Evidence Act (1872), Ss. 74, 77.

Where sanction appears on the charge-sheet submitted by the police the original sanction itself is available to the Court and no formal proof of it is necessary. Further the sanction is a public document which can always be proved as provided for in S. 77, Evidence Act, by producing a certified copy prepared under S. 76 of that Act. (Sapru and Wanchoo JJ.) State v. Sagar Mal,

AIR 1951 All 515=I L R (1952) 2 All 543=52 Cr L J 225.

——Sanction if should be in prescribed form.

There is no form prescribed for according sanction. Therefore in a case where the facts are all given briefly in the charge-sheet and the offence that is made out is also mentioned and the order sanctioning prosecution appears on the same charge-sheet, the inference that the District Magistrate did apply his mind to the facts of the case before he ordered prosecution can be drawn. (Sapru and Wanchoo JJ.) State v. Sagar Mal,

A I R 1951 All 515=I L R (1952) 2 All 543=52 Cr L J 225.

——Offence under Cl. 3—Sanction for prosecution — District Magistrate authorised under Cl. 10 on 21-6-1947 by notification in Gazette of India—Charge-sheet submitted on 21-8-1947—Sanction for prosecution given subsequently—Held, the District Magistrate had authority and the sanction was valid. (Sapru and Wanchoo JJ.) State v. Sagar Mal,

A I R 1951 All 515=I L R (1952) 2 All 543=52 Cr L J 225.

——Sanction not showing facts on which it was obtained.

Where the sanction under S. 10 or the record of the trial Court does not show as to what facts were placed before the sanctioning authority for obtaining the sanction the sanction is invalid. (Atma Charan J. C.) Janwahar v. Rex,

A I R 1950 Ajmer 20=51 Cr L J 890.

COTTON TEXTILE (CONTROL OF MOVEMENT) ORDER (1946), Cl. 10

——Contravention of Bihar Notification No. 16100 S T dated 3-6-46, Cl. 3 (a)—Sanction under Cl. 10 of the order if necessary to prosecute offender—See ibid, Cl. 3.

AIR 1950 Orissa 114=51 Cr L J 914 (SB).

COTTON TEXTILE (CONTROL OF MOVEMENT) ORDER (1948)

——Validity—See Essential Supplies (Temporary Powers) Act, 1946, S. 3,

AIR 1953 Nag 58=1953 Cr L J 481.

—Cl. 3.

——Right to dispose of or transport cotton textiles—Deprivation of — Constitution of India, Art. 19 (1) (f) and (g).

Clause 3 of the Order does not deprive a citizen of the right to dispose of or transport cotton textiles purchased or produced by him but only requires him to obtain a permit, general or special, from the Textile Commissioner to enable him to transport them. The requirement of a permit in this regard cannot be regarded as an unreasonable restriction on a citizen's rights under sub-clauses (f) and (g) of Art. 19 (1), Constitution of India. (Sinha C. J. and Mudholkar J.) Hiralal Sutwala v. State,

A I R 1953 Nag 58=I L R (1952) Nag 770=1953 Cr L J 481.

——Cls. 3, 4, 5 and 6—Repeal by, of Railways Act (1890), Ss. 27, 28 and 41.

Clauses 3, 4, 5 and 6 of the Cotton Textiles (Control of Movement) Order, 1948, do not operate as an implied repeal of Ss. 27, 28 and 41 of the Railways Act. These Clauses are all constitutional. (Sinha C. J. and Mudholkar J.) Hiralal Sutwala v. State,

A I R 1953 Nag 58=I L R (1952) Nag 770=1953 Cr L J 481.

——Cls. 3 to 6 — Rights of citizen against Railway administration are not taken away — Railways Act (1890), Ss. 27, 28 and 41.

The Cotton Textiles (Control of Movement) Order, 1948, does not whittle down the rights of a citizen against the Railway administration at all but merely imposes certain restrictions on the citizen himself. If the Railway administration does something in derogation of a citizen's right under Ss. 27 and 28 of the Railways Act, the citizen will be entitled to seek redress under S. 41 of that Act. There is nothing in the Order which takes away the citizen's right to obtain relief under S. 41 where his complaint is that the Railway administration has deprived him of his rights under Ss. 27 and 28.

Neither the right against the Railway administration nor the remedy against it having been abrogated or even impaired by the Order it cannot be said that the two laws cannot stand together. Thus, .Ss. 27, 28 and 41 of the Railways Act do not preclude the Central Government from imposing any restrictions or from interfering with traffic facilities or from practising discrimination. (Sinha C. J. and Mudholkar J.) Hiralal Sutwala v. State,

A I R 1953 Nag 58=I L R (1952) Nag 770=1953 Cr L J 481.

——No inconsistency with State laws — See East Punjab Cotton Cloth and Yarn (Regulation of Movement) Order (1948), Cl. 3,

AIR 1951 Punjab 409=52 Cr L J 886.

——General permit, cls. (2) and (3) — Railway parcel—Meaning.

A comparison of the language of cls. (2) and (3) of the general permit makes it quite clear that the Textile Commissioner intends to draw a distinction between a passenger's personal luggage and a railway parcel, and between goods carried by a goods train and goods carried by a passenger train. Clause (3) of the permit is not intended to apply to personal luggage at all, and, therefore, railway parcel does not include personal luggage as used in the general permit. (Agarwala C. J.) Ramswarath v. King,

AIR 1951 Pat 411=52 Cr L J 347.

COTTON TEXTILE (CONTROL OF MOVEMENT) ORDER (1948), Cl. 3

——General permit, cls. (2) and (3)—Applicability.

Clause (3) of the permit is intended to permit an unlimited quantity of textiles by passenger train only if it does not constitute the personal luggage of a passenger travelling by train. If it constitutes the personal luggage of a passenger, it is governed by cl. (2) and the amount is limited to 10 pounds in weight. A person who, therefore, carries in his compartment as his personal luggage cloth weighing 2 mds., 20 srs., contravenes the provisions of the Order. (Agarwala C. J.) Ramswarath v. King,

AIR 1951 Pat 411=52 Cr L J 347.

——Conviction under—Sentence—See Essential Supplies (Temporary Powers) Act, S. 7,

AIR 1951 All 515=52 Cr L J 225.

——General Permit No. 1, para 3 — Transport of cloth exceeding 10 lbs. by train.

Under para. 3 of General Permit No. 1 (Notification No. 101/19-Tex-1/48, dated 10-9-1948), it is not permissible to transport 'cloth' exceeding ten pounds in weight by a passenger train unless it is booked as a railway parcel. (Atma Charan J. C.) Sugan Chand v. Rex,

AIR 1950 Ajmer 24=51 Cr L J 1075.

—Cl. 4.

——Rights of citizen against Railway administration not taken away—See ibid, Cl. 3,

AIR 1953 Nag 58=1953 Cr L J 481.

—Cl. 5.

——Rights of citizen against Railway administration not taken away—See ibid, Cl. 3,

AIR 1953 Nag 58=1953 Cr L J 481.

—Cl. 6.

——Rights of citizen against Railway administration not taken away—See ibid, Cl. 3,

AIR 1953 Nag 58=1953 Cr L J 481.

—Cl. 21.

——Scope of enquiry under S. 11, Ess. Sup. (Temp. Powers) Act, 1946 — See Essential Supplies (Temporary Powers) Act (1946), S. 11,

I L R (1953) 5 Assam 293.

—Cl. 23.

——Cl. 23 (d)—Conviction under—Mens rea—See Essential Supplies (Temporary Powers) Act (1946), S. 7,

AIR 1953 Punjab 204=1953 Cr L J 1313.

—Cl. 24.

——Charge under — Goods seized — Proper order to be passed—See Essential Supplies (Temporary Powers) Act (1946), S. 7 (1),

AIR 1952 Cal 139=1952 Cr L J 349.

—Cl. 28.

——Cl. 28 (3)—Scope of enquiry under S. 11, Essential Supplies (Temporary Powers) Act, .1946—See Essential Supplies (Temporary Powers) Act (1946), S. 11.

ILR (1953) 5 Assam 293.

COUNSEL

See (1) Bar Councils Act.
(2) Legal Practitioner.
(3) Legal Practitioners' Act.

—Authority of—See Criminal P. C., Ss. 205, 255.

—Right of, to appear in Criminal Cases—See Criminal P. C., Ss. 4 (1) (r) and 340.

COUNTER CASES

—Evidence in — Mode of taking — See Criminal P. C., S. 353.

COUNTER CASES

—Procedure as to trial and decision — See Criminal P. C. (1898), Ss. 233, 344, 353, 366.

—Relevancy of evidence in—See Evidence Act, S. 33; Criminal P. C., S. 233.

—Stay of proceedings in—See Criminal P. C., S. 344.

COUNTERFEIT COIN

See Penal Code, S. 232.

COUNTERFEITING

See Penal Code, Ss. 231, 235, 243.

COUNTERFEITING STAMP

See Penal Code, S. 260.

COUNTERFEITING TRADE MARK

See Penal Code, S. 482.

COURT

—Appellate Court—See Criminal P. C., S. 423.

—Classes of Criminal Court—See Criminal P. C., S. 6.

—Language of—See Criminal P. C., S. 558.

—Revisional Court — See Criminal P. C., Ss. 435 and 439.

—What is—See Criminal P. C., 1898, Ss. 6, 195, 435 and 476.

COURT-FEES ACT (VII of 1870)

—S. 7.

——S. 7 (ii), Sch. II, Art. 17 (iii)—Suits for maintenance.

When a person sues for maintenance at a particular rate whether or not she has already been refused maintenance by the Magistrate under S. 488, Cr. P. C., she is clearly making a money claim, whose value for purposes of taxation can be assessed in the manner given in S. 7, Court-fees Act.

When a Magistrate having ordered maintenance, the husband or father comes to the Civil Court, he does not exactly ask for the cancellation of a specific monetary liability; what he can urge is that there are circumstances which entitle him to a declaration that the person concerned is not his wife or child or that the right to maintenance has been lost by her or his own conduct. In such a case it is a suit for declaration about status or a disqualification. Such suit is not to be taxed 'ad valorem', but under Sch. 2, Art. 17, cl. (iii) of the Act, and the appropriate local amendment, if any, to that Article.

Where there is a suit for reduction of maintenance fixed by a decree, the suit should not be taxed 'ad valorem', while one for the increase in the maintenance should be so taxed. (Krishnan J. C.) Mt. Durghatia v. Ayodhya Prasad,

AIR 1953 Vind P 28=1953 Cr L J 1214.

——Ss. 7 (xi) (cc) and S. 7 (v)—Suit against ex-tenant for possession—Court-fee.

The court-fee payable on a plaint is to be determined on the nature of the allegations in the plaint and not on what is set up in the written statement. Therefore although in a suit by landlord against tenant for recovery of possession of property on the termination of tenancy the plaint contains an allegation that in reply to a notice by the landlord the tenant set up a false claim to occupancy right in the suit land, court-fee would be leviable under S. 7 (xi) (cc) and not under S. 7 (v). (Chandra Reddi J.) In re Annadhana Katlai,

AIR 1951 Mad 206=64 M L W 207 = 1951-1 M L J 466=1951 M W N 315.

—S. 19.

——S. 19 (17)—Application by counsel of accused—Adjournment application.

COURT-FEES ACT (VII of 1870), S. 19

An application filed by an advocate or counsel on behalf of the prisoner and purporting to be from the prisoner himself, is a petition "by a prisoner" within the meaning of S. 19 (17), and the fact that it was an adjournment application made by the counsel for his personal convenience is immaterial: AIR 1922 U B 14; 14 N L R 77 and AIR 1924 Rang 160, Rel. on. (King J.) Bhaya Lal v. Emperor,

AIR 1930 All 261=52 All 542=I R 1930 A 875=126 I C 827=1930 Cr C 373=11 L R A Cr 45 = 1930 A L J 682=31 Cr L J 1121.

——Appeal or revision.

A petition of appeal or revision signed and filed by an advocate or pleader on behalf of a prisoner under an authority signed by the prisoner, need not bear a Court-fee stamp. (Robinson C. J.) In re Court-fees Act, S. 19,

AIR 1924 Rang 160=76 I C 869=1 Rang 510=25 Cr L J 277.

——S. 19, Cl. XVII—Prisoner in remand — Application by advocate—No court-fee necessary.

An application made by the Advocate of a prisoner in duress or under restraint is an application made by the prisoner himself. It has been the practice to accept applications by Advocates on behalf of persons in custody within the meaning of S. 19, cl. XVII, without a court-fee. (Saunder J. C.) Jaganath Kahar v. Emperor,

AIR 1922 U B 14=65 I C 553=23 Cr L J 121.

——S. 19, Cl. XVII—Prisoner—Petition of appeal through pleader.

A petition of appeal presented by a pleader on behalf of the prisoner is exempted from Court-fees. (Batten A. J. C.) Emperor v. Naroti Teli.

AIR 1918 Nag 125 = 14 N L R 77 = 45 I C 158=19 Cr L J 494.

—S. 30.

——Stamps, when can be said to be used—Endorsement by stamp vendor—Erasement of—Whether offence under S. 263, part 2, Penal Code.

Section 30, Court-fees Act, requires, that the Officer of the Court or the head of the office on receiving any document requiring to be stamped under the Act, shall forthwith effect a cancellation of the stamp by punching out the figurehead so as to leave the amount designated on the stamp untouched and the part removed by punching shall be burnt or otherwise destroyed. The endorsements put upon a stamp by the stamp-vendor are the name of the vendor, the name of the vendee and the date of sale. These endorsements are not put upon the stamp for the purpose of showing that it has been used, and therefore, erasement of it and its possession do not come within the purview of the second part of S. 263, Penal Code.

Per Jack J.—The fact that the stamps were not punched does not, of course, necessarily show that an offence could not be committed in respect of them, as there have been a number of cases in which stamps which have been used have been left unpunched and, subsequently, removed probably for nefarious purposes. Of course, if the procedure laid down in the Stamp Act, is properly carried out, every stamp ought to be punched, but experience has shown that punching is often omitted. (Lort-Williams and Jack JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Bazlar Rahman,

164 I C 12=9 R C 193 (2) = 39 C W N 542 = 37 Cr L J 923.

—S. 31.

——Effect—"Fines"—Scope of.

The making of an order under S. 31 does not ordinarily amount to an enhancement of sentence but may be made as an incidental order to bring the judgments into conformity with the law. Section 31 of the Court-fees Act provides that all fees ordered to be repaid under the section

COURT-FEES ACT (VII of 1870), S. 31

shall be recoverable "as if they were fines" but does not thereby make them part of the sentence : 22 M. 153, Dist. (Spencer J.) E. Thimmiah v. Emperor,

A I R 1925 Mad 136 = 47 M L J 355 = 82 I C 141= 47 Mad 914 = 20 M L W 293 = 35 M L T 39 = 1924 M W N 489=25 Cr L J 1213.

——Cognizable cases.

In a cognizable case it is inequitable to order the accused to pay the costs of the complainant. (May Oung J.) Maung San Myin v. King-Emperor,

A I R 1923 Rang 245=81 I C 187=2 Bur L J 37=25 Cr L J 699.

——Cognizable offence

Under S. 31 payment has only to be ordered when the offence is non-cognizable. (Stuart J.) Mingan v. Emperor,

A I R 1923 All 86=81 I C 56=25 Cr L J 568.

——Accused directed to repay the complainant—Court-fee paid on the complaint — Appellate Court if can set aside order.

The appellate Court cannot set aside an order which directs the accused, who was convicted of a non-cognizable offence, to re-pay to the complainant the fee paid by him on the complaint as the direction does not form part of the sentence passed on him for the offence. (Abdur Rahim J.) Emperor v. Maddipatla Subbarayadu,

4 Ind Cas 1130 = 5 M L T 223 = 31 Mad 547=9 Cr L J 83.

——Burma Vaccination Act — See Act (XIII of 1880), S. 18.

4 L B R 12=6 Cr L J 124.

——Enhancement of sentence — Order directing payment of complainant's costs—See Criminal P. C. (1898), S. 423.

29 Mad 188=3 Cr L J 460.

——Complaint under Workmen's Breach of Contract Act (XIII of 1859) — Order awarding expenses of prosecution and Court-fee on complaint — Legality— See Workmen's Breach of Contract Act (XIII of 1859), S. 2.

1 Cr L J 263 (Bom).

—S. 34.

——S. 34(3)—Duty of prosecution-in-charge under S. 34(3) —Stamps sold should be identified.

To establish a charge under S. 34 (3), Court-fees Act, it is necessary for the prosecution to identify the stamps alleged to have been so sold. (Guha and Biswas JJ.) Ram Krishna Sinha v. Emperor,

A I R 1938 Cal 195 = 42 C W N 246=10 R C 693= 174 I C 513=39 Cr L J 417.

——Penal Code (Act XLV of 1860), S. 468—Using stamp for another client altering endorsement of stamp vendor— Offence.

The case of a mukhtear who purchases a court-fee stamp for a client and transfers it to another client is not covered by S. 34, Court-fees Act.

A stamp was purchased for a client and the stamp-vendor wrote his name across it. It was not used for that client and the Vakil's munshi instead of obtaining a refund for the unused stamp, altered the name so as to show the name of another client and not of the first and made use of it for the first time on behalf of the second client :

Held, that the munshi was not guilty of an offence under S. 468, Penal Code, as the evidence did not show that he acted dishonestly. (Harrison J.) Emperor v. Abdul Hakim,

A I R 1931 Lah 337=32 P L R 432=Ind Rul (1931) Lah 821=133 I C 645=32 Cr L J 1051.

—Sch. I, Art. 1.

——Application by advocate for permission to appear and plead in criminal case — Application rejected — Appeal— Court-fee—See Bar Council Act (38 of 1926), S. 14.

A I R 1950 F C 71=51 Cr L J 1035 (FC).

COURT-FEES ACT (VII of 1870)

—Sch. I, Art. 6.

——(Travancore) Court-fees Act (6 of 1087), Sch. 1, Art. 7 —Applicability.

Sch. I, Art. 7, Travancore Court-fees Act corresponding to Sch. I, Art. 6 of Indian Act applied only to civil proceedings and not to proceedings in criminal Court. (Koshi C. J. and Govinda Pillai J.) James Paul Alexandar v. James Arthur Ewards,

A I R 1953 Tra-Co 212 = 1953 K L T 141 = I L R (1953) Tra-Co 69=1953 Cr L J 1236.

—Sch. I, Art. 9.

——(Travancore) Court-fees Act (6 of 1087), Sch. I, Art. 10—Applicability to criminal proceedings.

A copy of judgment or order of a criminal Court should be affixed with court-fee stamp according to the provisions of Sch. I, Art. 10 of the Travancore Act corresponding to Sch. I, Art. 9 of the Indian Act. The expression 'judicial proceeding' in that Article would cover a judgment or order of criminal Court. (Koshi C. J. and Govinda Pillai J.) James Paul Alexandar v. James Arthur Ewards,

A I R 1953 Tra-Co 212 = 1953 K L T 141 = I L R (1953) Tra-Co 69=1953 Cr L J 1236.

——Application for particular order only — Power of Magistrate to compel applicant to pay and take copies of order not applied for—See Criminal P. C. (1898), S. 548.

A I R 1925 Lah 361=26 Cr L J 853.

—Sch. II, Art. 6.

——Bond given by guardian under Guardians and Wards Act falls under Art. 57, Stamp Act and not under Art. 6, Court-fees Act.

Article 6 of Sch. II, Court-fees Act, only refers to the bail bonds or other instruments of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Criminal P. C., or Civil P. C. A bond given by a person under the Guardians and Wards Act as a guardian of the estate of a minor in accordance with the orders of the Court is covered by Art. 57 of the Schedule to the Stamp Act and not by Art. 6, Sch. II, Court-fees Act. (Beaumont C. J., Divatia and Macklin JJ.) Baburao Keshavrao v. Kalavathibai Amrutrao,

A I R 1940 Bom 275 = 42 Bom L R 668 = 13 R B 101=190 I C 224 (SB).

—Sch. II, Art. 17.

——Sch. II, Art. 17 (iii) — Suits for maintenance — See ibid, S. 7 (ii).

A I R 1953 Vin Pra 28=1953 Cr L J 1214.

COURT HOURS

See Criminal P. C., S. 352.

COURT MARTIAL

See (1) Army Act (1911), Ss. 53 to 103.
(2) Government of India Act, 1935, S. 270 (1).

COURT OF APPEAL

See Criminal P. C., S. 423.

COURT OF JURISDICTION

See Criminal P. C., S. 6.

COURTS (EMERGENCY PROVISIONS) REPEALING ACT, 1947 (BURMA ACT, II of 1947)

——Retrospective effect — Repeal of S. 14 (j) and (o) of Courts (Emergency Provisions) Act, 1943 (Burma Act XI of 1943) — Revived S. 25, Evidence Act and S. 164, Criminal P. C., would apply to pending proceedings—Pending proceedings include appeal.

The statutes which affect changes in procedure must be interpreted in their operation as retrospective. The Evidence Act, the Code of Criminal Procedure and S. 14 (j) and (o) of the Courts (Emergency Provisions) Act, 1943

COURTS (EMERGENCY PROVISIONS) REPEALING ACT, 1947 (BURMA ACT, II of 1947)

(Burma Act XI of 1943) are merely statutes regulating procedure. The Courts (Emergency Provisions) Repealing Act, 1947 (Burma Act II of 1947) did not make any specific provisions for pending proceedings. Hence on the repeal of the Courts (Emergency Provisions) Act 1943 by the Repealing Act of 1947, the provisions of S. 25, Evidence Act and S. 164, Criminal P. C., which became revived are applicable to proceedings already commenced at the date of such revival. This would apply to an appeal also as proceedings in criminal appeal are all part of the trial of the accused for an alleged offence, Case law referred. (Roberts C. J., Ba U and E Maung JJ.) King v. Thorpe,

1947 Rang L R 279 (FB).

COURT-WITNESS

See Criminal P. C., S. 540.

COVENANT BY RULER

—Art. 20.

——Applicability—See Constitution of India, Art. 311.

A I R 1953 Tra-Co 130=1953 Cr L J 752 (FB).

COVENANTS OF MADHYA BHARAT RULES

—Art. 13.

——Nature and enforceability of — See Constitution of India, Art. 362.

A I R 1953 Madh Bha 254=1953 Cr L J 1718.

COWS

—Right to kill—See Criminal P. C., S. 133.

CRIMINAL APPEAL ORDINANCE OF TRINIDAD AND TOBAGO (1931)

——Court of Criminal Appeal established under Ordinance —Whether branch of Supreme Court — Person appointed as acting Judge under S. 7 (1), of Judicature Ordinance of Trinidad and Tobago (1880) as amended in 1936, if can act as member of Court of Criminal Appeal — Court of Criminal Appeal composed of Chief Justice and two Acting Judges held not properly constituted — Interpretation Ordinance (XIX of 1933), Ss. 17, 20 — Applicability — Constitution of Court.

The Court of Criminal Appeal established under Criminal Appeal Ordinance, 1931, of Trinidad and Tobago, is not established as a branch of the existing Supreme Court, but as a separate Court of Record, the Judges of which are stated to be the Chief Justice of Trinidad and Tobago and the Puisne Judges of Trinidad and Tobago. The Criminal Appeal Ordinance contains no power to appoint a person to act as a Judge of the Court of Criminal Appeal.

A person appointed under S. 7 (3) of the Judicature Ordinance of Trinidad and Tobago (1880), is not a Puisne Judge of Trinidad and Tobago, nor is he under that provision invested with any powers beyond such as are necessary to enable him to act effectively as a Judge of the Supreme Court. Such person cannot, therefore, sit as a member of Court of Criminal Appeal.

Sections 17 and 20 of the Interpretation Ordinance 1933, deal with the case of one individual being appointed to take the place of another individual, and to act as a substitute for him.

An acting Judge is not a Puisne Judge of the Colony, for the number of Puisne Judges is fixed and cannot be exceeded. Moreover, they are appointed in accordance with instructions received through a Secretary of State, which is not the case with acting Judges.

Where, therefore, an appeal from conviction of the accused is heard by the Court of Criminal Appeal composed of the Chief Justice of the Colony and two acting Judges of the Supreme Court appointed under S. 7 (3) of the Judicature Ordinance, the Court is not properly constituted and its judgment is void and of no effect. (Lords Rusell of Killowen, Romer and Sir George Rankin) Tubal Uriah Butler v. The King,

1939 M W N 1005=43 C W N 1121=6 B R 287=12 R P C 113=185 I C 461=41 Cr L J 206 (P C).

CRIMINAL APPEAL ORDINANCE OF TRINIDAD AND TOBAGO (1931)

CRIMINAL APPEALS

See (1) Criminal P. C., Ss. 404 to 431.
(2) Constitution of India, Arts. 134, 136.
(3) Judicial Committee Rules.
(4) Privy Council.

CRIMINAL BREACH OF CONTRACT

See (1) Act XIII of 1859 (Workmen's Breach of Contract Act).
(2) Penal Code, Ss. 490-492.

CRIMINAL BREACH OF TRUST

See Penal Code, S. 403-409.

—Breach by pawnee — See Contract Act, Ss. 176 and 178.

—By clerk or servant—See Penal Code, S. 408.

CRIMINAL CIRCULARS (BURMA)

—S. 37.

——Scope.

It is contrary to the rule laid down in S. 37 for a judge to be engaged in any other business while the examination of witnesses is going on. (Herbert Thirkell White C. J. and Bigge J.) Nga Saw v. Emperor

11 Bur L R 8=2 Cr L J 133.

CRIMINAL CODE OF CANADA

—S. 498-A.

——S. 498-A, introduced by S. 9 of 25 and 26, Geo. V, c. 56 — Whether ultra vires of the Parliament of Canada —Constitutional Law.

The only limitation on the plenary power of the Dominion to determine what shall or shall not be criminal is the condition that Parliament shall not in the guise of enacting criminal legislation in truth and substance encroach on any of the classes of subjects enumerated in S. 92. It is no objection that it does in fact affect them. If it is a genuine attempt to amend the criminal law, it may obviously affect previously existing civil rights. The object of an amendment of the criminal law as a rule is to deprive the citizen of the right to do that which apart from the amendment he could lawfully do. No doubt the plenary power given by S. 91 (2), does not deprive the Provinces of their right under S. 92 (15), of affixing penal sanctions to their own competent legislation. On the other hand, there is nothing to prevent the Dominion if it thinks fit in the public interest from applying the Criminal law generally to acts and omissions which so far are only covered by provincial enactments. Section 498-A of the Criminal Code of Canada introduced into the Code by S. 9 of 25 and 26, Geo. V, c. 56, is not ultra vires, there being no reason for supposing that the Dominions are using the criminal law as a pretence or pretext or that the Legislature is in pith and substance only interfering with civil rights in the Province. (Lords Atkin, Thankerton, Macmillan, Wright (Master of the Rolls) and Sir Sidney Rowlatt) Attorney-General of British Columbia v. Attorney-General of Canada,

A I R 1937 P C 91=9 R P C 224=168 I C 56 (P C).

CRIMINAL CONSPIRACY

See Penal Code, Ss. 120-A and 120-B.

CRIMINAL COURTS
See Criminal P. C., S. 6.

CRIMINAL FORCE
See Penal Code, Ss. 352 and 353.

CRIMINAL INTIMIDATION
See Penal Code, Ss. 503, 506 and 507.

CRIMINAL JURISPRUDENCE
——Right to inflict punishment by individuals.

Under no law, much less the Islamic law, a person has got a right to inflict punishment on a person supposed to have committed any offence or moral wrong.

Under the law of Pakistan as well as under the Islamic law, the general disrepute would not entitle anybody to punish the persons complained against.

Even if a person is leading an immoral life, nobody has a right to inflict any punishment on him. (Mohd. Shafi J.) Mohd. Zaman v. The Crown,
Pak Cas (1951) Pesh 11=52 Cr L J 362.

CRIMINAL LAW (AMENDMENT) ACT (XIV of 1908)
——Scope.

The application of the procedure of the Criminal Law Amendment Act which was intended "to provide for the more speedy trial of certain offences" to a case under S. 121-A, I. P. C., and which resulted in the detention in custody of the accused for many months without any access to legal advice could hardly have been contemplated. (Jenkins C. J., Brett and D. Chatterjee JJ.) Emperor v. Noni Gopal
15 C W N 593=38 Cal 559=10 I C 582 = 12 Cr L J 286.

——Vakils—Right of audience.

The vakils have no right of audience in cases sent up for trial to the High Court under the provisions of the Criminal Law Amendment Act, 1908. (Harington A. C. J., Brett, Stephen, Mookerjee, Caspersz, Fletcher and Carnduff JJ.) In re Barristers and Vakils,
13 C W N 605=4 I C 297=10 Cr L J 553.

—S. 1.
——(as amended in Madras) — Act before and after its amendment—Invalidity of—Constitution of India, Art. 19 (1) (c) and (4).

Per Full Bench.—The Criminal Law Amendment Act, 1908, became void on the coming into force of the Constitution of India. Further, that Act, as amended in its application to the State of Madras by the Criminal Law Amendment (Madras) Act, 1950, is also void as its provisions are inconsistent with Art. 19 (1) (c). No doubt the Act so amended is in the interests of public order ; but the restrictions imposed by it are not reasonable so as to save it under Art. 19 (4).

Per Rajamannar C. J. and Viswanatha Sastri J., Satyanarayana Rao J. (contra.) — The Act, however, does not contravene the provisions contained in Art. 14 of the Constitution. (Rajamannar C. J., Satyanarayana Rao and Viswanatha Sastri JJ.) Row v. State of Madras,
A I R 1951 Mad 147=1951-1 M L J 628 = 52 Cr L J 515 (F B).

—S. 9.
——S. 9 — Special Bench of High Court — Powers of, charges under S. 302 read with S. 34, Penal Code.

A Special Bench of the High Court constituted under Act XIV of 1908, is competent to try an accused person for an offence under S. 302 of the Penal Code read with S. 34 although S. 34 is not specifically named in the

CRIMINAL LAW (AMENDMENT) ACT (XIV of 1908), S. 9
Schedule. (Jenkins C. J., Mookerjee and Holmwood JJ.) Emperor v. Nogendra Nath Sen Gupta,
A I R 1916 Cal 524=19 C W N 923=21 C L J 396=30 I C 128=16 Cr L J 576.

—S. 12.
——Bail—High Court's power—See Criminal P. C. (1898), S. 498.
11 Cr L J 217 (Cal).

—S. 14.
——Power of Sessions Judge to grant bail.
14 C W N 516=37 Cal 439=11 Cr L J 219.

——Bail—High Court's power—See Criminal P. C. (1898) S. 498.
11 Cr L J 217 (Cal).

—S. 15.
——Ss. 15 and 16—Provisions of, do not offend Art. 19 (1) (c) of Constitution—(Constitution of India, Art. 19 (1) (c).)

Far from imposing restrictions on a citizen's right given by Art. 19 (1) (c), Constitution of India, S. 16 restricts the power of the Provincial Government in the matter of making a declaration by laying down certain requirements for a valid declaration. Assuming that such requirements can be regarded as restrictions on the right of a citizen to form an association, they cannot be regarded as unreasonable. The provisions of Ss. 15 and 16 cannot, therefore, be held to offend the fundamental rights guaranteed by Art. 19 (1) (c). (Thadani C. J.) Prabhat Malla Barooah v. D. C. Kamrup,
A I R 1952 Assam 167=I L R (1952) 4 Assam 18=1952 Cr L J 1659.

——S. 15 (2) (b) (as amended in Madras by Madras Act XI of 1950) — Validity — Constitution of India, Art. 19 (1) (c) and (4).

Section 15 (2) (b) as amended in Madras by the Criminal Law Amendment (Madras) Act, 1950, falls outside the scope of authorised restrictions under Cl. (4) of Art. 19 and is, therefore, unconstitutional and void. The right to form association or unions has such wide and varied scope for its exercise, and its curtailment is fraught with such potential reactions in the religious, political and economic fields, that the vesting of authority in the executive Government to impose restrictions on such right without allowing the grounds of such imposition, both in their factual and legal aspects, to be duly tested in a judicial inquiry, is a strong element which must be taken into account in judging the reasonableness of the restrictions imposed by S. 15 (2) (b) on the exercise of the fundamental right under Art. 19 (1) (c) ; for, no summary and what is bound to be a largely one-sided review by an Advisory Board, even where its verdict is binding on the executive Government, can be a substitute for a judicial enquiry. The formula of subjective satisfaction of the Government or of its officers, with an Advisory Board thrown in to review the materials on which the Government seeks to override a basic freedom guaranteed to the citizen, may be viewed as reasonable only in very exceptional circumstances and within the narrowest limits, and cannot receive judicial approval as a general pattern of reasonable restrictions on fundamental rights. (Patanjali Sastri C. J., Mahajan, B. K. Mukherjea, S. R. Das and Chandrasekhara Aiyar JJ.) State of Madras v. Row, V. G.,
A I R 1952 S C 196=65 M L W 420=1952 S C J 253=1952 M W N 397=1952 M W N (Cr) 101 = 1952-2 M L J 135 = 1952 S C R 597 = 90 C L J 218 = 1952 S C A 399=1952 Cr L J 966 (S C).

——S. 15 (2) (b) (as amended in Madras) — Power to declare association unlawful—Conferment of, by implication.

CRIMINAL LAW (AMENDMENT) ACT (XIV of 1908), S. 15

Power to declare an association unlawful is not a natural or common law or prerogative right of the State. It can acquire such a power only under an enactment conferring such power. Such a power can be conferred by the enactment expressly as well as by necessary implication.

For old S. 15 (2) (b) of the Criminal Law Amendment Act, 1908, a new cl. (b) was substituted by the Criminal Law Amendment (Madras) Act, 1950. This new clause which was introduced in the definition section did not expressly confer a power on the State Government to declare an association unlawful. By the Madras Amending Act, S. 16, which gave such power, was omitted. On a notification issued by the State Government declaring an association unlawful, it was contended that as S. 16 was no longer in force there was no power conferred on the State to declare an association unlawful :

Held, that taking into consideration the long practice of the Legislature and the intention as disclosed in the provisions of the Amending Act, such a power is implied in S. 15 (2) (b) as amended by necessary intendment and that the Legislature must be deemed to have conferred such power. (Rajamannar C. J., Satyanarayana Rao and Viswanatha Sastri JJ.) Row v. State of Madras,

A I R 1951 Mad 147 = 1951-1 M L J 628=52 Cr L J 515 (F B).

——Instigation—Formation of an unlawful association.

The accused was alleged to have stated that the British Raj had come to an end or at any rate was about to do so and exhorted the people to hold a Diwan and to take steps to establish an Independent.State at Bagrian. After staying at Bagrian the accused went away and immediately after the departure an unlawful association was formed of which the accused's son was made the secretary. He also told the people that he had paid Rs. 2,000 towards the movement. Subsequent to the formation, the Diwans were held of a political nature.

Held, on these facts that the accused's act was not covered by S. 1 or S. 2, as he did not contribute to the funds or assist in the management of the existing association. But that he did instigate the formation of an association which was unlawful under S. 15, cl. (2) (a) and therefore abetted its formation and as any one becoming a member of that association or contributing funds to it would be guilty of an offence under S. 17 (1), accused's act amounted to an abetment of an offence, and as this abetment was of the commission of an offence by persons exceeding 10, the action came within the purview of I. P. Code, S. 117. (Broadway and Moti Sagar JJ.) Emperor v. Mihan Singh,

A I R 1924 Lah 440 = 89 I C 392 = 5 Lah 1=26 Cr L J 1352.

—S. 16.

See also Criminal Law Amendment Act, 1908, S. 17.

——Does not offend Art. 19 (1) (c) of Constitution — See ibid, S. 15..

A I R 1952 Assam 167=1952 Cr L J 1659.

——Declaration under—Effect.

The effect of a declaration under S. 16 is to enable the police to investigate a cognizable offence punishable under S. 17. The declaration stands on the same footing as an information of a cognizable offence under the Penal Code. (Thadani C. J.) Prabhat Malla Barooah v. D. C. Kamrup,

A I R 1952 Assam 167=I L R (1952) 4 Assam 18 = 1952 Cr L J 1659.

——Ss. 16 and 17 (1) — Prosecution under S. 17 (1) started before Constitution — S. 16 declared to be void after Constitution — Effect—General Clauses Act (1897), S. 6.

Where the prosecution under S. 17 (1) relates to acts committed before the Constitution came into force, the

CRIMINAL LAW (AMENDMENT) ACT (XIV of 1908), S. 16

conviction is not bad merely on the ground that S. 16 of the Act has been held to be void under Art. 13 of the Constitution. (Das Gupta and P. N. Mookerjee JJ.) Narendra Gopal v. State,

A I R 1951 Cal 505=52 Cr L J 1087.

——Delegation of powers to the Local Government to declare which associations are to be deemed to be unlawful is not ultra vires. (Jai Lal J.) Mathra Das v. Emperor,

A I R 1933 Lah 387 (2)=34 Cr L J 1178.

——Ss. 16, 15, 17—Notification declaring all associations with unlawful object as danger to public peace — Person making speech at meeting of one of such associations— Speech not being specially violent, whether material.

Where a general notification declared that all associations by whatever name the associations might be known or whether they might be known by any distinctive name or not—which had the following objects or any one of them, namely, disobedience of laws and orders of Government, non-payment of taxes, boycott and picketing of liquor and foreign cloth shops—on the ground that they interfered with the administration of law and order and constituted a danger to the public peace :

Held, that the notification sufficiently complied with the terms of S. 16 read with S. 15.

Held further, that a person making a speech at a meeting of any such association must be held to be assisting in promoting a meeting of an unlawful association even if the speech itself was not specially violent. (C. C. Ghose Actg. C. J. and S. K. Ghose J.) Swadesh Ranjan v. Emperor,

A I R 1934 Cal 161 = 6 R C 438 = 37 C W N 964= 148 I C 155=35 Cr L J 605.

—S. 17.

SYNOPSIS

1. Section 17 (1)—"Assisting the operation."
2. Section 17 (1)—Cases not falling under.
3. Section 17 (2).
4. Offence by legal practitioner.
5. Procedure.
6. Evidence and proof.
7. Punishment.

1. Section 17 (1)—"Assisting the operation."

——S. 17 (1) — "Assisting the operations of association."

The words "assists the operations of any such association" involve a conscious act on the part of the person charged. The acts of the person who assists and the operations of the association must be so connected together as to be possible to infer from them the existence of a design or calculation. (Misra J.) Ramesh Chandra Nigam v. The State,

A I R 1952 All 359 = 1950 A L J 705 = 1952 Cr L J 682.

——Ss. 17 (1) and 17 (2) — Accused found to be members of unlawful body—No proof of their promoting or assisting promoters of meetings — Conviction under Ss. 17 (1) and 17 (2) changed into one under S. 17 (1) only — Sentence suitably altered.

Where it was found that the accused were the members of the Rashtriya Swayam Sewak Sangh which was declared to be unlawful body by the Government and that they were also the members of a procession which paraded through the town shouting Sangh slogans and were convicted under S. 17 (1) and S. 17 (2) of the Criminal Law Amendment Act, 1908 :

Held that they were guilty under S. 17 (1) only and not under S. 17 (2) as it was not proved that they had managed or assisted in the management of an unlawful association or that they were promoting or assisting the

CRIMINAL LAW (AMENDMENT) ACT (XIV of 1908), S. 17 — 1. Section 17 (1) — "Assisting the operation"

promoters of the meeting, which meant assisting them for promotion of meeting and not any other thing. Consequently, their sentence of one year's rigorous imprisonment and a fine of Rs. 300 was held not only excessive but also illegal and was altered to the fine and imprisonment for the period already undergone. (Seth J.) Ram Bharose v. Rex,

A I R 1950 All 149 = 1949 A W R H C 437 = 1949 All Cr Cas 101=1949 A L J 463=51 Cr L J 458.

——S. 17 (1) — Hoisting of national flag over shop — Refusal to take it down at instance of Police — 'Assisting the operations of an unlawful association.'

Hoisting of the national flag over a shop or refusal to take it down at the request of the Police does not amount to assisting the operations of an unlawful association nor is it an offence under S. 17 (1). (C. C. Ghose Actg. C. J. and Malik J.) Jogendra Mohan v. Emperor,

A I R 1933 Cal 695 (1)=6 R C 84=37 C W N 992=145 I C 240=34 Cr L J 925.

——S. 17 (1) — The word "assists" in S. 17 (1) must be construed in a reasonable way and means "intentionally assists." The section is obviously not designed to punish persons who acting quite innocently, happen, by accident, to do something which furthers the operation of an unlawful association. (Burn J.) In re Panduranga Mudali,

A I R 1933 Mad 123=Ind Rul (1933) Mad 35 = 1932 M W N 1357 = 63 M L J 906 = 140 I C 767 = 34 Cr L J 90.

——S. 17 (1) — 'Assisting the operations of an unlawful association'—Mere display of Congress flags.

The mere display of a Congress flag over a shop and refusal to take it down at the request of the Police does not amount to 'assisting the operations of an unlawful association' and is not an offence under S. 17 (1).

A warning by the District Magistrate by public notification in the absence of any order forbidding such an act, that the public are assisting the operations of the Congress by setting up such flags over their shops, cannot make such an act an offence. (Pullan J.) Ram Prasad v. Emperor,

A I R 1933 All 95=Ind Rul (1932) All 652=140 I C 497=34 Cr L J 22.

——S. 17 (1) — 'Assist', meaning of — Absence of co-operation—Publication of time and place of meeting with Police Commissioner's ban.

The words 'in any way assists the operations of any such association' in S. 17 (1), are not limited to acts which assist the operations of such association with the co-operation of such association but cover acts which may assist the operations of the association, but which are done without any co-operation of the association.

A notice in a paper circulating in Bombay stating that a meeting is to take place in Bombay and giving the time and place of the meeting 'assists' the promoters of the meeting within the meaning of S. 17 (1). The publication of the Police Commissioner's order prohibiting the meeting side by side with the notice, does not make any difference. (J. W. F. Beaumont, C. J. and Murphy J.) Sohrab Palanji v. Emperor,

A I R 1931 Bom 206 (2)=33 Bom L R 314=Ind Rul (1931) Bom 313=131 I C 889=32 Cr L J 804.

——S. 17 (1) — 'Assisting operations' of unlawful association.

An association whose object was to control processions of a political character was declared unlawful but still continued to function. The accused took part in a procession carrying national flags and singing political songs and they were convicted under S. 17 (1), for assisting the operations of the association :

CRIMINAL LAW (AMENDMENT) ACT (XIV of 1908), S. 17 — 1. Section 17 (1) — "Assisting the operation"

Held, that the conduct of the accused in taking part in the procession was sufficiently connected with the activities of the association to justify the Magistrate in having drawn an inference that they were in fact intending to assist the operations of that association and the convictions were justified. (J. W. F. Beaumont, C. J. and Murphy J.) M. S. Adhikari v. Emperor,

A I R 1931 Bom 202 = 33 Bom L R 325 = Ind Rul (1931) Bom 301=131 I C 477=32 Cr L J 723.

——S. 17 (1)—Unlawful association—'Assisting operations of association'—Connection between acts.

The question whether particular acts amount to assisting the operations of an unlawful association within the meaning of S. 17 (1), is always one of fact to be determined in the circumstances of each case.

There must be some limitation upon the generality of the words of the section and the true limitation to be placed upon the section is really this, that there must be such a connection between the acts of the accused and the operations of the unlawful association that an intention to assist the operations of such association may be properly inferred. The mere existence of a common aim between the person accused and the unlawful association is not enough to involve assistance.

Where one of the regular activities of an unlawful association was to engage in picketing cloth shops in order to prevent people from buying foreign cloth and the methods employed by the accused who were also picketing such shops were similar to those employed by the association :

Held, that the Court was justified in assuming that the accused were in fact assisting the operations of the unlawful association, although there was no evidence that they were, in fact, acting under the directions of the association. (J. W. F. Beaumont, C. J.) Gangubai Ramdas v. Emperor,

A I R 1931 Bom 200=33 Bom L R 319=55 Bom 442 =Ind Rul (1931) Bom 294=131 I C 470=32 Cr L J 717.

——Scope—Person in charge of an office — Unauthorised persons taking part in meetings.

A person who is in charge of an office is not necessarily the person who manages or assists in managing the association which owns that office.

Clause (1) of S. 17 makes it an offence not only to be a member of an unlawful association or to take part in its meetings, but also to help it in any way and it is immaterial whether the person who renders such help has been authorised to do so or whether he acts purely on his own initiative. (AIR 1925 Lah 522, Expl.)

Clause (1) of S. 17 is obviously intended to deal with members and all other persons identifying themselves with any unlawful body of persons as defined by S. 15, and Cl. (2) of S. 17 is directed against the ring-leaders of such a body; that is, the persons who actually control or direct the activities of the association or who organize or help to organize any of its meetings. Criminal Appeal No. 912 of 1924 and Cr. Rev. No. 1045 of 1925, Rel. on. (Broadway and Fforde JJ.) Meher Singh v. Emperor.

AIR 1926 Lah 357=96 I C 257 = 7 Lah 348=8 L L J 242=27 P L R 555=27 Cr L J 913.

——Promoting—Assisting in organizing meeting.

A person who takes an active part in organising or assisting to organize a meeting must clearly be regarded as promoting or assisting to promote it. In the ordinary dictionary sense to promote an undertaking is to forward, further or encourage it and a person who takes a part in the actual management of a meeting is obvious-

CRIMINAL LAW (AMENDMENT) ACT (XIV of 1908), S. 17. — 1. Section 17 (1) — "Assisting the operation"

ly furthering or encouraging such meeting. (Broadway and Fforde JJ.) Mehr Singh v. The Crown.

AIR 1926 Lah 405=96 I C 223=7 Lah 357=8 L L J 255=27 P L R 529=27 Cr L J 911.

——Offence under.

The accused was alleged to have stated that the British Raj had come to an end, at any rate was about to do so and exhorted the people to hold a Diwan and to take steps to establish an Independent State at Bargrain. After staying at Bargrain the accused went away and immediately after the departure an unlawful association was formed of which the accused's son was made the secretary. He also told the people that he had paid Rs. 2,000 towards the movement. Subsequent to the formation, the Diwans were held of a political nature.

Held, on the facts that the accused's act was not covered by S. 1 or S. 2, as he did not contribute to the funds or assist in the management of the existing association. But that he did instigate the formation of an association which was unlawful under S. 15, Cl (2) (a) and therefore abetted its formation and as any one becoming a member of that association or contributing funds to it would be guilty of an offence under S. 17 (1) accused's act amounted to an abetment of an offence and as this abetment was of the commission of an offence by persons exceeding 10, the action came within the purview of Indian Penal Code, S. 117. (Broadway and Moti Sagar JJ.) Emperor v. Mihan Singh.

AIR 1924 Lah 440 = 89 I C 392=5 Lah 1=26 Cr L J 1352.

——Essentials—Existence of the association.

The offence of promoting or assisting in promoting a meeting of an unlawful association implies that the association is already in existence. No doubt a thing not already existing may be promoted, but the offence under the Act consists in promoting, of assisting in promoting, not an unlawful association, but a meeting of such an association and therefore the association must exist before a meeting of it can be promoted. It cannot therefore be said that a person by urging his hearers to form themselves into "Jathas" promotes or assists in promoting meeting of the "Jathas" when the "Jathas" themselves had not come into existence. The person alleged to have promoted such meetings on behalf of an unlawful association must be proved to have authority from that association to convene the meetings. (Martineau J.) Attar Singh v. Emperor.

AIR 1925 Lah 522=88 I C 367=6 Lah 349=7 L L J 521=26 P L R 411=26 Cr L J 1135.

2. S. 17 (1)—Cases not falling under.

——S. 17 (1) — Assisting the operations of an association —Advocating boycott, shouting out slogans and carrying Congress flags — Identity of objects of accused, and association—Sufficiency for conviction.

Section 17 (1) does not make the advocating of boycott, the shouting out of slogans and the carrying of Congress flags an offence. The doing of such acts does not necessarily amount to assisting the operations of any unlawful association. Simply because the objects of an association and the object of some individual person in his own individual activities are identical, it cannot be said that the individual is helping the operations of the association. Identity of objects with no other connection does not amount to assisting the operations of an association.

The words 'assisting the operations of an association' in the section would become meaningless unless the operations of the association are in the person's mind and an intention to assist them is also there and such

CRIMINAL LAW (AMENDMENT) ACT (XIV of 1908), S. 17—2. Section 17 (1)— Cases not falling under

intention to assist the operation of that association can be inferred by an unambiguous overt act. (Ramesam J.) Iswarudu v. Emperor.

AIR 1933 Mad 369=1932 M W N 1265=6 R M 2=144 I C 765=34 Cr L J 823.

——S. 17 (1) — Preaching boycott of British goods — 'Taking part in meeting,' what amounts to.

Where a person who had been prohibited from taking part in any meeting by an order of the District Magistrate stood upon a platform and began to make a speech when a large number of persons collected;

Held, that it was immaterial whether more than the prescribed number of persons assembled as a result of the invitation direct or indirect of the petitioner or whether she found a number of persons assembled and began to make a speech to them or whether persons collected on hearing her making a speech. In either case, she must be held guilty of the offence of having taken part in a meeting in contravention of the terms of the notice served upon her.

"Merely preaching boycott of British goods is not an offence under S. 17 (1) of the Criminal Law Amendment Act as boycott of British goods is not the monopoly of the associations declared unlawful by the Government." (Jai Lal J.) Vidya Wati v. Emperor.

AIR 1932 Lah 613 = 34 P L R 32 = Ind Rul (1933) Lah 51=141 I C 33=34 Cr L J 87.

——S. 17 (1)—'Assisting the operation,' what constitutes —Sentence.

The accused went to a bazaar where foreign cloth was sold and began to preach boycott of foreign goods. It was also found that they had dissuaded several purchasers from coming to the shop and purchasing foreign cloth therefrom, but there was nothing to show that the accused were in any way connected with the Indian National Congress. They were convicted under S. 4 of Ordinance No. V of 1932 and S. 17 (1) and were sentenced to 6 months' rigorous imprisonment :

Held, that the conviction under the Criminal Law Amendment Act could not be maintained inasmuch as merely promoting or carrying out the same or similar objects is not tantamount to assisting the operation of an association within the meaning of S. 17 (1) of the said Act :

Held further that the sentence was excessive in the circumstances of the case. (Dalip Singh J.) Bhagwanti v. Emperor.

AIR 1932 Lah 578=Ind Rul (1933) Lah 20=33 P L R 1002=140 I C 608=34 Cr L J 72.

——S. 17 (1), (2) — Presiding at conference and asking people to join Congress and boycott British goods — Offence.

The mere fact that at a conference, people were asked to join the Congress and boycott of British goods was preached and also the civil disobedience movement was promoted, does not make the conference identical with the Congress which has been declared unlawful and a person who merely presided at such a conference cannot be convicted under S. 17 (1) or (2) of the Criminal Law Amendment Act. (Jai Lal J.) Partap Singh v. Emperor.

AIR 1932 Lah 615 (2) = 33 P L R 1071 = Ind Rul (1932) Lah 712=140 I C 442=34 Cr L J 25.

——S. 17 (1)—War Council — Congress Bulletin — Criticism of Police Circular — Reproduction—Assisting operations of unlawful association — Appeal to traders not to trade in foreign cloth.

The accused was charged and convicted with having printed and published an article entitled 'helping out laws' in his paper, the Free Press Journal, and thereby

CRIMINAL LAW (AMENDMENT) ACT (XIV of 1908), S. 17—2. Section 17 (1) — Cases not falling under

assisted the War Council of the Bombay Provincial Congress Committee in its operations and thereby committed an offence under S. 17 (1), Criminal Law Amendment Act, 1908. The article was reproduced from the Congress Bulletin which was alleged to be an organ of the War Council :

Held, (i) that though the War Council was an unlawful association, the prosecution had failed to prove that the Congress Bulletin was in fact an operation of the War Council.

(ii) further, the article was merely a criticism, not of a profound character, upon a letter addressed by the Commissioner of Police to newspapers in Bombay and the mere reproduction of a criticism upon a letter which had been generally circulated—a criticism of a harmless character cannot possibly assist the operations of the unlawful association.

Where the accused reproduced in his newspaper an appeal to stop trading in foreign cloth, made by a person describing himself as the President of the War Council and he was charged under S. 17 (1) with assisting the operations of an unlawful association :

Held, that the article did not advocate any unlawful action; it only expressed views on an economic question which anybody was free to do, and no offence was made out under S. 17 (1). (Beaumont C. J. and Murphy J.) Sadanand v. Emperor.

AIR 1931 Bom 413 = 33 Bom L R 652 = Ind Rul (1931) Bom 469=134 I C 357=32 Cr L J 1158.

——Instigation.

——Exhorting the Sikhs in a meeting to enlist themselves for shahidi jathas for the purpose of going to a certain place and collecting funds for a committee which was declared as unlawful by the Government. is not an offence under S. 17 (1) and S. 17 (2) of the Criminal Law (Amendment) Act, but is an offence under S. 117, Penal Code, as the accused instigated people to become members of a jatha under the orders of the said committee which jatha would be an unlawful association within the meaning of S. 16. A I R 1924 Lah 440, Ref. (Scott-Smith J.) Kirpal Singh v. Emperor,

A I R 1926 Lah 115=26 P L R 412=89 I C 462=26 Cr L J 1374.

3. Section 17 (2).

——S. 17 (2)—Leader of party inducing boys to take out Congress flags and exhibit them.

The leader of a party which induces certain boys to take out and publicly exhibit Congress flags in lieu of clothes and some cash for the services rendered, is guilty under S. 17 (2). (Jai Lal J.) Mathra Das v. Emperor,

AIR 1933 Lah 387 (2)=6 R L 160=34 P L R 923=146 I C 25=34 Cr L J 1178.

4. Offence by legal practitioner.

——S. 17 (3) — Persons charged under S. 17 (1) have in suitable cases right to be released on bail—Criminal P. C. (1898), Ss. 497 and 498, (Panchapakesa Ayyar J.) In re B. Ramalingayya,

AIR 1950 Mad 391=1950-1 M L J 87=63 M L W 80 = 1950 M W N 144 = 1950 A W R Sup 34 = 1950 M W N Cr 28=51 Cr L J 913.

——Where a pleader assists and promotes a meeting of an unlawful association for which he is convicted under S. 17 (2), his action is nothing short of an open and defiant violation of law by which conduct he makes himself liable to action under S. 12, Legal Practitioners' Act. (Malik and Jack JJ.) Chandra Binode Das, In the matter of,

AIR 1934 Cal 808=59 C L J 410=7 R C 337=152 I C 943.

CRIMINAL LAW (AMENDMENT) ACT (XIV of 1908), S. 17—4. Offence by legal practitioner

——Per Jai Lal J.—Every conviction of a legal practitioner under S. 17 (1) of the Criminal Law Amendment Act does not necessarily attract the disciplinary jurisdiction of the High Court. This must depend on the nature of the acts for which the practitioner was convicted. (Jailal, Dalip Singh and Monroe JJ.) Emperor v. Farid-ul-haq,

AIR 1933 Lah 577=Ind Rul (1933) Lah 384=14 Lah 532=143 I C 737 (SB).

5. Procedure.

——S. 17 (1)—Prosecution under, started before Constitution—S. 16 declared to be void after Constitution—Effect —See ibid, S. 16.

AIR 1951 Cal 505=52 Cr L J 1087.

——Person liable to be prosecuted under S. 17, prosecuted under Punjab Public Safety Act—Legality — See Punjab Public Safety Act (I of 1947), S. 3.

AIR 1949 E P 130=50 Cr L J 370.

——S. 17 (1) — Penal Code (Act XLV of 1860), S. 117—Abetment of offence triable as summons case.

Where the accused is charged with abetment of a specific offence, which offence is a summons case, the abetment is also a summons case.

A case under S. 117, I. P. C., and S. 17 (1), Criminal Law Amendment Act, is, therefore, triable as summons case. (J. W. F. Beaumont C. J. and Murphy J.) Narasimha Narayan v. Emperor,

A I R 1931 Bom 199 = 33 Bom L R 353 = Ind Rul (1931) Bom 296=131 I C 472=32 Cr L J 718.

——Assisting volunteers by giving shelter.

The case against petitioners originated on a police report which was in these words : "I beg to report that Srijut Parmanand Agarwala has been assisting the volunteers by giving them shelter in a house belonging to him in the Tejpur town. I, therefore, request that action under the Criminal Law (Amendment) Act may be taken against him." Upon this, the Deputy Commissioner ordered "Issue warrant with bail under S. 17 (2) of the Act."

Held, this report failed to make out a prima facie case in respect of the offence, described in this section with the result that the proceedings based on the report were liable to be quashed. (Walmsley and Suhrawardy JJ.) Parmanand Agarwala v. Emperor,

A I R 1922 Cal 538=71 I C 49=36 C L J 179=24 Cr L J 1.

6. Evidence and proof.

——S. 17 (1)—Association declared unlawful by Provincial Government by notification—Court not to question declaration or need for notification—Court to take judicial notice of notification and then examine evidence whether a person took part in manner prohibited by section.

The Criminal Courts in deciding a case under S. 17 (1) are concerned only with finding out whether an association has been declared unlawful or not. They are not concerned with the reasons for that declaration. The gravamen of the charge is membership, etc., of an association which is rendered unlawful by a decision of the Provincial Government. The Court cannot question the need of the notification. The power to determine whether an association is unlawful has been left to the Provincial Government. For the purposes of application of S. 17 (1), the Courts take judicial notice of the notification and then examine the evidence showing whether A or B took part or not in a manner prohibited by that section. (Hidayatullah J.) N. G. Sabde v. The Crown,

AIR 1950 Nag 12=ILR (1949) Nag 976=1950 N L J 211=51 Cr L J 254.

——S. 17 (1)—Association declared unlawful—Prosecution for continuing as members — Evidence of continuing

CRIMINAL LAW (AMENDMENT) ACT (XIV of 1908), S. 17—6. Evidence and proof

membership—Presumption—Gazette containing notification shown to accused.

It is not right to presume from the fact that a man is a member of an association when it is lawful and that he continues to be a member after it is declared unlawful. In order to sustain a conviction under S. 17 (1), in such a case, there must be evidence of continuing membership.

The fact that the Gazette in which the notification declaring an association unlawful was printed had not been issued to the public is immaterial so long as a copy of the Gazette containing the notification was actually shown to the accused. (J. W. F. Beaumont C. J. and Murphy J.) Emperor v. Dharmanand Kosambi,

A I R 1931 Bom 203 = 33 Bom L R 333 = Ind Rul (1931) Bom 303=131 I C 479=32 Cr L J 725.

——Ss. 17 (1), 16 — Unlawful association — Evidence of membership.

The accused was prosecuted on a complaint filed on July 5, 1930, for being a member of the Gujranwala Congress Committee, which was declared to be an "unlawful association" under S. 16, Act XIV of 1908, on the 3rd of that month. The only documentary evidence in the case was an application alleged to have been made by the accused for being elected a delegate to the session of the Indian National Congress which was held at Lahore in 1929. None of the witnesses had any personal knowledge of the fact of the convict being a member of the Congress Committee and their statements were based on conjectures and unwarranted inferences :

Held, that the fact that the accused was a delegate to the National Congress held in 1929 was not sufficient to prove that he was a member of the Congress Committee after July 3, 1930, and there was not sufficient evidence for convicting the accused under S. 17 (1), Criminal Law Amendment Act. (Tek Chand J.) Bhim Sen Sachar v. Emperor,

A I R 1931 Lah 153=Ind Rul (1931) Lah 456 = 131 I C 360=32 Cr L J 708.

——Ss. 17 (1), 16 — Notification declaring association unlawful—Conviction of members—Overt act subsequent to notification.

Under S. 17 (1) of the Criminal Law Amendment Act, every person who was a member of an association at the moment when it was declared as unlawful does not automatically become guilty under the said section. On the other hand, the very fact that membership of a particular association was not unlawful until such time as the Governor-in-Council in the exercise of the power conferred on him by S. 16, chose to declare it to be "an unlawful association" makes it imperative for the prosecution to prove some overt act or conduct on the part of the person concerned, which establishes his connection with the association at some time subsequent to such declaration. In any case, ordinary rules of justice and common sense require that those who were connected with the association at the time when it was declared unlawful should be given a locus poenitentiae to withdraw from its membership within a reasonable time of its notification as such. (Tek Chand J.) Pars Ram v. Emperor,

A I R 1931 Lah 145 (151, 152) = 32 P L R 71=Ind Rul (1931) Lah 449=131 I C 353=32 Cr L J 700.

——Ss. 17, 16—Declaration that association is unlawful takes effect only on notification in Gazette.

A declaration by the Local Govt. under S. 16, that an association is unlawful does not become effective until it is notified in the Gazette.

Where the Chief Commissioner of Delhi declared a Committee unlawful on September 17, but the declaration was notified in the Gazette only on September 27 :

CRIMINAL LAW (AMENDMENT) ACT (XIV of 1908), S. 17—6. Evidence and proof

Held, that the Committee could not be considered to be an "unlawful association" till September 27, and no person arrested before that date could possibly be held guilty of an offence under S. 17. (Tek Chand J.) Roshan Lal v. Emperor,

A I R 1931 Lah 107 = 32 P L R 130 (2) = Ind Rul (1931) Lah 380 = 12 L 471 = 131 I C 108 = 32 Cr L J 653.

——Ss. 17 (1), 16—Notification declaring association unlawful — Mere insertion in Gazette — Onus of proof at time of publication.

In order to prove that an association has been declared unlawful under the Criminal Law Amendment Act of 1908, the Government must not only insert the declaration in the Official Gazette, but must publish the Gazette in the manner usually adopted for publishing such Gazette and allow a reasonable opportunity to people concerned to see the Gazette.

Ordinarily, it may be presumed under S. 114, Illus. (e), Evidence Act, that a Government Notification purporting to have been published in a Gazette of a certain date was in fact so published; but where the interval between the issue of a notification and action taken on it is very short, a Court might require stricter proof that all the formalities requisite to the act of notifying, or, in other words, publishing the notification, had actually been carried out. (Beaumont C. J. and Murphy J.) Balkrishna Anant v. Emperor,

AIR 1931 Bom 132=33 Bom L R 82=Ind Rul (1931) Bom 257=55 Bom 356=130 I C 577=32 Cr L J 572.

——Ss. 17, 16—Notification declaring association unlawful—Prosecution of members without any further overt act—Discontinuance of membership — Onus of proof—Mere receipt of letter of notification.

There can be no justification whatever for presuming that because a person was a member of an association which was lawful, he remained a member of that association after it had been declared unlawful. On the other hand, when the Local Government declares a particular association to be unlawful, the Courts must presume that the citizens will recognize that declaration, which is made, after all, for their good, to preserve the public safety, and will loyally carry it out, and that they will cease absolutely to be members of the association declared unlawful, or in any way to act as such.

There is nothing in S. 17, Criminal Law Amendment Act, to impose upon the members of the association declared unlawful the obligation of doing anything specific to terminate their membership.

The powers given by Ss. 16 and 17 of the Act are not intended to be used so as to make people liable to penalties for having been members of associations at a time when they were lawful, and not unlawful.

The mere receipt of a letter addressed to a person as Secretary to an association cannot make him liable as a member of the association. (Beaumont C. J. and Murphy J.) Shripad Ramchandra v. Emperor,

AIR 1931 Bom 129=33 Bom L R 90=Ind. Rul. (1931) Bom 235=55 Bom 484 = 130 I C 27=32 Cr L J 472.

——Admission, effect of—Managing an unlawful association.

An accused person does not plead to a section of a criminal statute. He pleads guilty or not guilty to the facts alleged to disclose an offence under that section. Where the charge stated that the accused was the jathadar of the Akali Dal and as such addressed meetings of the Akalis and appealed to the Sikhs to organize themselves into jathas, and he admits himself to be a jathadar of

CRIMINAL LAW (AMENDMENT) ACT (XIV of 1908), S. 17—6. Evidence and proof

that organization, he is admitting that he is a member of an unlawful association, therefore pleading guilty to an offence under the provisions of S. 17 (1). The words "jathadar" means a person who leads or controls a jatha, and if it is proved that there was any jatha being at that time led or controlled by the accused, he would obviously be guilty of managing an unlawful association. (Broadway and Fforde JJ.) Basant Singh v. The Crown,

AIR 1926 Lah 406=7 Lah 359=8 L L J 251=27 P L R 551=96 I C 219=27 Cr L J 907.

7. Punishment.

——Where a person has been charged under S. 17 (1), Criminal Law Amendment Act, 1908, for picketing foreign cloth shops, and under S. 4 of Ordinance V of 1932 of molestation in respect of the said picketing and has been convicted under both the sections, it is illegal to award separate sentences in respect of each of the convictions. (Bardswell J.) In re Anantanarayan,

AIR 1933 Mad 337=37 L W 476 = Ind. Rul. (1933) Mad 184=64 M L J 351 = 1933 M W N 546=142 I C 21=34 Cr L J 277.

CRIMINAL LAW AMENDMENT ACT (XXIII of 1932)

—S. 1.

——Deletion of sub-s. (3) by Act of 1935—Act of 1935 itself repealed — Sub-s. (3) whether revived — General Clauses Act (1897), S. 6A.

Sub-section (3) of S. 1 limiting the duration of the Criminal Law Amendment Act, 1932 is repealed by the Criminal Law Amendment Act, 1935. By virtue of S. 6A, General Clauses Act, 1897, the repeal of 1935 Act does not affect the continuance of any amendment made by that Act, and in operation at the time of the repeal of that Act. The amendment by the deletion of such sub-s. (3) of S. 1 was in operation when the 1935 Act was repealed in 1937, and unless a different intention appeared in the Repealing Act, the amendment made in the original Act continues to have operation. (Rajadhyaksha and Vyas JJ.) Damodhar Ganesh v. State,

AIR 1951 Bom 459=53 Bom L R 739=21 Bom Cr C 232=1952 Cr L J 37.

——Criminal Law Amendment Act of 1935 amending Act of 1932 is validly enacted by the Governor-General under the power vested in him under proviso to S. 67B (2), Government of India Act, 1915. (Rajadhyaksha and Vyas JJ.) Damodar Ganesh v. State,

AIR 1951 Bom 459=53 Bom L R 739=21 Bom Cr C 232=1952 Cr L J 37.

—S. 7.

——Validity.

See Constitution of India, Art. 19.

AIR 1952 Mad 95.

——Nature of offence under—Proof of intention.

Under S. 7 (1) (a) and (b) the offence consists of loitering at specified places with a particular intent—under cl. (a) the intention is to cause a person to abstain from doing a thing which such person is entitled to do, and under cl. (b) the intention is to deter a person, from entering, approaching and dealing at such places. In both cases, no overt act other than that of loitering is necessary to constitute an offence. It should be a matter of evidence whether the "loitering" is with specified intention or not. It affects the proof of intention and such intention may have to be proved either by words uttered, leaflets distributed or gestures adopted. It may also be proved, not by anything done or said at the time of loitering, but by speeches made or exhortations given long before such loitering. But the section, as it stands, requires apart from the mental state signified by the word "intention", nothing more than "loitering" so far as cl. (a) is concerned, and "loitering in a particular way" so far as cl. (b) goes. Therefore mere exercise of the right of freedom of movement is made penal under certain circumstances. (Rajadhyaksha and Vyas JJ.) Damodar Ganesh v. State,

AIR 1951 Bom 459=53 Bom L R 739=21 Bom Cr C 232=1952 Cr L J 37.

——S. 7 (1)—Peaceful picketing in mill area—Restriction placed by S. 7 (1)—Section whether void under Constitution of India, Art. 19 (1).

Where a conflict exists between the only way in which one section of the public can exercise its right of pursuing its occupation and one of the numerous ways in which the other section of the public can exercise its right of freedom of movement, but which interferes or is likely to interfere even in a small number of cases with the former, in such a case the latter must necessarily give way to the former. A restriction which fractionally interferes with the right of freedom of movement of one section of the public in the interest of the only way in which another section of the public can exercise its right of pursuing its occupation, cannot be said to be unreasonable.

In conjunction with the right of freedom of speech and expression and the right of freedom of movement given to the citizens by Cls. (a) and (d) of Art. 19 (1) of the Constitution it is also necessary to consider the right to carry on any occupation, trade or business which is also given by the Constitution to all the citizens by Cl. (g) of that article. For just a person has a right of freedom of movement and freedom of speech in exercise of which he wants to carry on a peaceful picketing at the gate of a mill, the employees who wish to go to the mill and pursue their occupations have also the right to move freely and to carry on their occupation, trade or business.

Section 7 (1), Criminal Law Amendment Act, has placed a restriction on the peaceful picketing in that it restricts the right of freedom of movement of the person who wants to carry on the peaceful picketing. But taking into consideration the conflict between the rights indicated above such a restriction can be said to have been imposed in the interest of the general public. Therefore it cannot be held that the restriction is an unreasonable one. Hence, S. 7 is not void. (Rajadhyaksha and Vyas JJ.) Damodar Ganesh v. State,

AIR 1951 Bom 459=53 Bom L R 739=21 Bom Cr C 232=1952 Cr L J 37.

——S. 7 (1), (2)—Offence not indicated in charge sheet.

Many offences punishable under S. 7, may be committed but no Magistrate can take cognizance of any one of those offences unless that particular offence is constituted by the facts set out in the Sub-Inspector's report. Where a particular offence has not been indicated in the charge-sheet, the Court is not at liberty to try the accused for that particular offence. (Horwill J.) In re Satyanarayanamurthi,

AIR 1943 Mad 572=1943 M W N 225=56 L W 222 =(1943) 1 M L J 315=16 R M 276=208 I C 542=44 Cr L J 796.

——Whether repealed by Repealing and Amending Act (XX of 1937)—Notification applying S. 7 to Madras—Renotification after amendment of Act in 1935, whether necessary.

In the face of S. 4 of the Repealing and Amending Act of 1937 and of S. 6A of the General Clauses (Amendment) Act of 1936, it is not open to contend that the Criminal Law Amendment Act, 1932 has been repealed in its entirety. These sections leave the Criminal Law Amendment Act of 1932, so far as S. 7 is concerned, intact.

CRIMINAL LAW AMENDMENT ACT (XXIII of 1932), S. 7

The notification which was issued by the Govt. of Madras, applied S. 7 and the Criminal Law Amendment Act, 1932, so far as S. 7 was concerned was still on the statute book :

Held, that there was no necessity for re-notification and that S. 7 applied to the Madras Presidency. (Leach C. J. and Abdul Rahman J.) In re Arunagirinatha,

AIR 1939 Mad 21=1938 M W N 1105 (2)=(1938) 2 M L J 863=48 L W 813 = 11 R M 603=ILR (1939) Mad 87=179 I C 605=40 Cr L J 224.

——S. 7 (1) (a), whether applies to picketing of house of public servant — Loitering before Premier's house for forcing him to get cancelled certain order passed by Government.

There is no indication within the Criminal Law Amendment Act that a public servant whose house is picketed cannot claim the benefit of the section. There is no justification whatever for the plea that the offence contemplated by S. 7 (1) (a), Criminal Law Amendment Act, 1932, when committed in respect of public official whether high or low, should go unpunished.

The special law contemplated in Ss. 40 and 41, I. P. C., are laws such as the Excise, Opium and Cattle Trespass Acts, creating fresh offences, that is, laws making punishable certain things which are not already punishable under the I. P. C. The Criminal Law Amendment Act of 1932 deals with picketing and makes picketing in certain circumstances an offence. The Criminal Law Amendment Act is, therefore, to be deemed to be a special law within the meaning of S. 41, I. P. C., and there can therefore be an abetment of an offence under S. 7 (1) (a), Criminal Law Amendment Act.

If the words of the statute are unambiguous, no more is necessary than to interpret them in their ordinary or what is usually known as literal or grammatical sense—bearing in mind that the words employed by the framers can best declare their intention. The language employed in S. 7, Criminal Law Amendment Act, 1932, is clear and admits of only one meaning. In these circumstances, it is unnecessary to speculate on the intention of the framers of the Act.

The Premier is entitled to move the Legislature or the Government to repeal the order which was passed by the Government and if people loiter in front of his house with the object of forcing him to move in the matter in order to have the order cancelled, which he has a right to do or abstain from doing the action imputed to the accused would apparently fall within the mischief that S. 7 (1) (a) is designed to prevent. (Leach C. J. and Abdul Rahman J.) In re Arunagirinatha

AIR 1939 Mad 21=1938 M W N 1105 (2)=(1938) 2 M L J 863=48 L W 813=11 R M 603 = I L R (1939) Mad 87=179 I C 605=40 Cr L J 224.

——S. 7 (b)—Procession passing through a mohalla having foreign cloth shops — Halts for distributing handbills—Whether amounts to loitering or deterring people from buying foreign cloth.

A patrol passing and re-passing a certain street or a certain shop at intervals may be considered as an act similar to loitering, but by no stretch of imagination can a procession, passing a shop in a particular mohalla and possibly repeating the procession a week later, be construed into loitering or an act similar to loitering. Further in order to commit an offence under S. 7 of the Criminal Law Amendment Act, the loitering must be done with the intention that any person is deterred from entering or approaching or dealing at the particular place near which such loitering occurs. Halting for the purpose of

CRIMINAL LAW AMENDMENT ACT (XXIII of 1932), S. 7.

distributing handbills, announcing a meeting for a later hour cannot be interpreted as being with the object of deterring any prospective purchaser from entering or dealing at the particular shop near which the halt was made.

A procession singing boycott songs may have the effect of deterring people generally from buying foreign cloth at a future time, but cannot have the effect of deterring people from buying foreign cloth at a particular place by the silent form of intimidation and keeping watch on a place to take note of the people who deal there. (Grille J. C.) Radhakisan v. Emperor

158 I C 1008=18 N L J 22=8 R N 112=37 Cr L J 10.

——Seditious speech—Verbatim report of speech, if necessary.

It is not the law that in order to establish what a speaker did say at a certain meeting a verbatim report is necessary. (Grille J. C.) R. S. Ruikar v. Emperor

AIR 1935 Nag 149 = 31 N L R 318 = 157 I C 618= 36 Cr L J 1153.

——Seditious matter deliberately introduced — Fact of speech itself being innocuous is no defence—Trade Unions Act (XVI of 1926), S. 17—Conflict between S. 7 and Act, if exists — Offence under S. 7, committed in course of trade dispute.

It is no defence in a charge for sedition that the bulk of the speech was innocuous if seditious matter is deliberately introduced. Where, therefore, the accused is not charged with making speeches as such but with abetting the offence of molestation, it is sufficient to prove that part of his speech relates to the abetment without any reference to the greater parts of his speeches which may be entirely legitimate with reference to the object of the strike and the grievances of the workers.

There is no conflict between S. 7, Criminal Law Amendment Act and the Trade Unions Act of 1926. Trade Unions have the right to declare strikes and to do certain acts in furtherance of trade disputes. They are not liable civilly for such acts or criminally for conspiracy in the furtherance of such acts as the Trade Unions Act permits, but there is nothing in that Act which apart from immunity from criminal conspiracy allows immunity from any criminal offence. But any agreement to commit an offence would, under S. 17 of the Trade Unions Act, make them liable for criminal conspiracy. Section 7 of the Criminal Law Amendment Act is part of the Criminal law of the land and an offence committed as defined in that section is an offence to which the concluding sentence of S. 17 of the Trade Unions Act applies as much as it would do to an agreement to commit murder.

Held, that as the offence under S. 7 was committed under a bona fide trade dispute and S. 7 was applied to such trade disputes for the first time, the sentence should be reduced to the term already undergone. (Grille J. C.) R. S. Ruikar v. Emperor

AIR 1935 Nag 149 = 31 N L R 318 = 157 I C 618= 36 Cr L J 1153.

——Interpretation of—Reference to Statement of Objects and Reasons — S. 7, if can be applied to picketing in course of trade disputes—Statements made in Legislative Assembly—Interpretation of statutes.

As the wording of S. 7, Criminal Law Amendment Act, is entirely plain and unambiguous, reference to the Statement of Objects and Reasons of the Act is unnecessary. The section itself makes no limitation in respect of the parties disputing or the nature of the disputes giving rise to a situation where picketing is employed, and from the wording of the section itself, it is clear that its application is universal.

CRIMINAL LAW AMENDMENT ACT (XXIII of 1932), S. 7.

In interpreting S. 7, the Court is precluded from considering any statements made in the Legislative Assembly or elsewhere on behalf of Government. It is no duty of the Courts of Law to examine, criticise or interpret anything that may be said on behalf of Government in debate or elsewhere. The duty of the Court is to interpret the law as enacted. Had it been the intention of the Legislature to exclude the application of S. 7 from cases arising out of industrial disputes, it would have said so in explicit terms, more particularly in view of the nature of the majority of the other sections of the Act which have their origin in other Ordinances.

Neither the Ordinance out of which S. 7 arose nor the Act lays down any limitation as to the circumstances in which molestation becomes an offence. (Grille J. C.) R. S. Ruikar v. Emperor

AIR 1935 Nag 149 = 31 N L R 318 = 157 I C 618= 36 Cr L J 1153.

—S. 10.

——Effect of—Complaint by public authority is essential —See Penal Code (1860), S. 188

AIR 1951 Orissa 84.

—S. 15.

——Ss. 15, 16 (h)—Press (Emergency Powers) Act (XXIII of 1931), S. 18 (1) — Pamphlet referring to labourers as against rich persons — Pamphlet calling on labourers to meet at a place in large numbers — Likelihood of breach of peace.

Where a pamphlet purported to deal with the grievances of the poor against the rich and referred on one side to the labourers in a district labouring in fields and factories and on the other to the rich persons, the zemindars, the bankers and the petty shop-keepers, and the pamphlet called on the labourers to assemble in large numbers at certain place and it appeared that the feelings of the assembly would be inflamed by this pamphlet against the rich persons and bankers and the zemindars and the petty shop-keepers who are mentioned in the pamphlet and the result of such a pamphlet, if successful, would probably have been that the large crowd of kisans called together in such circumstances would have started looting the shops in the place, and a breach of the peace would have occurred which might have required the sacrifice of many lives before order would have been restored :

Held, that the classes referred to in the pamphlet were sufficiently well-defined for the purposes of S. 16 (h), Criminal Law Amendment Act, 1921, and that as the action taken by the accused in publishing the pamphlet would promote feelings of enmity or hatred between the different classes of His Majesty's subjects, he was punishable under S. 8 (1), Press Emergency Powers Act, read with Ss. 15 and 16 of the Criminal Law Amendment Act, 1932. (Bennet J.) Ram Saran Das v. Emperor

AIR 1934 All 717=6 R A 960=3 A W R 831=149 I C 710=35 Cr L J 1000.

—S. 20.

——Charges under — Stay of proceedings before leading evidence—Expiry of Ordinances by lapse of time :

Held, that the trial could not be continued. (Sulaiman C. J., Mukerji and King JJ.) Bansgopal v. Emperor,

AIR 1933 All 669 =1933 A L J 875=6 R A 141= 55 All 961=145 I C 680=34 Cr L J 1030 (FB).

CRIMINAL LAW AMENDMENT ACT (1935)

——The Act is validly enacted by the Governor-General— See Criminal Law Amendment Act (23 of 1932).

AIR 1951 Bom 459=1952 Cr L J 37.

CRIMINAL LAW AMENDMENT ACT (XLVI of 1952)

—S. 7.

——S. 7 (2)—Illegal exercise of jurisdiction — See Constitution of India, Art. 227.

AIR 1953 Assam 220=1953 Cr L J 1768.

——S. 7 (1) is not retrospective.

Section 7 has not been made retrospective by the Legislature specifically. There are no necessary implications arising from the phraseology used to hold that the section is retrospective in its effect. The use of the word "only" in S. 7 (1) emphasizes the fact that Special Judges are to have exclusive jurisdiction from the moment the Act comes into force in respect of offences mentioned in S. 6. (Sapru and Mukerji JJ.) State v. Pyarey Mohanlal,

AIR 1953 All 694 = 1953 ALJ 339 = 1953 A W R (H C) 371=1953 Cr L J 1546.

——Ss. 7 and 10 — S. 7, retrospective effect — (General Clauses Act (1897), S. 6).

If an order had been validly passed committing a case to the Court of Session under the law then in force, a subsequent change in the law would not divest the Court of Session of its jurisdiction to try it and the accused acquires a vested right to have the case continued in that Court and tried according to the law in force on the date of the order of commitment. (Somasundaram J.) State v. Swamy,

AIR 1953 Mad 451=1952 M W N 908=1952 M W N (Cr) 264 = 1953-1 M L J 45 = ILR (1953) Mad 667 = 1953 Cr L J 882.

—S. 10.

——Scope and object—See ibid, S. 7.

AIR 1953 Mad 451 = 1953 Cr L J 882.

CRIMINAL LAW AMENDMENT ORDINANCE (XXIX of 1943).

——Iron and Steel (Movement by Rail) Order (1942) — Offence of contravening Order — Competency of Second Special Tribunal at Lahore to try offence after end of emergency—See Iron and Steel (Movement by Rail) Order (1942),

AIR 1947 Bom 361 = 48 Cr L J 902.

——Ordinance is intra vires— Letters Patent (Allahabad) whether touched.

Ordinance XXIX of 1943 is intra vires the Ordinance making authority of the Government of India including S. 8 of that Ordinance which confers revisional powers on the High Court in excess of those conferred by the Letters Patent. Nor does the Ordinance purport to do anything which is contrary to the Letters Patent of the Allahabad High Court. (Iqbal Ahmad C. J., Allsop and Dar JJ.) Shiv Kali Goswami v. Emperor,

AIR 1944 All 257 = 1944 A W R 273 = 1944 A L J 419=1944 O W N 201 = 17 R A 109 = ILR (1944) All 758=216 I C 100 = 46 Cr L J 122 (FB).

— S. 3.

——Ss. 3 and 4 (as amended by W. B. Ordinance, 1 of 1950)—Special Tribunal— Necessity of notification for its constitution.

Tribunal composed of 3 members — Resignation by one member — Subsequent legislative amendment reducing numerical strength of tribunal from 3 to 2 — Fresh notification reconstituting Tribunal not issued— Remaining 2 members concluding hearing and delivering judgment — In the absence of notification in Gazette constituting Tribunal composed of remaining 2 members, under S. 4 (1) as amended, mere legislative reduction of numerical strength of Tribunal to 2 members, would not bring into existence validly constituted Tribunal composed of the remaining 2 members :

CRIMINAL LAW AMENDMENT ORDINANCE (XXIX of 1943), S. 3

In any event, gap between resignation by one member and the legislative amendment reducing numerical strength was also fatal.

Hence, proceedings before them and judgment delivered by them were void and of no effect. (Chakravartti and Sinha JJ.) Edward Ezra v. State,

AIR 1953 Cal 263 = 56 C W N 875 = 1953 Cr L J 673.

——S. 3, as amended by Ordinance 52 of 1944 and Ordinances 12 and 22 of 1945 — Second Special Tribunal at Lahore constituted under Ordinance — Competency of Tribunal to try offences after end of emergency — See Govt. of India Act (1935), Sch. 9, S. 72.

AIR 1947 Bom 361 = 48 Cr L J 902.

——Ss. 3 and 5 and Sch. 1 (as amended by Ordinance 52 of 1944)—Offence of contravening Iron and Steel (Movement by Rail) Order (1942) — Offence committed outside British India — Allotment of trial to tribunal constituted under Ordinance — Validity.

Where an offer for transport of steel, in contravention of the Iron and Steel (Movement by Rail) Order, was made at Rampur railway station outside British India :

Held that the Governor-General could not constitute a tribunal to try the offence committed outside British India and the allotment of the trial of the case in respect of that offence to the Second Special Tribunal at Lahore was, therefore, ultra vires. (Stone C. J., and Lokur J.) Emperor v. J. K. Gas Plant Manufacturing Co.,

AIR 1947 Bom 361 = 49 Bom L R 352 = 1948 Bom Cr C 83 = 48 Cr L J 902.

——Ss. 3 and 4 — Attachment by District Judge — High Court in revision cannot go into question whether he was right or wrong in issuing attachment.

High Court is not entitled in revision to go into the question whether the District Judge was right or wrong in issuing the attachment, for, he is obviously entitled to do so and no question of jurisdiction being involved, High Court cannot interfere simply because the order was wrong on facts. (Abdur Rahman and Achhru Ram JJ.) Satwant Singh v. Provincial Govt., Punjab,

AIR 1946 Lah 406 = 48 P L R 77 = 227 I C 488 = 48 Cr L J 136.

——Ss. 3 and 4 — Money procured by means of offence described in Schedule deposited in Bank—It can be attached even if such money is mixed up with other money of Bank.

Where a person has procured money by means of an offence described in the Schedule to the Ordinance and has deposited it in a Bank, the bankers with whom the money is deposited are the debtors and agents of the offender and the money in their hands does not cease to be attachable even if its identity is lost by getting mixed up with the other money as long as it is not converted into anything else and remains liable to be paid back in cash to the offender or to his order. The offender cannot be in that case regarded to cease to be the owner of the money deposited by him although it may not have remained in his physical possession and may have come into his debtor's or agent's possession on his behalf. (Abdur Rahman and Achhru Ram JJ.) Satwant Singh v. Provincial Govt., Punjab,

AIR 1946 Lah 406 = 48 P L R 77 = 227 I C 488 = 48 Cr L J 136.

——Expression 'District Judge' is synonymous with expression 'District Court' as used in Civil P. C.—It includes Judge of Chief Court exercising ordinary Original Civil Jurisdiction.

The expression "District Judge" in S. 3 of the Ordinance has not the same meaning as the expression

CRIMINAL LAW AMENDMENT ORDINANCE (XXIX of 1943), S. 3

"District Judge" in the General Clauses Act. However, having regard to the use of the words, "within the local limits of whose jurisdiction" in S. 3 of the Ordinance, the expression "District Judge" is synonymous with the expression "District Court" used in S. 2 (4) of the Civil Procedure Code. Hence the expression 'District Judge' includes a Judge of the Chief Court of Sind exercising Ordinary Original Civil Jurisdiction, the Chief Court being a District Court within the meaning of S. 2 (4), Civil Procedure Code. (Thadani J.) Province of Sind v. L. B. Kalyanpur,

A I R 1947 Sind 34 = I L R (1946) Kar 129 = 230 I C 94.

—S. 4.

——As amended by W. B. Ordinance I of 1950.

Special Tribunal — Necessity of notification for its constitution—See ibid, S. 3.

AIR 1953 Cal 263=1953 Cr L J 673.

——Ss. 4 and 11 — Every interlocutory order passed by District Judge disposing of some of objections would not give right of appeal.

Under sub-cls. (2) and (3) of S. 4, the person whose property or money has been attached or any other person or persons who claims or claim any interest or title in the same are called upon to show cause or to make objections to the attachment. And this, strictly speaking, each of them can only do once or by one document and not piecemeal. The person showing cause or making objection can be allowed to add other grounds to those which he has taken at first. This he may be permitted to do in suitable cases. But this cannot be taken to mean that he can be found entitled — even if permitted to add or amend —to show cause more than once or to make, more than one objection. The grounds which he may subsequently take will thus be regarded to form a part of the previous petition which has been filed by him or on his behalf. Similarly, every interlocutory order passed by the District Judge disposing of some of the objections cannot be regarded to be in the nature of the 'order' contemplated by S. 11 of the Ordinance and would not give him a right of appeal for, it is easy to conceive that the interlocutory order may be against him but the final order may yet be in his favour. The interlocutory order thus passed by the District Judge in regard to the question of jurisdiction or to such issues of law as may in his opinion dispose of the whole of the case or any part thereof, which can be legitimately taken up and decided before the other questions of fact have been heard and determined cannot give a right of appeal under S. 11 unless of course the preliminary issues have been decided against the Crown and the case has been finally disposed of so far at least as the District Judge is concerned. (Abdur Rahman and Achhru Ram JJ.) Satwant Singh v. Provincial Govt., Punjab,

AIR 1946 Lah 406 = 48 P L R 77 = 227 I C 488 = 48 Cr L J 136.

——S. 4 (1) — Attachment — District Judge, whether required to give reasons, stated.

The District Judge is not required by S. 4 (1) of the Ordinance to give any grounds or reasons if he decides to issue the ad interim attachment but is only bound to do so if he finds that there were no prima facie grounds for believing that the person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other property. (Abdur Rahman and Achhru Ram JJ.) Satwant Singh v. Provincial Govt., Punjab,

AIR 1946 Lah 406 = 48 P L R 77 = 227 I C 488 = 48 Cr L J 136.

CRIMINAL LAW AMENDMENT ORDINANCE (XXIX of 1943)

—S. 5.

——Continuance of proceedings pending at the date of Constitution—(Constitution of India, Art. 13 (1))—(General Clauses Act (1897), S. 6 (e)).

Where the trial under the Ordinance, which had become void under Art. 13 (1), Constitution of India, was pending at its date, the trial held after the Constitution was void, because it was in the trial being held on a special forum and in the procedure of the trial that the infringement of the fundamental right of equality before the law lay and consequently during every moment of the trial after the Constitution such infringement was suffered.

Section 6 (e), General Clauses Act, has no application. (Chakravartti and Sinha JJ.) Edward Ezra v. State,

AIR 1953 Cal 263 = 56 C W N 875 = 1953 Cr L J 673.

——Validity—(Constitution of India, Arts. 13 and 14).

Provisions for special courts, special procedure etc. — Unfettered discretion in Government to allot any case to be tried by special Tribunal—Special procedure not only prejudicial to accused but also offending against basic principles of fair judicial proceeding — Section 5 is repugnant to Art. 14 of the Constitution and has become void under Art. 13 (1), on the Constitution coming into force. (Chakravartti and Sinha JJ.) Edward Ezra v. State

AIR 1953 Cal 263=56 C W N 875=1953 Cr L J 673.

——Court specified under S. 197 (2), Criminal P. C. — Transfer of case to Special Tribunal — Governor whether competent to make such transfer (Quære). (Lords MacDermott, Reid and Sir John Beaumont) T. A. Menon v. The King

AIR 1950 P C 19= 77 I A 11 = 54 C W N 197 = 63 M L W 89=1950 M W N Cr 36 (2)=1950 M W N 152 =1950-1 M L J 170 = Pak Cas 1950 P C 27 = 52 Bom L R 463=51 Cr L J 638 (P C).

——Special Tribunal can try under S. 5 (3), not only offences mentioned in Schedule but also those for which charges can be framed at the same trial under Criminal P. C.

Under S. 5 (3), Criminal Law Amendment Ordinance, as amended by Ordinance 12 of 1945, a Special Tribunal is competent to try not only offences mentioned in the Schedule to the Ordinance but also offences with which an accused could under the Criminal Procedure Code be charged at the same trial. The words 'any offence' in that section cannot be construed as referring to offences which may be termed as cognate to those mentioned in the Schedule. Consequently, where an accused is tried for offences under Ss. 420 and 120-B, Penal Code, he can also be charged at the same trial for an offence under S. 468, Penal Code, committed by him in the course of the same transaction, though the latter offence is not mentioned in the Schedule to the Ordinance. (Hemeon J.) V. M. Sarangpani v. Emperor

AIR 1946 Nag 374=1946 Nag L J 581=I L R (1946) Nag 671=224 I C 155=47 Cr L J 574.

——"As may be preferred" — Criminal Law (Amendment) Ordinance is not ultra vires the Governor-General.

The words "as may be preferred" in S. 5 of the Ordinance do not mean that the Governor-General himself had not decided that the persons mentioned in the 1st Schedule should be prosecuted but that it has been left to the Tribunals to decide whether the evidence led by the prosecution justifies the framing of the charge. (Agarwala and Imam JJ.) Hector Huntley v. Emperor

AIR 1944 Pat 378=23 Pat 457=218 I C 282 = 46 Cr L J 438.

—S. 6.

——S. 6 (2)—Cases triable under Ordinance.

CRIMINAL LAW AMENDMENT ORDINANCE (XXIX of 1943), S. 6

Section 6 (2) of the Criminal Law Amendment Ordinance 1943, read with S. 1 (2), Criminal P. C., indicates that S. 197, Criminal P. C., does not apply to cases triable under the Ordinance. (Spens C. J., Varadachariar and Zafrulla Khan JJ.) Hector Thomas Huntley v. Emperor

AIR 1944 F C 66=23 Pat 517=1944 A L J 258=1944 F C R 262=1944 M W N 430=48 C W N F C 109=17 R F C 20=11 B R 20=1944 A W R 26= 25 P L T 200 =214 I C 199=45 Cr L J 755 (F C).

—S. 8.

——Revisional jurisdiction, nature of.

The High Court has power to exercise its revisional jurisdiction in cases covered by the Ordinance. The High Court in revision usually accepts the findings on questions of fact recorded by a Subordinate Tribunal, unless the finding is manifestly perverse or erroneous. The revisional powers are no doubt wide but are discretionary and must be exercised not as a matter of course but only where it is demanded in the interest of public justice. (Iqbal Ahmad C. J., Allsop and Dar JJ.) Shiv Kali Goswami v. Emperor

AIR 1944 All 257= 1944 A L J 419 = 17 R A 109 = 1944 A W R 273= 1944 O W N 201 = ILR (1944) All 758=216 I C 100=46 Cr L J 122 (FB).

—S. 9.

——S. 9 (2) — Finding of motive — Section cannot be invoked.

Where there is a finding that the accused took gratification as a motive or reward, S. 9 (2) cannot be invoked. (Kania C. J., Fazl Ali and Patanjali Sastri JJ.) Sudhir Kumar Dutt v. The King

AIR 1949 F C 61=1948 F C R 86=29 P L T 437=51 Bom L R 21=1949 Bom Cr C 25= 1948 M W N 753= 1948 F L J 1=1948-2 M L J 37=52 C W N F R 44=50 Cr L J 294 (FC).

—Schedule, item 4.

——Word 'dominions' includes Government of Burma.

The word 'dominions' in item 4 of the Schedule to the Criminal Law Amendment Ordinance has not been used in a technical sense referring only to such dominions as have been recognised to be such under the Statute of Westminster in 1931. It is used to denote His Majesty's territory, realm or empire and, therefore, includes the Government of Burma. (Abdur Rahman and Achhru Ram JJ.) Satwant Singh v. Provincial Govt., Punjab

AIR 1946 Lah 406=48 P L R 77 = 227 I C 488 = 48 Cr L J 136.

—Sch. 1.

——Implied sanction for prosecution mentioned.

The Governor-General having himself made and promulgated the Criminal Law (Amendment) Ordinance 1943, for the express purpose of setting up Tribunals for the trial of the persons mentioned in the First Schedule, so far as these persons are concerned, he must be deemed to have consented to their prosecution in respect of offences mentioned in the Ordinance itself. (Agarwala and Imam JJ.) Hector Huntely v. Emperor

AIR 1944 Pat 378=23 Pat 457= 218 I C 282 = 46 Cr L J 438.

CRIMINAL LAW AMENDMENT ORDINANCE (XXXVIII of 1944), S. 1.

——Ordinance is still alive — Indian Independence Act (1947), S. 18 (3) — Constitution of India, Art. 372 (1) — India (Provisional Constitution) Order (1947), Schedule).

Section 18 (3) of the Indian Independence Act and Art. 372 (1) of the Constitution of India have kept the Criminal Law Amendment Ordinance alive, and it is wrong to assume that because of the omission of the

CRIMINAL LAW AMENDMENT ORDINANCE (XXXVIII of 1944), S. 1

ninth Schedule (to the Government of India Act, 1935, which contains S. 72 under which the Ordinance was promulgated) as indicated in the Schedule attached to the India (Provisional Constitution) Order, 1947, this emergency Ordinance had ceased to operate. (Reuben and Narayan JJ.) State of Bihar v. Santo Kumar Mitra

AIR 1952 Pat 148=31 Pat 170=1952 Cr L J 476.

—S. 3.

——Ss. 3 and 4 — Money procured by means of offence described in Schedule deposited in Bank — It can be attached even if such money is mixed up with other money of Bank.

Where a person has procured money by means of an offence described in the Schedule to the Ordinance and has deposited it in a Bank, the bankers with whom the money is deposited are the debtors and agents of the offender and the money in their hands does not cease to be attachable even if its identity is lost by getting mixed up with the other money as long as it is not converted into anything else and remains liable to be paid back in cash to the offender or to his order. The offender cannot be in that case regarded to cease to be the owner of the money deposited by him although it may not have remained in his physical possession and may have come into his debtor's or agent's possession on his behalf. (Abdur Rahman and Achhru Ram JJ.) K. Satwant Singh v. Provincial Government of the Punjab

AIR 1946 Lah 406=48 Pun L R 77=227 I C 488=48 Cr L J 136.

——Ss. 3 and 4— Attachment by District Judge — High Court in revision cannot go into question whether he was right or wrong in issuing attachment— Civil P. C. (1908), S. 115.

High Court is not entitled in revision to go into the question whether the District Judge was right or wrong in issuing the attachment, for, he is obviously entitled to do so and no question of jurisdiction being involved, High Court cannot interfere simply because the order was wrong on facts. (Abdur Rahman and Achhru Ram JJ.) K. Satwant Singh v. Provincial Government of the Punjab

AIR 1946 Lah 406=48 Pun L R 77= 227 I C 488 = 48 Cr L J 136.

——"District Judge," meaning of—Jurisdiction.

The expression "District Judge" in S. 3 of the Ordinance has not the same meaning as the expression "District Judge" in the General Clauses Act. But having regard to the use of the words "within the local limits of whose jurisdiction" in S. 3 of the Ordinance, it is clear that the expression "District Judge" used in S. 3 of the Ordinance is synonymous with the expression "District Court" as used in S. 2 (4), Civil P. C. As soon as the local limits of the jurisdiction of a principal Civil Court of original jurisdiction are defined, the limits constitute a district, and the district then is called a District Court within the meaning of the Civil P. C., and includes the local limits of the ordinary original civil jurisdiction of a High Court. The local limits of the jurisdiction of the Chief Court of Sind for the exercise of its ordinary original civil jurisdiction are defined and, therefore, for the purposes of the Civil P. C., is a District Court within the meaning of S. 2 (4), Civil P. C. (Thadani J.) Province of Sind v. Kalyanpur

AIR 1947 Sind 34=ILR (1946) Kar 129= 230 I C 94.

—S. 4.

——S. 4 (1) — Attachment — District Judge whether required to give reasons, stated.

The District Judge is not required by S. 4 (1) of the Ordinance to give any grounds or reasons if he decides to issue the ad interim attachment but is only bound to do so if he finds that there were no prima facie grounds for believing that the person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other property. (Abdur Rahman and Achhru Ram, JJ.) K. Satwant Singh v. Provincial Government of the Punjab,

A I R 1946 Lah 406=48 Pun L R 77=227 I C 488= 48 Cr L J 136.

——Ss. 4 and 11 — Every interlocutory order passed by District Judge disposing of some of objections would not give right of appeal.

Under sub-cls. (2) and (3) of S. 4 the person whose property or money has been attached or any other person or persons who claims or claim any interest or title in the same are called upon to show cause or to make objections to the attachment. And this, strictly speaking, each of them can only do once or by one document and not piecemeal. The person showing cause or making objection can be allowed to add other grounds to those which he has taken at first. This he may be permitted to do in suitable cases. But this cannot be taken to mean that he can be found entitled—even if permitted to add or amend—to show cause more than once or to make more than one objection. The grounds which he may subsequently take will thus be regarded to form a part of the previous petition which has been filed by him or on his behalf. Similarly every interlocutory order passed by the District Judge disposing of some of the objections cannot be regarded to be in the nature of the 'order' contemplated by S. 11 of the Ordinance and would not give him a right of appeal for it is easy to conceive that the interlocutory order may be against him but the final order may yet be in his favour. The interlocutory order thus passed by the District Judge in regard to the question of jurisdiction or to such issues of law as may in his opinion dispose of the whole of the case or any part thereof, which can be legitimately taken up and decided before the other questions of fact have been heard and determined cannot give a right of appeal under S. 11 unless of course the preliminary issues have been decided against the Crown and the case has been finally disposed of so far at least as the District Judge is concerned. (Abdur Rahman and Achhru Ram JJ.) K. Satwant Singh v. Provincial Government of the Punjab,

AIR 1946 Lah 406 = 48 Pun L R 77=227 I C 488= 48 Cr L J 136.

—S. 9.

——Application under—Property attached from applicant deposited in Lahore treasury before partition of India — No funds with District Judge at Ambala—Order on application to 'put up when money is transferred to India' held correct — Judge need not fix the amount for applicant's maintenance and for legal expense. (Weston C. J. and Falshaw J.), Satwant Singh v. State of Punjab,

A I R 1951 Punj 90 (1)=52 Cr L J 1230.

—S. 11.

——Order vacating 'ad interim' attachment — Appeal against order is competent. (Reuben and Narayan JJ.), State of Bihar v. Santo Kumar Mitra,

AIR 1952 Pat 148=31 Pat 170=1952 Cr L J 476.

—Schedule.

——Item 4— Word 'dominions' includes Government of Burma.

The word 'dominions' in item 4 of the Schedule to the Criminal Law Amendment Ordinance has not been used in a technical sense referring only to such dominions as have been recognised to be such under the Statute of Westminster in 1931. It is used to denote His Majesty's territory, realm or empire and, therefore, includes the

CRIMINAL LAW AMENDMENT ORDINANCE (XXXVIII of 1944), Schedule

Government of Burma, (Abdur Rahman and Achhru Ram JJ.) K. Satwant Singh v. Provincial Government of the Punjab,

AIR 1946 Lah 406 = 48 P L R 77=227 I C 488=48 Cr L J 136.

CRIMINAL MISAPPROPRIATION.

See Penal Code, Ss. 403 and 404.

CRIMINAL NEGLIGENCE.

See Penal Code, S. 304A.

CRIMINAL PROCEDURE.

See Criminal P. C. (1898).

CRIMINAL PROCEDURE (ADAPTATION) ORDINANCE (XXXII OF 1948).

——Power of Government to deprive District Magistrate of his powers under S. 515, Criminal P. C.—See Criminal P. C. (1898), S. 36,

AIR 1951 Madh B 67=52 Cr L J 214.

CRIMINAL PROCEDURE AMENDMENT ACT (XXVI OF 1943).

——Act is validly enacted by Central Legislature — Appeal under S. 411A, inserted by Act in Criminal P. C., is maintainable — Word "procedure" in entry 2, List III, Sch. VII, Government of India Act should be construed to find out what it was intended to comprise as subject-matter, not to find out whether particular matter is matter of procedure — Matter of appeal treated as part of procedure when Government of India Act was passed—Legislature must be presumed to have so treated it when Government of India Act was passed— Subject-matter of Act XXVI [26] of 1943 falls within expression "Criminal Procedure" in Entry 2, List III—If not it falls within expression "all matters included in Criminal P. C., at date of passing Act" in the same entry—Subject-matter does not fall under entry 1 or 2 of List II, either as "administration of justice" or as "constitution or organisation of Court" — If there is overlapping, List III prevails — Assuming that subject-matter falls in List II, it is valid under special provisions contained in S. 103. (Rajamannar C. J., Horwill and Rajagopalan JJ.) In re S. M. Nathaniel,

A I R 1949 Mad 481 = 1949 M W N 93 = (1949) 1 M L J 258=I L R (1949) Mad 739=50 Cr L J 684 (FB).

CRIMINAL PROCEDURE CODE (V of 1898)

—Preamble.

See also Interpretation of Statutes.

——Scope — Absence of provision on particular matter—Powers of Court.

The Criminal P. C., is exhaustive only with regard to matters specifically dealt with by it. Absence of any provision on a particular matter does not mean that there is no such power, and the Court may act on the principle that every procedure should be understood as permissible till it is shown to be prohibited by law. (Gruer J.) Hansraj Harjiwan v. Emperor,

A I R 1940 Nag 390=ILR (1942) Nag 333=191 I C 636=1940 A L J 449=13 R N 212=42 Cr L J 208.

——Construction—Sub-sections in Code are not clauses.

The sub-sections of the Criminal P. C. are referred to as "sub-sections" and not as "clauses" and it is only in the case of a bill that a reference is made to clauses. (Bennet J.) Shyama Pado Deb v. Sundar Das,

A I R 1938 All 536 = ILR (1938) All 794 = 177 I C 928=1938 A L J 767=11 R A 241=1938 A L R 801 = 39 Cr L J 978.

CRIMINAL P. C. (V of 1898), Preamble

——Construction of the Code.

The language of the Criminal P. C. is conclusive and must be construed according to ordinary principles, so as to give effect to the plain meaning of the language used. No doubt in the case of an ambiguity, that meaning must be preferred which is more in accord with justice and convenience, but in general, the words used read in their context must prevail. (Lords Wright, Alness, Romer, Sir Shadilal and Sir George Rankin.) Babulal Choukhani v. Emperor,

A I R 1938 P C 130 = 32 S L R 476 = 1938 M W N 505=1938 A W R 116=1938 A L J 382=40 Bom L R 787=4 B R 490=19 P L T 343 = 42 C W N 621=174 I C 1=67 C L J 161=1938 O W N 416=ILR (1938) 2 Cal 295=(1938) 1 M L J 647=1938 A L R 309 = 1938 O L R 189 = 65 I A 158 = 10 R P C 250 = 39 Cr L J 452 (PC).

——Applicability.

Provisions of the Code, in so far as they are inconsistent with the Bengal Suppression of Terrorist Outrages Act XII of 1932, do not apply to trials by Special Magistrates under the Terrorist Outrages Act. (S. K. Ghose and Henderson JJ.) Mahomed Saleuddin v. Emperor,

A I R 1935 Cal 281 = 39 C W N 698 = 7 R C 695= 156 I C 238=1935 Cr Cas 391=36 Cr L J 884.

——If exhaustive.

So far as the Criminal P. C. deals with any point specifically, the Code must be deemed to be exhaustive but where a case arises which demands interference and it is not within those for which the Code specifically provides, it would not be reasonable to say that the Court had not the power to make such order as the ends of justice required. (Guha and Nasim Ali JJ.) Nagen Kundu v. Emperor,

A I R 1934 Cal 428=61 Cal 498 = 38 C W N 501=6 R C 665=59 C L J 516=149 I C 345=1934 Cr C 538 = 21 A I Cr R 255=35 Cr L J 941.

——Internal arrangement of High Court.

The internal arrangements of the High Court are dealt with by its rules and the Code does not decide what functions can be exercised by a single Judge or must be exercised by a Division Bench. Code deals with the High Court as one and the definitions of the High Court are not intended to do more than to point to the Court itself so as to distinguish it from other Courts. (Rankin C. J., C. C. Ghose, Buckland, B. B. Ghose and Mukerji JJ.) Emperor v. Girish Chandra,

=A I R 1929 Cal 756 = 57 Cal 1042=I R 1930 Cal 321 123 I C 433=50 C L J 408= 34 C W N 13 = 1929 Cr C 468=31 Cr L J 506 (FB).

——Construction—Strictly in favour of the accused.

Extradition Act and Criminal Procedure Code both being penal enactments their terms must be strictly construed in favour of accused persons wherever such construction can be reasonably justified. (Mirza and Baker JJ.) Bai Aisha, In re,

A I R 1929 Bom 81=Ind Rule (1929) Bom 369=117 I C 321=31 Bom L R 62=53 Bom 149=30 Cr L J 772.

——The Evidence Act is a separate statute dealing with an important branch of law, and its provisions are independent of the rules of procedure contained in the Criminal Procedure Code and must have full scope unless it is clearly proved that they have been repealed or altered by another statute. (Shadi Lal C. J. and Addison J.) Rannun v. King-Emperor,

A I R 1926 Lah 88 = 7 Lah 84 = 27 P L R 583=94 I C 901=27 Cr L J 709.

CRIMINAL P. C. (V of 1898), Preamble

——Power of Court—Exhaustive only so far as it deals.

So far as it deals with any point specifically, the Code of Criminal Procedure must be deemed to be exhaustive and the law must be ascertained by reference to its provisions, but where a case arises which obviously demands interference and it is not within those for which the Code specifically provides, it would not be reasonable to say that the Court had not the power to make such order as the ends of justice require. (Buckland and Cuming JJ.) Rahim Sheikh v. Emperor,

A I R 1923 Cal 724=50 Cal 872=37 Cal L J 595=73 I C 773 (2)=24 Cr L J 677 (2).

——Abrogation of—Martial Law.

The introduction of Martial Law does not abrogate or suspend the operation of the Criminal Procedure Code in any particular area. (Spencer and Kumaraswami Sastri JJ.) Kochunni Elaya Nair In re,

AIR 1922 Mad 215=45 Mad 14=68 I C 26=14 L W 465=41 M L J 441=(1921) M W N 708=23 Cr L J 490.

—S. 1.

SYNOPSIS

1. Criminal procedure.
2. Civil dispute.
   See also (1) Note 1—Criminal Procedure.
   (2) Criminal P. C., Ss. 145 and 203.
3. Extent.
4. "In the absence of any specific provision to the contrary."
5. Special law.
6. Local law.
7. Special powers.
8. Police at Calcutta and Madras.
9. Village headman in Madras.
10. Village police officers in State of Bombay.

1. Criminal procedure.

——Ss. 1, 4 (1) (h) and 561A — Practice of rushing to Criminal Courts for expeditious settlement of disputes which should properly be decided by Civil Courts, deprecated—Complaint held did not disclose any commission of offence and proceedings quashed under S. 561A. (Kapur J.) K. S. Javari v. Bhagwat Parshad,

A I R 1950 E P 155=51 Cr L J 736.

——Ss. 1 and 367—Duty of Judge.

In a criminal trial, the Judge is not merely a disinterested auditor of the contest between the prosecution and the defence but it is his duty to elucidate a point which the prosecution or the defence may have left in obscurity either intentionally or unintentionally. The presence of counsel in a criminal trial does not absolve the Court from its primary and fundamental responsibility to ensure that all proper and necessary steps are taken to arrive at the truth :

The object of the Criminal Courts is not primarily to do justice between complainant and an accused person. The primary object is to punish crime in the interests of the State and if a complainant is considering his own private grievances he can seek redress by way of damages in a civil Court. It is their duty to get to the bottom of a case and to bring relevant evidence upon the record and to see that justice is done. (Khosla and Harnam Singh JJ.) Jit Singh v. The Crown,

A I R 1949 East Punj 334=51 P L R 65=50 Cr L J 840.

——Civil matters — Questions of ownership and title should not be decided by Criminal Courts.

It is not for a Criminal Court to decide difficult and complicated questions of ownership and title. For instance, the question whether the person has the right to revoke

CRIMINAL P. C. (V of 1898), S. 1 — 1. Criminal procedure

the grant is a difficult question of law not properly to be decided in a criminal case. (Davis C. J. and Weston J.) Budho v. Emperor, [redacted]

A I R 1943 Sind 152 = 16 R S 71=I L R (1943) Kar 112=208 I C 258=44 Cr L J 761.

——Civil rights.

A Criminal Court is not competent to decide the civil rights of the parties. (Nanavutty J.) Ram Bali v. Emperor,

A I R 1937 Oudh 207=9 R O 293=1937 O W N 34= 13 Luck 89 = 166 I C 219 = 1936 O L R 727 = 38 Cr L J 147.

——Court's duty—Difference between a civil and criminal case.

In civil cases, it is the duty of the parties to place before the Court their case as they think best, and in criminal cases the Court must try to get all relevant evidence before it and see that justice is done. (Tudball and Walsh JJ.) Emperor v. Janki Prasad,

A I R 1921 All 202 = 43 All 283=L R 2 A (Cr) 6= 60 I C 322=19 A L J 196=22 Cr L J 210.

2. Civil dispute.

See also (1) Note 1—Criminal Procedure.
(2) Criminal Procedure Code, Ss. 145 and 203.

3. Extent.

——A criminal case pending at the time the Code of Criminal Procedure (Amendment) Act came into force in Hyderabad State would be governed by Indian Criminal Procedure Code and not by Hyderabad Criminal P. C.—See Constitution of India, Art. 254.

A I R 1952 Hyd 167=1952 Cr L J 1740 (FB).

——Applicability in Rewa State before and after its integration in Vindhya Pradesh—See Penal Code (1860), S. 1.

A I R 1951 Vin Pra 17=52 Cr L J 561.

——Applicability to Indian Native States.

The Code does not extend to Indian Native States. (Hemeon J.) Hira Lal v. Emperor,

A I R 1946 Nag 128=1945 Nag L J 68=I L R (1945) Nag 130.

——Ss. 1, 83—Court in Quetta.

Quetta does not form part of British India and consequently a warrant issued by a Court in Quetta cannot be executed in British India. The Court in Baluchistan must proceed under S. 7, Extradition Act. (Almond J. C.) Devki Nandan v. Emperor,

A I R 1940 Pesh 30 = 13 R Pesh 24=190 I C 203= 41 Cr L J 857.

4. "In the absence of any specific provision to the contrary."

——S. 1 (2)—"In the absence of any specific provision to the contrary" meaning of.

The words "in the absence of any specific provision to the contrary" in S. 1 (2), Criminal P. C., mean and contemplate a provision specific in affecting the special or local law. This specific provision to the contrary need not be in the Criminal P. C., itself. It may be in the special or local law also. The words "in the absence of a specific provision to the contrary" in S. 1 (2), cannot be read as referring to any possible contrariety between a specific provision in the present statute and a provision in a special statute. In order that one provision can be said to be 'a specific provision to the contrary' it must completely cover the field of operation of the other and must lay down a contrary rule for the entire field so as altogether to nullify the other. (Lodge and Pal JJ.) Naresh Chandra v. Emperor,

A I R 1942 Cal 593=15 R C 497=I L R (1942) 1 Cal 436=46 C W N 180 = 75 C L J 507 = 204 I C 111=44 Cr L J 145.

CRIMINAL P. C. (V of 1898), S. 1—4. "In the absence of any specific provision to the contrary"

——S. 1 (2)—Specific provision to the contrary, meaning of.

Per Braund J.—The words 'specific provision' in S. 1 (2) really mean that the particular provision of the Criminal P. C., must, in order to "affect" the "special law," clearly indicate, in itself and not merely "by implication to be drawn" from the statute generally, that the "special law" in question is to be affected without necessarily referring to that "special law" or the effect on it intended to be produced in express terms. (Collister, Allsop and Braund JJ.) Baldeo v. Emperor,

A I R 1940 All 263 = 13 R A 48 =1940 A L J 241= 1940 A W R 229=I L R (1940) All 396=188 I C 562= 41 Cr L J 627 (FB).

5. Special law.

——S. 1 (2)—Offences cognizable by panchayat Court — Jurisdiction of panchayat Courts is not exclusive so as exclude jurisdiction of ordinary Courts — Existence of special law by itself cannot be taken to exclude the operation of the Criminal P. C., unless the special law impliedly or expressly provides that certain offences shall be exclusively tried by Courts constituted under the Act — See Madhya Bharat Panchayat Vidhan, S. 2006 (LVIII of 1949), S. 77.

A I R 1953 Madh Bha 89=1953 Cr L J 629.

——S. 1 (2)—Exclusion of Code in Naga Hills territory under rules framed by Governor of Assam by virtue of his power under S. 6, Scheduled Districts Act, 1874—Conferment of power belonging to the Governor under the rules upon the Assam High Court — Governor not having power under rules to transfer pending Criminal Case to Court outside district—High Court if enabled by language of R. 22 to transfer in such manner — See Scheduled Districts Act (1874), S. 6.

A I R 1949 Assam 69=51 Cr L J 147.

——S. 1 (2)—"Generalia specialibus non-derogant."

The rule laid down in S. 1 (2), Criminal P. C. "Nothing herein contained shall affect any special law now in force" is an application of the maxim generalia specialibus non derogant. (Burn and Stodart JJ.) In re Subbiah Tevar,

A I R 1939 Mad 856 = 50 L W 318=(1939) 2 M L J 455=1939 M W N 1000 = 12 R M 469 = I L R (1939) Mad 947=184 I C 593=41 Cr L J 41.

——In absence of any provision to the contrary in the Calcutta Municipal Act, 1923 the provisions of the Criminal P. C., will apply and therefore the Magistrate is not entitled to hear and determine the case in the absence of the accused on the subsequent date. (Jack J.) Kusum Kumari v. Corporation of Calcutta,

A I R 1937 Cal 218=9 R C 872=168 I C 698=38 Cr L J 632.

——Evidence Act.

Section 1 (2) shows that the Code does not affect any local or special law in force; so one must look to the Evidence Act for the admissibility of confessions rather than the Criminal P. C. (Baguley J.) Nga Thein Maung v. Emperor,

A I R 1936 Rang 350 = 9 R Rang 64=164 I C 162= 1936 Cr Cas 703=37 Cr L J 920.

——Applicability.

Orders passed under the Upper Burma Ruby Regulations of 1887, S. 6, are within the scope of the Criminal Procedure Code, as regards appeal and revision though no provision is made in the Regulation for an appeal or revision. (Duckworth J.) Maung Po Lon v. King-Emperor,

A I R 1925 Rang 12 = 84 I C 433 = 2 Rang 321=3 Bur L J 168=26 Cr L J 289.

CRIMINAL P. C. (V of 1898), S. 1—5. Special law

——"Special Law" refers to statutory enactments and not to local family law. (Ayling and Napier JJ.) Parapatti Chinna v. Shankunni Menon,

A I R 1919 Mad 193=10 L W 229=26 M L T 238= 37 M L J 361=(1919) M W N 632 = 52 I C 893=20 Cr L J 733.

——Ss. 1 (2), 435 — Sind Frontier Regulation (Act 5 of 1872), S. 11 and (Act 3 of 1892).

The revisional powers conferred on a High Court by the Code do not apply to proceedings under Sind Frontier Regulations (Pratt J. C.) Imperator v. Ghulam Kadar,

5 S L R 105=12 I C 656=12 Cr L J 568.

——Jurisdiction of Court under S. 480 against European British subject — See Criminal Procedure Code (Act 5 of 1898), S. 480,

10 Cr L J 257 (Mys).

6. Local law.

——Ss. 1, 9 and 215 — Courts of Sessions in British Baloochistan—Jurisdiction to try European British subject —Chief Court's jurisdiction — Reg. 8 of 1896 — Sessions Courts in Baloochistan have jurisdiction to try European British subjects on committal by competent Courts. Their jurisdiction is not affected by the fact of their not having been appointed by the Local Government under S. 9 of the Code because they had been appointed by the Governor-General under S. 3 of Regulation 8 of 1896. The Extra Assistant Commissioner and Assistant Political Agent, Quetta, commit to the Sessions Court. So, a commitment by the Extra Assistant Commissioner, Quetta, of a European British subject to the Sessions Court cannot be quashed under S. 215 of the Code. (William Clark C. J. and Reid J.) King-Emperor v. Arthur Mercer,

5 P R 1907 Cr=26 P W R 1907=41 P L R 1907=6 Cr L J 108.

7. Special powers.

——Ss. 1, 344, 556—Summary proceedings for contempt —Stay—S. 220 (2) (b), Government of India Act, 1935 (25 & 26 Geo. V, Ch. 42).

The Criminal P. C., is not applicable to summary proceedings taken for punishing a contempt. Even if S. 344 of the Code be applicable in a case where the Court is scandalised and an attempt is made by a scurrilous publication to undermine and impair the authority of the Court, immediate action is necessary with a view to vindicate the authority of the Court and the proceedings should not be adjourned merely because an application has been made by the accused to His Majesty through the Viceroy under S. 220 (2) (b), Govt. of India Act. (Young C. J., Monroe and Mhuhammad Munir JJ.) In re K. L. Gauba,

A I R 1942 Lah 105=44 P L R 206=I L R (1942) Lah 411=14 R L 449=200 I C 182=43 Cr L J 599 (FB).

8. Police at Calcutta and Madras.

——Ss. 1 and 164—Police investigation.

The change by amendment of 1923 is made to allow a Presidency Magistrate to record a confession in the course of a police investigation. Although S. 1 bars the application of the Code to the police it does not bar an application of the Code to a Magistrate or any Magistrate not being a police officer. (Adami and Bucknill JJ.) Nil Madhab Chowdhry v. Emperor,

AIR 1926 Pat 279=96 I C 509=5 Pat 171=7 A I Cr R 75=27 Cr L J 957.

——Ss. 1 (2) (a), 4 (p) and (s), 55 (b), 109 (b) — Arrest by an Inspector of Police in Calcutta, Legality of—Power of Magistrate to proceed under S. 105 (b).

S. 1 (2), Criminal P. C., makes it clear that the Code does not apply to the Police in the town of Calcutta unless expressly made applicable to them. Hence S. 4

CRIMINAL P. C. (V of 1898), S. 1 — 8. Police at Calcutta and Madras

cls. (p) & (s) do not apply to them. Section 55 is however, expressly made applicable to them. An arrest by an Inspector of Police in Calcutta of a person, who has no ostensible means of subsistence or is unable to give a satisfactory account of himself is, therefore, quite legal.

A Magistrate is empowerd to initiate proceedings under S. 109, Criminal P. C., whenever he has credible information that the accused has no ostensible means of livelihood or is unable to give satisfactory account of himself and is within the limits of his jurisdiction. How the accused came before the Magistrate is immaterial. (Rampini and Handley JJ.) Emperor v. Madho Dhobi,

I L R 31 Cal 557=1 Cr L J 535.

9. Village headman in Madras.

——Complaints by Village Magistrate.

S. 1 of the Code merely means that Village Magistrates are not with reference to the proceedings before them as such Magistrates governed by the provisions of the Criminal Procedure Code and not that they cannot complain. (Krishnan J.) Public Prosecutor v. Mari Mudali,

A I R 1924 Mad 730=76 I C 653=19 M L W 30=1924 M W N 145=25 Cr L J 221.

10. Village police officers in State of Bombay.

——All that is laid down by S. 1 (2), is that the procedure laid down by the Code is not to govern the actions of village Police Officers, but it does not mean that the provisions of the Code are not to apply in the case of a complaint against a village Police Officer. (Beaumont C. J. and Sen J.) Emperor v. Sankar Sayaji,

AIR 1938 Bom 489=40 Bom L R 1106=11 R B 183=178 I C 682=40 Cr L J 116.

—S. 2.

——S. 2 (11) — Hindu coparcenary — On father's death, sons and widow are his legal representatives—(Civil P. C. (1908), O. 22, R. 3).

On the death of a Hindu his sons who take by survivorship and his widow who takes under the statute (Hindu Women's Right to Property Act) are legal representatives A. I. R. 1921 Lah. 34, Dissented from, A. I. R. 1918 Bom. 165, held overruled by I. L. R. (1941) Bom. 177; Case law reviewed. (Falshaw and Kapur JJ.) Bishan Narayain v. Om Parkash,

A I R 1952 Punj 167=I L R (1952) Punj 150=54 Pun L R 73.

—S. 3.

——S. 3 (2)—"Full power Magistrate" in Mysore means First Class Magistrate—See Mysore Village Police Rules, R. 23,

29 Mys L J 134.

——Apology.

—Lack of supervision is not a defence to a proceeding for contempt arising on a publication in the newspaper. But where the publication may have been the result of an accidental slip apology may be accepted. (Blank and Lahiri JJ.) Bankim Chandra Paira v. Ananda Bazar Patrika,

AIR 1950 Cal 129=I L R (1951) 1 Cal 94=51 Cr L J 610.

—S. 4.

SYNOPSIS

1. S. 4—Scope.
2. S. 4 (1) (b)—Bailable offence.
3. S. 4 (1) (f)—Cognizable offence — See also Criminal P. C., S. 190.
4. S. 4 (1) (h)—Complaint—See also Criminal P. C., S. 200.
   (a) Scope of definition.
   (b) Form of complaint.
   (c) Civil dispute — See under Criminal P. C., Ss. 1, 145 and 203.
   (d) Joint complaint — See also Criminal P. C., S. 200.
   (e) Who may complain.
   (f) "To a Magistrate."
   (g) "With a view to his taking action."
      (i) Cases where petition was held to be a "complaint."
      (ii) Cases where petition was held not to be a "complaint."
   (h) "That some person has committed an offence."
   (i) "Some person whether known or unknown."
   (j) "Report of a police officer."
   (k) Limitation.
5. S. 4 (1) (i)—European British subject.
6. S. 4 (1) (j)—High Court.
7. S. 4 (1) (k)—Inquiry.
8. S. 4 (1) (l)—Investigation.
9. S. 4 (1) (m)—Judicial proceeding.
10. S. 4 (1) (n) — Non-cognizable offence and non-cognizable case.
11. S. 4 (1) (o)—Offence.
12. S. 4 (1) (p) — Officer in charge of police station.
13. S. 4 (1) (r)—Pleader.
14. S. 4 (1) (v) and (w) — Summons case and warrant case.

CRIMINAL P. C. (V of 1898), S. 4

1. S. 4—Scope.

——Interpretation—Self-contained.

Section 4 of the Civil Procedure Code, is an interpretation clause or section. Its legitimate function is to declare that certain words and expressions used in the Code shall, wherever permissible, not only have the meaning which is generally attached to such words and expressions but such meaning as is assigned to such words and expressions by the interpretation clause. But by no means it is intended to annex to such words or expressions every incident which may seem to be attached to them by any other Act of the Legislature : 12 Cal 430, Ref. (Kennedy J. C., Raymond, Aston, Rupchand Bilaram and Percival, A. J. Cs.) Walter John Brooks v. Nee Burwick.

AIR 1926 Sind 58=91 I C 99 (FB).

2. S. 4 (1) (b)—Bailable offence.

——S. 4 (1) (b) and Sch. II — Defence of India Rules (1939), R. 81 (4)—Offence under, is non-bailable—Court is bound to allow expenses of defence witnesses—Madras Criminal Rules of Practice, R. 366.

An offence under R. 81 (4), Defence of India Rules, 1939 being punishable with a maximum term of 3 years' imprisonment, is non-bailable as per Sch. II, Criminal P. C. Consequently in a trial of an accused for an offence punishable under that rule, the Court is bound to pay the expenses of witnesses for defence as per R. 366 of the Madras Criminal Rules of Practice. (Kuppuswami Aiyar J.) In re Chokalingam Pillai.

AIR 1946 Mad 390=59 M L W 239=(1946) 1 M L J 361=1946 M W N 275=226 I C 182=47 Cr L J 843.

3. S. 4 (1) (f)—Cognizable offence.

See also Criminal P. C. S. 190.

——The special provisions at the end of Sch. II, Criminal P. C., support the view that offences under the Bombay Prevention of Gambling Act are not cognizable offences under S. 4 (1) (f) of Criminal P. C. (Davis C. J.) Mahmood Khan Daulat Khan v. Emperor.

AIR 1942 Sind 106 = I L R (1941) Kar 94 = 15 R S 58=202 I C 681=43 Cr L J 888.

CRIMINAL P. C. (V of 1898), S. 4 — 3. S. 4 (1) (f)— Cognizable offence

——In order that an offence may be cognizable, it is not necessary that every Police Officer should have the power to arrest without warrant. (Pollock J.) In re Nagar Mal Jankiram.

AIR 1941 Nag 338=1941 N L J 465 = 14 R N 145= I L R (1941) Nag 426=196 I C 869=43 Cr L J 89.

——Offences punishable with imprisonment for less than three years.

The words "or under any law for the time being in force" in S. 4 (1) (f), have reference to such offences which are punishable with imprisonment for less than three years, but are specified as offences for which the Police may arrest without a warrant, that is offences, which but for the special provision would not under the Criminal P. C., be cognizable offences. (Grille J. C.) Maganlal Bagdi v. Emperor.

AIR 1934 Nag 71=7 R N 10 = 30 N L R 269 = 150 I C 623=1934 Cr C 276=35 Cr L J 1097.

——Interpretation—Applicability of maxims.

The words "under any law for the time being in force" in S. 4 (f) are wide enough to include an express or implied provision of any law or enactment and would cover the application of the maxims 'qui facit per alium facit per se' (whatever a man may do of himself, he may do by another and 'qui per alium facit per seipsum facre videtur' (he who does an act through another is deemed in law to do it himself) to any provision of any enactment, in order to arrive at the true intention of the enactment. (Patkar and Wild JJ.) Emperor v. Ismail Herji.

AIR 1930 Bom 49=I R 1930 Bom 234 = 124 I C 106 =31 Bom L R 1349=1930 Cr C 113= 54 Bom 146=31 Cr L J 633.

——Cognizable offence—Bombay Prevention of Gambling Act.

As under S. 6 certain officers have power to issue warrants of search and also of arrest, and to cause search or arrest without warrant personally, the offence under S. 4 or S. 5 of Bombay Act 4 of 1887 is a cognizable offence under S. 4 (1) (f), Cr. P. Code. (Marten and Madgavkar JJ.) Emperor v. Abasbhai.

AIR 1926 Bom 195 = 93 I C 967 = 50 Bom 344=28 Bom L R 272=27 Cr L J 503.

4. S. 4 (1) (h)—Complaint.

See also Criminal P. C., S. 200.

(a) Scope of definition.
(b) Form of complaint.
(c) Civil dispute — See under Criminal P. C. Ss. 1, 145 and 203.
(d) Joint complaint — See also Criminal P. C., S. 200.
(e) Who may complain.
(f) "To a Magistrate."
(g) "With a view to his taking action."
(h) "That some person has committed an offence."
(i) "Some person whether known or unknown."
(j) "Report of a police officer."
(k) Limitation.

4. S. 4 (1) (h) — Complaint

(a) Scope of definition.

——The term "complaint" as defined in S. 4 (1) (h) has the meaning therein given, unless a different intention appears from the subject or context. It does not include the report of a Police Officer. (Allsop J.) Barkat v. Emperor.

AIR 1943 All 6 = 1942 A W R 346 (1)=15 R A 327 =1942 A L J 608=I L R (1943) All 29=204 I C 243= 44 Cr L J 165.

CRIMINAL P. C. (V of 1898), S. 4 — 4. S. 4 (1) (h)— Complaint—(a) Scope of definition

——S. 4 (1) (h) — Complaint and information differentiated.

The essential difference between a complaint and information is that a Magistrate acts on a complaint because the complainant has asked him to act, but a Magistrate acts on information on his own initiative. In the case of a complaint the Magistrate is asked to prosecute the person named as accused and he has then to decide whether he will accede to the request or not. If he does not, then he must record his reasons under S. 202 (1), and may either make an enquiry himself or direct an inquiry or investigation or dismiss the complaint under S. 203 after recording his reasons. But in the case of receiving information, the Magistrate is not asked by any one to issue process and if he does not choose to act on the information, he need not record any reason or pass any order. In the case of information there is no complainant to examine on oath. On a complaint, the complainant is first examined on oath unless it has been made by a public servant acting in the discharge of his official duty : 1 C W N 105; (1899) A W N 201; 3 C W N 65 and 43 Mad 709, Ref. (Bennet J.) Sheo Pratap Singh v. Emperor.

AIR 1930 All 820=129 I C 436 = 1930 A L J 1316= 1930 Cr C 1204 = Ind Rul (1931) All 164 = L R 12A 25 Cr=53 A 208=32 Cr L J 306.

——Ss. 4 (1) (h), 492—The prosecutor in all Criminal Cases is the Crown. (Rampini and Sharfuddin JJ.) Mahadeo Lal v. Emperor

7 Cr L J 342 (Cal).

——Ss. 4, (1) (h) and 199—Complaint, meaning of.

The word "complaint" referred to in S. 199, Criminal P. C. means a complaint as defined in S. 4 (1) (h) of that Code. It must be interpreted throughout the Code as bearing that meaning. (Francis W. Maclean, C. J., Ghose, Rampini, Henderson and Geidt JJ.) Tara Prosad Laha v. Emperor

I L R 30 Cal 910=8 C W N 17 = 1 Cr L J 25 (F B).

4. S. 4 (1) (h)—Complaint—(b) Form of complaint.

——Ss. 4 (h), 200, 190 (1) (c) and 537—Valid complaint—What is.

The criterion of a valid complaint is whether there is sufficient material in it on which the Magistrate can apply his mind to the facts stated therein with a view to see whether they constitute an offence or not. If some details are missing, that deficiency is made up by the statement of the complainant in his examination under S. 200.

If there is any error, omission or irregularity in the complaint and not illegality of a gross nature, that is curable under S. 537 of the Code. (Lakshmi Narain J. C.) Marjit Kumar Singh v. Sudhamoy Bhattacharyya

A I R 1953 Tripura 1=1953 Cr L J 1463.

——Contravention of Order under S. 144 — Report by police against certain persons for action being taken under S. 188, Penal Code — Report when merely countersigned by District Magistrate if amounts to a complaint under S. 4 (1) (h) of the Code—See ibid, S. 195 (1) (a)

A I R 1950 Ajmer 23=51 Cr L J 935.

——Ss. 4 (1) (h) and 195 — Complaint misdescribing offence — Trial and conviction under another offence as disclosed by facts—Legality—See Cr. P. C., S. 195

A I R 1948 All 121=49 Cr L J 25.

——Facts showing offence under Ss. 196, 471, 193, Penal Code, and its abetment — Mention of S. 193 only is immaterial.

It is not the section cited in the complaint which matters but what matters is the complaint. When the complaint clearly shows that it is a complaint not only of an offence under S. 193, I. P. C., but also of abetment thereof as also of an offence either under S. 196 or S. 471,

CRIMINAL P. C. (V of 1898), S. 4—4. S. 4 (1) (h)—Complaint—(b) Form of complaint

I. P. C., it is immaterial that no other section except S. 193 has been cited therein:

Held, (obiter) that even on a pure and simple complaint of an offence under S. 193, I. P. C., the Court could take cognizance and convict the accused of an offence under S. 196 or S. 471, if the facts disclosed it. (Pollock and Bobde JJ.) Provincial Govt. C. P. and Berar v. Gomaji

A I R 1944 Nag 192=1944 N L J 174= I L R (1944) Nag 589=17 R N 53=215 I C 265=46 Cr L J 80.

——Charge sheet under S. 379, Penal Code (Act XLV of 1860), setting out facts constituting offence under S. 163 (a) (2), Madras Local Boards Act (XIV of 1920).

Where the charge sheet filed by the Police under S. 379, I. P. C., sets out the facts which constitute the offence under S. 163, cl. (a) (2), Madras Local Boards Act, it amounts to a complaint as defined in S. 4 cl. (h), Criminal P. C. (Lakshmana Rao J.) In re Muthuswami Pillai

A I R 1939 Mad 839 = 12 R M 463 = 1939 M W N 615 = (1939) 2 M L J 39 = 50 L W 919= 184 I C 471 (1)=41 Cr L J 20.

——A mere endorsement made by a superintendent of Police forwarding to a Magistrate the report made to the former by a Sub-Inspector of Police is not a complaint because in such a case the superintendent of police cannot be said to have intended himself to make any allegation to the Magistrate. (Sulaiman C. J. and Bennet J.) Lakhan v. Emperor

A I R 1936 All 788=1936 A L J 1064 = 1936 A L R 950=9 R A 312 = 1936 Cr Cas 1011 = I L R 1937 All 162=165 I C 769=38 Cr L J 57.

——Ss. 4 (1) (H), 190 (1) (B)—A person actually institutes criminal proceeding upon making a complaint as defined in S. 4 (1) (h) and a person also institutes criminal proceedings upon reporting the commission of a cognizable offence to the Police. (Middleton J. C. and Almond A. J. C.) Hidayatullah v. Emperor

A I R 1936 Pesh 66 = 8 R Pesh 189=162 I C 140= 1936 Cr C 122=37 Cr L J 604.

——Ss. 4 (1) (H), 190 (1) (B) — Where a complaint has been filed by a husband, it is a question of construction in each case as to whether it amounts to a complaint of an offence under S. 498, I. P. C. If a petition contains an allegation of facts which, if proved by evidence, would constitute an offence under S. 498, such petition is clearly a complaint. The fact that there are other allegations in the petition which by themselves or in conjunction with those relating to an offence, under S. 498, constitute a more serious offence, will not make the complaint any the less a complaint under S. 498, I. P. C. (Niamat-Ullah J.) Mohan Singh v. Emperor

A I R 1935 All 472=7 R A 569=153 I C 697 = 1935 Cr Cr Cas 555=36 Cr L J 404.

——Ss. 4 (1) (h), 195, 476 — Petition for inquiry into certain matters — Omission of Court to examine complainant on oath — Order directing inquiry by Police Officer.

A petition was filed before the Sub-Divisional Officer stating that a false entry was caused to be entered in the Death Register of a Police Station at the instance of the accused. The Court ordered the Police Inspector to make inquiry. In the course of the inquiry, a document alleged to be forged was produced:

Held, that the petition was a complaint within the terms of S. 4 (1) (h) and that it was the duty of the Sub-Divisional Officer receiving that complaint to examine the complainant on oath, but his failure to do so was merely an irregularity and his order referring the matter to the Inspector for inquiry must be deemed to be in substance an order directing an inquiry by Police Officer

CRIMINAL P. C. (V of 1898), S. 4—4. S. 4 (1) (h)—Complaint—(b) Form of complaint

for the purpose of ascertaining the truth or falsehood of the complaint. No proceeding of that kind could be taken by virtue of S. 195, without the complaint of the Court. (Rowland J.) Raghunandan Lal v. Emperor

A I R 1934 Pat 156 = 15 P L T 17 = 7 R P 77 (2)= 151 I C 320=1934 Cr Cas 340=35 Cr L J 1309.

——Ss. 4 (1) (H), 195, 476 — A complaint as defined in S. 4 (1) (h) need not in fact specify any offender or even the section of the law which makes an act or omission punishable. (Dhavle and Rowland JJ.) Baldeo Prasad v. Emperor

A I R 1933 Pat 297 (300)=14 P L T 330=6 R P 166 =12 Pat 758=145 I C 382=1933 Cr Cas 289 = 34 Cr L J 942 (DB).

——Wrong section of law.

The essence of the complaint is the statement of facts relied upon as constituting the offence. It is sufficient that the complainant shall state the true facts in his own language, and it is for the Magistrate to apply the law to those facts. Where a Court while making a complaint under S. 476, Criminal P. C., wrongly described S. 477, I. P. C., though the facts disclosed a case under S. 465, I. P. C., and it was contended that the complaint was invalid on the ground that S. 477 was not one of those sections mentioned in S. 195, Criminal P. C.

Held, that the complaint was not illegal on that ground. A. I. R. 1925 Lah. 631, Ref. (Addison and Coldstream JJ.) Emperor v. Balmukand

A I R 1928 Lah 510 = 110 I C 108 = 9 Lah 678=10 A I Cr R 474=29 Cr L J 652.

——Section of law.

A complaint need not quote any section of I. P. C., but must contain a statement of the facts relied on as constituting the offence, and it is for the Magistrate to determine on these facts what offence has prima facie been committed ; the nature of the charge will be determined by him. All that is necessary for him to see is that the enquiry into the charge is within his competency and that, in the case of certain offences, the complaint has been made by the proper person. (Le Rossignol and Fforde JJ.) Mt. Naurati v. Emperor

A I R 1925 Lah 631 = 2 Lah Cas 53 = 95 I C 305= 6 Lah 375=26 P L R 552=27 Cr L J 769.

——Action under S. 107—Prayer for.

The definition does not require that the action asked for should be under any particular provision of the Code and does not exclude a request for action under S. 107, provided the facts alleged do amount to a substantive offence. (Daniels J.) Khacho Mal v. Emperor,

AIR 1926 All 358=93 I C 69=7 L R A Cr 76=27 Cr L J 405.

——Oral complaint.

The sworn statement and the written complaint of a complainant may be read together for the purpose of ascertaining what the nature of the complaint in any particular case is. (Spencer J.) Arunachalam Chetty, In re

AIR 1924 Mad 323=74 I C 949=33 M L T 268= 1923 M W N 876=45 M L J 543 (2)=24 Cr L J 837.

——Ss. 4 (h) and 200—Written complaint—Deposition on oath under S. 200.

Per Wallis C. J. and Coutts Trotter, (Ayling J. contra.) Ascertainment of what specific charges were preferred by the complainant cannot be made from the deposition of the complainant on oath under S. 200, Cr. P. C. (Wallis C. J.) Pedda Anjinigadu, In re,

AIR 1922 Mad 353=13 L W 695=(1921) M W N 514=64 I C 282=22 Cr L J 762.

——Ss. 4 (1) (h), 190 (1) (a) and 537 (a)—Complaint, meaning of — Jurisdiction — Irregularity—Penal Code, S. 354.

CRIMINAL P. C. (V of 1898), S. 4—4. S. 4 (1) (h)—Complaint—(b) Form of complaint

A woman sent a petition to the Dy. Commissioner with an 8 annas Court-fee stamp, describing the offence committed, and the name of the offender and expressly asking for trial and punishment under S. 354, I. P. C., by a Subordinate Court, but the Deputy Commissioner returned the petition with an endorsement that it might be presented before a specified Magistrate and she presented it to that Magistrate : Held, the presentation amounted to a valid complaint. The fact that the heading was wrong or that a fresh court-fee ought to have been taken when it was presented to the proper Magistrate could not alter the contents of the petition, and that the complaint required to give the Tahsildar jurisdiction under S. 190 (1) (a) cannot reasonably be said to have been wanting. (Drake Brockman J. C.) Shanker v. Mauni,

AIR 1916 Nag 117=13 N L R 13=39 I C 299=18 Cr L J 459.

——Petition to collector is a complaint.

Where a petition to the Collector of a District was treated by him as a complaint and the petitioners themselves by their subsequent action treated it as such held, that whatever be the heading of the petition, it was a complaint within the meaning of the Code. (Tudball J.) Bullan v. Emperor,

11 A L J 529=20 I C 409=14 Cr L J 425.

——Complaint does not include deposition before Magistrate in the course of trial.

Complaint does not include a deposition made to a Magistrate in the course of a trial. (Batchelor and Rao JJ.) In re Kisandas,

14 Bom L R 1166=18 I C 145=14 Cr L J 1.

——Telegram if can be treated as complaint—See ibid, S. 476.

6 Ind Cas 390=11 Cr L J 351 (All).

4. S. 4 (1) (h)—(c) Civil dispute.

See under Criminal P. C., Ss. 1, 145 and 203.

4. S. 4 (1) (h)—Complaint—(d) Joint complaint.

See also Criminal P. C., S. 200.

——Joint complaint by two persons is legal. (Bennett J.) Abdul Karim v. Nangoo,

AIR 1942 Oudh 407=15 R O 59=1942 O W N 388=1942 A W R 259=18 Luck 248=201 I C 54=43 Cr L J 731.

——Ss. 4 (1) (h), 200—Joint complaint, legality of.

A joint complaint by two persons is not contemplated by the Criminal P. C. A Magistrate must examine the complainant on oath and it is obvious that if there are two or more complainants on the complaint, it is physically impossible to fulfil the provisions of that section. (Lort-Williams and S. K. Ghose JJ.) Sashadhar Acharjya v. Charles Tegart,

AIR 1931 Cal 646=35 C W N 782=Ind. Rul. (1932) Cal 69=134 I C 1189=(1931) Cr C 846=33 Cr L J 83.

4. S. 4 (1) (h) — Complaint—(e) Who may complain.

——Sending report of Sarpanch of Panchayati Adalat to Judicial Officer by Sub-Divisional Magistrate is filing complaint.

Where the Sub-Divisional Magistrate sends the report of the Sarpanch of the Panchayati Adalat itself to the Judicial Officer, he obviously intends that the Judicial Officer should take cognizance of the offence that has been committed. That is tantamount to his filing a complaint before the Judicial Officer and the Government Order (No. 12353, D/- 20-10-1949) providing that the Sub-Divisional Magistrate should file the complaint is substantially complied with. (Agarwala J.) Sadanand v. State,

AIR 1952 All 515=1952 A L J 100=1952 R D (H C) 100=1952 A W R (HC) 222=1952 All Cr R 78=1952 Cr L J 951.

CRIMINAL P. C. (V of 1898), S. 4—4. S. 4 (1) (h)—Complaint—(e) Who may complain

——Ss. 4 (1) (H), 190 (1) (B) — Complaint by aggrieved party, if essential—Exemptions — Criminal P. C. (Act V of 1898), Ss. 198, 199.

A complaint need not necessarily be made by the person injured, but may be made by any person aware of the offence. The rule is that if a general law is broken, any person has a right to complain whether he himself has suffered any particular injury or not. This general rule is subject to exceptions mentioned in Ss. 198 and 199, Criminal P. C., where certain offences are stated to be complainable only by specified persons. (Ganga Nath J.) Gajraj Sinha v. Emperor,

AIR 1935 All 938=8 R A 425=1935 A L J 1108=1935 R D 491=1935 A W R 1067=159 I C 306 = 1935 Cr C 1184=1935 A L R 1104=37 Cr L J 56.

——Ss. 4 (1) (H), 200—Complainant need not be eye-witness of everything in the complaint. (Jackson J.) Sathakuttia Pillai v. Pichai Cruz,

1931 M W N 1316.

——There is nothing in the definition of "complaint" which requires it to be made by the person aggrieved or only in a non-cognizable case. 18 All 465, Foll. (Bennet J.) Sheo Pratap Singh v. Emperor,

AIR 1930 All 820=129 I C 436=1930 A L J 1316=1930 Cr C 1204=Ind. Rul. (1931) All 164=L R 12 All 25 Cri=53 All 208=32 Cr L J 306.

——Right to make complaint.

Any person who knows about the commission of an offence may make a complaint. (Suhrawardy and Graham JJ.) Basirulla v. Asadulla,

AIR 1929 Cal 639=119 I C 130=33 C W N 576=1929 Cr C 357 = Ind. Rul. (1929) Cal 738=30 Cr L J 1013.

——Presentation of complaint.

It is not essential that the complaint should be presented in person by the complainant and the fact that it is not so presented does not render it the less a complaint under the Code. For the purpose of vesting the Magistrate with jurisdiction to take cognizance of a case on a complaint made to him, it is not essential such complaint should be presented to him by the complainant personally. 17 C W N 448; AIR 1925 Oudh 144, Ref. (Percival J. C. and Rupchand A. J. C.) Chuhermal Nihalmal v. Emperor,

AIR 1929 Sind 132=117 I C 147=23 S L R 285=1929 Cr C 160=Ind. Rul. (1929) Sind 131 = 30 Cr L J 732.

——Ss. 4 (h) and 190 (1)—Complaint—What is.

The definition of complaint does not contain any limitation that before a Magistrate can take cognizance of an offence on a complaint there must be before him some one with a personal knowledge of the facts. But he must have before him an allegation of facts constituting the offence and not a mere repetition of the words of a section. Section 190 (1) (a) must be read with S. 4 (h) of the Code. (Beachcroft and Ghose JJ.) Sukumar Chatterjee v. Mufezuddin Ahmad,

AIR 1921 Cal 561=25 C W N 357 = 61 I C 839=22 Cr L J 455.

——Ss. 4 (1) (h), 190 (c) and 200 — Complaint—Personal knowledge—Cognisance.

A complaint which is otherwise proper is not illegal because the person making it has not personal knowledge of the offence committed. There is nothing in the Cr. P. C. to suggest that a complainant must have personal knowledge of the offence. (Coutts J.) Suresh Chandra Deb v. Emperor,

AIR 1920 Pat 163=55 I C 682 = 1 Pat L T 531=21 Cr L J 346.

CRIMINAL P. C. (V of 1898), S. 4—4. S. 4 (1) (h)—Complaint—(e) Who may complain

——Ss. 4 (1) (h), 190 (1) (a) and 200 — Madras Town Nuisance Act, S. 3 (5) — Prosecution by Sanitary Inspector, legality of—Use of charge sheet forms.

A Sanitary Inspector, not empowered to exercise the powers of a Police officer can initiate proceedings under the Madras Town Nuisance Act. He cannot put in a charge sheet or submit a police report to the Magistrate but the mere use by him of a printed form intended for offences under District Municipalities Act for embodying the substance of his complaint will not render the prosecution illegal when the document was treated as a complaint under S. 190 (1) (a) and the complainant examined under S. 200. (Ayling and Napier JJ.) Public Prosecutor v. Shamsudin Saheb,

A I R 1948 Mad 455=40 I C 289 (2)=18 Cr L J 641.

——Complaint, what is valid.

A complaint by the Public Prosecutor would not be equivalent to a complaint by the Court in the matter of charging a person under S. 211, Penal Code, and it is doubtful whether the Court could delegate its duty of filing such a complaint : 38 B. 642 : 28 I. C. 107, Ref. (Scott Smith J.) Emperor v. Gurditta,

A I R 1917 Lah 338=19 P R 1917 Cr = 39 I C 692=20 P W R 1917 Cr=18 Cr L J 548.

——Person not complained against — Whether can be charged—Aggrieved person.

A Magistrate taking cognizance of a complaint can proceed against any other person who though not mentioned in complaint appears on the evidence to be concerned in the commission of the offence. The definition of "Complaint" in S. 4 (h) means that the complainant need not always be the party directly aggrieved by the offence. Husband of a girl is competent to apply to the Magistrate with a view to his taking action under the Code. (Sharfuddin and Teunon JJ.) Dedar Bux v. Syamapada Malakar,

A I R 1914 Cal 801=41 Cal 1013 = 18 C W N 921=24 I C 954=15 Cr L J 546.

——Ss. 4 (1) (h), 190 and 191—Complaint—Who can file.

Every member of the public has a right to set the law in motion by complaint, whether he is himself a witness of the facts or not so that a Magistrate can take cognizance of a complaint filed by the Public Prosecutor, who had no personal knowledge of the facts.. (Pratt J. C.) Emperor v. Shewak Ram,

A I R 1914 Sind 65=7 S L R 77 = 23 I C 737 = 15 Cr L J 369.

——Complaint under S. 199 — Report of Police Officer—See Criminal P. C., S. 199.

12 Cr L J 50 (1) (Punj).

——Ss. 4 (1) (h) and 200—Sanction under S. 196, Criminal P. C.—Examination of complainant.

The person who signs the letter of authority under S. 196, Criminal P. C. is not the complainant, and it is not necessary to take his examination. The person who after obtaining sanction under S. 196, Criminal P. C. makes the application to the Court for the apprehension of the accused is the complainant, and his examination is to be taken. The Magistrate need not at this stage administer an oath to the complainant nor reduce his complaint into writing. (Caspersz and Chitty JJ.) Apurba Krishna Bose v. Emperor,

7 CLJ 49=ILR 35 Cal 141=2 M L T 5=7 Cr L J 10.

——Magistrate not to treat police officer as complainant under S. 200 — See Criminal P. C. Ss. 200 4 (1) (h), 190 (1) (b).

1 Cr L J 193 (Low Bur)

4. S. 4 (1) (h)—Complaint—(f) "To a Magistrate."

——Ss. 4 (1) (h), 195 — Communication by Sub-Inspector to District Superintendent of Police.

CRIMINAL P. C. (V of 1898), S. 4—4. S. 4 (1) (h)—Complaint—(f) "To a Magistrate"

Per Sulaiman C. J. and Rachhpal Singh J. Bennet J. Contra.—The communication made by the Sub-Inspector to the Superintendent of Police to the effect that a certain person has committed an offence under the Penal Code, and praying for his permission for filing a complaint against him, and which is forwarded by the latter to the Magistrate does not amount to a complaint within the meaning of S. 195, Criminal P. C. (Sulaiman C. J. and Bennet J.) Lakhan v. Emperor,

A I R 1936 All 788=1936 A L J 1064=1936 A W R 905=9 R A 312=I L R (1937) All 162 = 165 I C 769=1936 A L R 950=1936 Cr Cas 1011=38 Cr L J 57.

——Complaint by Magistrate to his own Court.

Petitioner gave evidence in a case tried by the Chief Presidency Magistrate. Part of his evidence was regarded as false and the Magistrate deemed it necessary to take proceedings under S. 476, Civil P. C. He accordingly drew up a complaint. This complaint he preferred in his own Court and then he transferred it to a Presidency Magistrate for disposal. This latter issued process, held an enquiry and committed the petitioner for trial. The petitioner was then tried and convicted :

Held, by Court (Rankin and Chakravarti JJ. Dissenting) that the procedure was not illegal.

Held, Per Walmsley J. — The Magistrate committed nothing worse than an irregularity which may be disregarded.

Held, Per Rankin J. — The proceedings have been bad throughout in defiance of the express provisions of the Code and of fundamental principles of law.

A document which is not addressed to a person other than the writer is not a complaint either in the ordinary sense or in the sense in which the word is used in S. 476 of the Criminal P. C.

Held, Per Cuming J. — There is nothing in the Code that prevents a Magistrate from taking cognizance of his own complaint.

Held, Per B. B. Ghose J. — The complaint and the subsequent trial was not illegal and the irregularity was curable under S. 532 (i), Civil P. C. (Walmsley, Rankin, Cuming, B. B. Ghose and Chakravarti JJ.) Colin Mackenzie Mackay v. Emperor,

A I R 1926 Cal 470 = 93 I C 33 = 53 Cal 350 = 43 C L J 310=30 C W 276=27 Cr L J 385 (F B).

——False charge — Charge to whom to be made — Complaint.

To fall under S. 211, Penal Code the false charge must be made to some person in authority (i. e.) to a person who is in a position to get the offender punished. The charge must be embodied either in a complaint to a Magistrate or in a report of a cognizable offence to a police officer : 6 C. 620 : 30 C. 415 : 26 B. 150 : 32 M. 8, Ref. (Simpson A. J. C.) Gaya Barhai v. Emperor,

A I R 1923 Oudh 4 = 26 O C 44 = 9 O L J 342 = 4 U P L R (O) 81=69 I C 81=23 Cr L J 641.

4. S. 4 (1) (h)—Complaint—(g) "With a view to his taking action".

(i) Cases where petition was held to be a "complaint".

(ii) Cases where petition was held not to be a "complaint".

4. S. 4 (1) (h)—Complaint—(g) "With a view to his taking action"—(i) Cases where petition was held to be a "complaint".

——Police Officer making complaint to Magistrate in respect of non-cognizable offence—Complaint is valid in view of definition in S. 4 (1) (h) — Certificate of fitness under Art. 134 (1) (c) of the Constitution cannot be issued—See Constitution of India, Art. 134 (1) (c).

A I R 1952 Kutch 54=1952 Cr L J 1037.

CRIMINAL P. C. (V of 1898), S. 4—4. S. 4 (1) (h) — Complaint—(g) "With a view to his taking action"— (i) Cases where petition was held to be a "complaint" ——Liquidation officer under U. P. Encumbered Estates Act ordering prosecution.

Where a liquidation officer, acting under the provisions of the U. P. Encumbered Estates Act (XXV of 1934) orders that an applicant whose debt he is liquidating be prosecuted and the order is communicated to a Magistrate and is made with a view to an action being taken under the Criminal P. C., and sets out the facts which constitute the offence, it cannot but be held that it is a complaint. (Harish Chandra and Agarwala JJ.) Channu Lal v. Rex,

A I R 1949 All 692 = 1950 A W R 147 = 1950 All Cr C 56=51 Cr L J 199.

——What constitutes.

If the circumstances indicate that action was sought the statement of allegations constituting an offence can be deemed to be a complaint. A prayer for action by the Magistrate is not necessary. (Rege J.) Dhapu v. Shivnarayan,

1 Madh B L R 136.

——Complaint containing prayer that case be investigated by superior Police Officer on ground that local Police were hostile to complainant.

An application addressed and presented to a Magistrate containing an allegation that an offence has been committed, with a prayer that the culprits be suitably dealt with, is a "complaint" within the definition of that term contained in S. 4. Merely because the application also contained a prayer that the case should be investigated by a superior Police Officer on the ground that the "local" Police were hostile to the applicant and under the influence of the principal accused, it does not cease to become a complaint which can only be dealt with under the Criminal P. C. and become an executive application which can be dealt with in a different manner. (Blacker J.) Kania Ram v. Chanan Mal

A I R 1940 Lah 208=42 P L R 134=13 R L 33=188 I C 524=41 Cr L J 618.

——Ss. 4 (1) (h), 190 (1) (a), 200 — Complaint not inculpating complainant—Magistrate deputed for local investigation—Report recommending prosecution of complainant —Report, if constitutes complaint.

Where, on the basis of a complaint not inculpating the complainant, local Magistrate was deputed to make a local investigation and he made report recommending the prosecution of the complainant also under S. 6, Child Marriage Restraint Act :

Held, (1) that the report constituted a complaint within the meaning of S. 4 (1), cl. (h) of the Criminal P. C. ;

(2) when the District Magistrate took cognizance on this complaint he was taking cognizance under sub-s. (1) (a) of S. 190 of the Code ;

(3) that as the complaint was made by a public servant, in the discharge of his official duties, it was not necessary for him to be examined on oath under S. 200, Criminal P. C., before issuing process. (James J.) Sukha Sahu v. Emperor

A I R 1933 Pat 87 = 13 P L T 791=Ind Rul (1933) Pat 91=141 I C 810=1933 Cr Cas 211=34 Cr L J 237.

——A Tahsildar alleged in writing to a Magistrate that three persons named in the document have committed an offence and had made a definite request that they should be tried under the Penal Code.

Held, that such a document sent by the Tahsildar to the Magistrate was a complaint : 12 C W N 438 ; A I R 1924 All 190=26 I C 148 and 11 Mad 443, Ref. (Bennet J.) Sheo Pratap Singh v. Emperor

A I R 1930 All 820 = 129 I C 436 = 1930 A L J 1316 =1930 Cr C 1204=Ind Rul (1931) All 164=L R 12 All 25 Cri=53 All 208=32 Cr L J 306.

CRIMINAL P. C. (V of 1898), S. 4—4. S. 4 (1) (h) — Complaint—(g) "With a view to his taking action"— (i) Cases where petition was held to be a "complaint" ——Essentials of.

It is of the essence of a complaint that the accusation should have been made with a view to action being taken under the Code of Criminal Procedure. An express request to that effect is unnecessary, but whether a statement is made with a view to action being taken upon it as upon complaint must be determined in the light of the circumstances. (Courtney-Terrell C. J. and Dhavle J.) Banti Pande v. Emperor

A I R 1930 Pat 550=12 Pat L T 109 = 129 I C 87 = 1930 Cr C 1094=Ind Rul (1931) Pat 71=32 Cr L J 210.

——Commission of offence.

In a complaint of a non-cognizable case to a Magistrate after the allegations that the accused had committed an offence the prayer was worded thus : "Under the circumstances complainant prays that your Honour would be pleased to order the D. D. Police to cause an enquiry to be made into the matter and the allegations made against the complainant and to submit the report of the same to your Honour. And for the time being, your petitioner reserves the right of bringing a case of defamation against the accused in future."

Held, that the petition satisfies the definition of complaint as given in S. 4 (h), C. P. Code. (Mukerji J.) Muhammad Gul v. Fazley Karim

A I R 1929 Cal 346=122 I C 205 = 33 C W N 446= 56 Cal 1013=31 Cr L J 369.

——A petition praying for an opportunity to prove the petitioner's case by witnesses is a complaint under the Criminal Procedure Code. (Jwala Prasad J.) Sukhadeva Sahay v. Hamid Miyan

A I R 1928 Pat 585 = 111 I C 862 = 7 Pat 561 = 10 P L T 14=11 A I Cr R 209=29 Cr L J 942.

——Where a case was pending before a Subordinate Magistrate, the parties compounded and filed the agreement into Court. The Magistrate found that there was a material alteration in the agreement after it was filed in Court and that the accused was responsible for it and made a report of it to the District Magistrate. He made no order under S. 476, but the District Magistrate ordered prosecution of the accused.

Held, that the report cannot in any sense be treated as an order under S. 476, Cr. P. Code, but the report falls within the definition of complaint as given in S. 4 (h) and his order therefore cannot be said to have been passed without any jurisdiction. 26 All 514, Ref. (Sulaiman J.) Sarju Prasad v. The Crown

A I R 1924 All 190=81 I C 595=21 A L J 825=4 L R A Cr 248=9 O & A L R 1049=25 Cr L J 947.

——S. 4 (1) (h) — Application to Court Inspector — If a complaint.

Where a Superintendent after inquiring into various allegations against a Sub-Inspector found they were untrue and sanctioned prosecution under S. 195, Cr. P. Code and directed the Sub-Inspector to submit an application by way of complaint, whereupon he sent the necessary papers to the Court Inspector who took proceedings, there is in effect a complaint. (Lumsden J.) Mehr Chiragh Din v. Emperor

A I R 1924 Lah 258=4 Lah 359=76 I C 189 = 25 Cr L J 125.

——Ss. 4 (1) (h) and 195 (1)—Complaint petition sent for enquiry—Offence under S. 182, I. P. C.

Where a Sub-Divisional Magistrate received a petition alleging corruption on the part of his subordinate and he sent the petition to an inferior Magistrate for enquiry and on receipt of the latter's report directed the prosecution of the petitioner under S. 476 of the Cr. P. C. Held that the order of the Sub-Divisional Magistrate was not one under

CRIMINAL P. C. (V of 1898), S. 4 — 4. S. 4 (1) (h)— Complaint—(g) "With a view to his taking action"—

(i) Cases where petition was held to be a "complaint"

S. 476 of the Cr. P. C. but a complaint, on which cognisance of an offence under S. 182, I. P. C. could be taken under S. 195 of the Cr. P. C. (Jwala Prasad J.) Saheb Tewari v. Emperor

A I R 1919 Pat 203=49 I C 919=20 Cr L J 247.

——Objection petition is a complaint.

The petition of objection filed by the petitioner during a charge of house-breaking against him was a complaint under S. 4 (1) (h). (Mullick and Atkinson JJ.) Sadhu Charan Roy v. Balai Swain

A I R 1918 Pat 270=3 P L J 346=47 I C 70 = 19 Cr L J 874.

——Petition to Magistrate is complaint.

Where a petition to a District Magistrate states that a Tahsildar was guilty of various offences under the Penal Code including one under S. 161 the petition amounts to a complaint. (Banerji J.) Thakur Das v. Emperor

A I R 1918 All 345=40 All 41=15 A L J 841=42 I C 924=19 Cr L J 12.

——Ss. 4 (1) (h) and 200.— Complaint — Transfer of, to Sub-Deputy Magistrate for inquiry and report — Irregularity.

The petitioner impugned the report of the police in a criminal case and applied to the Sub-Divisional Officer to proceed with his case against the accused. This was made over to the Sub-Deputy Magistrate for inquiry and report. The application was a complaint within the meaning of S. 1, and the procedure adopted by the Magistrate was irregular as it was not in accordance with the provisions of chapter XVI. (Jwala Prasad J.) Lalji Singh v. Pardip Singh

A I R 1917 Pat 362=41 I C 130=18 Cr L J 754.

——Complaint—Meaning of.

Complaint includes a committal sheet, signed by the Superintendent of the Salt Department and sent to Magistrate setting out date and particulars of offence under the Salt Act, the names of accused, names of witnesses, etc., and requesting the Magistrate to try the case against the accused. (Chamier C. J. and Sharfuddin J.) Phagu Sahu v. Emperor

A I R 1916 Pat 129=1 Pat L J 592 = 38 I C 750 = 3 Pat L W 29=18 Cr L J 366.

——Ss. 4 (1) (h), 195 and 476—Order of Court—Complaint or sanction—Revision.

Where a District Judge passed an order: — "I complain that R, filed two false and forged bonds in the Court," and sent the papers to the District Magistrate for taking action, held, that the order was a complaint within S. 4 (1) (h) and not a sanction under S. 195 or S. 476. (Knox J.) Raja Ram v. Emperor

A I R 1914 All 367=12 A L J 881=26 I C 148 = 15 Cr L J 700.

——Ss. 4 (1) (h), 190 (c) and 200—"Complaint" — Examination of complainant.

A letter asking a Magistrate to take action against a certain person for using insulting language against the writer is a complaint and the complainant ought to be examined on oath under S. 200 before issuing a summons to the accused. (Sharfuddin and Coxe JJ.) Khetter Mohan v. Emperor

17 C W N 448=18 I C 412=14 Cr L J 76.

——Ss. 4 (1) (h), 190, 191—Complaint—What is, cognizance on complaint.

Where a Magistrate took cognizance on a petition of complaint filed by certain persons that the accused were interfering with persons who came to sell cattle and had assaulted them as well as the complainants; held, that the complaint fell within the definition of that term in S. 4 (1) (h) and therefore in taking cognizance the Magistrate acted under cl. (a) and not under cl. (c) of S. 190.

CRIMINAL P. C. (V of 1898), S. 4 — 4. S. 4 (1) (h)— Complaint—(g) "With a view to his taking action"—

(i) Cases where petition was held to be a "complaint"

Section 191 of the Code had no application to this case. (Banerji and Tudball JJ.) Jhau Lal v. Pir Bakhsh,

2 Ind Cas 453=10 Cr L J 18 (All).

——Ss. 4 (h), 195, 476 — Communication by Revenue Court—Sanction.

A Revenue Court being satisfied from perusal of the documents tendered in evidence that the documents were forgeries sent the case for inquiry and such orders as might seem fit, to the Magistrate of the District who was also Collector of the District. The Collector as the Court superior to the Revenue Court granted sanction under S. 195.

Held that the communication by the Revenue Court to the Magistrate of the District was a complaint on which the latter would act. (Reid J.) Inder Bhan v. Emperor,

6 P L R 416=30 P R 1905 Cr=2 Cr L J 687.

——Definition of "complaint" in S. 4 (h) is wide enough to include a petition to the Magistrate impugning the correctness of the Police report, and praying that the person accused by the petitioner might be brought to trial, although it is not such a petition as, according to the practice in the mofussil would be regarded as a complaint. (Rampini and Mookerjee JJ.) Jogendra Nath Mookerjee v. Emperor,

33 C 1 = 2 C L J 228=10 C W N 158=2 Cr L J 615.

——S. 4 (h) — Report of an Akunwun, stating there was prima facie case against applicant of having collected revenue in excess of authorised amount by means of falsified receipts—Report held complaint. (H. Adamson Esq.) Nga v. King-Emperor,

10 Bur L R 150=1 Cr L J 671.

——Ss. 4 (1) (h), 190, 192, 476 — An Assistant Collector being of opinion that the plaintiff in a rent suit had told a lie, submitted the record of the case to the Collector with the request that proceedings under S. 193, Penal Code, be taken against him. Accordingly on receipt of the record the Collector directed the initiation of proceedings:

Held that the Assistant Collector's order could not be regarded as an order under S. 476, Criminal P. C., but there being an allegation in writing to the Collector of the District with a view to his taking action under the Criminal Procedure Code, the Collector, who was also the District Magistrate had power as Magistrate to take action upon the allegation and to pass the order as he did. (Knox J.) Emperor v. Sundar Sarup,

24 A W N 90=I L R 26 All 514=1 Cr L J 335.

4. S. 4 (1) (h)—Complaint—(g) "with a view to his taking action."

(ii) Cases where petition was held not to be a "complaint."

——Offence under S. 186, Penal Code—Report by Deputy Superintendent of Opium to Police — Charge-sheet submitted by police to Magistrate on basis of that report — No complaint—See ibid, S. 195 (1) (a).

A I R 1952 H P & B 32=1952 Cr L J 821.

——Complaint under West Bengal Premises Rent Control (Temporary Provisions) Act (38 of 1948), S. 41—No prayer for action against accused — It is not a proper complaint under S. 4 (1) (h) — Conviction of such complaint is not proper and is illegal. (Das Gupta and Lahiri JJ.) Durga Dutt v. The State,

A I R 1951 Cal 2=54 C W N 916.

——Petition asking for administrative action is not complaint.

To amount to a complaint the allegation must be made with a view to the recipient taking action under the Code charging some person with a particular offence. Where in a petition to a Magistrate it was alleged that the opposite party had removed a sluice box from a canal and as a

CRIMINAL P. C. (V of 1898), S. 4—4. S. 4 (1) (h)—Complaint—(g) "With a view to his taking action"—(ii) Cases where petition was held not to be a "complaint"

result the lands of the petitioners were seriously affected, and the petitioner had prayed that the learned Magistrate should call upon the opposite party to replace the sluice box and to make such repairs as would enable the work of cultivation by the tenants to be carried on :

Held that the petition was not presented with a view to the Magistrate taking action under the Code of Criminal Procedure. The Magistrate in terms was asked to take administrative action. The petition did not therefore amount to a "complaint." (Harries C. J. and Blank J.) Subodh Chandra v. Jamser Mandal,

A I R 1949 Cal 55=49 Cr L J 635.

——Ss. 4 (1) (h), 199 (1) (a), 552—Application not suggesting Magistrate should take action—Prayer to take woman from husband's custody—Deposition of applicant—Omission—Effect.

An application to the Magistrate did not suggest that the Magistrate should take any action against any person for committing an offence; nor did the allegations in the application form the ingredients which constitute any offence under the I. P. C., nor was there any offence referred to in the application by the number of the section. It only said that R, the husband of K, came to the house of D and took her away from that house where she was staying with her uncle D. The relief which was asked by the application was that K should be set at liberty and taken from the custody of her husband because there was an apprehension that he might illtreat her :

Held, that the application was not a criminal complaint but an application under S. 552, that the Magistrate was not bound to take the deposition of the applicant on oath and his omission to do so did not vitiate an order subsequently made by him directing a complaint under S. 182, I. P. C., to be made against the applicant for prosecution under S. 199 (1) (a), Criminal P. C. (Bennet J.) Dalpat Rai v. Emperor,

A I R 1936 All 469 = 1936 A L J 592=1936 A W R 396=9 R A 42=163 I C 609 = 1936 Cr Cas 614 = 1936 A L R 620=37 Cr L J 857.

——Asking for action of Magistrate in his judicial capacity.

The mere fact that a document in writing contains an allegation that a specific offence has been committed does not necessarily constitute that document a complaint. The allegation of the specific offence must be with a view to action being taken under the Code, i. e., for the prosecution of the offender for having committed the specific offence. Besides, it must be made to the Magistrate in the judicial capacity so that he may exercise his powers of taking cognizance of that specific offence and proceed in respect of it against the person accused.

Where, therefore, a petition clearly shows that the object of the petition is not that the particular offence should be punished, but rather the mention of the particular offence is put in with a view to illustrate the kind of conduct which the accused person is supposed to be following and against which the petitioner is seeking protection, such a petition is not a complaint. What is supermost in the mind of the petitioner is the anticipated conduct of the person whom he mentions and against that conduct he is asking the Magistrate in his executive capacity to make enquiry and protect him against a repetition of such conduct. (Courtney-Terrel, C. J., Dhavle and James, JJ.) Bharat Kishore v. Judhistir,

A I R 1929 Pat 473 = 119 I C 413 = 10 P L T 779= 1929 Cr C 341=Ind Rul (1929) Pat 589=30 Cr L J 1056 (F B).

——A process-server presented a report on the back of a warrant to the Civil Court that he was beaten by A when

CRIMINAL P. C. (V of 1898), S. 4—4. S. 4 (1) (h)—Complaint—(g) "With a view to his taking action"—(ii) Cases where petition was held not to be a "complaint"

he was attaching property in its execution. Thereupon, the Civil Court reported the matter to the police who challaned A under Ss. 332 and 394, I. P. C. The Magistrate found these offences not proved, but he convicted A under S. 186 :

Held, that the Magistrate had no jurisdiction to convict the accused under S. 186, as neither the report nor the police challan constituted a complaint. (Shadi Lal C. J.) Mt. Darkan v. Emperor

AIR 1928 Lah 827=110 I C 101=10 A I Cr R 486= 29 Cr L J 645.

——Report by an officer to his superior.

In a complaint it is the complainant who sets the law in motion. The only functions that remain to the Magistrate are judicial functions. He may reject the complaint, but in doing so he performs a judicial act. Where the Superintendent of Police simply submitted the report of his subordinate to the Magistrate for the Magistrate to exercise his discretion as to whether he would initiate judicial proceedings or not :

Held, that there was no complaint as required by law. (Daniels J.) Baldeo Singh v. King-Emperor

AIR 1926 All 566 = 96 I C 211 = 7 L R A Cr 133= 27 Cr L J 899.

——Ss. 4 (1) (h), 476—Sanction granted under S. 476 for prosecution is not complaint within S. 4 (1) (h). (Newbould and B. B. Ghose JJ.) Durjodha N. Bhat v. Emperor

AIR 1925 All 1226 = 89 I C 1027 = 52 Cal 666 = 26 Cr L J 1459.

——One M applied to Deputy Commissioner, alleging that his application to the police was not enquired into and praying that the Deputy Commissioner should order an enquiry or start himself an enquiry. M did not ask for the trial and punishment of the accused ;

Held, that the application was not a "complaint" for the purposes of S. 211, I. P. C. (Kotwal A. J. C) Mahadu v. Emperor

AIR 1924 Nag 115=75 I C 543=24 Cr L J 959.

——Application to continue proceedings.

An application by the complainant stating that the proceeding against the accused already taken be reviewed as he has sufficient material to support the case against accused, is not a complaint but an application for continuing the case. (Kulwant Sahay J.) Gajo Chaudhry v. Debi Chaudhry

AIR 1923 Pat 532=72 I C 945 = 1 Pat L R Cr 97= 24 Cr L J 481.

——Extra-judicial statement is not a complaint.

Statements made to a Magistrate extra-judicially without intending them to be taken as complaint but only in reply to questions by the Magistrate is not a "complaint" under S. 4, Criminal P. C. (Tudball J.) Bhola Singh v. Emperor

AIR 1915 All 457 = 38 All 32 = 13 A L J 1050 = 31 I C 823=16 Cr L J 807.

—— Ss. 4 (1) (h) and 199—Complaint—Petition by husband.

Where a husband lodged a complaint against his wife and another under Ss. 498 and 379/109 and 379, I. P. C., respectively before a Deputy Magistrate at 9 p. m. in the presence of his wife, not with the object of getting the Magistrate to take action but simply to coerce his wife to get back the jewels :

Held, that there was no complaint under S. 199, Cr. P. C. such as to entitle the Magistrate to take cognizance of the case after the death of the husband. (Kumaraswami Sastri J.) In re Rukmani Ammal

AIR 1916 Mad 1059=29 I C 98=16 Cr L J 466.

CRIMINAL P. C. (V of 1898), S. 4—4. S. 4 (1) (h)—Complaint—(g) "With a view to his taking action"—(ii) Cases where petition was held not to be a "complaint"

——Bombay Prevention of Gambling Act, S. 6.

A statement to a Magistrate to induce him to take action against a person under S. 6 of the Bombay Prevention of Gambling Act is not a 'complaint' under S. 4, Cr.P.C. (Hayward J. C. and Boyd A. J. C.) Hotu v. Emperor,

AIR 1914 Sind 185 = 8 S L R 66 = 25 I C 985 = 15 Cr L J 657.

——Report of peon is no complaint.

The report of a peon without any request to the Magistrate to take any action is not a 'complaint' under S. 4 (h). (Harington and Coxe JJ.) Ahmad Hussain v. Emperor

17 C W N 980=20 I C 622=14 Cr L J 462.

——Ss. 4 (1) (h) and 199 — Complaint by husband — Deposition by husband not a complaint — Penal Code, Ss. 366, 379 and 498.

The accused was charged in the first instance with offences under Ss. 366 and 379, I. P. C., but when the complainant, the husband of the woman concerned, was examined as a witness the statements made amounted to an offence under S. 498, I. P. C. The Court acquitted the accused on the charges under Ss. 366 and 379 and convicted him under S. 498, I. P. C.

Held, that the conviction under S. 498 was bad as there was no complaint by the husband. The statements in the husband's deposition as a witness could not be said to be a complaint within cl. (h) of S. 4. (Chandavarkar and Batchelor JJ.) Emperor v. Imankhan Rasulkhan

14 Bom L R 141=14 I C 671=13 Cr L J 287.

——Petition before Magistrate making charges against accused and asking for an order on police to warn accused, if complaint.

A petition filed in Court in which the petitioner made certain charges against a person and asked for an order on the police to warn him is not a complaint in a criminal case, and no sanction to prosecute the petitioner under S. 211, Penal Code, for those allegations, can be granted. (Halmwood and L. N. Chatterjea JJ.) Purno Chandra Ghosh v. Hurish Chandra Ghosh

15 C W N 1051=12 I C 303=12 Cr L J 535 (2).

——Application for issue of process against a person not named in the petition of the complaint is not a complaint —See Cr. P. C., S. 196

12 Cr L J 2 (Cal).

——Ss. 4 (1) (h), 196 and 537—Defect regarding complaint or its absence.

Section 537 (a) covers the whole surface of the ordinary course of a trial beginning with complaint and ending with judgment. The absence of a formal complaint when the essence is present is a technical irregularity covered by the section. Any irregularity under S. 196 as regards the authority necessary before complaint can be made cannot be cured. There is no special procedure laid down in S. 196 regarding complaints; it merely prescribes by whom a complaint must be made in accordance with the ordinary rule of procedure and where the most essential part of the section has been complied with and the formal sanction to entertain the complaint has been incorrectly treated as a complaint itself, and the intermediate formalities omitted and no detriment has resulted to any one, S. 196 has no special application, and the irregularity regarding the complaint or the absence of a formal complaint is cured by S. 537 (a) of the Cr. P. C.

Held in this case the irregularity regarding the complaint or absence of formal complaint was cured by S. 537 (a). (Robertson and Kensington JJ.) Swami Dayal v. King-Emperor

8 P R 1908 Cr=15 P W R 1908 Cr=149 P L R 1908 =7 Cr L J 353.

CRIMINAL P. C. (V of 1898), S. 4—4. S. 4 (1) (h)—Complaint—(g) "With a view to his taking action"——Order of discharge—Fresh complaint, if necessary.

After an order of discharge, it is enough if there is an application that the case might be revived. It is not necessary to file a fresh complaint within the meaning of the Code—Application to revive proceedings is not a complaint. (Fox C. J.) Nga Nyun Bu v. Emperor

13 Bur L R 141=5 Cr L J 478.

——Complaint — Mere authorisation to prosecute under Post Office Act—See Post Office Act (1898), S. 61,

4 Cr L J 170 (Cal).

——Ss. 4, 195, 537—Absence of complaint or sanction.

The accused was sent for trial before a Deputy Magistrate under Ss. 353 and 147 of the Penal Code. The case had been taken up by the police in consequence of a letter addressed to them by a Civil Court Amin making certain allegations against the accused. The accused was convicted by the Magistrate under S. 186, Penal Code. Held that this conviction was bad in the absence of a complaint or sanction required by S. 195, Criminal P. C., and the case was not covered by S. 537. (Banerji J.) Emperor v. Mathura Singh,

24 A W N 266=1 Cr L J 1046 (All).

4.—S. 4 (1) (h)—Complaint—(h) "That same person has committed an offence."

——Police report.

A report by the police officer merely saying that action be taken against the complainant and under S. 182, Penal Code, without relating any facts does not satisfy the requirements of the complaint. (Ram Labhaya J.) Nayan Chand Das v. State.

A I R 1951 Assam 54=I L R 1950-2 Assam 249=52 Cr L J 394.

——S. 4 (1) (h) — Offence must be disclosed — Merely saying that accused disobeyed order under S. 144, is no complaint.

A complaint as defined in S. 4 (1) (h) must disclose that an offence has been committed. Where the complaint merely says that the accused have disobeyed a certain order under S. 144 and nothing more, this does not amount to a complaint within the meaning of S. 4 (1) (h). (Sen J.) Saroj Hazra v. Emperor,

231 I C 224 (Cal).

—— Contents and validity of complaint.

Where the person aggrieved asked the Court in his petition to take action under the preventive S. 107 or 145, Criminal P. C., and there was no allegation in his petition or in his statement as recorded by the Magistrate that an offence had been committed and that the Magistrate should take action in respect of such offence against any person under the Criminal P. C.

Held, that the petition of the aggrieved person did not amount to a complaint. (Pullan J.) Sarfaraz Singh v. Emperor,

A I R 1930 Oudh 500 = 6 Luck 354 = 128 I C 279= 7 O W N 947=1930 Cr C 1164=32 Cr L J 124 (2).

——Commission of offence.

If the facts alleged disclose an offence, it is immaterial if the section is not mentioned in the complaint. (Reilly J.) Balusamy Ayyar v. Emperor,

A I R 1929 Mad 188=112 I C 566=2 M Cr C 60=11 A I Cr R 362=29 Cr L J 1062.

——Application under S. 107.

Application under S. 107 is not "complaint" under S. 4 (1) (h) and S. 203 of the Code therefore does not apply to such an application. (Zafar Ali J.) Shamas-ud-din v. Ram Dayal Singh,

A I R 1924 Lah 630=76 I C 25=25 Cr L J 89.

——Ss. 4 (1) (h) and 250 — Complaint that a person was using a house as a Brothel.

CRIMINAL P. C. (V of 1898), S. 4—4. S. 4 (1) (h)—Complaint—(h) "That same person has committed an offence"

Section 41, Bombay District Police Act (4 of 1890) does not make the use of a house as a brothel an offence, for it is not punishable. A complaint under S. 41, therefore, is not a complaint under S. 4 (1) (h) of the Criminal P. C. and the Magistrate cannot order the complainant to pay compensation under S. 250. (Pratt J. C. and Crouch A. J. C.) Imperator v. Mt. Khari,

6 S L R 254=19 I C 1008=14 Cr L J 320.

——S. 4 (1) (h)—Application for maintenance under S. 488, whether complaint—See Criminal P. C., Ss. 488, 203, 4 (h),

2 Cr L J 421 (Lah).

——Application for maintenance under S. 488—See Criminal P. C., Ss. 488, 203, 4 (h),

2 Cr L J 367 (Lah).

4.—S. 4 (1) (h)—Complaint—(i) "Some person whether known or unknown."

——A complaint need not in fact specify any offender or even the section of the law which makes an act or omission punishable. (Dhavle and Rowland JJ.) Baldeo Prasad v. Emperor,

A I R 1933 Pat 297=1933 Cr C 789=14 P L T 330=6 R P 166=12 Pat 758=145 I C 382=34 Cr L J 942.

——Complaint includes complaint against unknown person.

'Complaint' includes a complaint that some person unknown has committed an offence. (Pratt J. C. and Waley Cohen A. J. C.) Imperator v. Lalu,

4 S L R 258=11 I C 583=12 Cr L J 399.

4.—S. 4 (1) (h)—Complaint—(j) "Report of a police-officer."

——Police Report of non-cognizable offence — Court can take cognizance of — See Criminal P. C. (1898), Ss. 190 (b) (c),

A I R 1953 T C 43=1953 Cr L J 288.

——Report of police officer.

The report of a police officer, whether in a non-cognizable or in a cognizable offence, does not amount to a complaint : A. I. R. 1936 Nag. 143, Foll. (Hemeon J.) Hatim Ali v. The Crown,

AIR 1950 Nag 38=1950 N L J 384=ILR (1950) Nag 87=51 Cr L J 427.

——Irregularity in investigation and arrest of accused — Charge sheet for cognizable offence submitted by Sub-Inspector — Charge sheet can be treated as report within S. 190 (1) (b) or complaint within S. 4 (1) (h) and would therefore fall under S. 190 (1) (a) and the magistrate would have jurisdiction to take cognizance of offence —See Criminal P. C. S. 190 (1) (b),

A I R 1948 Bom 163=49 Cr L J 196.

——Ss. 4 (1) (h), 190 (1) (b) — Report of Police Officer in cognizable or non-cognizable case.

Even though S. 4 (1) (h) has not been amended, the words in it, as it stands, are sufficiently wide to include a report of a non-cognizable offence and the meaning of the phrase, in the two Ss. 190 and 4 (1) (h), although the wording is different, amounts to the same thing. Consequently, the report of a Police Officer whether in a non-cognizable or in a cognizable offence does not amount to a complaint. (Gruer J.) Emperor v. Babulal Munnilal,

A I R 1936 Nag 86 (87)=19 N L J 120 = 8 R N 258 I L R (1936) Nag 50=162 I C 308=1936 Cr C 551=37 Cr L J 587.

——Police report—Non-cognizable offence.

Patkar J.—The wording of S. 190 is quite general and would include even a non-cognizable offence being taken cognizance of by a Magistrate upon a report by a police officer. The report of a police officer in respect of a non-cognizable offence if it contains an allegation in writing to a Magistrate with a view to his taking action under the Code that some person has committed an offence would amount to a complaint within the meaning of S. 4 (h). A Magistrate can in a proper case treat a police report of a non-cognizable offence as a complaint and take cognizance under S. 190, cl. (a), especially where such report is made by the Police Officer regarding an offence committed by his subordinate: 26 Bom. 150 and A. I. R. 1926 Mad. 865, Foll.; A. I. R. 1925 Bom. 131, Dist. (Fawcett and Patkar JJ.) Emperor v. Shivaswami Guruswami,

A I R 1927 Bom 440=105 I C 459=51 Bom 498=29 Bom L R 742=28 Cr L J 939.

——Order on police complaint for summons—S. 476.

Where a prosecution was initiated by the Police who made the complaint and on that complaint the Magistrate passed an order to summon the accused,

Held, that the order could not be construed as a "complaint" within the meaning of the Code. (Bucknill and Ross JJ.) Shaikh Muhammad Yassin v. Emperor,

AIR 1925 Pat 483=86 I C 825=4 Pat 323= 6 P L T 457=26 Cr L J 889.

——Non-cognizable case—Police report.

The written allegation of a non-cognizable offence made by a police officer who is also a Public Prosecutor with the idea of making the Court take action on it is not the report of a police officer but is a complaint as defined in S. 4, Criminal P. C. and it is competent for the Court to take action thereon. The words "Report of a Police Officer" refer to the report of a police officer in a case in which he is authorised to investigate by the Code. (Shadi Lal C. J. and Le Rossignol, J.) Emperor v. Ghulam Hussain,

A1R 1925 Lah 237=82 I C 753=6 L L J 606=1 L C 16=25 Cr L J 1361.

——Complaint by police in non-cognizable offence—'Complaint for sedition—See Criminal P. C., S. 196.

9 Cr L J 108 (Mad).

4.—S. 4 (1) (h) Complaint—(k) Limitation.

——Ss. 4 (1) (h) and 439—Non-appealable sentence—Delay in filing complaint is no reason to set aside sentence in revision. (Trivedi J. C.) Osman Isak v. Dada Pir Mamad,

AIR 1950 Kutch 41=51 Cr L J 1062.

5. S. 4 (1) (i)—European British subject

——Person's grandfather born in England.

Even if there had been some evidence to show that the applicant's grandfather himself was born in England, that would not be sufficient to bring the applicant within the provisions of S. 4, as regards the definition of "European British subject" which appears in sub-s. (1) (i) of that section. In order that the applicant should bring himself within the four corners of that definition, he will have to show that his grandfather was of European descent. (Derbyshire C. J. and Costello, J.). Cyril Bertram Plucknett v. Emperor,

A I R 1939 Cal 545= I L R (1939) 1 Cal 162=12 R C 295=43 C W N 120=184 I C 757=41 Cr L J 72.

——Quære — Whether every person who is a European British subject under this definition in S. 4 (1) (i) (ii), Criminal P. C., is a European within the meaning of S. 275. (Macpherson and Agarwala JJ.), Gutherie v. Emperor

A I R 1934 Pat 200=15 P L T 82=13 Pat 177 = 148 I C 933=(1934) Cr Cas 384=35 Cr L J 827 (DB).

——Marriage.

The words "naturalised or domiciled" which follow "born" are disjunctive of and not conjunctive with what precedes. A European British subject who marries a native British Indian husband or an Indian subject of a Native State does not thereby cease to be a "European

CRIMINAL P. C. (V of 1898) S. 4—5. S. 4 (1) (i) — 5. European British subject

British subject" as defined in the Code. (Mirza and Baker JJ.) Bai Aisha, In re,

A I R 1929 Bom 81 = Ind Rul (1924) Bom 369=53 Bom 149=31 Bom L R 62=117 I C 321=30 Cr L J 772.

——The accused, the son of an Indian born at Constantinople does not become a European British subject unless it is proved that accused or his father or grandfather was domiciled in the United Kingdom or in any other European, American or Australian, colonies of His Majesty. (Robertson and Rattigan JJ.) Alexander Ruffe v. Emperor,

6 P R (Cr) 1912 = 24 P W R Cr 1912=14 I C 197= 13 Cr L J 197.

6. S. 4 (1) (j)—High Court.

——An application under S. 491 can be heard by a Bench of two Judges and not by a Single Judge — See Criminal P. C., (1898), S. 491,

53 Mys H C R 365.

——"European British subject," meaning of.

The words "European British subject" in S. 4 (j) mean a European British subject who had claimed to be dealt with as such. (Lakshmana Rao and K. S. Menon JJ.) In re H. B. Babington,

AIR 1937 Mad 14=1936 M W N 1091= 44 L W 755 =71 M L J 827=9 R M 430=I L R (1937) Mad 339= 167 I C 160=38 Cr L J 336.

——S. 4 (1) (j), Chap. XXXIII—European British subject —Trial within N. W. F. P. — Waiver of right to be tried as such —Court of appeal.

In view of the provisions of S. 4 (j), the Court of Revision or Appeal for a European British subject convicted by a Court of N.-W. F. P. who has waived his right to be tried as such or who has set it up and failed to establish it, is the Judicial Commissioner's Court of N.-W. F. P. and not the Lahore High Court. (Fraser J. C. and Saaduddin A. J. C.), Emperor v. T. B. A. W. Johnson,

AIR 1933 Pesh 6=141 I C 445=1933 Cr C 148.

——Santhal Parganas Regulation (V of 1893).

Under Cl. 1 (ii) (a) of S. 4, the High Court of Patna has only jurisdiction to deal with appeals under S. 417 against an order of acquittal. It has no power to deal with an application under S. 439 for setting aside acquittal for which the proper forum is the Commissioner of Bhagalpur. (Jwala Prasad and Macpherson JJ.) Anwar Ali v. Chairman Deoghar Municipality.

A I R 1926 Pat 449 = 99 I C 112 = 8 P L T 271 = 7 A I Cr R 231=6 Pat 83 = 1926 P H C C 267 = 28 Cr L J 80.

——What is — European British subject —Plea of.

The mere fact that a person is a European British subject is not sufficient to make the first part of S. 4 (j) apply to him. His pleading that he is a European British subject will only entitle him to be treated as such. In such cases the second part of S. 4 (j) will apply. (Krishnan J.) Jeremiah v. Johnson,

AIR 1924 Mad 373=45 M L J 800 = 18 M L W 895 =33 M L T 194 = (1924) M W N 60 = 76 I C 695 = 25 Cr L J 231.

——S. 4 (j) — European British subject — High Court.

The 'High Court' in reference to proceedings against European British subjects in Oudh means the High Court of Judicature for the North-Western Provinces. (Chamier J. C.) Thomas Bradshaw v. King-Emperor,

13 O C 335=8 Ind Cas 873=11 Cr L J 723 (Oudh).

——"High Court" within meaning of S. 195 (6) — See Criminal P. C., S. 195 (6).

2 Cr L J 106 (Cal).

7. S. 4 (1) (k)—Inquiry.

——Trial, meaning of — Trial and inquiry distinction— See ibid, S. 350 (1), Proviso (a).

A I R 1953 Madh B 1=1953 Cr L J 98.

CRIMINAL P. C. (V of 1898), S. 4—7. S. 4 (1) (k) — Inquiry

——Inquiry—Whether a proceeding under S. 144 can be called an inquiry (Quaere.)—See ibid, S. 517.

AIR 1952 Pat 316=1952 Cr L J 1124.

——Ss. 4 (1) (k), 499 and 514 — Trial, conclusion of — Surety for production of accused—Extent of responsibility —Forfeiture of security.

A trial must be deemed to have been concluded on the date on which judgment is pronounced.

Where the terms of a surety bond for the production of the accused are wide enough to include an undertaking to produce him on all the hearings on which his trial is to take place, the sureties would under the bond be responsible to produce the accused on the date on which the case is set down for delivery of judgment.

Therefore, where the accused whose presence had not been dispensed with is absent on the date set down for delivery of judgment and the Judge orders the forfeiture of the surety bonds under S. 514, Criminal P. C., the order is unobjectionable though he delivers a judgment of acquittal after passing the order. (P. L. Bhargava J.) Joti Prasad v. State,

AIR 1951 All 549=52 Cr L J 221.

——Inquiry and investigation—Distinction — Documents seized — Examination of, by Custom or Police Officers, whether investigation.

A clear distinction is made by the Code between an inquiry and an investigation. An "inquiry" relates to a proceeding held by a Court or a Magistrate while an investigation relates to the steps taken by a Police Officer or a person other than a Magistrate.

A proceeding by a Police Officer for the collection of evidence would answer the definition of investigation only if it were a proceeding under the Code. An examination by the Customs or Police Officers, of the documents seized, is not a proceeding under the Code and hence not an investigation under the Criminal P. C. (Khundkar and Sen JJ.) Hoshide v. Emperor,

A I R 1940 Cal 97=12 R C 510=44 C W N 82=ILR (1940) 1 Cal 231=186 I C 486=41 Cr L J 329.

——Trial, when begins.

Sind Frontier Regulation III of 1892—Offence punishable with death or transportation for life—Trial commences only when the case is proceeded with in Sessions Court. (Rupchand Ag. J. C. and Lobo J.) Minho v. Emperor,

AIR 1938 Sind 9=32 S L R 129=10 R S 201 = 173 I C 325=39 Cr L J 294.

——'Trial', meaning of.

In Bombay the word "trial" has always been understood to mean the proceeding which commences when the case is called on which the Magistrate on the Bench, the accused in the dock and the representatives of the prosecution and defence, if the accused be defended, present in Court for the hearing of the case.

The trial covers the whole of the proceedings in a warrant case. (Broomfield and Sen JJ.) Dagdu Govindset v. Punja Vedu Wani,

AIR 1937 Bom 55=38 Bom L R 1189=9 R B 247= ILR (1937) Bom 211=166 I C 598=38 Cr L J 250.

——Trial, meaning of—When begins.

"Trial" is every proceeding which is not an enquiry and begins when the accused is called on to answer. (Cornish, Mockett and Lakshmana Rao JJ.) Emperor v. John McIyer

AIR 1936 Mad 353=1936 M W N 281=43 L W 548 =70 M L J 635 = 8 R M 1000 = 162 I C 592=1936 Cr Cas 433=37 Cr L J 637 (FB).

——Commitment to Sessions.

If a Magistrate on receipt of a complaint issues process against the accused and ultimately concludes that an

CRIMINAL P. C. (V of 1898), S. 4 — 7. S. 4 (1) (k)— Inquiry

offence triable at Sessions has been committed and commits the accused, the trial does not begin until the accused appears at the Sessions and the proceedings before the Magistrate constitute an enquiry only. (Courtney Terrel C. J. and Dhavle J.) Hema Singh v. Emperor,

AIR 1929 Pat 644=I R 1930 Pat 578=126 I C 146 = 12 Pat LT 36=9 Pat 155=1929 Cr C 372=31 CrLJ 961.

——Inquiry and judicial proceedings — S. 176, Criminal Procedure Code—Proceedings under, fall within Ss. 4 (1) (k) and 4 (1) (m).

Proceedings of a Magistrate under S. 176 are an "inquiry" as defined by S. 4 (1) (k) and a "judicial proceeding" as defined by S. 4 (1) (m). (Mirza and Patkar JJ.) Laxminarayan Timmanna Karke, In re,

AIR 1928 Bom 390=112 I C 567=30 Bom L R 1050 =11 A I Cr R 324=29 Cr L J 1063.

——Explosive Substances Act, S. 4.

The failure to obtain necessary consent of Government as required by S. 7 of Explosive Substances Act (VI of 1908) does not invalidate the commitment proceedings conducted by a Magistrate for an offence under S. 4 and exclusively triable by the Sessions Court as the committal proceedings are only an "inquiry" as defined in cl. (k) of S. 4 of the Criminal P. C. (Fawcett and Madgavkar JJ.) Emperor v. Kallappa Dundappa,

AIR 1927 Bom 21=99 I C 37=50 Bom 695=28 Bom L R 1290=7 A I Cr R 161=28 Cr L J 5.

——Inquiry is a judicial proceeding.

The scheme of the Code and also the general provisions in Chap. XXIV relating to inquiries and trial go to show that the word 'inquiry' is used to indicate a judicial proceeding as distinguished from 'investigation' and 'trial'. (Macleod C. J. and Shah J.) Moti Lal Hira Lal v. Emperor,

AIR 1922 Bom 138=46 Bom 61=23 Bom L R 884= 64 I C 40=22 Cr L J 728.

——"Trial" "inquiry".

Where a charge has been drawn up and read over to the accused and he has pleaded, the "inquiry" becomes a "trial". (Kensington C. J., Johnstone and Rattigan JJ.) Hasta v. Emperor,

A I R 1914 Lah 561=29 P R 1914 Cr=26 I C 993= 210 P L R 1915=16 Cr L J 81 (FB).

——"Enquiry"—Proceedings under S. 145, if enquiry.—See Criminal P. C. S. 145.

9 Cr L J 278 (Cal).

——Ss. 4 (1) (k), 233, 252 and 256—"Trial" when commences.

Where in a joint trial against several accused the Magistrate after discharging some of them decided to try the rest separately on separate charges but acted on the evidence recorded by him prior to the framing of charge without taking fresh evidence for prosecution.

Held that the conviction was illegal and the accused should be tried de novo.

The word "trial" in S. 233 includes the taking of evidence in support of the prosecution, as also the whole of the subsequent procedure laid down in Ch. XXI of the Code for the trial of warrant cases. The words "claims to be tried" in S. 256, no doubt, give colour to the argument that no trial commences until after the accused refuses to plead, or does not plead, or claims to be tried, but the words do not really raise any doubt that a trial under Chap. XXI commences when the accused appears or is brought before a Magistrate under S. 252. (Fox C. J.) Paw Tha v. King-Emperor,

3 L B R 280=5 Cr L J 417.

——S. 4 (k)—Enquiry and trial.

The word "inquiry" excludes trial. (Russell and Batty JJ.) Emperor v. Sita Kom Ramasa,

7 Bom L R 457=2 Cr L J 432.

CRIMINAL P. C. (V of 1898), S. 4

8. S. 4 (1) (l)—Investigation.

——Commencement of—Test—Evidence—Meaning of — (Evidence Act (1872), S. 3).

The question of when does an investigation start depends upon whether the police officer has taken proceedings under the Code for the collection of evidence. Evidence referred to here may or may not be conterminous with the definition of that word in S. 3 of Evidence Act but yet as in the case under that Act it must be evidence "in relation to matters under inquiry." Unless the matters of fact under enquiry are known or ascertained there is nothing in regard to which evidence might be permitted or required to be made by a Court under S. 3, Evidence Act, or collected by a police officer in the process of investigation as contemplated by the definition of investigation in S. 4 (1) (l) of the Code. As to whether the stage when investigation starts in the light of above requirement has been reached in any particular case will depend upon the facts and circumstances of that case. (Chowdhry J. C.) Ranjit Singh v. State,

AIR 1952 H P 81 = 1952 Cr L J 1720.

——"Collection of evidence conducted by Police officer," interpretation of.

The expression 'collection of evidence conducted by a Police Officer' in S. 4 (1) (l), is a short way of saying collection of material to be used as evidence conducted by a Police Officer. The expression "giving or taking evidence" is nowhere used in reference to Police Officers. (Skemp J.) A. F. G. Price v. Emperor,

AIR 1937 Lah 160 = 17 Lah 593 = 38 P L R 1042= 9 R L 515 = 167 I C 555 = 38 Cr L J 435.

——Ss. 4 (1) (l), 165—Recording of reasons prior to search.

An investigation includes all the proceedings under the Criminal P. C. for the collection of evidence, conducted inter alia by a Police Officer.

Where a Police Officer decides to make a search, the reasons in writing referred to in S. 165 can be recorded at any time or in any place prior to the actual search. (Aston A. J. C.) Asandas Hashmatrai v. Khanchand,

AIR 1933 Sind 240 = 6 R S 189 = 148 I C 178 = 1933 Cr C 800.

9. S. 4 (1) (m) — Judicial proceeding.

——Disobedience of order under S: 144, Criminal P. C.—Complaint under S. 188, I. P. C. — See ibid, S. 144,

AIR 1953 Mad 956 = 1953 Cr L J 1780.

——Where a Magistrate holds an inquiry under Police Order No. 157, revision lies against an order relating to such inquiry when statements of witnesses are taken on oath. (Kuppuswami Ayyar J.) In re Veerappan,

AIR 1944 Mad 37 = 56 L W 437 = 1943-2 M L J 182 = 1943 M W N 706 (1) = 16 R M 450 = 210 I C 321 = 45 Cr L J 212.

——Ss. 4 (1) (m), 526 — Applicability — Case must be in Court subordinate to High Court — Executive Officer making enquiry in Administrative capacity — Whether Court.

The condition precedent to the exercise by High Court of the power conferred by S. 526 is that the case sought to be transferred must be in a Criminal Court subordinate to the High Court.

Where an Executive Officer is appointed to enquire into a certain firing incident and to report his findings to the Government and he is also vested with Magisterial powers he is not exercising any judicial power or acting as a Court as the scope of his enquiry is limited to finding of facts and as he has not the power to give a binding and authoritative decision on the facts found by him or to carry the decision into effect, it is thus merely an admi-

CRIMINAL P. C. (V of 1898), S. 4 — 9. S. 4 (1) (m)— Judicial proceeding

nistrative enquiry and not one under the Code by a Court to which S. 526 could apply : 1931 A C 275; AIR 1949 P C 129 ; 22 Bom 936 and 23 Mad 223, Rel. on. (Shinde and Dixit JJ.) Chimansingh v. State,

AIR 1951 M B 44.

——'Criminal proceedings' meaning of.

The expression 'criminal proceedings' includes investigation by Police Officer of an alleged cognizable offence. (King and Bennet JJ.) Emperor v. Johri

AIR 1931 All 269 = 1931 A L J 177=Ind Rul (1932) All 165=136 I C 277= 1931 Cr C 429 = 33 Cr L J 256.

——Re-trial.

The trial of a suit after an ex parte decree against the defendant is set aside may be regarded as a continuation of the trial of the same suit which first ended in a decree. The definition of "judicial proceeding" in S. 4 (m), Cr. P. Code, is not opposed to this view. 32 M 49 and AIR 1919 Mad 410 (FB), Dist. (Spencer J.) Arumugam Pillai, In re,

AIR 1924 Mad 86 = 81 I C 219 = 18 M L W 133= 25 Cr L J 731.

——Judicial proceeding includes execution proceeding.

The definition of a judicial proceeding given in S. 4 (1) (m) is wide enough to cover execution proceedings (Jwala Prasad J.) Barhamdeo Singh v. Emperor,

AIR 1917 Pat 101=43 I C 441 = 19 Cr L J 153.

——Ss. 4 (1) (m), 200, 476 and 552—Judicial proceedings —Inquiry—Oaths.

Section 200, Cr. P. C., does not authorise magistrates to administer oaths but directs examination of the complainant upon oath. It recognises the power and directs the time when Court should exercise the power. S. 552 recognises the power and the exercise made compulsory in the issue of orders therein contemplated. The inquiry, made compulsory on a magistrate, for satisfying himself before issuing process under S. 100 is a judicial proceeding. (Chevis and Broadway JJ.) Abdul Aziz v. Emperor,

AIR 1916 Lah 281 = 36 I C 171 = 34 P R 1916 Cr= 17 Cr L J 491.

——Proceedings under S. 122, if judicial proceedings— See Criminal P. C. S. 122,

11 Cr L J 497 (Sind).

——Magistrate acting under S. 164—Statement of witness before him—Statement is made in "judicial proceedings" and forms part of Court's record —Such statement need not be formally proved because statement is a document" within meaning of S. 80, Evidence Act—See Criminal Procedure Code (Act V of 1898), S. 164.

10 Cr L J 24 (Kathiwar).

——Case sent by one magistrate to another for inquiry prior to issue of process — Latter Magistrate holding enquiry, examining witnesses and recording evidence, and coming to conclusion that case was false — Proceedings conducted by him are judicial proceedings and he has power to take proceedings under S. 476, Cr. P. C. (Brett and Ryves JJ.) Kanchan Garhi v. Ram Kishun,

36 Cal 72 = 13 C W N 122 = 1 I C 203 = 9 Cr L J 295.

——Judicial inquiry — Enquiry stated by magistrate — See Criminal P. C. (1898), S. 156.

4 Cr L J 334 (Bom).

——Investigation under Ch. XIV, Cr. P. C. — Judicial proceeding — False evidence — See Penal Code (1860), S. 193.

3 Cr L J 370 (Mad).

——Ss. 4 (m), 476—"Judicial proceedings"— An enquiry conducted by a Magistrate into the truth of allegations against a subordinate official, contained in a petition presented to a Deputy Commissioner, is a judicial proceeding within the meaning of S. 4 (m) of the Code. Where the petition is found to contain false and malicious allegations, an order under S. 476 can be passed for prosecution of the petitioner under S. 211, I. P. C. (Knox J.) Emperor v. Kuna Sah.

28 All 89 =1905 A W N 195 = 2 A L J 717 = 2 Cr L J 454.

——Delivery of possession by Nazir in execution of decree if judicial proceedings—See Criminal P. C., Ss. 476 and 195.

2 Cr L J 110 (Cal).

——Inquiry under S. 202 is a judicial proceeding. (Subramanya Aiyar (O.) C. J. and Bhashyam Iyengar J.) Public Prosecutor v. Palliyathodirayan

1 Cr L J 118 (Mad).

10. S. 4 (1) (n)—Non-cognizable offence and non-cognizable case.

——Ss. 4 (1) (n), 155 (2) and Sch. II.

Offence under the Opium Act — Maximum punishment prescribed by S. 9 of that Act being two years the offence is non-cognizable one— Police has no power to investigate without an order of Magistrate in view of S. 155 (2)— (Opium Act (1878), Ss. 9, 14). (Chowdhary J. C.) State v. Nilam Das,

AIR 1952 Him-Pra 74=1952 Cr L J 1712.

——Complaint by Police—Non-cognizable case.

A police officer is not prohibited under the Criminal P. C., from presenting a complaint to the Magistrate in a non-cognizable case. (Shadi Lal C. J. and Le Rossignal J.) Emperor v. Ghulam Hussain,

AIR 1925 Lah 237=82 I C 753=6 L L J 606= 25 Cr L J 1361.

11. S. 4 (1) (o)—Offence

——'Prosecution' and 'offence' in Art. 20 (2) of the Constitution — Meaning of — See Constitution of India, Art 20 (2).

AIR 1953 Cal 85=1953 Cr L J 294.

——Firing of single shot at two persons — Only one offence is committed—See ibid, S. 234.

AIR 1952 S C 45=1952 Cr L J 323.

——Scope of the section — Whether act or transaction that Constitutes offence — Combination of several forgers to commit forgery — Act of each individual forger is distinct from the act of others—Entire transaction does not constitute forgery—See ibid, S. 195 (1) (c).

AIR 1949 All 392=50 Cr L J 595.

——"By any law for the time being in force" — Non-compliance with provisions of Ss. 3 and 4, Mussalman Waqf Act is an offence under S. 10 of that Act within the meaning of S. 4 (1) (o) of this Code — See Mussalman Waqf Act (1923), S. 10.

AIR 1949 Nag 137 (FB).

——Ss. 4 (1) (o), 5 (2) — Offence, what is — Contempt of Court—Process of securing attendance of offender residing outside jurisdiction.

Contempt of Court is an offence within the meaning of S. 4 (1) (o), Criminal P. C., and as such can be inquired into under S. 5 (2) of that Code. Hence, where a contempt has been committed within the territorial jurisdiction of a High Court, such Court can issue process to secure the presence of the offender wherever he may be residing in British India. (Collister and Allsop JJ.) Emperor v. Benjamin Guy Horniman,

AIR 1945 All 1=1944 O W N 158 = 1944 A L J 459 I L R (1944) All 665=217 I C 247= 1945 A W R 97= 7 R A 136=46 Cr L J 272.

——Triable offences—Mussalman Wakf Act.

There does not appear to be anything in the Mussalman Wakf Act which is repugnant to the definition of

CRIMINAL P. C. (V of 1898), S. 4—11. S. 4 (1) (o)—Offence

an offence contained in the General Clauses Act and in the Criminal P. C., and as the Act contains no provision regarding the Court by which offences under S. 10 of the Act should be tried, they can be tried by any Magistrate. (Percival J. C. and Aston A. J. C.) Ali Mahomed v. Emperor.

AIR 1928 Sind 43=105 I C 666=9 A I Cr R 142=22 S L R 141=28 Cr L J 954.

——Cattle Trepass Act, S. 20—Complaints under.

A Magistrate generally empowered under the Criminal P. C., to receive complaints of offences has jurisdiction in respect of offences under S. 20 of the Cattle Trespass Act without any special authorization by the District Magistrate to receive complaints under the above section: A I R 1925 Bom 85 (1) and 34 Cal 926, Foll. (Wallace J.) Deenadayalu Naidu v. Ratna Padayachi,

AIR 1927 Mad 395=52 M L J 251= 100 I C 381= 50 Mad 841=25 M L W 282 = 1927 M W N 167 = 28 Cr L J 301.

——Accused.

Person called on to give security is not an accused. (C. C. Ghose and Cuming JJ.) Binode Behari Nath v. Emperor

AIR 1924 Cal 392 =81 I C 909 = 50 Cal 985 = 25 Cr L J 1085.

——Cattle Trespass Act, S. 20 — Illegal seizure of cattle mentioned in if offence —See Cattle Trespass Act (1 of 1871), Ss. 20 to 23.

6 Cr L J 363 (Cal).

——Act in respect of which complaint can be made under S. 20, Cattle Trespass Act—See Cattle Trespass Act (1 of 1871), S. 20.

6 Cr L J 122 (Burma).

——Act in respect of which complaint can be made under S. 20, Cattle Trespass Act—See Cattle Trespass Act (1 of 1871), S. 22.

6 Cr L J 121 (Burma).

——What amounts to.

Inability to give satisfactory account of oneself or want of ostensible means of subsistence does not amount to an offence. (H. .V. Drake-Brockman Offg. J. C.) Emperor v. Buddhu

3 N L R 51=5 Cr L J 434.

——Meaning of — The word 'offence,' in S. 4 (o) includes an act, in respect of which a complaint may be made under S. 20, Cattle Trespass Act. (Benson and Moore JJ.) In the matter of Ponnusami

29 Mad 517=5 Cr L J 86.

——Jurisdiction of Magistrate with regard to acts specified in S. 58 (3), Bengal Tenancy Act, 1885 — See Bengal Tenancy Act (8 of 1885), S. 58.

2 Cr L J 532 (Cal).

12. S. 4 (1) (p)—Officer in charge of police station.

——Sub-Inspector and other senior officers away on duty —Clerk attached to Police Station in charge of Station — Clerk may be said to be "officer-in-charge" of Police Station. (Koshi C. J. and Gangadhara Menon J.) Pyli Yaccob v. State.

AIR 1953 Trav-Co 466=ILR (1952) T C 937 = 1953 Cr L J 1670.

——Officer on tour.

Assistant Sub-Inspector on duty in mofussil during investigation is not officer-in-charge of the police station for purposes of S. 154, when the first information report is made to him unless he comes within the strict terms of S. 4. (C. C. Ghose and Jack JJ.) Momin Talukdar v. Emperor.

AIR 1928 Cal 771=Ind Rul (1929) Cal 553= 117 I C 601=30 Cr L J 803.

CRIMINAL P. C. (V of 1898), S. 4—12. S. 4 (1) (p)—Officer in charge of police station

——Writer Head Constable may investigate when officer-in-charge.

Where in a particular case the Sub-Inspector in charge was ill and the Writer Head Constable was not generally empowered to investigate cognizable cases.

Held that he being the officer in charge of the police-station on that day, it was his duty to make the investigation. (Mullick and Bucknill JJ.) Emperor v. Bhola Bhagat,

AIR 1923 Pat 547=2 Pat 379=4 P L T 521 = 1 Pat L R 248 Cr =72 I C 375=24 Cr L J 375.

——Ss. 4 (1) (p) and 166 — Station.house officer—Acting incumbent comes within section.

If a person is deputed to be in charge of a police station in the absence of the permanent incumbent, the fact that he was doing duty outside the station house does not deprive him of his capacity of station house officer. (Seshagiri Aiyar and Phillips JJ.) Asan Alliar v. Masilamony Nadar,

AIR 1919 Mad 226=36 M L J 252=25 M L T 274 = 51 I C 198=42 Mad 445=1919 M W N 452 = 20 Cr L J 422.

——Officer in charge of police station includes constable empowered by Government.

According to S. 4 (1) (p) 'officer in charge of police station' includes an officer in charge of the station, in the absence of the officer, but the Code empowers the Local Government to direct that some other person may be empowered to act as such officer; and the Local Government can so empower a senior constable. (Abdur Rahim and Ayling JJ.) Public Prosecutor v. Kuppa Kaundan.

(1911) 1 M W N 231 = 10 I C 667 = 9 M L T 414= 12 Cr L J 190.

——S. 4 (p) and (s)—Applicability to police in Calcutta.

Criminal Procedure Code does not apply to police of Calcutta unless expressly made applicable to them, S. 55 is expressly applicable though not S. 4 (1) (p) and (s)—See Criminal Procedure Code (Act V of 1898), S. 1.

1 Cr L J 535 (Cal).

13. S. 4 (1) (r)—Pleader.

——Punjab High Court Rules and Orders, Vol. III, Ch. 25A, Rule 1 — Applicability of Rule to bail application — Accused represented by Advocate — Vakalatnama whether necessary.

The definition of the term 'pleader' to S. 4 (1) (r), Criminal P. C., is in a wide sense. It does not impose any restriction or condition in the case of an advocate, a vakil or an attorney of a High Court who therefore, need not be appointed as such by the accused. Rule 1, Chapter 25-A in Vol. III of the Rules and Orders of the Punjab High Court which are made applicable to the Judicial Commissioner's Court, Himachal Pradesh, being in the nature of an exception to this general rule, must be restricted in its application to the case to which its terms apply. It does not, therefore, extend to a bail application and an accused is properly represented by an Advocate in those proceedings even though he is not appointed as pleader by the accused by a vakalatnama. (Chowdhry J. C.) Indar Dass v. State.

AIR 1951 Him P 31=1952 Cr L J 280.

——King's counsel, when granted permission is "Pleader."

When a King's Counsel from England is granted permission by the Tribunal constituted under Burma Special Crimes Tribunal Act, 1947, to appear before it, he is a "pleader" within the definition, from the date of the permission and not before. (Ba U C. J. (Union of Burma), E. Maung J. and U Thein Maung C. J. (H. C.)) U Saw v. The Union of Burma.

1948 Bur L R 249 (Supreme Court).

CRIMINAL P. C. (V of 1898), S. 4—13. S. 4 (1) (r)—Pleader

——Vakils authorised to practice in Orissa—If can claim protection under second part of S. 4 (1) (r) for appearing in Courts in Madras Presidency.

Persons who claim to be entitled to practise as Vakils of a High Court must show that they are authorised to do so. Vakils authorised to practise only in the Orissa Courts are not persons who can claim protection under second part of S. 4 (1) (r), for appearing in Courts in the Madras Presidency. (Byers J.) In re Narasimhamurti Patnaick.

AIR 1943 Mad 470=1943 M W N 223=56 L W 256 =(1943) 1 M L J 382 = 16 R M 161=207 I C 623=44 Cr L J 662.

——Constituted attorney, if can appear.

The words 'any other person' in the definition of 'Pleader' in S. 4 (1) (r), are not restricted in their meaning and are not limited to a person authorized by law to appear in a particular Court. A constituted attorney is hence authorized to appear for the accused. (Beaumont C. J. and Barlee J.) Emperor v. Jaffar Cassum Moosa.

AIR 1934 Bom 212=36 Bom L R 433=6 R B 414 = 149 I C 1132=1934 Cr C 759=35 Cr L J 1035.

——Advocate on Appellate Side, if Pleader—Whether can appear in High Court Sessions.

Advocates on the Appellate Side do not come within the definition of "Pleader" as defined in the Criminal P. C., for the purposes of the Sessions Court, because they are not authorized by law for the time being in force to practise in that Court. Consequently, they have no authority to practise in the Sessions Side of the High Court. (Beaumont C. J., Blackwell and Rangnekar JJ.) In re Philip N. Godinho.

AIR 1934 Bom 70 = 6 R B 312 = 58 Bom 456 = 36 Bom L R 1=148 I C 664=1934 Cr C 302 (FB).

——Pleader for accused—Public Prosecutor.

The District Magistrate considering it possible that the complaint against two Government Officials was a false one, made in consequence of the accused performing their duty, directed the Prosecuting Inspector to defend the accused. The trying Magistrate allowed the Prosecutor to so defend the accused.

Held, that though the Public Prosecutor was not a member of the Bar it could not be held that he was not a person appointed by the accused with the permission of the Court to defend them though it was desirable that they had made such appointment: AIR 1926 Bom 218, Ref. (Macnair A. J. C.) Emperor v. Chote Khan.

AIR 1930 Nag 150 = 122 I C 442=I R 1930 Nag 170 =1930 Cr C 506=26 N L R 172=31 Cr L J 419.

——Mukhtyar—In Bombay Presidency "Mukhtyar" is a person who can with the permission of the Court represent an accused in any proceeding within the meaning of S. 4 (1) (r), Cr. P. Code, and so a general order of a District Magistrate against employment of Mukhtyars in criminal cases in his district is improper. (Patkar and Baker JJ.) Bajirau Abaji Kulkarni, In re.

AIR 1928 Bom 33=107 I C 56=29 Bom L R 1587 = 9 A I Cr R 403=29 Cr L J 226.

——Estate manager.

It is open to an accused to appoint his estate manager to appear in his stead, and plead and do other acts on his behalf in the case against him, and it is equally open to the Court to permit the estate manager to represent the accused as a pleader; but there should be clearly on record something to show that the person who represents the accused has been duly appointed by him and to show that the Court has given the requisite permission for his appearance in place of the accused:

CRIMINAL P. C. (V of 1898), S. 4—13. S. 4 (1) (r)—Pleader

1862 Rat Unrep. Cr C 1 and 1884 Rat Unrep. Cr C 206, Cons. (Fawcett and Madgavkar JJ.) Dorabshah v. Emperor.

AIR 1926 Bom 218 = 93 I C 232 = 50 Bom 250=28 Bom L R 102=27 Cr L J 440.

——Pleader accepting engagement in Court not authorised to practise in—Duty of.

A pleader appearing in the Court of a District to which his sanad does not apply ought to inform the Magistrate of the same and apply for permission under S. 4 (r) of the Cr. P. C.; better still if he had obtained permission before accepting the engagement. (Pratt J. C., Kemp and Hayward A. J. Cs.) In re, Mr. C. H. Clements.

7 S L R 98=23 I C 750=15 Cr L J 382.

——Mukhtear.

A mukhtear can only plead with the permission of the presiding officer of the Court: (6 Bom 4, dist.) (Hayward J. C., and Leggatt A. J. C.) Topanmal v. Emperor.

4 S L R 195=9 I C 711=12 Cr L J 118.

——Mukhtear—Right to appear for accused.

It would not be a wise discretion on the part of the Court to refuse permission to a mukhtear appearing for the defence. A mukhtear should not be permitted to appear when his appearance is unnecessary. In exercising its discretion the Court should consider the character of the person appointed to plead. (Holmwood and Sharfuddin JJ.) Ishan Chandra v. Emperor.

38 Cal 488=15 C W N 409=9 I C 664=13 C L J 635 =12 Cr L J 111.

[Under the New Code, a Mukhtear is entitled to plead without such permission—Ed.]

——Mukhtear—Right to practise.

In criminal cases a mukhtear cannot, as a matter of right, practise. He can only act when he has received the permission of the Court to act in a particular proceeding. Where the District Magistrate issued an order that "mukhtears can appear under S. 4 (r) only with the Court's permission," held that he did not act without jurisdiction or contrary to law. (Richards J.) In the matter of Anant Ram,

5 A L J 40=28 A W N 11=30 A 66=7 Cr L J 21.

14. S. 4 (1) (v) and (w)—Summons case and warrant case.

——Ss. 4 (1) (v) and (w), 221 (7), 255A, 262 — Bombay Prohibition Act (XXV of 1949), S. 85 (2) — Trial for first offence under—Procedure.

The effect of Ss. 221 (7) and 225A, Criminal P. C. read together is that the accused is to be charged with the previous convictions at the same time when he is charged with the subsequent offence, and if he is found guilty of that offence, he will be tried on the charge of previous convictions, by reason of which he is liable to enhanced punishment.

Where in a trial for an offence under S. 85 (2), Bombay Prohibition Act, the prosecution do not allege that the accused has a previous conviction for the same offence and the charge does not mention such previous conviction as required by S. 221 (7), Criminal P. C., the offence committed by the accused will be punishable as a first offence with imprisonment for a term extending to three months and the case will be tried as a summons case. If on the other hand, the accused has been previously convicted for an offence under S. 85 (2), Bombay Prohibition Act, he will be punishable with imprisonment extending to one year and the case will be a warrant case and will have to be tried as such. (Dixit and Chainani JJ.) State of Bombay v. Govind Masu,

AIR 1951 Bom 332=53 Bom L R 108=1951-21 Bom Cr C 61=ILR (1951) Bom 467=52 Cr L J 693.

CRIMINAL P. C. (V of 1898), S. 4 — 14. S. 4 (1) (v) and (w)—Summons case and warrant case

——S. 4 (1) (v)—Summons case.

It is open to a Magistrate who entertains a complaint and records a sworn statement to come to the conclusion that although the complained allegation constitutes an offence triable under the warrant procedure yet in fact a minor offence was committed, that he may adopt the summons procedure if the offence appears to be one to which the summons procedure can be applied; and that he may proceed with the case as if the complaint was one of the minor charge only. (Horwill J.) Arunachala Reddy v. Sellamuthu Goundan,

AIR 1942 Mad 594 = (1942) 1 M L J 594=55 L W 372=1942 M W N 373=15 R M 396=201 I C 451=43 Cr L J 760.

——Distinction—Bengal Excise Act (V of 1909), Ss. 46, 62—Prosecution under S. 46 (a) — Previous conviction—Accused liable to imprisonment exceeding six months—Magistrate following summons case procedure—Trial—Irregularity, S. 537.

The procedure for the trial of a summons case is laid down in Chap. XX, while that for a warrant case is laid down in Chap. XXI of the Criminal P. C. There is a difference between the two, the main difference lying in the fact that in a warrant case, it is necessary to frame the charge, and secondly, that the accused has the right to reserve cross-examination of the prosecution witnesses till a late stage.

In considering whether the trial should be in accordance with the procedure of a summons case or of a warrant case, it is not pertinent to consider the nature of the offence, but only the measure of the punishment which may be inflicted. That constitutes the deciding factor.

Where, therefore, it is apparent in a prosecution under S. 46(a), Bengal Excise Act, from the beginning that the accused is liable to imprisonment exceeding six months by reason of a previous conviction under the provisions of S. 62, Bengal Excise Act, the proper procedure for the Magistrate to adopt is that laid down for a warrant case. The irregularity of following the summons case procedure instead of the procedure for warrant case is not a mere matter of form. The difference between the two forms of trial is of sufficient importance to lead to an almost indefeasible presumption of prejudice to the accused and the trial is not in accordance with law, and must therefore be set aside, the irregularity being of such a character as not to be curable by S. 537, Criminal P. C., or by any of the other curative provisions of the Code. (Biswas J.) Sufal Golai v. Emperor,

AIR 1938 Cal 205=42 C W N 222=10 R C 674=174 I C 454=39 Cr L J 438.

——Test to decide.

It is not the conviction under any particular section of the Penal Code that decides whether a case is to be tried as warrant or summons case. It is the complaint, the notices issued to the accused and the commencement of the trial which decide its nature. (Gokul Prasad J.) Ganga Saran v. Bhagwati Prasad,

L R 1 A Cr 185.

—S. 5.

SYNOPSIS

1. Applicability and scope.
2. Duty of Court to comply with procedural law.
3. Enactment.
4. Offences against other laws—S. 5 (2).
   (a) General.
   (b) Abkari and Opium Laws.
   (c) Companies Act.
   (d) Contempt of Court.
   (e) Factories Act.

CRIMINAL P. C. (V of 1898), S. 5

   (f) Foreigners Law.
   (g) Forest Law.
   (h) Panchayat Law.
   (i) Prevention of Corruption Law.
   (j) Preventive Detention Law.
   (k) Public Gambling Act.

1. Applicability and Scope.

——S. 5 (2)—Offences committed prior to commencement of Chandernagore (Application of Laws) Order (1950)—Trial of—Procedure—See Chandernagore (Application of Laws) Order (1950), Para 7.

AIR 1952 Cal 588=1952 Cr L J 1308 (SB).

——The expression corpus delicti is not found in any part of the Criminal P. C. The course of criminal trials in India is to be governed by the provisions of the Indian Statute and not by a criterion derived from the law of some other country. (Varma and Rowland JJ.) Emperor v. Maya Dhar Pothal,

AIR 1939 Pat 577=20 P L T 420=5 B R 706=11 R P 653=18 Pat 450=181 I C 1001=40 Cr L J 625.

——Ss. 5, 29, 194 (1), 526—Election petitions, trial of.

The trial of election petition is not governed by rules applicable to Criminal cases. (McNair J.) Nasiruddin Ahmad v. Mahammad Yusuf,

63 Cal 825=40 C W N 741=9 R C 404=165 I C 489.

——S. 5, Chap. XIV—Offence covered by special as well as general law—Law applicable.

It is not a general rule of law that if an act is an offence under a special law providing penalties for such an act, the application of the general law would be repelled. It is possible that an act may be an offence both under special law as well as under general law, both laws being applicable simultaneously. In such a case, the offender may be prosecuted under either law though it would be more appropriate to prosecute the offender and to convict him under the special Act if the offence falls strictly within the purview of a section of the special Act and does not go beyond it. (Sulaiman J.) Jiwa Ram v. Emperor,

AIR 1932 All 69=Ind. Rul. (1932) All 219=1932 A L J 519=136 I C 571=L R 12 All 168 Cr=1932 Cr Cas 89=33 Cr L J 309.

——New offence under statute—Indictment under general law.

Per Das J. — Where a statute creates a new offence which was not an offence at common law and imposes a penalty in respect of such offence a person committing such an offence can only be proceeded against under the statute which creates the offence and cannot be indicated under the general law. (Mullick, Coutts and Das JJ.) Emperor v. Abdul Hamid,

AIR 1923 Pat 1=2 Pat 134=3 Pat L T 585=1 Pat L R Cr 199=68 I C 945=4 U P L R Pat 79=1922 Pat 274=23 Cr L J 625 (SB).

2. Duty of Court to comply with procedural law.

——Disposal of application in criminal trial.

Where a Magistrate passes no orders on the application made by the defence for permission to cross-examine a witness examined by it as a defence witness, but merely says "file" on it, this is not a proper way of disposing of an application in the course of a criminal trial. (Dhavle J.) Chokat Ahir v. Suraj Singh,

A I R 1940 Pat 299=21 P L T 627=6 B R 301=12 R P 474=186 I C 182=41 Cr L J 257.

——Court's duty — Procedure — Prompt disposal — No excuse for not attending to procedure.

While prompt disposal of a criminal case is a matter of importance, it is of equal or even greater importance to

CRIMINAL P. C. (V of 1898), S. 5—2. Duty of Court to comply with procedural law

pay proper attention to the procedure prescribed by law. (Bhide J.) Faqir Singh v. Emperor,

A I R 1929 Lah 382=110 I C 801=10 Lah 223=30 P L R 385=11 A I Cr R 1=29 Cr L J 769.

——Court's duty — Procedure — Should insist upon compliance with procedural law as embodied in statutes and decisions.

It should be the duty of the presiding officers in criminal trials to see that the requirements of law as laid down in the Cr. P. Code and by the High Courts are complied with fully and satisfactorily. (C. C. Ghose and Cammiade JJ.) Tuka Mea v. Emperor,

A I R 1927 Cal 936=31 C W N 387=101 I C 606=28 Cr L J 478.

——Court's duty—Directions of superior executive authority when need not be cared for.

It is the duty of a trying Magistrate to ignore extra-judicial directions given by a superior authority as to the disposal of the case. (Kennedy J. C. and Madgaonkar A. J. C.) Bassarmal Awatmal v. Emperor,

A I R 1921 Sind 48=64 I C 511=15 S L R 149=23 Cr L J 31.

3. 'Enactment'.

——S. 5 (2)—'Enactment' does not include Rule 4 framed by Local Government under S. 23 of the Calcutta Rent Act.

Rule 4 framed by the Local Government under S. 23 of the Rent Act is not an "enactment" within S. 5 (2) of the Code. (Sanderson C. J. and Richardson J.) Gobardhan Das v. Doolie Chand,

AIR 1921 Cal 708=33 C L J 551=25 C W N 661=61 I C 210=48 Cal 955=22 Cr L J 354.

4. Offences against other laws—S. 5 (2).

(a) General.
(b) Abkari and Opium laws.
(c) Companies Act.
(d) Contempt of Court.
(e) Factories Act.
(f) Foreigners law.
(g) Forest law.
(h) Panchayat law.
(i) Prevention of Corruption law.
(j) Preventive Detention law.
(k) Public Gambling Act.

4. Offences against other laws—S. 5 (2)—(a) General.

——Where no special form of procedure has been prescribed by any special or local law the trial must be regulated by the procedure set out in the Criminal P. C.—See Frontier Crimes (Validation of Orders, Proceedings, Sentences and Acts) Ordinance (2 (II) of 1946), S. 2,

49 Punj L R 265.

——Offence under Special Act — Prosecution to be under Special Act.

Where a Special Act makes a special offence and a special procedure for the prosecution of the offences under that Act, prosecutions not in accordance with that special procedure are barred. (Davis C. J.) Emperor v. Vishanath B. Patel,

A I R 1942 Sind 9 =14 R S 134 = 198 I C 95=43 Cr L J 304.

4. Offences against other laws—S. 5 (2)—(b) Abkari and Opium laws.

——S. 5 (2)—Security taken under Gwalior Opium Act—Forfeiture — Gwalior Excise Act, S. 58—Gwalior Opium Act, S. 19.

The provisions of Gwalior Excise Act are not applicable to any of the offences committed under the Gwalior Opium Act. Where security is taken under S. 19 (2) Gwalior Opium Act, the provisions of Criminal P. C., will govern the forfeiture of the security as provided in S. 5 (2), Criminal P. C. (Shinde J.) State v. Darshanlal,

AIR 1951 Madh. B. 102=52 Cr L J 625.

——S. 5, Chap. XIV — Bombay Abkari Act (5 of 1878), Ss. 43 (1), 47—Offence under—Police, if have jurisdiction to search or arrest.

Chapter XIV, being controlled by S. 5 (2), the Police have no right to file a charge-sheet or otherwise to proceed under Chap. XIV, Criminal P. C., in respect of an offence under the Bombay Abkari Act. There is no provision in the Bombay Abkari Act, empowering Police Officers to effect searches or arrests or to send up cases for trial for offences falling under this Act, and no such powers can be presumed. (Ferrers J. C., Rupchand and Mehta A. J. Cs.) Emperor v. Mohomed Usman,

A I R 1933 Sind 325=6 R S 65=146 I C 419=1933 Cr C 1077=35 Cr L J 129 (FB).

——Abkari and Opium Acts — Applicability of Cr. P. Code—Complaint by private persons — If allowed.

For complaints under the Abkari Act or under the Opium Act (1 of 1878), the ordinary Cr. P. Code, is not applicable but the procedure contained in those Acts is to be strictly followed ; and as complaints by private persons are not provided for by the procedure in those Acts, they must be treated as not properly instituted. A. I. R. 1923 Mad. 339 and 25 M. L. J. 577 Rel. on. (Odgers J.) L. Fernando v. A. Fernando,

A I R 1929 Mad 604=57 M L J 214=52 Mad 613=2 M Cr C 168=30 M L W 112=1929 M W N 507=119 I C 174=1929 Cr C 78=Ind Rul (1929) Mad 926=30 Cr L J 1011.

——Abkari Act—Special law.

The police have no right to file a charge sheet or otherwise to proceed under Chapter 14 of the Cr. P. Code in respect of an offence under the Abkari Act. Chapter 14 is controlled by S. 5 (2) of the Cr. P. Code and this is an offence under a special law, which can be investigated and tried only according to the provisions of the law. (Oldfield and Ramesam JJ.) Kuppusami, In re,

A I R 1923 Mad 339=72 I C 175=17 M L W 308=44 M L J 231=24 Cr L J 335.

4. Offences against other laws—S. 5 (2)—(c) Companies Act.

——Trial of offence under S. 282A, Companies Act—Jurisdiction of First Class Magistrate to take cognizance and try—See Companies Act (1913), S. 282A,

AIR 1953 All 715=1953 Cr L J 1635.

——Ss. 5, 29, 194 (1), 526—Offence under any other law than under Penal Code — Jurisdiction of High Court—Offence due to contravention of S. 85, Companies Act—High Court, when and how can take jurisdiction to try it.

There is absolutely no conflict between the provisions of S. 5 and those of S. 29. Section 29 merely empowers the High Court, when no Court is mentioned for any offence under any law other than the Penal Code. The mere fact that S. 29 empowers the High Court to try such an offence does not show that the High Court can take cognizance of the offence straight off, try the accused and convict him and punish him without following the procedure laid down in the Code. In the case of offences due to the contravention of the provisions of S. 85, Companies Act, the High Court has no jurisdiction to take cognizance and try such offence and impose fine. If the case were committed to the High Court under S. 194 (1), Criminal P. C., or proceedings were started on an application of the Advocate-General under S. 194 (2), or were transferred to it under S. 526, Criminal P. C.,

CRIMINAL P. C. (V of 1898), S. 5 — 4. Offences against other laws—S. 5 (2)—(c) Companies Act

then the High Court would have jurisdiction to try the accused; but it would not have jurisdiction to try the accused merely on an application made under S. 85, Companies Act. (Sulaiman C. J., Thom and Rachhpal Singh JJ.) Harish Chandra v. Kavindra Narain Sinha,

A I R 1936 All 830=1936 A L J 1105=1936 A W R 964=9 R A 349=I L R (1937) All 220=166 I C 53=1936 A L R 990=38 Cr L J 111 (FB).

4. Offences against other laws—S. 5 (2) — (d) Contempt of Court.

——S. 5 (2)—Contempt of Court is an offence, within the meaning of S. 4 (1) (o), Criminal P. C., and as such can be inquired into under S. 5 (2) of that Code. (Thomas C. J. and Koul J.) P. L. Jaitley v. Sir Iqbal Ahmad,

A I R 1945 Oudh 266=1945 O W N 169=1945 A W R C C 153=20 Luck 442=222 I C 260.

——S. 5 (2)—Offence of contempt by publication outside Court does not come within Penal Code nor Criminal Procedure Code nor under any other law within S. 5 (2), Criminal P. C. (Beaumont C. J. and Sen J.) In re Benjamin Guy Horniman,

A I R 1944 Bom 127=46 Bom L R 94=1944 O W N 32 = 1944 A W R (Sup) 11 = 212 I C 631=1944 O A (Sup) 11=ILR (1944) Bom 333=45 Cr L J 647.

4. Offences against other laws—S. 5 (2)— (e) Factories Act.

——Ss. 5, 239 (a) — Offences under Factories Act, whether offences of the same kind.

Offences under S. 41 (h) and S. 41 (j) of the Factories Act are offences of the same kind within the meaning of S. 239 (c) and so persons jointly and severally liable for offences under the said clauses may be tried together for two offences committed by them. (Scroope J.) J. Agarwala v. Emperor,

A I R 1932 Pat 188 = Ind Rul (1932) Pat 65 = 13 P L T 252=136 I C 289=1932 Cr Cas 414 = 33 Cr L J 274 (2).

4. Offences against other laws—S. 5 (2) — (f) Foreigners law.

——Foreigners Ordinance (III of 1914), Ss. 3, 4 and 7.

An ordinance is a law and an infringement of its provisions is an offence and an inquiry into such an offence under S. 5, must be dealt with according to the provisions of that Code unless there is any other enactment in force prescribing a different method of inquiry. (Leslie Jones J.) Shersingh v. Emperor,

A I R 1916 Lah 207=10 P R Cr 1916=15 P W R Cr 1916=34 I C 641=152 P L R 1916=17 Cr L J 225.

4. Offences against other laws — S. 5 (2)— (g) Forest law.

——Offences under U. P. Private Forests Protection Act are triable only by second class Magistrates under S. 15 (2) of that Act — Trial by first class Magistrate is ultra vires — See U. P. Private Forests Protection Act (VI of 1949), S. 15,

A I R 1953 All 179=1953 Cr L J 444.

4. Offences against other laws — S. 5 (2)— (h) Panchayat law.

——Offences cognizable by panchayat Courts — Jurisdiction of panchayat Courts is not exclusive so as to bar jurisdiction of ordinary Courts — See M. B. Panchayat Vidhan Sm. 2006 (58 of 1949), S. 77.

A I R 1953 Madh-B 89=1953 Cr L J 629.

——Village Panchayats—Transfer of cases.

By S. 5 read with S. 526 High Court has jurisdiction to transfer cases from village panchayats constituted under the U. P. Village Panchayats Act of 1920. A. I. R. 1926 All. 27 Rel. on. (Iqbal Ahmad J.) Basdeo Misra v. Badal Misra,

A I R 1927 All 199 = 99 I C 126 = 25 A L J 157=8 L R A Cr 33 = 49 All 188 = 7 A I Cr R 246=28 Cr L J 94.

CRIMINAL P. C. (V of 1898), S. 5—4. Offences against other laws—S. 5 (2)—(h) Panchayat law

4. Offences against other laws — S. 5 (2)— (i) Prevention of corruption law.

——Ss. 5 (2), 234 — Joint trial for offence under S. 5 (1) (a), Prevention of Corruption Act and ten offences under S. 161, Penal Code—Legality.

Where the accused is charged with and tried at one trial for more than three offences under S. 161, Penal Code, and also for offence of criminal misconduct under S. 5 (1) (a), Prevention of Corruption Act, the trial with regard to offences under S. 161, Penal Code, is illegal in view of S. 234 (1), Criminal P. C., but the trial for offence under S. 5 (1) (a), Prevention of Corruption Act is legal by reason of S. 5 (2), Criminal P. C. (Kayani J.) Ghulam Muhammad v. Crown,

52 Cr L J 484 (Lahore).

——S. 5 (2)—Procedure prescribed by Code—Applicability to offences under (Pakistan) Prevention of Corruption Act, 1947.

Per Khurshid Zaman J. — No special procedure has been prescribed by the (Pakistan) Prevention of Corruption Act, 1947, for the trial of offences of criminal misconduct under S. 5 of the Act. Therefore, the provisions of the Code relating to trials also apply to offences falling under that section. (Khurshid Zaman J.) Crown v. Ghulam Muhammad,

Pak Cas 1950 Lah 681.

4. Offences against other laws — S. 5 (2)— (j) Preventive detention law.

——S. 5 (2)—Criminal P. C., if intended to be exhaustive of criminal procedure — Provisions of Bihar Preventive Detention Ordinance (2 of 1950) creating additional procedure — Validity — See Bihar Preventive Detention Ordinance (II of 1950),

A I R 1950 Pat 332=51 Cr L J 1251.

4. Offences against other laws — S. 5 (2)— (k) Public Gambling Act.

——S. 5 (2)—Commission of offences under Ss. 3 and 4 of Public Gambling Act — Search and arrest by Sub-Inspector of Police—Chalan presented by City Police :

Held, that the provisions of Criminal P. C., regulate investigation and trial of such offences which are cognizable and the procedure adopted by the Police for the arrest of the accused was proper. (Pollock J.) In re Nagar Mal Janki Ram,

A I R 1941 Nag 338=1941 N L J 465=I L R (1942) Nag 426=14 R N 145=196 I C 869=43 Cr L J 89.

—S. 6.

——'Court'—Meaning—(Words and Phrases—Court.)

There is no definition of 'Court' in the Criminal Procedure Code. But a "Court" is ordinarily understood as "a place where justice is judicially administered." For the sake of brevity, the Code uses the term 'Court and Magistrate' generally if not always, as convertible terms. (Somasundaram J.) In re Ramanath Bholgothra,

A I R 1953 Mad 953 = 1953 M W N 488 = 1953-2 M L J 399=1953 Cr L J 1737.

——Court—Panchayat.

A panchayat constituted under the Punjab Village Panchayat Act, 1939, is a Court and it is, in the exercise of its criminal jurisdiction, an inferior criminal Court. (Bannerji J. C.) Dhirjoo v. Kamna,

A I R 1950 Him-P 40=51 Cr L J 1109.

CRIMINAL P. C. (V of 1898), S. 5 — 4. Offences against other laws—S. 5 (2) — (k) Public Gambling Act

——Magistrate appointed under S. 531, Calcutta Municipal Act, is Criminal Court within S. 6. (Per Mookerjee J.) —See Calcutta Municipal Act (III of 1923), S. 531.

A I R 1950 Cal 36=51 Cr L J 346.

——Judicial act—No provision to issue of notice to party affected or for being heard — This is not sufficient to convert judicial act into executive one — Party must be deemed entitled to get opportunity of being heard — Ex parte order may be revoked at instance of party prejudiced thereby — Test to determine if act is judicial or not is exercise of judicial discretion (Per Mookerjee J.)

Per Mookerjee J.—If an act is otherwise found to be a judicial act the absence of specific provisions either for the issue of notice to the party affected or for being heard in recognition of the fundamental right, will not be sufficient to convert the judicial act into an executive one. On the other hand, the party must always be deemed to be entitled to get an opportunity of being heard even if the statute does not specifically provide for the same. The only exception will be when there is a clear direction that no notice need be given or that the ex parte order is made revisable at the instance of the party affected. Similarly, if an order is otherwise found to be an executive one, the mere fact that there is a provision for allowing a hearing to the party concerned, will not by itself make it a judicial one. Even where there are specific provisions permitting ex parte orders of a judicial nature, it is also another fundamental principle of natural justice that such orders may be revoked at the instance of any party prejudiced thereby and the Court has inherent power to give such directions as the justice of the case may require. It is further incontrovertible that even the absence of specific provisions in the statute does not authorise the Magistrate to proceed ex parte and without offering an opportunity to the party concerned to be heard in his defence. Such an absence of provisions cannot also be taken by itself to be sufficient to make the order a ministerial one. On the other hand, one of the infallible tests applied by Courts to determine whether an act is merely ministerial or judicial is to ascertain whether the public officer or body had to exercise a judicial discretion. Case law discussed. (R. P. Mookerjee and Das Gupta JJ.) Abdoola Haroon & Co. v. Corporation of Calcutta,

A I R 1950 Cal 36=51 Cr L J 346.

——Duty of Subordinate Courts towards criminal work.

Subordinate Courts should not labour under the impression that criminal work is of no real importance and can be done in any manner, as a sort of "spare time occupation" (Sen J.) Aditya Das v. Emperor,

I L R (1948) 1 Cal 407.

——Sessions Court is criminal Court within S. 6. (Davis C. J. and Weston J.) Mir Fateh Khan v. Emperor,

A I R 1942 Sind 161=ILR 1942 Kar 323=15 R S 89 =204 I C 31=44 Cr L J 137.

——A village panchayat constituted under U. P. Village Panchayat Act is not Court as defined under S. 6 and is therefore not a body subject to the revisional jurisdiction of the Chief Court. (Zia-ul-Hasan and Hamilton JJ.) Badri Nath v. Sheophal,

A I R 1939 Oudh 143=1939 O W N 231=1939 A W R 54=14 Luck 592 = 11 R O 240 = 180 I C 142=1939 O L R 120=40 Cr L J 338.

——District Magistrate — Subordinate to District Court.

There is no Court of a District Magistrate as such within the meaning of S. 6 of the Code. A District Magistrate's Court is only a Court of Magistrate, first class, and subordinate to the Court of the Sessions Judge for the purposes of S. 195 (3). An appeal, therefore, under S. 476-B lies to the Court of the Sessions Judge, from an order passed by the District Magistrate under S. 476-A and not to the High Court. (Kinkhede, Mohiuddin and Staples, A. J. Cs.) Pilalal v. Emperor,

A I R 1929 Nag 97=116 I C 77 = 25 N L R 1 = 12 A I Cr R 345=30 Cr L J 550 (F B).

——Order under S. 144—'Court'.

Order of the Magistrates acting under S. 144 is not the order of a Court. No revision, therefore, lies against such order under S. 435, in spite of omission of cl. 3 from the Code of 1898. A I R 1923 Mad 473, Foll. Magistrates are not always Courts. Section 6 is not inconsistent with the idea that Magistrates may sometimes act in executive and administrative capacity and not as Courts. 39 Cal 953 (P C), Dist.; A I R 1924 Pat 703, not appr. (Ramesam J.) Vedappan Servai v. Perianan Servai,

A I R 1928 Mad 1108 = 113 I C 279=28 M L W 506 =1928 M W N 779 = 52 Mad 69 = 1 M Cr C 304=12 A I Cr R 17=55 M L J 621=30 Cr L J 119.

——Municipal Magistrate—Calcutta Municipal Act.

The Municipal Magistrate appointed under S. 531 is a Court of inferior criminal jurisdiction within the meaning of S. 6, Cr. P. Code, and orders for demolition passed by such a Magistrate are subject to revision by the High Court under Ss. 435 and 439, Cr. P. Code. Further, an order for demolition is a judicial order and whether made in the exercise of the Magistrate's civil or criminal jurisdiction is open to revision by the High Court. A I R 1919 P C 31, Foll. (Sanderson, C. J. and Panton, J.) Ramgopal Goenka v. Corporation of Calcutta,

A I R 1925 Cal 1251 = 90 I C 317 = 52 Cal 962 = 29 C W N 898=26 Cr L J 1533.

——Court of Session—High Court.

The High Court exercising Original Criminal Jurisdiction is not a Court of Session within the meaning of the Code of Criminal Procedure. (Mukerji J.) Emperor v. Harendra Chandra Chakravarty,

A I R 1925 Cal 384 = 84 I C 929 = 51 Cal 980 = 29 C W N 384=26 Cr L J 385.

——Deputy Magistrate.

The terms 'Deputy Magistrate' and 'General Deputy Magistrate' are not known to the Code of Criminal Procedure. (Benson and Sundara Iyer JJ.) Public Prosecutor v. Sadananda Patnaik,

23 M L J 670 = 17 I C 786 = 12 M L T 601 =13 Cr L J 350.

——Ss. 6 and 195 — Sanction to prosecute by successor.

When an officer who tried a case is transferred his successor has power to grant sanction in respect of anything arising out of that case under S. 195. But a second class Magistrate cannot be regarded as successor of a first class Magistrate. Section 6 shows that the different Magistrates there mentioned constitute different classes of Courts. (Nanjundayya J.) Nasimhachar v. Srinivasiengar,

13 M C C R 140=9 Cr L J 566.

—S. 7.

——S. 7 (2) — Notification declaring deep stream of river as boundary between districts — Interpretation of—U. P. Revenue Manual (Vol. II), Para. 1631.

The notification embodied in Para. 1631 of the U. P. Revenue Manual (Vol. II) declaring, for purposes of criminal jurisdiction, the deep stream of a river as the boundary between certain districts implies that the limits of the districts change with the shift in the deep stream and must be determined according to the deep stream as it exists at the time of the dispute and not as it existed at the date of the notification. That this is the meaning of Para. 1631 follows from the note contained in it as also

CRIMINAL P. C. (V of 1898), S. 7

from Para, 1632: 25 Cal 858, Dissent. (Agarwala J.) Prag v. Ram Das,

A I R 1923 All 24=1952 A L J 641 = 1953 All L W 50=1953 Cr L J 186.

——Ss. 7, 9—Notification does not create powers—Powers are conferred by Ss. 7 and 9—Formal notification though desirable is not absolutely necessary.

There is no particular virtue in a formal Notification. The notification does not confer the powers. Section 9, Criminal P. C., confers the necessary powers so does S. 7. A Government Notification merely declares or records the acts of Government. The powers themselves are conferred by and exercised under the sections. Neither S. 7 nor S. 9 of the Code requires formal publication in the Government Gazette. Whether a Court of Session is established is a question of fact, whether the limits of a sessions division or district are altered is a question of fact, although it is particularly desirable that in questions of jurisdiction the acts of Government should be declared with precision and particularity by a formal Notification which places the matter above all dispute or argument or doubt. (Davis C. J., Lobo and Weston JJ.) Nawab Jam Khambu Khan v. Emperor,

A I R 1943 Sind 39 = 15 R S 107 = 204 I C 415=44 Cr L J 293 (F B).

——Ss. 7, 10 — Madras Government Notification constituting two Sessions Divisions of Tanjore District—'District', meaning of — Appointment of one District Magistrate for two districts.

Held, by the Full Bench, (Jackson, J., dissenting)—The word 'district' in S. 7 (1), does not necessarily refer to a revenue district but means a district for the purposes of criminal administration. Therefore, the Notifications Nos. 175 and 177 of the Local Government dated June 22, 1921, constituting a Sessions Division of West Tanjore and a Sessions Division of East Tanjore are intra vires of the Local Government.

Per Jackson, J.—The word 'district' in S. 7, is used in its generally accepted sense of a revenue division in charge (in the Madras Presidency) of a Collector and the above said notifications are, therefore, ultra vires. (Sir Horace Owen Compton Beasley C. J., Sir Vepa Ramesam, Jackson, Anantha Krishna Ayyar and Sundaram Chetty, JJ.) Arumugha Solagan v. Emperor,

A I R 1931 Mad 697=1931 M W N 161=34 M L W 201=61 M L J 265=Ind Rul (1931) Mad 803=54 Mad 943 = 134 I C 51 = 1931 Cr Cas 937 = 32 Cr L J 1095 (F B).

——S. 7 (2)—Notification declaring boundary between two districts—Power of District Magistrate to transfer.

It is not competent for one District Magistrate to transfer a case for trial to another District Magistrate, on the ground that the boundaries fixed by the Government vest in the jurisdiction over the offence in the latter. (Lindsay, J. C.) Kayamuddin v. Dwarka,

A I R 1918 Oudh 158 = 5 O L J 145=45 I C 1007 = 19 Cr L J 671.

——Sessions division — Formation of two sessions divisions in same district is not unwarranted by law. (Subrahmania Aiyar and Benson, JJ.) Mundiath Valia Ambu Podaval v. King-Emperor,

16 M L J 444 = 1 M L T 402 = 30 M 136 = 4 Cr L J 443.

—S. 9.

——Sessions Judge has power only by virtue of his appointment to particular division and not as Sessions Judge simpliciter.

A Sessions Judge who has ceased to be the Sessions Judge of one division and has not become the Sessions

CRIMINAL P. C. (V of 1898), S. 9

Judge of another has no powers as a Sessions Judge simpliciter. He has jurisdiction to exercise the powers of a Sessions Judge only by virtue of his appointment to a particular Sessions division. (Horwill and Shahabuddin JJ.) In re Patan Ali Khan,

A I R 1947 Mad 248=59 M L W 472=1946-2 M L J 195=1946 M W N 585=228 I C 164=1947 A W R Sup 12=1947 O A Sup 12=I L R (1947) Mad 365 = 48 Cr L J 81.

——Sessions Division of Jhunjhunu in Jaipur includes Sikar.

Sikar Thikana is included in the Sessions Division of Jhunjhunu. (Ghose C. J., Mirza and Sharma JJ.) Rupla v. Surjea,

1946 J L R 34 (F B).

——Jurisdictional Thikanas in Jaipur — Sikar—Judicial Officer—Powers of Additional Sessions Judge.

The position of the Judicial Officer is that of an Additional Sessions Judge generally or specially empowered as under Ss. 9 and 409, Criminal P. C. He can hear appeals from the decisions of the Magistrates of Sikar and hear revision applications relating to proceedings other than commitment proceedings before such Magistrates. (Ghose C. J., Mirza and Sharma JJ.) Rupla v. Surjea,

1946 J L R 34 (F B).

——Sections 9 and 7, Criminal P. C., do not require formal publication in the Government Gazette. (Davis, C. J., Lobo and Weston, JJ.) Nawab Jam Khambu Khan v. Emperor,

A I R 1943 Sind 39=15 R S 107 = 204 I C 415 = 44 Cr L J 293 (F B).

——The establishment of a Court of Session and the appointment of a Judge to such Court are, under the terms of S. 9, Criminal P. C., two things very closely connected. The establishment of a Court of Session at Nawabshah for the Sessions division and district of Nawabshah with headquarters at Nawabshah was necessarily implicit in the terms of the creation of the post of the District and Sessions Judge at Nawabshah, and in the appointment of a certain person as District and Sessions Judge Nawabshah. (Davis C. J., Lobo and Weston JJ.) Nawab Jam Khambu Khan v. Emperor,

A I R 1943 Sind 39 = 15 R S 107 = 204 I C 415 = 44 Cr L J 293 (F B).

——Ss. 9, 193 (2), 409, 195—Sessions Judge can transfer appeal from order under S. 195 to Additional Sessions Judge who has jurisdiction to hear it.

The effect of Ss. 9, 193 (2) and 409, Criminal P. C., is that an Additional Sessions Judge can hear all the appeals which lie to the Sessions Judge and the Sessions Judge has power to transfer any appeal he likes to the Court of the Additional Sessions Judge. (Agarwal J.) Chandra Kumar v. Ramesh Chandra,

A I R 1942 Oudh 50=1941 O W N 1130=14 R O 250 =1941 A W R 313 = 196 I C 664 = 1941 O L R 734= 43 Cr L J 50.

——Ss. 9, 193 (2)—Predecessors of Sub-Judge appointed Assistant Sessions Judges by name—No subsequent order appointing Sub-Judge by designation or name as Assistant Sessions Judge—Trial of sessions case by such Sub-Judge is illegal. (Lakshmana Rao J.) Shaik Silar, In re,

A I R 1941 Mad 681 = 1941 M W N 62 = 1941 M Cr C 35.

——Ss. 9 (3), 268 — Additional Sessions Judge appointed by Resident—Whether can exercise discretion under S. 268.

Held, that the Additional Sessions Judge appointed by the Resident under S. 9 (3), was entitled to exercise his discretion under S. 268, and try cases without jury or aid

of assessors. (Lords, Thankerton, Normand and Sir Shadi Lal.) Fakira v. Emperor.

AIR 1937 P C 119 = 1937 O W N 412 = 1937 A L J 1055=3 B R 426=39 P L R 334=41 C W N 741=1937 M W N 546=46 M L W 134=(1937) 2 M L J 323=64 I A 148=39 Bom L R 966 = I L R (1937) Bom 711=9 R P C 231 = 1937 A W R 1128 = 167 I C 790 = 1937 O L R 216=1937 A L R 328=38 Cr L J 498 (P C).

——Ss. 9 (3), 268—Jurisdiction—Appeal filed in Sessions Court A—Additional Sessions Judge hearing it at B — B farther from accused's house than A — Discretion, if properly exercised.

Where a Sessions division covers districts A and B, a criminal appeal in respect of an offence alleged to be committed in district A can be tried at B and it is a matter of discretion for the Sessions Judge or the Additional Sessions Judge to decide in which district it should be heard. The discretion must be exercised in a judicial manner and reasonable attention must be paid to the interest of the accused.

The Additional Sessions Judge heard an appeal at B thinking that the appellant had not been taken by surprise as he had ample notice of the Court's intention but he did not take into consideration the fact that B was at a great distance from the place where the appellant resided (being more distant than A was from his house) and that it would be more inconvenient for him to take lawyer to A than to B :

Held, that the discretion was wrongly exercised by the Additional Sessions Judge and that the appeal should be re-heard by such Appellate Court as the Sessions Judge might direct. (Courtney-Terrell C. J.) Deodhari Rai v. Emperor,

AIR 1934 Pat 643=15 P L T 604=1 B R 220=7 R P 354=153 I C 576=1934 Cr Cas 1321=36 Cr L J 371.

——Ss. 9, 476—Offence before Additional Sessions Judge —Power of Sesssions Judge to make complaint— Failure to record expressly that enquiry is necessary.

Under S. 9, the Local Government is empowered to establish a Court of Session for every Sessions division, and to appoint a Judge of such Court and Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in such Court, and to direct at what place or places the Court of Session shall sit. But there is only one Court of Session in each Sessional Division though manned by a number of Judges and the Sessions Judge can, therefore, make a complaint in respect of an offence committed before the Court of the Additional Sessions Judge. (Lort-Williams and S. K. Ghose JJ.), Superintendent and Legal Remembrancer of Legal Affairs, Bengal v. Ijjatulla Paikar

AIR 1931 Cal 190=58 Cal 1117=35 C W N 400=53 C L J 177 = Ind Rul (1931) Cal 544 = 132 I C 160= (1931) Cri C 254=32 Cr L J 842.

——Identification— Evidence subject to close and careful scrutiny.

The evidence as to identification ought in each case to be subjected to a close and careful scrutiny. It is an important factor whether all the persons identified were previously known to the witnesses or were perfectly strangers to them. The time of occurrence, the state of light and the opportunities which the witnesses had of identifying are material circumstances. The range and the distance from which the witnesses say that they saw the accused should be determined. (Sen J.) Man Singh v. Emperor,

AIR 1929 All 928=121 I C 103 = 11 L R A Cr 1=13 A I Cr R 52=1929 Cr C 656=31 Cr L J 206.

——Ss. 9, 531 — Appeal to Additional Sessions Judge — Appeal heard by Sessions Judge himself—Jurisdiction.

The jurisdiction of the Sessions Judge in respect of an appeal is not ousted in consequence of any arrangement, which he might previously have made for the convenient disposal of the work of Sessions Court. The absence of any corresponding provision in respect of cases tried within the same Sessions Divisions by a lawfully appointed Judge of that Sessions Division, whether he be the Sessions Judge or an Additional Sessions Judge, shows that the Legislature did not think that any doubt as to the jurisdiction of such Judges could arise in view of the wording of Section 9 of the Criminal P. C. (Piggott and Walsh JJ.) Birju Marwari v. Emperor,

AIR 1922 All 387=44 All 157=65 I C 491=19 A L J 952=L R 2 A (Cr) 166=23 Cr L J 107.

——Sessions Court in British Baluchistan — Jurisdiction to try British European subject — Committal to sessions Court—Quashing of committal—See Criminal P. C. (1898) Section 1,

6 Cr L J 108 (Lah).

——Order of Magistrate prohibiting procession on public Street—Suits for declaration—See Criminal P. C. (1898), Section 144.

5 Ind Cas 902 (Mad)

—S. 10.

——Ss. 144, 195, 10, 17, 528 and 476—Complaint for disobedience of order under S. 144 by First Class Magistrate— Competency of Additional District Magistrate to withdraw —See ibid, S. 144,

AIR 1953 Mad 956=1953 Cr L J 1780.

——S. 10 (2) — Notification investing Additional District Magistrate with powers of District Magistrate under future legislation—(Bombay Police Act (22 of 1951), S. 56).

By virtue of the notification of 21-4-1950 the Additional District Magistrate came to possess the powers of a District Magistrate under S. 56, Bombay Police Act immediately the Act was passed.

Section 10 (2) empowers the Provincial Government to invest the Additional District Magistrate, with all or any of the powers of a District Magistrate, not only under the existing laws but under any other laws which may be passed in future. (Bavdekar and Chainani JJ.) In re Kalu,

A I R 1953 Bom 401=55 Bom L R 404=ILR (1953) Bom 793=1953 Cr L J 1576.

——Additional District Magistrate—Power to pass order under S. 4, Pubjab Public Safety Act—See Punjab Public Safety Act (II of 1947), S. 4.

AIR 1950 Ajmer 12=51 Cr L J 771.

——Powers of Additional District Magistrate—He cannot exercise all powers of District Magistrate.

The mere fact that the Additional District Magistrate can exercise the powers of the District Magistrate for a great many purposes does not necessarily invest him with authority to exercise all the District Magistrate's Powers. (Pollock and Bose JJ.) Prabhakar Kesheo v. Emperor,

AIR 1943 Nag 26=1943 N L J 1=15 R N 178=ILR (1943) Nag 154=205 I C 5=44 Cr L J 345.

——Ss. 10, 438—District Magistrate invested with powers under S. 10 has also other powers not contemplated by Code.

From the mere fact that the District Magistrate has been invested with certain powers under S. 10, it does not follow that he has not other powers which are not contemplated by the Criminal P. C. He is in addition the Collector of the district. He is also the District Officer and in those capacities, he has to perform many functions which are not covered by the Criminal P. C. (McNair and Khundkar. JJ.) Bejoy Krishna v. Shyam Narain,

AIR 1940 Cal 30=ILR (1939) 2 Cal. 532=12 R C 575 =187 I C 310=41 Cr L J 442.

CRIMINAL P. C. (V of 1898), S. 10

——S. 10 (2) — The Additional District Magistrate upon whom the ordinary powers of a District Magistrate had been conferred under S. 10 (2), is not in any way affected by the proviso to S. 337 (1) and he is in his own right empowered under the law to tender a pardon to the accused without the sanction of the District Magistrate. (Monroe and Din Mohammad JJ.) Emperor v. Amar Singh.

AIR 1938 Lah 796=40 P L R 758 (2)=11 R L 855=ILR (1939) Lah 38=181 I C 509=40 Cr L J 543.

——S. 10 (2)—When in dual roles.

Officials who function both as Deputy Commissioners and District Magistrates ought to take meticulous care to differentiate between their exacting, and to some extent incompatible, duties as Deputy Commissioners and as District Magistrates. (Page, C. J. and Mya Bu J.) Sein Tha U v. Maung Kyaw Khine,

AIR 1935 Rang 137=7 R Rang 378=13 Rang 336=156 I C 149=1935 Cr Cas 540=36 Cr L J 875.

——S. 10 (2)—Force of "in".

The phrase "Local Government shall appoint a Magistrate in every district" need not imply that the Magistrate so appointed shall be situate in the district and that he may not be one with headquarters elsewhere the word "in" being synonymous with "to". (Jackson J.) R. S. Kandaswami Pillai v. T. Karasu Pillai,

1931 M W N 1064.

——Ss. 10 (2) and 197 — Additional District Magistrate can give sanction under S. 197.

The Local Government having empowered all District Magistrates to pass orders of sanction under S. 197, the appointment of an Additional District Magistrate and the conferring on him of "all the powers of a District Magistrate under this Code" under S. 10 (2) imply that he can pass orders of sanction under S. 197. (Wallace J.) Kakarla China Chendrayya v. Maddukuri Subbarayadu,

A I R 1923 Mad 338 = 17 L W 226 = 71 I C 244=(1923) M W N 77=24 Cr L J 116.

——Ss. 10 (2) and 435 (1)—Additional District Magistrate if inferior to District Magistrate—See Criminal P. C., S. 435.

9 Cr L J 104 (Lah).

——Ss. 10 (2), 12—Subordination of Magistrates — District Magistrate and Additional District Magistrate.

An Additional District Magistrate, appointed under sub-s. (2) of S. 10 of the Code is not subordinate to a District Magistrate. Section 12 does not make him so. Therefore the District Magistrate has no power under S. 528 to transfer cases to the former. (Mitra and Caspersz JJ.) Prakas Chunder Dutt v. Emperor

34 C. 918=6 Cr L J 360.

——Duty of Magistrates and Collectors of District.

The Magistrate and Collector of the District, being for most purposes the principal representative and administrator of the law in the eyes of the people of the District, a position of great power and great responsibility, it is of supreme importance that his acts should be examples of equal justice, rigid impartiality and obedience to the law. (Wilson and Porter JJ.) Gopinath Paryah v. Empress,

2 C L J 555=10 C W N 82=3 Cr L J 169.

—S. 11.

——District Magistrate ill but not left district — No temporary succession.

Where the District Magistrate is ill but has not left the district there is no vacancy in the office of the District Magistrate and no temporary succession to such office within S. 11 of the Code. (Kanhaiya Lal J. C.) Emperor v. Achhaibar Singh,

A I R 1921 Oudh 162 = 24 O C 255 = 63 I C 873=8 O L J 632=22 Cr L J 713.

CRIMINAL P. C. (V of 1898), S. 11

——Powers of Officer succeeding to a vacancy.

Where a Magistrate of the first class while officiating for the District Magistrate commences a trial and during its pendency reverts as Magistrate of the first class, he has jurisdiction to continue the trial provided that he, as a Magistrate of the first class, could have held the trial. (Richards J.) Emperor v. Syed Sajjad Husain,

1906 A W N 201=3 A L J 825=4 Cr L J 140.

—S. 12.

See also ibid, S. 145.

——S. 12 (2)—Jurisdiction of Magistrates—Extent.

Where there is nothing to indicate that there was any specified local area within the district within which a Magistrate in the district is to exercise his powers, the jurisdiction and powers of the Magistrate extend throughout the District. (Das Gupta and P. N. Mookerjee JJ.) Prasanta Kumar v. State,

A I R 1952 Cal 91 = 55 C W N 619 = I L R 1952-2 Cal 86=1953 Cr L J 82.

——S. 12 (1) and (2)—Magistrates of first class have jurisdiction throughout District — Exclusion of jurisdiction under Cl. (1) does not arise merely because areas of jurisdiction are assigned to different Magistrates.

Unless the jurisdiction is excluded either expressly or impliedly under S. 12 (1), a Magistrate of the first class has, under S. 12 (2), jurisdiction throughout the District to which he is appointed. The exclusion under S. 12 (1) does not arise because areas of jurisdiction are assigned to different Magistrates : A. I. R. 1935 Bom. 409 and A. I. R. 1933 Lah. 143, Rel. on ; A. I. R. 1938 Nag. 448, Ref.

Where, therefore, a Magistrate of the first class was appointed to a District consisting of A and B Tahsils and was assigned under the distribution memorandum issued by District Magistrate, cases from A tahsil and also "complaints from B tahsil," his jurisdiction to entertain a complaint under the Child Marriage Restraint Act, 1929, from B tahsil is not excluded merely because another Magistrate of the same class is also given, under the distribution memorandum, the jurisdiction to try all cases from B tahsil including cases under the said Act. (Bose J.) Amritrao Kole v. Chandrabhan Kavley,

A I R 1947 Nag 79=225 I C 624=1946 N L J 460=I L R (1947) Nag 80=47 Cr L J 794.

——S. 12 (2) — Mere definition of areas if can exclude jurisdiction of Magistrate in rest of district.

The mere definition of areas cannot be taken as a provision excluding jurisdiction in the rest of the district. Sub-section (2) of S. 12, clearly requires some provision excluding jurisdiction in the rest of the district, which is either express or must be inferred by necessary implication. (Beaumont C. J. and N. J. Wadia J.) Gulabrao Laxmanrao Chandgude v. Emperor,

A I R 1935 Bom 409=37 Bom L R 745 = 1935 Cr C 1113=8 R B 404=162 I C 207=37 Cr L J 514.

——S. 12 (2)—Magistrate in charge of one sub-division—Jurisdiction over entire district.

Although a Magistrate is placed in charge of one sub-division, his jurisdiction over the area outside his jurisdiction as a Magistrate of the First Class is retained unless specifically curtailed. (Dhavle J.) Rameshwar Pathak v. Baij Nath Rai,

A I R 1935 Pat 436=16 P L T 576 = 2 B R 61 = 8 R P 257=159 I C 12=1935 Cr C 1107=37 Cr L J 55.

——S. 12 (1), (2)—Local area of Magistrate not defined—Jurisdiction extends to whole district.

Where the local area of the jurisdiction of a Magistrate of the First Class has not been defined under S. 12 (1), his jurisdiction extends under S. 12 (2) to the whole of

CRIMINAL P. C. (V of 1898), S. 12

his district. (Malik and Remfry JJ.) Golam Rahman Khan v. Kalipada Manna,

A I R 1932 Cal 864=36 C W N 796=Ind Rul (1932) Cal 663=59 Cal 1484=139 I C 850 = 1932 Cr C 888= 33 Cr L J 858.

——Jurisdiction.

Order passed by a Magistrate after he hands over charge or transfer is without jurisdiction. (Newbould and Suhrawardy JJ.) Jagat Bandhu Saha v. Jagabandhu Saha Sardar,

A I R 1924 Cal 192=76 I C 432=38 C L J 201 = 25 Cr L J 192.

——S. 12 (2)—Jurisdiction not defined—Magistrate cannot take cognizance of case pending in another Court.

If the jurisdiction of a Magistrate is not defined in the manner laid down in S. 12 (2) his jurisdiction extends throughout the district. But he cannot take cognizance of a case pending in another Court unless there is a valid order transferring the case from the file of that Court to his file. (Kanhaiya Lal J. C.) Emperor v. Achhaibar Singh,

A I R 1921 Oudh 162=24 O C 255=63 I C 873 = 8 O L J 632=22 Cr L J 713.

——Sub-Divisional Magistrate—No power to take cognizance outside his local area.

A Sub-Divisional Magistrate cannot take cognizance of matters outside the local area within which the District Magistrate has appointed him to act : 26 C. W. N. 201, Dist. (Mears C. J.) Chaubey Kunj Behari v. Lanua,

A I R 1921 All 123=19 A L J 77=L R 2 A (Cr) 1= 59 I C 554=22 Cr L J 122.

——Ss. 12, 460 and 528 — Magistrate transferred to Municipality.

A Magistrate who is gazetted to the office of Chairman of a Municipal Board and takes charge of that office is no longer a Magistrate and is also not subordinate to the District Magistrate. Hence the latter cannot transfer any criminal case to him for trial. (Piggott J.) Nathi Mall v. Emperor,

A I R 1914 All 410=36 All 513=12 A L J 890 = 26 I C 141=15 Cr L J 693.

——Transfer of Magistrate—Effect of.

Cases on the file of a Magistrate do not pass automatically to his successor if the former is transferred to another local area. (Sir George Knox Kt. J.) Mithani v. Emperor,

9 A L J 448=14 I C 203=13 Cr L J 203.

——Proceedings against practitioner convicted of a crime —Correctness of conviction if can be challenged—Conviction if necessarily involves punishment under Act.

It is not open to the practitioner who has been convicted of an offence and against whom the proceedings under the Act were initiated on the ground of that conviction, to go behind the conviction and invite the Court to examine the facts with a view to arrive at the conclusion that the conviction was in substance erroneous. But the convictions are not conclusive in the sense that merely because the practitioner has been convicted of a criminal offence he is necessarily liable to be suspended or removed under S. 12 of the Act. It must be proved for that purpose that the conviction implies a defect in character which renders him unfit for being a member of the profession. (Mookerjee and Carnduff JJ.) In re Kali Prosonno Bosu Chaudhury

14 C W N 1073=7 I C 622=12 C L J 553=11 Cr L J 503.

——Subordination of Magistrates — Additional District Magistrate appointed under S. 10—See ibid, S. 10.

6 Cr L J 360 (Cal).

CRIMINAL P. C. (V of 1898), S. 12

——S. 12 (2) — Jurisdiction of First Class Magistrate holding Court at Head Quarters, has local jurisdiction throughout the District—See Cr. P. C., S. 145

4 Cr L J 223 (Cal).

—S. 13.

——Ss. 13 (3), 529 (f), 192—District Magistrate appointing Sub-Divisional Magistrate for particular period — Authority to be in charge of S. D. O's file during his tour—Such appointed Magistrate, not empowered under S. 192, transferring case in good faith to his own file.

A District Magistrate who has been delegated powers under S. 13 (3), Criminal P. C., is competent to appoint a Sub-Divisional Magistrate on a particular date or dates or for a particular period. This he might do without relieving the permanent incumbent. The mere authority from the District Magistrate to be in charge of the S. D. O.'s file at headquarters so long as he is on tour is an appointment within the meaning of S. 13 though the appointment is limited only to a particular kind of work and a particular occasion.

Where such a Magistrate appointed by the District Magistrate transfers erroneously but in good faith, a case of which he has not taken cognizance to his own file as second officer, the order of transfer is valid by virtue of S. 529 (f). The fact that he is not empowered to do so under S. 192, is immaterial. (Guha and Biswas JJ.) Ram Krishna Sinha v. Emperor

AIR 1938 Cal 195 = 10 R C 693 = 42 C W N 246 = 174 I C 513=39 Cr L J 417.

——Res judicata—Applicability—See Cr. P. C., S. 403.

9 Cr L J 21 (Burma).

—S. 14.

——Special Magistrate sitting in Jodhpur is subordinate to the District Magistrate of Jodhpur and District Magistrate can transfer cases from his Court to any other Court under S. 528 (2)—See ibid, S. 528 (2)

AIR 1952 Raj 96=1952 Cr L J 1048.

——"Local area" — Power of Government to appoint special Magistrate for entire State.

The expression "local area" is wide enough to include the entire State. However, the Code contemplates the appointment of a Special Magistrate having jurisdiction within the entire district or a certain area within it.

It is possible that the same person may have conferred on him magisterial powers with respect to cases arising within an area of several districts as well, but in that case he will combine in himself the offices of a Special Magistrate in each district, though as a Special Magistrate for each district he will have a distinct personality. Therefore, the Government can confer magisterial powers on a person in the entire area of the State but the Magistrate would be considered to be a distinct Special Magistrate for each district. (Raghubar Dayal J.) Lalta Prasad Saxena v. State

AIR 1952 All 70=1952 A W R (H C) 86=1952 All Cr R 23=1952 Cr L J 199.

——S. 14 (2) — Special Magistrate appointed for six months—Exercise of summary powers after that term— Validity.

Where a Judicial Officer is invested with powers to try summarily certain offences as a Special Magistrate for a period of six months he cannot, after the expiry of that period, exercise the magisterial powers or the powers to try summarily the offences mentioned in S. 260, Criminal P. C. without any further orders and such trial by him is therefore illegal. (Raghubar Dayal J.) Munirkhan v. State

AIR 1951 All 488=1950 A W R 472=1950 All Cr C 153=1950 A L J 449.

CRIMINAL P. C. (V of 1898), S. 14

——Provincial Government, if can transfer case under S. 14.

Per Shahbuddin and Amin Ahmed JJ. — Under S. 14 a Special Magistrate can be appointed to try a particular case, but the Provincial Government cannot under this section transfer a case from one Court to another. (Shahbuddin J.; on difference of opinion between Ellis and Amin Ahmed JJ.) Benod Behari Dutt v. The Crown.

54 C W N (2 DR) 167.

——S. 14 (6) — Order under S. 144 expiring — Local Government cannot resuscitate it by extension.

Section 14, Criminal P. C., does not permit the Local Government to resuscitate an order under S. 144 which has expired and is no longer in force, by extending it. (Sale J.) Chanan Singh v. Emperor

AIR 1940 Lah 459 = 13 R L 272 = 42 P L R 786 = 191 I C 162=42 Cr L J 90.

——S. 14 (6)—'Case', meaning of.

In S. 14, the word "case" is a comprehensive term and would include all the offences which come to light during the investigation. (S. S. Patkar, Acting C. J. and Murphy J.) K. R. Bhat v. Emperor

AIR 1931 Bom 517 = 33 Bom L R 1192 = Ind Rul (1932) Bom 14 = 134 I C 1230 = (1931) Cr C 949 = 33 Cr L J 68.

——Duration—Honorary Magistrate.

Where an Honorary Magistrate has been appointed in the Central Provinces for a term of years his jurisdiction to decide cases must be considered to continue unless there is an order cancelling such appointment. (Subhedar A. J. C.) Tukaram v. Daghu

AIR 1930 Nag 96 = 120 I C 223 = 1930 Cr C 201 = 31 Cr L J 24.

——'Case' meaning—Charges.

Where a public servant was suspended, and his prosecution was sanctioned in respect of three charges but the words used in an order under S. 14 were: "To try the case relating to the prosecution of Mr. . . . . Deputy Collector, under suspension."

Held, the words of the order must be interpreted in the light of the facts in relation to which they are used and the word "case" covered all the three charges. (Crump and Madgavker JJ.) Jehangir Ardeshir v. Emperor

AIR 1927 Bom 501=106 I C 100=8 A I Cr R 324 = 29 Bom L R 996=28 Cr L J 1012.

——'Any local area' — Special Magistrate for whole province—Appeal.

An appeal from an order of a Special Magistrate appointed under S. 14, Cr. P. C. for the whole province lies to the Sessions Judge within the local limits of whose jurisdiction the Special Magistrate held his Court in disposing of the case. The words "any local area" in S. 14 are not restricted to a local area within a specified district or sessions division, but extend to a whole province. (Rattigan C. J. and Scott Smith J.) Hira Lal v. Emperor

AIR 1918 Lah 196=48 P L R 1918=4 P W R (Cr) 1918=44 I C 326=19 Cr L J 310.

—S. 15.

SYNOPSIS

1. Appeal.
2. Change in personnel of Benches — Effect. See also S. 350A.
3. Classes of cases to be tried.
4. Judgment.
5. Powers and duties.
6. Revision.

1. Appeal.

——Ss. 15, 16 — "Sit together", meaning of — Rules of Bombay Govt. that a Bench of Honorary Magistrates

CRIMINAL P. C. (V of 1898), S. 15—1. Appeal

should consist of five members with quorum of three—Bombay Govt. Notification—Trial before Bench of three Magistrates having second class powers—Exercise of first class powers—Appeal—Jurisdiction of District Magistrate.

The words "sit together" in S. 15, Cr. P. C., must be construed as equivalent to "constitute", so that the Local Govt. may direct any two or more Magistrates to constitute a Bench, and then they may invest that Bench with special powers, and they may make rules under S. 16 providing how the Bench is to be constituted for the purpose of conducting trials. The rules made by Bombay Govt. providing that a Bench should consist, generally speaking, of five members with a quorum of three, are valid. Under the notification of the Govt. under S. 15, three Magistrates, members of the whole Bench of ten forming a trial Bench, have the powers of a First Class Magistrate under the notification, and the District Magistrate has no jurisdiction to entertain an appeal from the decision of the Bench. (Beaumont C. J. and Barlee J.) Emperor v. Bhimabai Sitaram

AIR 1934 Bom 176=36 Bom L R 314=7 R B 373= 154 I C 827=1934 Cr C 664=36 Cr L J 592.

2. Change in personnel of benches — Effect.

See also S. 350-A.

——Ss. 15, 16, 350—Rules framed by U. P. Govt. under Ss. 15 and 16 — Bench delivering judgment consisting of two members — One not present throughout trial — Accused specifically asked whether he wished to have trial de novo but not so wishing.

The procedure of Benches of Magistrates is governed in some measure by rules made under Ss. 15 and 16, Criminal P. C. Rules recommended by the U. P. Govt. are to be found in Para. 814 of the Manual of Govt. Orders.

One of the rules which lays down that the provisions of S. 350, Criminal P. C., will apply when the personnel or a Bench is changed during a trial, does not in any way contravene the provisions of the Code.

Where the Bench which delivered the judgment consisted of two members one of whom was not present throughout the trial and the Magistrates specifically asked the accused whether they wished to have a de novo trial and the accused stated through counsel that they did not so wish, the proceedings cannot be said to be irregular. (Allsop J.) Har Narain v. Emperor,

AIR 1943 All 20 = 1942 A L J 609= ILR (1943) All 23 = 1942 A W R 325 = 15 R A 337 = 204 I C 323 = 44 Cr L J 203.

——Procedure — Trial by Bench of two Magistrates—Only one of them signing proceeding — Whether proof that other who had not signed was absent.

Where there is nothing to show that one of the two members of the Bench of Magistrates hearing the case, who had not signed the proceedings was absent or was not paying attention to the proceedings when they were going on, the mere fact that he has not signed the proceedings is not enough to show that he was not present. (Agarwal J.) Jadonath v. Emperor,

AIR 1942 Oudh 423=1942 A W R 277=1942 O W N 444=15 R O 74=201 I C 243 = 43 Cr L J 646.

——Ss. 15, 16 — Only one Magistrate hearing case on many occasions.

Where in a trial before a Bench of Magistrates, it appeared that on several occasions, the evidence was heard by only one of the members of the Bench and only one member signed the depositions of the witnesses on several hearings:

CRIMINAL P. C. (V of 1898), S. 15 — 2. Change in personnel of benches — Effect

Held, that the trial was irregular and illegal and should be set aside. (Nanavutty J.) Rameshwar Datt Singh v. Bharath Singh,

AIR 1934 Oudh 85 = 6 R O 273 = 11 O W N 75 = 147 I C 516 = 1934 Cr C 255 = 35 Cr L J 417 (2).

——Ss. 15, 16 — Rules framed under S. 16 requiring quorum of two Magistrates — Trial commencing before three Magistrates — Presence of two only throughout trial—Judgment signed by only those two.

A criminal trial for offences under Ss. 323 and 452, I. P. C., commenced before three Honorary Magistrates but at some subsequent hearing one of them was not present. The other two were present at all the hearings, and these two Magistrates delivered the judgment. It was found that according to the rules framed by the District Magistrate of the place under S. 16, Criminal P. C., two Magistrates would form the quorum of the Bench and these two were required to hear a particular case from start to finish and sign the judgment :

Held, that inasmuch as there was a quorum of two Magistrates throughout the conduct of the case and the judgment was delivered by those Magistrates only, the trial was not irregular, and that the presence of the third Magistrate was unnecessary and as he was not a party to the judgment, he did not in any way influence the opinion of the other two. (Bajpai J.) Mathura v. Emperor.

AIR 1933 All 355 = Ind. Rul. (1933) All 379 = 1933 A L J 547 = 55 All 459 = 144 I C 123 = L R 14 All 114 Cr = 1933 Cr Cas 628=34 Cr L J 701.

——Ss. 15, 16, 350 (a) — Bench Magistrates — Evidence taken in the absence of some members — Validity of conviction.

If any member of a Bench of Magistrates is not present on any hearing, there is no properly constituted Bench, and, therefore, if witnesses are examined by one or more Magistrates in the absence of others constituting the Bench, the witnesses cannot be considered to have been examined by the Bench and a conviction based on such evidence is unsustainable. (Niamat Ullah J.) Chiteshwar Dube v. Emperor,

AIR 1932 All 127 = 1932 A L J 42=Ind Rul (1932) All 99=135 I C 835=L R 13 All 1 Cr=1932 Cr C 152= 33 Cr L J 200.

——Ss. 15, 16, 350 (a)— Evidence heard by three Magistrates—Judgment signed by seven.

Where, though only three Magistrates of the Bench heard the evidence and tried the case, the judgment was signed by seven :

Held, that there was an illegality which vitiated the proceedings and though the result was an acquittal, the nature of the illegality was such as would warrant interference in revision in the interests of the public. (Sundaram Chetty J.) Picha Kudumban v. Servaikara Thevan,

AIR 1931 Mad 494 — Ind Rul (1931) Mad 692=1930 M W N 770=133 I C 4 = 1931 Cr Cas 558=32 Cr L J 971.

——Ss. 15, 16 and 350 — Bench Magistrates — Rules by Local Government—Judgment pronounced by a Bench, of which one had not heard the whole evidence, is illegal.

A rule appointing three persons to constitute a Bench of Honorary Magistrates is not ultra vires of the Local Government. The quorum would be vested with all the powers conferred on the Bench and as one of the members on the second occasion when judgment was pronounced, did not hear the evidence etc., it was difficult to say that

CRIMINAL P. C. (V of 1898), S. 15 — 2. Change in personnel of benches — Effect

the accused were not prejudiced and consequently the trial was illegal. (Piggott J.) Mathura v. Emperor,

AIR 1918 All 56 = 41 All 116 = 16 A L J 884 = 48 I C 344 = 19 Cr L J 1004.

——Bench Court—Trial by two.

A case is not wrongly decided merely because one of the three composing the Bench left early and the judgment was written by the other two of them. (Walsh J.) Khuda Baksh v. Emperor,

AIR 1917 All 379 = 15 A L J 463 = 40 I C 749 = 18 Cr L J 749.

——Ss. 15 and 16 — Bench of Magistrates — Absence of some of the members—Effect of.

Absence of some of the Bench Magistrates, at the time of the judgment, who were present at the earlier stages of a trial does not vitiate the trial or invalidate the conviction. 21 M 246 ; 20 C 870, Ref. (Ayling and Seshagiri Aiyar JJ.) Venkatarama Aiyar v. Saminatha Aiyar,

AIR 1914 Mad 139 = 38 Mad 797 = (1914) M W N 867= 24 I C 957 = 15 Cr L J 549.

3. Classes of cases to be tried.

——Ss. 15, 16, 350 (a)—Trial by Bench Magistrates.

Where though a complaint was one for an offence under S. 430, I. P. C., which a Bench Court had no jurisdiction to try, the case was treated as a case under S. 426, I. P. C., and sent to the Bench Court for trial and the accused was tried by the Bench Court for the lesser offence under S. 426 :

Held, that the trial was not void. (Sundaram Chetty J.) Picha Kudumban v. Servaikara Thevan.

AIR 1931 Mad 494 = 1930 M W N 770 = Ind Rul (1931) Mad 692 = 133 I C 4 = 1931 Cr C 558 = 32 Cr L J 971.

——Difficult cases.

Where a Bench is of opinion that a case should be transferred from their file as it involves a difficult question it should move the matter officially and not to leave it to the parties to move. (Wallace J.) Gopala Nair, In re,

AIR 1929 Mad 403=106 I C 715=29 Cr L J 123.

——Cases, which are likely to be keenly contested and intricate in nature, are, on the whole, likely to be more efficiently disposed of by stipendiary Magistrate than by Honorary Magistrates. (Findlay, J. C.) Pandurang Krishnaji v. Emperor,

AIR 1928 Nag 21 = 105 I C 226 = 10 N L J 184 = 9 A I Cr R 49 = 28 Cr L J 898.

——Obiter—It is extremely undesirable that cases involving difficult questions of fact or of law should be directed to be tried by a Bench of Honorary Magistrates. They cannot ordinarily be expected to deal satistactorily with the questions that are involved in such cases. (Venkatasubba Rao J.) Public Prasecutor v. Varadarajulu Naidu

AIR 1925 Mad 64 = 81 I C 894 = 47 Mad 716 = 20 M L W 573 = 1924 M W N 880 = 47 M L J 470 = 25 Cr L J 1070.

4. Judgment.

——Bench of three Magistrates — All three must discuss and arrive at their conclusion—One Magistrate desiring to reserve his opinion and consider evidence and not participating in discussion—Order passed by other two.

Where a case is heard by a Bench of three Magistrates, before any order convicting or acquitting the accused can be properly passed, all three Magistrates will have to discuss the matter and arrive at their conclusion. It might be that by a majority, they can convict or acquit, but a discussion between all three is essential before any valid order can be passed.

Where one of the three Magistrates constituting the Bench desired to reserve his opinion and consider the

CRIMINAL P. C. (V of 1898), S. 15—4. Judgment

evidence, and there was no discussion between all three Magistrates before the order was passed, the non-participation of such Magistrate in the discussions leading to the order vitiates the order. (Harries, C. J.) (Berhampore Municipality v. Adam Hajee Ahmad,

AIR 1943 Pat 381 = 10 B R 138 = 9 Cut L T 8 = 16 R P 109 = 209 I C 271 = 45 Cr L J 88.

——Judgment signed by persons who did not hear evidence—Legality.

Where only three Magistrates of Bench heard the evidence and tried the case but the judgment was signed by seven, held, that the judgment was illegal and must be set aside though it might have resulted in an acquittal. (Sundaram Chetti J.) Picha Kudumban v. Servaikara Thevan,

AIR 1931 Mad 494 = 1930 M W N 770 = 3 M Cr C 221=I R 1931 Mad 692 = 133 I C 4 = 1931 Cr C 558= 32 Cr L J 971.

——Difference of opinion.

In cases wherever the Chairman of the Bench Magistrates is opposed to the majority, and where he is not prepared to write a judgment for the majority, one of the Magistrates ought to be asked to write the judgment which should form part of the record. (Devadoss J.) Seetharamayya, In re,

AIR 1926 Mad 354 = 91 I C 394 = 23 M L W 537= 27 Cr L J 90.

5. Powers and duties.

——Duty of Bench Magistrate.

The duty of Bench Magistrates lies in administering the law and in the performance of that duty, they should not allow their minds to be diverted by irrelevant consideration such as a want of politeness on the part of the accused in his behaviour towards the Police. (Pandrang Row J.) In re Ramaswamy Iyer,

AIR 1937 Mad 534=45 L W 239=1937 M W N 184 (1)=(1937) 1 M L J 310=9 R M 595=168 I C 511 = 38 Cr L J 544.

——Powers—Bench clutching at jurisdiction.

Where a complaint was made to a Bench of Magistrates for an offence which they had no jurisdiction to try but they tried the accused for a lesser offence for which they had jurisdiction, held, that the proceeding was not void. (Sundaram Chetti J.) Picha Kudumban v. Servaikara Thevan,

A I R 1931 Mad 494 = 3 M Cr C 221=1930 M W N 770=I R 1931 Mad 692=133 I C 4=1931 Cr C 558=32 Cr L J 971.

——The true meaning to be attached to the section is that it is open to Government to invest a Bench composed of Magistrates of a lower class with all the powers conferred on a Magistrate of a higher class, and also, if thought fit, to invest such Bench with powers conferrable on a Magistrate of such higher class, that is to say, that a Bench exercising third class magisterial powers may be invested with ordinary or additional powers of a Second Class Magistrate. (Percival J. C., Aston, Rupchand Bilaram, DeSouza and Lobo, A. J. Cs.) Emperor v. Noor Mahomed,

A I R 1928 Sind 1 = 105 I C 433 = 22 S L R 157=9 A I Cr R 66=28 Cr L J 913 (FB).

——"Any powers."

"Any powers" in S. 15 refers to powers of any particular class of Magistrates either conferred or conferrable and does not mean any one of the powers conferred without the other. (Percival J. C., Aston, Rupchand Bilaram, DeSouza and Lobo, A. J. Cs.) Emperor v. Noor Mahomed,

AIR 1928 Sind 1=105 I C 433=22 S L R 157=9 A I Cr R 66=28 Cr L J 913 (FB).

CRIMINAL P. C. (V of 1898), S. 15 — 5. Powers and duties

——Inferior Courts—Express power.

In inferior Courts and proceedings by Magistrates the maxim omnia praesumuntur rite esse acta does not apply to give jurisdiction. The old rule for jurisdiction is, that nothing shall be intended to be out of the jurisdiction of the superior Court but that which specially appears to be so; nothing is intended to be within the jurisdiction of an inferior Court but that which is expressly alleged. (Percival, J. C., Aston, Rupchand Bilaram, DeSouza and Lobo, A. J. Cs.) Emperor v. Noor Mahomed,

AIR 1928 Sind 1=105 I C 433=22 S L R 157=9 A I Cr R 66=28 Cr L J 913 (FB).

A Bench of Magistrates individually invested with powers of Third Class Magistrates was invested by a notification with the ordinary powers of a Second Class Magistrate, but the notification did not say that the Bench shall try any cases whatsoever or that they shall not try cases other than those triable by each of the Magistrates individually.

Held, that the notification was defective and that the Bench was empowered to try second class magisterial cases. (Percival J. C., Aston, Rupchand Bilaram, DeSouza and Lobo, A. J. Cs.) Emperor v. Noor Mahomed,

AIR 1928 Sind 1=105 I C 433=22 S L R 157=9 A I Cr R 66=28 Cr L J 913 (FB)

——A notification investing certain Magistrates with certain powers can hardly fall within the category of statutes or notifications which are to be strictly construed. (Percival J. C., Aston, Rupchand Bilaram, DeSouza and Lobo, A. J. Cs.) Emperor v. Noor Mahomed,

AIR 1928 Sind 1=105 I C 433=22 S L R 157=9 A I Cr R 66=28 Cr L J 913 (FB).

——Bench Magistrates—Trial.

The object of constituting a Bench is that the Magistrates concerned should individually and collectively give their attention, and apply their minds to the hearing of the evidence and the determination of the points at issue and, arrive at an independent judgment in regard to the merits of the charge. This is not possible, if, while one Magistrate is recording the evidence, the other Magistrate constituting the Bench is attending to some other work. Such a procedure defeats the very object with which a Bench is constituted and might lead in some cases to a miscarriage of justice. (Kanhaiyalal J. C.) Sultan v. Shamsher,

A I R 1922 Oudh 21=25 O C 182=69 I C 376=23 Cr L J 696.

6. Revision.

——Judgment—Revising of.

Held, that a Bench of Magistrates cannot sit in revision upon its own completed and pronounced judgment and that if there is any miscarriage of justice the proper course is for the President to refer the matter to the District Magistrate who if so advised can act under S. 438, Criminal P. C. (Wallace and Jackson JJ.) Ekambara Mudali v. Alamelammal,

AIR 1930 Mad 1001=59 M L J 708=Ind Rul (1931) Mad 292=53 M 870=1930 M W N 409=32 L W 152= 129 I C 628=1930 Cr C 1055=32 Cr L J 429.

—S. 16.

See also Criminal P. C., S. 15.

——Trial by Bench Magistrates.

Only three Magistrates of the Bench hearing and trying the case—Judgment signed by seven :

Held, the trial was illegal and vitiated all the proceedings. (Sundaram Chetty J.) Picha Kudumban v. Servaikara Thevan,

AIR 1931 Mad 494=Ind Rul (1931) Mad 692 = 1930 M W N 770=133 I C 4=(1931) Cr Cas 558=32 Cr L J 971.

CRIMINAL P. C. (V of 1898), S. 16

——It is not desirable that Honorary Magistrates should try complicated cases of defamation involving difficult points of law. (Jackson J.) Rangiah Chetty v. Abhoy Chetty,

(1931) M W N 407.

——Bench Magistrate — Constitution of.

Where, out of three Magistrates constituting the Bench only one is present on all hearings throughout the trial, sitting sometimes with one, sometimes with the other, and sometimes with both, the trial is bad as it contravenes the provisions of S. 350-A even though the quorum consisted of two. A I R 1926 Lah 304, Foll. (Stuart J.) Suraj Bali v. Emperor,

AIR 1928 Oudh 212=4 O W N 1240=107 I C 875=9 A I Cr R 414=29 Cr L J 310.

——Difference of opinions—Judgment—Writing of.

In a case where the President of the Bench is in a minority as to conviction or acquittal, the judgment should be written by some member of the majority. (Wallace J.) Lalamma v. Emperor.

A I R 1928 Mad 197=54 M L J 709=51 Mad 338=1 M Cr C 172=1928 M W N 31 = 27 M L W 239 = 106 I C 799=29 Cr L J 207.

——Procedure — Person in minority voting for sentence.

The giving of the vote by the President of the Bench on the question of the sentence of the accused found guilty by a majority, though he was one of the minority who thought the accused was not guilty, is not illegal. (Curgenven J.) Meenakanti Rosayya v. King-Emperor,

AIR 1927 Mad 500=100 I C 534=28 Cr L J 310.

——Evidence in the absence of the whole bench.

Where the rules as to the conduct of cases before a Bench provide that in order that there should be a quorum, two Magistrates should be present, evidence recorded in the absence of one of them is not recorded in a Court, and, therefore, any Court is bound to disregard that evidence. A mere reading over to a Court of statements which are not evidence does not make such statements evidence. (Kincaid J. C. and Kennedy A. J. C.) Emperor v. Gulu.

AIR 1926 Sind 192=20 S L R 134=93 I C 1038=27 Cr L J 542.

——Powers—There is nothing in the Criminal Procedure Code prescribing that any particular class of cases should be tried by Honorary Magistrates. (Baker J. C.) Yaqub v. Appaswami.

AIR 1925 Nag 40=81 I C 44=25 Cr L J 556.

——Ss. 16 and 350—Bench Trials—Different magistrates at different hearings—Retrial necessary.

The trial was commenced before a Bench of two Honorary Magistrates. They heard the evidence for the prosecution and examined one of the witnesses for the defence. On a subsequent date, one of the Magistrates was not present; and his place was taken by another who recorded the remaining evidence for the defence and heard the arguments and the case was eventually decided by all the three acting together, and ended in the conviction of the accused. On appeal the accused was acquitted. In revision the acquittal by the Appellate Court was set aside and retrial was ordered: A I R 1914 Mad 139; AIR 1917 All 379; AIR 1918 All 56; AIR 1916 Mad 810; A I R 1920 Bom 300; AIR 1914 Oudh 345, Ref. (Kanhaiya Lal J. C.) Brij Bhukan v. Ram Kirat.

AIR 1923 Oudh 163 = 10 O L J 614 = 76 I C 566=25 Cr L J 198.

——One Bench Magistrate alone competent to try.

Where transfer of accused was made under S. 192 to the Bench Magistrates one of whom alone being invested with powers of a Magistrate of third class was empowered to hear and try the case under orders issued by the District Magistrate consonant to the provisions of S. 16 of the Criminal Procedure Code, and where he had jurisdiction to try the case sitting alone and he heard all the evidence and he was the Magistrate who pronounced judgment. Held, there was no irregularity nor one vitiating the trial. (Dalal J.) Debi Prasad v. Emperor.

AIR 1924 All 674=5 L R A Cr 93.

——Trial commenced by three—Case heard by two—Conviction is illegal.

If for any cause it is found necessary to adjourn the hearing of the case after the evidence had been partly taken, the trial must be completed before the same Magistrates who commenced it, or must be held afresh before a different set of Magistrates. A Bench of three Magistrates constituted under the rules commenced a trial and heard the prosecution evidence but afterwards one member of the Bench was absent. The remaining two Magistrates went on with the trial, heard the defence evidence and convicted the accused. Held, that the trial having been in contravention of the above rule was void. (Shah and Hayward JJ.) Mohidin Karim v. Emperor.

AIR 1920 Bom 300=44 Bom 400 = 22 Bom L R 154=55 I C 849=21 Cr L J 369.

——Ss. 16 and 530 (h)—Bench Magistrates — Absence of some—Conviction is bad.

If in a trial by Bench of Magistrates, one of the members constituting the Bench is absent on the date when witnesses were examined the conviction is bad and there must be a re-trial: A I R 1916 Mad 810, Foll. (Kumaraswami Sastri J.) In re Tantravahi Bapiraju.

AIR 1919 Mad 274 = 26 M L T 362=10 L W 366=53 I C 823=20 Cr L J 823.

——Honorary Magistrate — Judgment by member who did not attend all the hearings is bad.

A Bench of Honorary Magistrates consisted of four members. At the trial two of the members were present throughout and the other two attended only some of the hearings. The judgment was mostly written by one of the latter. Held, that it was not clear that the trial had been held before a Bench properly constituted, it could not be held that the first Court had jurisdiction and the whole of the proceedings was set aside with a direction for a fresh trial before a competent Court. (Lindsay J.) Lekha v. Emperor.

(1919) 17 A L J 379.

——Bench of Magistrates—Some not present—Conviction is bad.

Where a person was convicted by a Bench of five Magistrates one of whom had not heard all the evidence, the conviction is bad. (Ayling J.) In re Subramania Ayyar.

AIR 1916 Mad 810=38 Mad 304=29 I C 329=16 Cr L J 489.

——Trial by a Bench of Honorary Magistrates — Difference of opinion—Procedure.

Where there is an irreconcilable difference of opinion between Honorary Magistrates trying a case as to the guilt of an accused, they should give the benefit of doubt to the accused and acquit him. A reference in such a case to a District Magistrate is irregular and is not justified by law. (Piggott J.) Kashinath v. Shankar Ram.

AIR 1915 All 96=27 I C 177=16 Cr L J 113.

——Local Government has power to make rules for guidance.

Section 16 does not exclude the authority of the Local Government to make rules for the guidance of a Bench

CRIMINAL P. C. (V of 1898), S. 16

of Honorary Magistrates. (Stuart A. J. C.) Inar Dat v. Emperor.

AIR 1914 Oudh 345 = 17 O C 142 = 24 I C 604=15 Cr L J 516.

——Bench Magistrates—Bengal, Behar, Orissa and Assam Laws Act, S. 3.

Where the notification of 1905 declared the Chairman of Bench of Magistrates to have a casting vote in cases of difference of opinion among the members and the notification was applied to Faridpur in 1905, the conviction of the accused on the Chairman's casting vote was legal as the notification still applied to Faridpur under S. 3, Bengal, Behar, Orissa and Assam Laws Act. There is no general rule as to the accused's acquittal on appeal when there is a difference of opinion as to Magistrates composing a Bench. (Imam and Chapman JJ.) Ulfat Sheikh v. Emperor.

19 C L J 92 = 18 C W N 394 = 21 I C 1004=14 Cr L J 684.

——S. 16, cl. (d) — Bench of Honorary Magistrates—Chairman's casting vote — Rule 6 of the Government rules—Validity.

By a majority (Ghose and Pratt, JJ., diss.) — Rule 6 of the Rules framed by the Government of Bengal for the guidance of Benches of Honorary Magistrates, under the provisions of S. 16 of the Code, cl. (d), providing that, when the members of a Bench of Magistrates are even, the view of the Chairman shall prevail, is not inconsistent with the Code, and, therefore, not ultra vires. [The rule was, however, disproved.] (Maclean C. J., Ghose, Rampini, Sale and Pratt JJ.) Kailash Chandra Indu v. Kali Prosunno Roy.

3 C L J 492=10 C W N 642=3 Cr L J 409 (FB).

—S. 17.

——Ss. 144, 195, 10, 17, 528 and 476—Complaint for disobedience of order under S. 144 by First Class Magistrate —Competency of Additional District Magistrate to withdraw—See ibid, S. 144.

AIR 1953 Mad 956=1953 Cr L J 1780.

——Special Magistrate is subordinate under S. 17 to the District Magistrate of the area where he sits and the District Magistrate can transfer cases from his Court to any other Court under S. 528 (2)—See ibid, S. 528 (2).

AIR 1952 Raj 96=1952 Cr L J 1048.

——Subordination of Special Magistrate.

A Special Magistrate appointed under S. 14 is subordinate to the District Magistrate who can give direction about the distribution of work among him and other Magistrates and is also subordinate to the sub-divisional Magistrate within whose sub-division he exercises jurisdiction. This subordination of a Special Magistrate appointed under S. 14 is not dependent on his place of sitting, whether that be a fixed place or not.

The subordination of a Special Magistrate to the Sessions Judge is on the principle that he will be subordinate to a particular Sessions Judge with respect to the cases of that sessions division and not with respect to the cases of another Sessions division if he as a Special Magistrate has jurisdiction over several sessions divisions. (Raghubar Dayal J.) Lalta Prasad Sexena v. State,

AIR 1952 All 70 = 1952 All W R (H C) 86 = 1952 All Cr R 23=1952 Cr L J 199.

——S. 17 (5)—Charge of arson — Accused not admitting that fire was intentional.

In view of S. 17 (5), a Magistrate is not subordinate to the Sessions Judge. In the case of a charge of arson under S. 436, I. P. C., where the accused does not admit that the fire was intentionally caused, the accused is

CRIMINAL P. C. (V of 1898), S. 17

under no obligation to make any report. (Roberts C. J. and Dunkley J.) A. H. Gandhi v. King,

AIR 1941 Rang 324 = 1941 Rang L R 566=14 R Rang 210=198 I C 455=43 Cr L J 373.

——S. 17 (1)—Burma Courts Manual, Para. 102—Discretion of District Magistrate under.

The instruction in the Burma Courts' Manual (Para. 102) which is based on the provisions of S. 17 (1), Criminal P. C., no doubt applies to pending as well as to completed proceedings; but the discretion which has to be exercised is the discretion of the District Magistrate, unfettered by influences and pressure which may weigh with the Deputy Commissioner, and it can very rarely be a proper exercise of such discretion to remove a pending proceeding from the Court of a Magistrate and forward it to an executive officer, and even in the rare cases when such a course might be justifiable, it would be essential for the District Magistrate to take adequate steps to see that the record must be returned within a reasonable time so that the trial could proceed. (Dunkley J.) King v. Maung Po Thaing,

AIR 1941 Rang 114=1941 Rang L R 82=13 R Rang 306=194 I C 370=42 Cr L J 573.

——S. 17 (1)— Magistrate holding two capacities — Duty to indicate capacity in which he is trying the case.

Though it is the same officer who exercises jurisdiction in the two capacities of District Magistrate and Govt. Agent of an Agency tract, the capacities are quite different not only as regards the territorial limits within which the authority is to be exercised, but in other respects as well.

A Magistrate who exercises an authority as a Sub-Divisional Magistrate in the plains and as Assistant Agent in an Agency tract must bear in mind the particular capacity in which he acts in a particular case and must indicate the same in his proceedings. Laxity in this respect should not be encouraged and the Magistrate should not be permitted to rectify the omission later on by making a special report after the case has been disposed of, as to the capacity in which he acted.

A report made by Magistrate after pronouncing his judgment cannot be used to contradict or vary what is contained in the judgments themselves.

The question whether a Sessions Judge has jurisdiction or not to entertain an appeal in such a case does not depend upon the report of the Subordinate Magistrate as to the capacity in which he acted but on the real facts of the case to be ascertained by the Judge. (Pandrang Row J.) Alla Satyam v. Emperor,

AIR 1937 Mad 17=44 L W 689=1936 M W N 1244 =9 R M 312=(1937) 1 M L J 759=165 I C 919=38 Cr L J 81.

——Ss. 17 (4), 528 (1)—Sessions Judge—Power to transfer cases—Inherent powers — Powers of Additional Sessions Judge.

There is nothing in the Criminal P. C. which gives jurisdiction to a Sessions Judge himself to transfer an appeal from the file of an Additional Sessions Judge to his own file, and even supposing a Sessions Judge has such jurisdiction, there is no provision in the Criminal P. C. by which an Additional Sessions Judge can issue such an order to another Judge of equal jurisdiction to himself. Section 17 (4) cannot confer any such jurisdiction on an Additional Sessions Judge.

An application within the meaning of S. 17 (4) must be an application which is recognized by law, that is, a document properly stamped. (Young J.) Daulat Ram v. Emperor,

AIR 1931 All 435=1931 A L J 591=Ind. Rul. (1932) All. 76=135 I C 252=33 Cr L J 158.

CRIMINAL P. C. (V of 1898), S. 17

——Ss. 17 (4), 528 (1)—Scope of.

The powers of a District Magistrate under S. 17, Criminal P. C., relate to the distribution of the business among Subordinate Magistrates. The said section does not empower a District Magistrate to stay proceedings in a Criminal Court. (Dhavle J.) Jagannath v. Rajagopalachari,

AIR 1931 Pat 411=12 P L T 671 = Ind. Rul. (1932) Pat 33=135 I C 513=33 Cr L J 147.

——Scope.

The Code of Criminal Procedure strictly limits the powers of an Additional Sessions Judge to such as are conferred upon him directly by the Local Government or by the Sessions Judge of the division in which he exercises power. Power to grant or cancel bail could be conferred on him under S. 17. Where no such power is conferred, the order of an Additional Sessions Judge granting or cancelling bail is ultra vires. (Doyle J.) Maung Ba Maung v. Emperor,

AIR 1930 Rang 335=1930 Cr C 1151=128 I C 577=15 A I Cr R 373=32 Cr L J 148.

——Revision.

On application for revision against order of Asst. Collector instead of against that of Collector who was responsible for that of the Asst. Collector, High Court's inherent power could be exercised under S. 561 (a). (Boys J.) Mt. Ram Sri v. Sri Kishun,

AIR 1924 All 777=82 I C 170=22 A L J 803=5 L R A Cr 129=46 All 879=25 Cr L J 1242.

——Criminal Rules of Practice (Mad.) R. 122—Power to stay trial.

A District Magistrate has wide powers of superintendence over his subordinate Magistrates which might be considered to justify special directions being issued by him to stop or go with particular proceedings pending before them. (Spencer J.) Nambia Pillai v. Sudalaimuthu Nadan,

AIR 1923 Mad 595=17 L W 570=44 M L J 642=32 M L T 191=(1923) M W N 276=76 I C 872=25 Cr L J 280.

——Stay of trial—Power of District Magistrate.

There is no provision in the Cr. P. Code which would give the District Magistrate the power to stay proceedings in a Criminal Court subordinate to him and it would appear that the High Court's power to pass such an order can only be exercised under its general powers of superintendence. 23 Cal. 610; 30 M. 226, Ref. (Ayling J.) Krishna Rao v. Seshasubramania,

AIR 1923 Mad 688=76 I C 869=1923 M W N 251=25 Cr L J 277.

——Deputy Magistrate—Subordinate to Sub-Divisional Magistrate.

A Deputy Magistrate attached to a sub-division is subordinate to the Sub-Divisional officer of that sub-division. (Jwala Prasad J.) Munshi Mian v. Emperor,

AIR 1918 Pat 172=43 I C 414=19 Cr L J 126.

——District Magistrate—Power to distribute work—Cannot be delegated.

The order of a District Magistrate authorising another Magistrate to distribute work among Magistrates is ultra vires. (Knox J.) Bal Kishun v. Sipahi Lal,

AIR 1914 All 202=36 All 468=12 A L J 803=25 I C 336=15 Cr L J 584.

——Power of District Magistrate to give general instructions to subordinate Magistracy in the matter of appearance of pleaders to conduct prosecution. It is competent for the District Magistrate, in his capacity of a principal Court of original criminal jurisdiction in the District, to

CRIMINAL P. C. (V of 1898), S. 17

supervise the Courts subordinate to him and give general instructions as to procedure, punishments and other matters of discretion. It is not improper for the District Magistrate if he considers that the too frequent appearance of pleaders for the prosecution in petty criminal cases is detrimental to the interests of justice, to advise and issue instructions to the subordinate Magistracy on the subject. (William Clark C. J. and Reid J.) Rala Ram v. Buta,

6 P R 1905 Cr=70 P L R 1905=2 Cr L J 43.

—S. 18.

——Commissioner of Police, Madras—(Madras City Police Act (3 of 1888), S. 7).

In the Code wherever there is reference to the Presidency Magistrate it can only mean and refer to the Presidency Magistrate appointed under S. 18 of the Code. The Commissioner of Police, Madras and his deputies who are Presidency Magistrates by virtue of their office are not Presidency Magistrates appointed under S. 18. Though they may have the powers of Presidency Magistrates by virtue of S. 7 of the Madras City Police Act, they are not Courts of Presidency Magistrates under the Code. (Somasundaram J.) In re, Ramanath Bholgothra,

AIR 1953 Mad 953 = 1953 Mad W N 488 = 1953.2 Mad L J 399=1953 Cr L J 1737.

——Ss. 18 (4), 202—Power of Additional Chief Presidency Magistrate to send a case to Subordinate Magistrate for enquiry and report—Duty of Subordinate Magistrate.

By S. 18, cl. (4), an Additional Chief Presidency Magistrate has been vested with all the powers of the Chief Presidency Magistrate including the power to send a case to a Subordinate Magistrate under S. 202 of the Code which is one of those powers. An order made on a complaint, by the Additional Chief Presidency Magistrate under S. 202 sending the complaint to a Presidency Magistrate for enquiry and report, is one authorised by law and the latter has to comply with it. All that is necessary for him to do is to send a report to the Additional Chief Presidency Magistrate and it will be for the latter to deal with the complaint in accordance with law. (Mukerji and S. K. Ghose JJ.) Kanayalal Bengani v. Kanmull Lodha,

AIR 1934 Cal 405 (2)=6 R C 477=59 C L J 204=38 C W N 560=61 C 467=148 I C 691=35 Cr L J 729.

——Ss. 18, 21, 106 — Bench of Honorary Presidency Magistrates—S. 18 confers the full powers of a Presidency Magistrate on a Bench of Honorary Presidency Magistrates under the Code; and the Bench can, therefore, take action under S. 106. (Russell and Batty JJ.) Hassan v. Yas Kubar,

7 Bom L R 833=2 Cr L J 770.

—S. 20.

——Jurisdiction—Presidency Magistrate.

Presidency Magistrate has jurisdiction to try offences committed at any place within the limits of the town. (Shah and Fawcett JJ.).Khodabux v. Emperor,

AIR 1926 Bom 564=28 Bom L R 1066=97 I C 973=27 Cr L J 1213.

——Ss. 20 and 29—Jurisdiction—Presidency Magistrates—Offence under Calcutta Port Act—Act (3 of 1890), Ss. 83, 84, 138 and 139.

A Presidency Magistrate of Calcutta has jurisdiction under S. 20 of the Cr. P. C. to try an offence committed under S. 84 of the Calcutta Port Act outside the limits of Calcutta but within the limits of the Port. Per Newbould J. The provisions contained in the first part of S. 130 and the whole of S. 130 of the Calcutta Port Act were made through excess of caution, and were based upon the pro-

visions of S. 29 of the Cr. P. C. (Sanderson C. J. and Newbould J.) Gunpat Rai Khemka v. W. G. Good,

AIR 1919 Cal 1=47 Cal 147=24 C W N 79=30 CLJ 252=53 I C 622=20 Cr L J 782.

—S. 21.

See also ibid, S. 18.

——Difference of opinions.

Though under Rr. 9 and 10 of the Rules by the Government of Bombay the judgment of the chairman prevails, the dissenting judgment of the Honorary Magistrate even if the Bench consists of two members, should form part of the record. (Patkar and Baker JJ.) Emperor v. Fardunci C. Cora,

AIR 1927 Bom 630=29 Bom L R 1470=106 I C 209 =28 Cr L J 1025.

——Powers—Chief Presidency Magistrate of Bombay.

The Chief Presidency Magistrate has power, in the event of any pressure of work occurring in other Courts, to give directions to bring up any particular class of cases arising in any division to his own Court, under R. 3 of the rules framed under S. 21, to regulate the conduct and distribution of business in the Courts of Magistrates of the town. (Shah and Fawcett JJ.) Khodabux v. Emperor,

AIR 1926 Bom 564=28 Bom L R 1066=97 I C 973= 27 Cr L J 1213.

——Bench of Honorary Presidency Magistrates, action by, under S. 106—See Criminal P. C., S. 18.

2 Cr L J 770 (Bom).

——Rules under, R. 8—Validity.

Rule 8, framed by the Chief Presidency Magistrate under S. 21, Criminal P. C., is inconsistent with the Code in so far as it directs that in a Bench composed of two members the decision of the chairman shall prevail, in the event of difference between the two members. Such a rule is, moreover, arbitrary and not consonant with natural justice. (Pratt and Handley JJ.) Henry Wakefield v. Haran Sardar,

8 C W N 862=1 Cr L J 842.

—S. 26.

——Suspension — Interference by District Magistrate pending trial.

In the course of an inquiry held under S. 176 by a mahalkari who was invested with powers of a 2nd Class Magistrate by name the District Superintendent of Police reported, imputing a cognizable offence to the Magistrate in the conduct of the enquiry, to the Collector and District Magistrate; the Collector started departmental enquiry and suspended the Magistrate and relieved him of his functions as mahalkari and Magistrate.

Held, that if the Collector was satisfied on perusal of the papers that there was an illegality or an irregularity in the proceedings, under S. 176 he could have reported to the High Court under S. 438, and the High Court would have passed such orders as it thought fit, but the action of Collector in interfering with the judicial enquiry and virtually putting an end to it was both illegal and improper and that the Magistrate continued to be a 2nd Class Magistrate though he was suspended as mahalkari, as the power of suspending the Magistrate was given only to Local Government by S. 26. (1887) Unrep. Cr. C. 322, Rel. on. (Mirza and Patkar JJ.) In re Laxminarayan Simmanna Karki,

AIR 1928 Bom 390=112 I C 567= 30 Bom L R 1050 =11 A I Cr R 324=29 Cr L J 1063.

—S. 28.

See also Criminal P. C., Ss. 30 and 177.

——Concurrent Jurisdiction—Forum.

Where two forums have concurrent jurisdictions the lower one should be approached at the first instance unless

the party concerned gives special reasons for a direct approach to the higher such as extreme urgency for a momentous question of general public policy. (Krishnan J. C.) State v. Jagan Singh,

AIR 1952 Vind-Pra 87=1953 Cr L J 74.

——Jurisdiction — Case tried by second class Magistrate, instead of first class Magistrate—Magistrate invested with first class powers later—Trial or conviction if legal.

A case triable by a first class Magistrate was transferred to and tried by second class Magistrate. The trial commenced on 21st of July. The judgment was delivered on the 27th July. And on the 1st of August, the second class Magistrate was vested with first class powers. Held that until first of August Magistrate had no jurisdiction to conduct the trial at all — Held further, that conviction must be set aside. (Agarwala and Bennett JJ.) Shridhar Jha v. Emperor,

AIR 1947 Pat 234= 13 B R 132 = 1947 A W R Sup 24=1947 O A Sup 24 = 228 I C 71 = 25 Pat 260 = 48 Cr L J 13.

——S. 28 does not mean that person charged with petty offence can at discretion of Magistrate be sent for trial to Court of Session. Cri. Appeal No. 398 of 1942, D/- 14-10-42, Overruled.

The effect of S. 28 is that a Court of Session has jurisdiction once a case has properly come before it, that is, on a legal order of commitment, even in matters of offences not ordinarily triable by it. This does not imply that a person charged with a petty offence can, at the discretion of a Magistrate, be sent for trial to the Court of Session. Cri. Appeal No. 398 of 1842 D/- 14-10-1942, Overruled. (Yorke and Bennett JJ.) Emperor v. Subedar Singh,

AIR 1946 All 365 = 1946 All W R H C 134 = 1946 All L J 137=226 I C 22 =ILR (1946) All 520 = 47 Cri L J 804.

——Respective jurisdictions of civil and criminal Courts explained.

Criminal Court is not to decide matters to be decided by the civil Court and the civil Court having tried all facts summarily the proceeding should be quashed. (Mohamad Noor J.) Hira Lal v. Emperor,

12 Cut L T 56.

——Under S. 28, a Sessions Court can try any case. (Horwill J.) In re Veeranna.

AIR 1942 Mad 440= 1942 M W N 297=55 L W 229 =(1942) 1 M L J 455=15 R M 151=200 I C 740=43 Cr L J 715.

——Objection to jurisdiction taken at late stage — Court, if gets jurisdiction.

A Court does not get a jurisdiction it does not possess, merely because objection to it is taken by the accused at a late stage. (Davis C. J.) Mansharam Gianchand v. Emperor,

AIR 1941 Sind 36=13 R S 231=193 I C 454 = 42 Cr L J 460.

——The Schedule to the Criminal P. C., and S. 28 must be read together and S. 28 is subject to the other provisions of the Code, that is, it is subject to S. 30. (Gruer J.) In re Prithivi Nath.

AIR 1938 Nag 56=20 N L J 151= 11 R N 18=I L R (1938) Nag 248=175 I C 935=39 Cr L J 660.

——Statement by accused that he committed graver offence and was not triable by Magistrate — Whether deprives the Magistrate of jurisdiction.

A statement by an accused person that the offence committed by him is a more serious one not triable by the Magistrate does not deprive the Magistrate of jurisdiction unless the prosecution accept the truth of that state-

ment or the Magistrate is of opinion that it is true. (Horwill J.) Appu Goundan v. Emperor,

AIR 1938 Mad 784=1938 M W N 592=11 R M 18=(1938) 2 M L J 43= 48 L W 145 (1)=175 I C 896 = 39 Cr L J 659.

——Jurisdiction—Magistrates should not usurp jurisdiction that they have not got.

The Legislature has decided that certain offences, either because of their serious or difficult nature, should be tried by one of the higher Courts of criminal jurisdiction, and this being so, it is not for a Magistrate to evade those provisions of law by usurping jurisdiction to himself. (Davis J. C. and Lobo A. J. C.) Shambhooram v. Emperor

A I R 1935 Sind 221=8 R S 79=29 S LR 428 = 159 I C 271=37 Cr L J 80.

——Ss. 28 to 30—Power to try.

The power to try a case would necessarily include the power to take cognizance. (Patkar Ag. C. J. and Murphy J.) K. R. Bhat v. Emperor

A I R 1931 Bom 517 = 38 Bom L R 1192 = Ind Rul (1932) Bom 14=134 I C 1230=33 Cr L J 68.

——Absence of jurisdiction to try offence with which also accused can be charged—Effect.

Where the offence complained of was one under S. 430, I. P. C., but the Bench tried the accused for a lesser offence under S. 426, I. P. C. and it appeared that they had jurisdiction to try the former and not the later offence.

Held, that the proceeding was not void : 24 M 675 and 27 M L J 594, Foll. (Sundaram Chetty J.) Picha Kudumban v. Servaikara Thevan

1930 M W N 770.

——Revision—Clenching of jurisdiction.

Under special circumstances, it is possible to agree with a contention that if the facts charged show the commission of a more serious offence which is triable only by higher tribunal the Magistrate with less powers has no right, in spite of objection raised, to grab jurisdiction by seeking to try the accused for the smaller offence. But even where a Magistrate tries the accused for an offence under a less serious section, when really the offence fell under a more serious section which was beyond his competency, his proceedings are not illegal, and therefore the High Court is not bound to interfere in such cases : AIR 1922 Mad 223, Rel. on. (Srinivasa Ayyangar J.) Abdul Sathar v. Emperor.

A I R 1928 Mad 585=1 M Cr C 65=27 M L W 683=109 I C 907=54 M L J 456=29 Cr L J 635.

——Scope.

Section 30 must be read as qualifying or controlling the provisions of S. 28 which in its turn makes reference to column 8 of the second schedule. (Kinkhede.Offg. A. J. C.) Danaji v. Emperor

A I R 1926 Nag 374=95 I C 56=27 Cr L J 728.

——Jurisdiction—Absence of.

An offence under S. 148, I. P. C., being triable by a Magistrate with first class power, a trial by a Magistrate with second class power is illegal and without jurisdiction. The District Magistrate cannot give jurisdiction by ordering the Magistrate to act for administrative convenience. (C. C. Ghose and Duval JJ.) Azizur Rahman v. Emperor

A I R 1926 Cal 590=93 I C 1041=43 C L J 214 = 27 Cr L J 545.

——Jurisdiction.

A Court cannot get jurisdiction if it had not any in law, merely because the complainant invoked its jurisdiction.

(Krishnan J.) Ramaswami Chettiar v. Muthuvelu Mudaliar

A I R 1923 Mad 191=71 I C 238=45 Mad 843=1923 M W N 57=16 M L W 562 = 31 M L T 420 = 24 Cr L J 110.

—S. 29.

See also (1) Bengal Tenancy Act (8 of 1885), S. 58.
(2) Criminal P. C., S. 5.

——Trial of offence under S. 282A, Companies Act — Jurisdiction of First Class Magistrate to take cognizance and try—See Companies Act (1913), S. 282A

A I R 1953 All 715=1953 Cr L J 1635.

——The existence of a special law by itself cannot be taken to exclude the operation of the Cr. P. C. Unless the special law expressly or impliedly provides that certain offences shall be tried exclusively by the Courts constituted under the Act, the jurisdiction of the ordinary Courts to try the offences under the Court cannot be said to have been excluded—Offences cognizable by panchayat Courts—Jurisdiction of panchayat Courts is not exclusive so as to bar jurisdiction of ordinary Courts — See M. B. Panchayat Vidhan Sm. 2006 (58 of 1949), S. 77

A I R 1953 Madh B 89=1953 Cr L J 629.

——S. 29 and Sch. II — Special law — Offence under — Court which should try.

The effect of reading Sch. II in the light of S. 29, Criminal P. C., is that where any special law lays down that a particular offence shall be triable by a particular Court it must be tried by that Court alone and not by any other Court. (Beg J.) Jaddu v. State

A I R 1952 All 873=1952 All W R (HC) 307 = 1952 All Cr R 106=1952 Cr L J 1556.

——S. 29 (17) — Offences committed prior to commencement of Chandernagore (Application of Laws) Order (1950) —Trial of—Procedure — See Chandernagore (Application of Laws) Order (1950), Para. 7

A I R 1952 Cal 588=1952 Cr L J 1308 (SB).

——Scope — Special Act specifying Court which could impose enhanced penalty for offence under Act but not mentioning the Court which should try offences under the Act — Intention of legislature — Section 29 of the Code whether applies and are the offences under the Act triable only by a Sessions Judge and not by the Court specified by the Act as being empowered to impose enhanced penalty — See Bombay Essential Supplies (Temporary Powers) and Essential Commodities and Cattle (Control) (Enhancement of Penalties) Act (XXXVI of 1947), S. 2 (1)

A I R 1951 Bom 145=52 Cr L J 1224.

——Offence charged under S. 5 (2), Prevention of Corruption Act (1947), is exclusively triable by the Court of Session under S. 29 read with Sch. 2 of the Code — See Prevention of Corruption Act (1947), S. 5

A I R 1950 Pat 550.

——S. 29 (2)—Offence uuder S. 10, Mussalman Wakf Act —Courts set out in Sch. 2 of this Code has the jurisdiction to try the offence—See Mussalman Waqf Act, 1923, S. 10

A I R 1949 Nag 137 (FB).

——Ss. 29 and 346 — Offence under R. 39, Defence of India Rules is triable by First Class Magistrate — Trial conducted by Second Class Magistrate—Magistrate invested with first class powers when prosecution evidence after charge was almost finished — Trial is illegal. (Agarwala and Bennett JJ.) Sridhar Jha v. Emperor,

AIR 1947 Pat 234=25 Pat 260=13 B R 132=228 I C 71=1947 A W R Sup 24=1947 O A Sup 24=48 Cr L J 13.

——Section 269, Criminal P. C., cannot be read with S. 29, so as to hold that the Local Government may direct that all or any class of offences not punishable with death shall be tried by jury before the Sessio n

Court and not by Magistrates invested with powers under S. 30. (Gruer J.) In re Prithivi Nath,

AIR 1938 Nag 56=20 N L J 151=I L R (1938) Nag 248=11 R N 18=175 I C 935=39 Cr L J 660.

——Sch. II — Jurisdiction of Magistrate with regard to acts specified in S. 58 (3), Beng. Ten. Act, 1885 — See Bengal Ten. Act (8 of 1885), S. 58,

2 Cr L J 532 (Cal).

——An offence under S. 20, Arms Act is triable only by a Court of Session. (Birks J.) Shunshanisha v. King Emperor,

2 L B R 244=1 Cr L J 742.

—S. 29-A.

——Claim—Trial as European British subject.

. The claim to be tried as a European British subject under S. 29-A, Cr. P. Code, must be made before the inquiry or trial actually begins so far as a case which falls within S. 528-A, Cr. P. Code, is concerned. Not having made this claim when a person is first brought before the Magistrate for the purpose of trial or inquiry, it is not open to revive or make it at any subsequent stage. (Cuming and Graham JJ.) Carmen v. O'Brien,

AIR 1928 Cal 97=107 I C 353=54 Cal 1041=9 A I Cr R 471=29 Cr L J 245.

—S. 29-B.

——In absence of any express provision relating to trial of offences under S. 130, Railways Act, by any particular class of Magistrates, S. 133 of that Act cannot be invoked so as to confer jurisdiction upon a Magistrate to try an offence of this nature, when no such jurisdiction is conferred upon him by Sch. IV of Criminal P. C., more so when S. 29-B, Criminal P. C., provides for an adequate machinery for trial of such offences. (Rupchand and Mehta A. J. Cs.) Emperor v. Wali Mahammad,

A I R 1936 Sind 185=30 S L R 9=9 R S 106=165 I C 642=38 Cr L J 83.

——Ss. 29-B, 28 and Sch. II.

Section 29-B was not intended to take away the jurisdiction already conferred on Magistrates under S. 28 and col. 8, Sch. II. It was intended to extend to certain Magistrates the power to try juvenile offenders for certain offences which would otherwise have been triable exclusively by the Court of Session. (Allsop J,) Onkar Nath v. Emperor,

A I R 1936 All 675=9 R A 227=1936 A L J 957=I L R (1937) All 101=1936 A W R 735=165 I C 148=37 Cr L J 1073.

——Whether permissive — Juveniles, trial of — Special Magistrate.

Section 29-B is in its terms clearly permissive. When a juvenile under the age of fifteen years is brought before a Magistrate other than one of those specially referred to in S. 29-B, the Magistrate can, if he chooses, either under S. 9 of the Reformatory Schools Act, 1897, or under S. 319 of the Criminal P. C., refer the matter to the District Magistrate with a view to the case being tried by a Special Magistrate under S. 29-B; and the District Magistrate of his own volition can direct any such case to be tried by a Magistrate having special powers. But if neither of those courses is adopted, then the trial Magistrate can deal with the case under the regular provisions of the Code. If the case is one which he is empowered to try under the Second Schedule to the Code, he can try it and pass any sentence authorized by law. Section 29-B enables one of the Special Magistrates there referred to, to deal with many cases which, apart from that section, could only be tried by a Court of Session. But the section does not invalidate a trial which would be valid apart

from the section. (Beaumont C. J. and Barlee J.) Emperor v. Jalal Dhondhibhai,

AIR 1934 Bom 211=6 R B 413=36 Bom L R 435=149 I C 1135=35 Cr L J 1033.

——Offence punishable with death or transportation for life—Jurisdiction of Central Children Court.

Section 29-B, implies that an offence under S. 304 of the I. P. C., which is punishable with transportation for life and which is exclusively triable by the Court of Session, cannot be tried by the Magistrate in charge of the Central Children Court.

Where an offence is committed within the local limits of the jurisdiction of the Sessions Court of Howrah, commitment from the Central Children Court, if it is to be made, must be made to the Sessions Court of Howrah and not to the High Court. (Mallik and Patterson JJ.) Lakhi Sahu v. Emperor,

A I R 1932 Cal 487=36 C W N 164=Ind Rul (1932) Cal 479 (1)=59 Cal 856=138 I C 626=33 Cr L J 645.

——Offender under fifteen years — Discretion of Magistrate to order trial by Special Magistrate.

Under S. 29-B, a Magistrate other than one of those particularly referred to in the section, before whom an offender under the age of fifteen years is brought was intended to have a discretion. He may deal with the matter under the ordinary provisions of the Code or he may direct that the accused be dealt with under S. 29-B of the Code, that is to say, be tried by one of the Magistrates specially empowered under the section. (Beaumont C. J and Murphy J.) Natwarlal Nagindas v. Emperor,

A I R 1931 Bom 198=33 Bom L R 312=Ind Rul (1931) Bom 300=131 I C 476=32 Cr L J 722.

——Jurisdiction—Railways Act, S. 130.

In view of provisions of S. 29-B of Cr. P. Code a Magistrate other than a District Magistrate has no jurisdiction to try an offence under S. 130 of Railways Act. AIR 1919 Bom 173, Diss. from. (Dalip Singh J.) Emperor v. Mt. Jannat,

AIR 1928 Lah 909=29 P L R 536=10 A I Cr R 499=110 I C 589=29 Cr L J 733.

—S. 30.

See also Criminal P. C., S. 28.

SYNOPSIS

1. Scope and object.
2. "As a Magistrate."
3. Procedure.
4. "All offences not punishable with death."
5. Sentence that can be passed — See Criminal P. C., S. 34.
6. Revision.

1. Scope and object.

——S. 30 — Essentially confers jurisdiction. It gives Magistrates power to try offences which otherwise they cannot try. It deals only with trial of offences and confers no power to pass a sentence. (Davis C. J.) Ram Singh Kunwar Singh v. Emperor

AIR 1943 Sind 87=ILR (1942) Kar 597=15 R S 171=206 I C 283=44 Cr L J 461.

——Object of conferring special powers on District Magistrate.

The object of conferring special powers on District Magistrate is to accelerate proceeding at the trial by avoiding the delay consequent on commitment to the Sessions Court which sits only at considerable intervals. It is also intended to afford relief to those who have to

CRIMINAL P. C. (V of 1898), S. 30 — 1. Scope and object

attend as witnesses in the Court. (Gruer J.) In re Prithivi Nath

AIR 1938 Nag 56=20 N L J 151=I L R (1938) Nag 248=11 R N 18=175 I C 935=39 Cr L J 660.

——S. 28, Cr. P. C. is subject to the other provisions of this Code, including S. 30. (Gruer J.) In re Prithivi Nath

AIR 1938 Nag 56=20 N L J 151=I L R (1938) Nag 248=11 R N 18=175 I C 935=39 Cr L J 660.

——Ss. 30, 28 — S. 28 is to be read with S. 30 under certain circumstances.

Section 30 cannot be regarded in any other light than the provision of the Code within which under certain circumstances and in certain parts of India, S. 28 of the Code is to be read. (Baguley and Mosely JJ.) Ma Sin v. Maung Maung Lay

AIR 1936 Rang 230=8 R Rang 613=14 R 378=163 I C 163=37 Cr L J 773.

——Scope.

Section 30 must be read as qualifying or controlling the provisions of S. 28 which in its turn makes reference to column 8 of the second schedule. (Kinkhede Offg. A. J. C.) Danaji v. Emperor

AIR 1926 Nag 374=95 I C 56=27 Cr L J 728.

2. "As a Magistrate."

——Additional District Magistrate invested with powers under S. 30 acting under S. 30 — Describing himself in record as Additional District Magistrate and signing judgment in same way—Effect.

It does not matter what the Magistrate calls himself but what powers he really dòes exercise. Where the Additional District Magistrate actually invested with powers under S. 30, acts in exercise of those powers, the fact that throughout the record of the case, he described himself as Additional District Magistrate and signed the judgment in the same way, cannot affect the exercise of powers under S. 30. (Skemp J.) High Court Bar Association, Lahore v. Emperor

AIR 1941 Lah 324 = 43 P L R 378 = 14 R L 157 = 196 I C 485=42 Cr L J 890.

——Ss. 30, 250—Special Power—Magistrate trying complaint under S. 376, Penal Code—Complaint found false —Accused discharged — S. 250 : 23 Cr L J 289 (1) = AIR 1923 Rang 15 (1), Overruled.

If the Magistrate having special powers is able to try the case before him, it is a violation of the ordinary meaning of the word "triable" to say that the case is not triable by the Magistrate.

Consequently, a Special Power Magistrate, trying a complaint under S. 376, I. P. C. and passing an order discharging the accused, can pass an order under S. 250, notwithstanding the fact that the offence is exclusively triable by a Court of Session : 23 Cr L J 289 (1)=A I R 1923 Rang 15 (1), Overruled. (Baguley and Mosely JJ.) Ma Sin v. Maung Maung Lay

AIR 1936 Rang 230 = 8 R Rang 613 = 14 R 378 = 163 I C 163=37 Cr L J 773.

——Case triable by Sessions tried by Magistrate exercising powers under section—Competency to award compensation —Case does not become "triable by Magistrate" — See ibid, S. 250

11 Cr L J 396 (Lah).

——Proceedings transferred under S. 349 to District Magistrate — Sentence imposed in exercise of powers under S. 30 is not legal—The District Magistrate acting under S. 349, must be regarded as a Magistrate not empowered under S. 30 and not empowered to pass sentence longer than he is empowered to pass under S. 32— See Criminal Procedure Code, 1898, S. 349

6 Cr L J 289 (Burma).

CRIMINAL P. C. (V of 1898), S. 30 — 2. "As a Magistrate"

——Ss. 30 and 337 — Deputy Commissioner empowered under S. 30—Tender of pardon by him—Effect.

When a Deputy Commissioner empowered under S. 30 tries a case triable by the Court of Sessions, he does so as a Magistrate, and if he tenders pardon under S. 337, he is precluded from trying the case himself. (Mitra and Holmwood JJ.) Paban Singh v. Emperor

10 C W N 847=4 Cr L J 44.

3. Procedure.

——Magistrate invested with S. 30 powers during pendency of committal proceeding — Notification is not retrospective.

The difference between the procedure of the trial of a case by a S. 30-Magistrate and the procedure in a case triable by a Sessions Court is not merely procedural but it is one of substance and of such a character that a change from one procedure to the other affects any vested or statutory right. Among other things, the difference lies also in the substantive rights of appeal and of being tried by a jury or with the aid of assessors. Such substantive rights vest in an accused person at the date when the criminal proceedings are instituted against him.

Consequently the notification dated 17th May 1950, which did not contain any provision making it retrospective conferring S. 30-powers on certain Magistrates, held was not retrospective in operation. The Magistrate thus invested with S. 30-powers and before whom the committal proceedings in a case were pending must, therefore, continue the committal proceedings against the accused and either discharge them or commit them to the Court of Sessions for trial. He himself could not try them exercising S. 30 powers. (Dixit and Chaturvedi JJ.) State v. Kanhaiyalal

AIR 1953 Madh B 56 = I L R (1952) Madh B 571= 1953 Cr L J 557.

——Ss. 30, 215 — Commitment of case under S. 376, Penal Code to Sessions Court—Procedure.

Where a case under S. 376, Penal Code, is committed to the Court of Session the Court must not dispose of the case itself but should refer it to the Court of the Judicial Commissioner for action under S. 215, Criminal P. C. It is for the Magistrate empowered under S. 30, Criminal P. C., to have disposed of the case. (Atma Charan J. C.) Har Nath v. State,

A I R 1952 Ajmer 49=1952 Cr L J 1563.

——The procedure of the Magistrate exercising powers under S. 30 is not similar to the procedure of Sessions Court. As far as possible the Magistrate should adhere to the procedure indicated in S. 256 — See Criminal P. C., S. 256.

A I R 1947 Pat 416.

——Case triable by S. 30 Magistrate and also by the Sessions Court — Section 30 Magistrate present in the district—Reasons for commitment not given :

Held, that the commitment was not illegal. The proper procedure for the Sessions Judge would be to try the case and if he ultimately found that the case should not have been committed, he should bring the matter to the notice of the District Magistrate or issue general instructions for the guidance of Magistrates if this was considered necessary. (Bhide J.) Indoo v. Emperor,

A I R 1934 Lah 326 (2)=1934 Cr C 557=7 R L 23= 35 P L R 218=150 I C 769.

——Ss. 30 and 346 — Submission of case of murder to District Magistrate — Powers of District Magistrate to deal with evidence.

A Subordinate Magistrate of the first class, before whom two accused persons were charged for murder and

abetment of murder respectively, submitted the case under S. 346 to the District Magistrate with a view to its disposal by the latter in the exercise of the power conferred by S. 30, being of opinion that the principal offence disclosed by the evidence for the prosecution did not amount to murder—Held, that the District Magistrate had jurisdiction to act upon the evidence already recorded by the Subordinate Magistrate. (Drake-Brockman J. C.) Emperor v. Ramprasad,

A I R 1915 Nag 115=12 N L R 146 = 36 I C 867 = 18 Cr L J 35.

4. "All offences not punishable with death."

——Magistrate empowered under S. 30 if compelled by virtue of S. 38 of the East Punjab Public Safety Act, 1949 to send to the Court of Session a case which could be tried by himself—See East Punjab Public Safety Act (V of 1949), S. 38 (1) (i),

A I R 1950 Ajmer 37 (1)=51 Cr L J 1240.

——The effect of S. 30, Criminal P. C., read with S. 8 of the Penalties (Enhancement) Ordinance (1942) is to remove the bar to the jurisdiction of the Magistrate functioning as a Court under S. 30, Criminal P. C., that would otherwise prevent his trying offences punishable with death. Therefore the Magistrate with S. 30 powers can try offence under R. 35, Defence of India Rules which is punishable with death and impose sentence of seven years' rigorous imprisonment under S. 34 which supplements S. 30. (Davis C. J.) Ram Singh Kunwar Singh v. Emperor,

AIR 1943 Sind 87=ILR (1941) Kar 597=15 R S 171 =206 I C 283=44 Cr L J 461.

——Case exclusively triable by Sessions—Case committed by Magistrate having powers under S. 30 :

Held, that the commitment was not illegal. (Mir Ahmad A. J. C), Emperor v. Madan Lal,

A I R 1936 Pesh 139=9 R Pesh 6=163 I C 611 = 37 Cr L J 852 (1).

——Cases of rape and unnatural vice should be tried by Magistrate with powers under S. 30, so that if the circumstances call for a heavy sentence, the same may be given up to the outside limits of seven years. Thus, where an offence under S. 377, I. P. C. is committed with violence, sentence of whipping in addition to rigorous imprisonment is right and proper. (Agha Haidar J.) Emperor v. Shera,

A I R 1936 Lah 256=8 R L 774 (1) = 38 P L R 437 =161 I C 591=37 Cr L J 474 (1).

——Offence not punishable with death — Magistrate can try offence under S. 304, Penal Code.

A Magistrate empowered under S. 30, Criminal P. C., can try a case under S. 304, Penal Code, though it would be more proper for him to commit the case to the Sessions. Proceedings before him are not ultra vires. (Pipon J. C.) Mir Alam v. Emperor,

69 I C 454=23 Cr L J 726 (Pesh).

—— Offences under Ss. 147, 148, 332 and 395, committed by accused while trying to rescue stolen cattle — Trial by S. 30-Magistrate—See Penal Code (1860), S. 332,

223 P L R 1912=41 P W R 1912 (Cr) (Lah).

——Offence under S. 302 or first clause of S. 304, Penal Code.

An offence prima facie falling under S. 302 or the first clause of S. 304, Penal Code cannot be tried by a Magistrate having S. 30-powers. (Chatterji J.) Hazara Singh v. Bishen Singh,

14 P R 1908 Cr=30 P W R 1908 Cr=8 Cr L J 263.

5. Sentence that can be passed.

See Criminal P. C. S. 34.

6. Revision.

——Ss. 30 and 437 — Discharge by District Magistrate exercising powers under S. 30, Criminal P. C. — Jurisdiction of Sessions Judge to revise the order.

The police sent up the accused for trial under S. 366, Penal Code, to the District Magistrate who without examining the complainant or taking any evidence for the prosecution, held the charge false upon the police papers and the record of the local enquiry, and discharged the accused under S. 253 of the Criminal P. C. The Sessions Judge, on application under S. 437 of the Criminal P. C., set aside the order of discharge and directed the District Magistrate to make a further inquiry into the case. On revision in the Chief Court, it was contended that the District Magistrate having acted under S. 30 of the Criminal P. C., as a Court of co-ordinate jurisdiction with the Sessions Judge, the latter Court had no jurisdiction to revise the order of discharge, and that the order of discharge was a proper one—Held that the Sessions Judge was competent to revise the order of the District Magistrate under S. 437, Criminal P. C., and that the order passed by the Sessions Judge was right. (Chatterji and Robertson JJ.) Jalloo v. Emperor,

131 P L R 1904=15 P R 1904 Cr=1 Cr L J 1063.

——Power of District Magistrate with S. 30-powers, to take action under S. 436—See Criminal P. C., S. 436.

60 P L R 1904.

—S. 31.

——Previous conviction.

More severe sentences than normal may be given if there are previous convictions but at the same time regard may be had to the nature of offence and humanity. (Young C. J. and Abdul Rashid JJ.) Allah Ditta v. Emperor,

40 P L R 118.

—S. 32.

SYNOPSIS

1. Applicability and scope.
2. Anticipatory fine.
3. Deterrent sentences.
4. Extenuating circumstances.
5. Fine.
6. General principles and theory of punishment.
7. Imprisonment.
8. Matters to be considered.
   - (a) Character and conduct.
   - (b) False defence.
   - (c) Length of trial.
   - (d) Motive.
   - (e) Previous convictions.
   - (f) Youth.
   - (g) Status.
9. 'May pass any lawful sentence.'
10. Offences against prohibition.
11. Political offences.
12. Technical offences.
13. Uniformity of sentence.
14. Whipping.
15. Miscellaneous.

1. Applicability and scope.

——Jury trial for offence made up of combination of minor offences — Conviction for minor offence, which in ordinary course would have been by first class Magistrate —Sentence reduced to two years, the maximum the

CRIMINAL P. C. (V of 1898), S. 32—1. Applicability and scope

Magistrate could have inflicted. (Govinda Menon and Basheer Ahmed Sayeed JJ.) In re Raman Ambalam,

A I R 1951 Mad 258 = 1950 M W N 870 = 1950 M W N Cr 274 = 1950-2 M L J 373 = I L R (1951) Mad 712.

——Ss. 32 and 35—Accused extorting money by wrongful confinement of complainant — Accused convicted by second class Magistrate on charges under Ss. 342 and 384, Penal Code and sentenced to a fine of Rs. 200 on each count — Offence committed being essentially one offence, imposition of two different sentences was improper — Sentence of fine in respect of charge under S. 342 set aside as being in excess of Magistrate's power.

The accused were tried by a Magistrate of the second class on charges under Ss. 342 and 384, Penal Code. The prosecution case was that the accused took the complainant to a certain place and wrongfully confined him there for the purpose of extorting money and did actually extort money by giving a threat of criminal prosecution. The Magistrate found the accused guilty and sentenced them on each count to pay a fine of Rs. 200 and in default rigorous imprisonment for two months:

Held, that though the offence committed came within two of the definitions of the Penal Code, it was essentially one offence and one transaction and therefore, it was improper to award two different sentences for the same set of acts and improper to give a sentence in excess of the Magistrate's power of punishment under S. 32 read with S. 35, Criminal P. C. The sentence in respect of offence under S. 342 should, therefore, be set aside as being improper. (Lodge J.) Durgacharan Singha v. Isamuddin Mahmud,

A I R 1948 Cal 6=229 I C 454=51 C W N 534=1947 A W R Sup 78=1947 O A Sup 78=48 Cr L J 389.

——S. 32 (c)—Very minor offence—Sentence of one week and fine of Rs. 25 by 3rd Class Magistrate — Appellate Court setting aside imprisonment and increasing fine to Rs. 150 — Sentence illegal — Fine reduced to Rs. 50. (Pandrang Row J.) Banka Ramulu v. Emperor,

1936 M W N 1382.

——S. 32 (c)—Where a Magistrate of the first class tried an accused for an offence under Emergency Powers Ordinance and sentenced him to pay a fine of Rs. 1500, but the proceedings showed that the trial was as a Court of a First Class Magistrate though he was in fact empowered as Special Magistrate :

Held, that the sentence was ultra vires. (Beaumont, C. J., Broomfield and Nanavati, JJ.) Ram Chandra v. Emperor,

A I R 1933 Bom 58 = 34 Bom L R 1676 = Ind Rul (1933) Bom 111=141 I C 574=34 Cr L J 162 (S B).

——Sentence—Enhancement in appeal is illegal.

An accused was convicted under S. 406, I. P. C., by a second class Magistrate and sentenced to three months' simple imprisonment. An appeal was preferred and the appellate Court changed the sentence to a fine of Rs. 400 or in default rigorous imprisonment for a certain period. On revision it was held that an appellate Court's power of varying a sentence must be measured by those of the Court of first instance and that the present variation went against S. 32, Cr. P. Code. (Walsh and Kanhaiya Lal, JJ.) Emperor v. Muhammad Yakub Ali,

A I R 1924 All 130=45 All 594=76 I C 1032=25 Cr L J 312.

——Applicability—Opium Act, S. 12.

Any fine could be imposed in lieu of confiscation under S. 12 of the Opium Act as S. 12 is not affected by S. 32, (Das J.) Mangan Das v. Rahim Bux,

A I R 1921 Pat 232=2 Pat L T 63 = 1 Pat L R (Cr) 32=69 I C 635=23 Cr L J 747.

CRIMINAL P. C. (V of 1898), S. 32

2. Anticipatory fine.

——Bihar and Orissa Municipal Act (VII of 1922), Ss. 197, 203—Conviction under—Sentence imposing fine for every day encroachment is not removed—Legality of.

A fine in respect of an offence which has not yet taken place cannot be imposed in anticipation of the commission of offence. Consequently, when a person is convicted under S. 197, read with S. 203, Bihar and Orissa Municipal Act, he cannot be sentenced to pay a fine for every day until removal of encroachment, in respect of an offence which had not been committed at the date of the order. (Agarwala J.) Haluman Sah v. Motihari Municipality,

A I R 1937 Pat 352 = 3 B R 297 = 9 R P 412 (1)= 18 P L T 332=167 I C 665=38 Cr L J 416 (1).

——S. 32 (c)—Anticipatory fine on and from day of conviction—Legality.

Even though a Magistrate is empowered under an Act to impose continuing fine, he cannot legally impose an anticipatory fine on and from the day when he convicts of the offence. (Macpherson and James JJ.) Bal Kishen Das v. Emperor.

AIR 1935 Pat 208=16 P L T 154=8 R P 53=14 Pat 455=1 B R 676=156 I C 1001=36 Cr L J 1048.

——Sentence of daily fine is illegal.

Imposing a daily fine so long as disobedience continues is incorrect. (Banerji J.) Husain v. Notified Area, Mahoba, Dist. Hamidpur.

AIR 1927 All 131=49 All 245=25 A L J 93=7 L R A Cr 182=97 I C 432=27 Cr L J 1120.

——Sentence of fine 'in futuro' illegal.

The sentence directing the accused to pay a fine 'in futuro' is illegal : 13 P R 1903; 16 Mad 230; 24 All 309; 22 Bom 766; 8 P R 1916; 27 Cal 565 and 40 All 569, Foll. (Broadway J.) Aisha v. Crown.

AIR 1926 Lah 248=7 Lah 168=8 L L J 80=27 P L R 188=93 I C 689=27 Cr L J 465.

——Order that non-compliance will involve continuing fine of certain sum per diem—Illegal and undesirable.

An order convicting the accused under Ss. 185 and 307 of the U. P. Municipalities Act concluded with the words "Failure to comply with the order will as from December 1st involve a continuing fine of Rs. 2 per diem.

Held, that if this was to be treated as an order imposing such a fine, it was illegal and if it was to be treated as a warning it was unnecessary and undesirable to specify the amount which could only be decided when a second prosecution had been successful. (Stuart J.) Ramzan v. Municipal Board of Benares.

AIR 1926 All 204=6 L R A Cr 112=88 I C 367=26 Cr L J 1135.

——Daily fine for future offence illegal.

It is not permissible in law to enforce a daily fine in anticipation of a commission of an offence. (Kulwant Sahay J.) Pancham Sao v. Emperor.

AIR 1925 Pat 322 = 82 I C 717 = 6 P L T 204 = 25 Cr L J 1357.

——Continuing fine until accused complies—Illegal.

Since no person can be punished for a thing he has not done but may possibly do in the future or is even likely to do it in future a daily fine until the accused complies with the order passed against him is illegal. (Hallifax A. J. C.) Baburao v. Municipal Committee.

AIR 1924 Nag 66=72 I C 78=24 Cr L J 318.

——Prospective fine.

A prospective fine is illegal. (Chamier and Evans JJ.) Mahadeo Prashad v. Municipal Board of Lucknow.

11 O C 122=7 Cr L J 454.

CRIMINAL P. C. (V of 1898), S. 32—2. Anticipatory fine

——Fine in anticipation of commission of offence — See Bengal Municipal Act (3 of 1884), S. 219.

2 Cr L J 144 (Cal).

3. Deterrent sentences.

——Property stolen from train — (Penal Code (1860), S. 411).

Cases under S. 411, especially when the property found is property stolen from a railway train, call for deterrent punishment and hence the sentence of nine months rigorous imprisonment cannot be said to err on the side of severity. (Kaul J.) Ahibaran Singh v. State.

AIR 1953 All 493=1953 A L J 173 = 1953 All W R (HC) 156=1953 Cr L J 1125.

——Popular feeling.

Deterrent sentences should be given while popular feeling runs high, and should be reviewed in a calmer reason with regard to the precise offence committed by each person. (Jackson J.) Kandaswami Nayakar v. Emperor.

1931 M W N 265.

——Deliberate defiance of law — Deterrent sentence justified.

A deterrent sentence is justified where a large body of men has deliberately set out to defy the law and the leaders have been proceeded against. (Macpherson J.) Jaigi Uraon v. Emperor.

AIR 1929 Pat 502=119 I C 887=1929 Cr C 254 = 30 Cr L J 1100.

——Sentence—Punishments—Deterrent—Principles.

It is of some importance that the theory of deterrent punishment should not be loosely put into practice and that the principles upon which alone a deterrent penalty should as a rule be inflicted clearly comprehended. Deterrent punishments are now regarded only as of utility under exceptional circumstances. When waves of imitative crime such as for example garroting, gang robbery, (or dacoity as it is called here) and forgery of counterfeit coin or notes commence to sweep over a state, judicious and increasing severity may properly be utilised to check and deter such an inundation : again, in times of public tumult, when there is a danger of wide breach of the public peace or security; or where a highly organised or what one may call semi-professional association of persons engineer series of offences such as swindling or burglary deterrent punishments may be with caution advantageously inflicted. Such a category is naturally not exhaustive but illustrative only; and sound knowledge, experience and a proper sense of perspective are alone the guides which can safely be followed in concluding whether the use of such an aid to the maintenance of the order and tranquillity of a locality is properly permissible and desirable. To adjust the punishments so as to make it appropriate and to balance it, so that it justly fits the gravity of the offence but does not shock the public conscience and thus wrap and dull the public's social sense and appreciation of crime as evil, should be the aim. (Bucknill J.) Gossain Misser v. Emperor,

AIR 1922 Pat 267=1922 Pat H C C 14=63 I C 615= 2 Pat L T 596=22 Cr L J 679.

——Sentence—Deterrent sentences—Prosecuting authorities, duties of—Jurisdiction of lower Court.

It is not desirable to trust exclusively to the High Court's power of correcting sentences of lower courts, where they ought to be deterrent and prosecuting authorities in such cases ought to put before the trying Court circumstances justifying the imposition of deterrent

CRIMINAL P. C. (V of 1898), S. 32 — 3. Deterrent sentences

sentences. (Heaton and Shah JJ.) Emperor v. Shinvar Birshah,

AIR 1914 Bom 179=23 I C 735=16 Bom L R 203= 15 Cr L J 367.

——Sentence—Deterrent sentence—Authority desiring — Duty of.

Where the authorities desire that a specially deterrent sentence should be imposed, they should bring it to the notice of the trying court and inform it of the reasons therefor. (Heaton and Shah JJ.) Emperor v. Ragha Jaga,

AIR 1914 Bom 36=23 I C 730=16 Bom L R 200=15 Cr L J 362.

4. Extenuating circumstances.

——Sentence—Mitigating circumstances.

The fact that the accused had not lost all feelings of sympathy at the time and had helped one of the injured, and his act of mercy in offering water to the injured do not diminish his liability for the offence and is not sufficient reason to reduce his sentence. (Naik C. J. and Siddiqi J.) Kasim Razvi v. State of Hyderabad,

AIR 1951 Hyd 97=52 Cr L J 1123.

——Connection of accused with persons serving Government is not extenuating circumstance.

The fact that the accused is a young man and some of his relations have served and are serving the Government is not an extenuating circumstance in awarding sentence. (Thomas C. J. and Walford J.) Tahawar Ali Khan v. Emperor,

AIR 1946 Oudh 26=1945 O W N 331 = 1945 All W R C C 248

——Servant acting under orders of master.

A servant acting under the direct orders of his master should not be punished as severely as the latter. (Bartley and Lodge JJ.) Yawar Bakht v. Emperor,

A I R 1940 Cal 277=71 C L J 181=44 C W N 474= ILR (1940) 1 Cal 531=13 R C 73=189 I C 173=41 Cr Cr L J 719.

——Injured person, taking lenient view of injury—Nature of offence.

The lenient view of the injury taken by the injured person cannot reduce the offence which the accused committed, even if it is taken into consideration as a mitigation which would justify a lenient view in passing sentence. (Baguley and Mosely JJ.) Nga Sit Tun v. Emperor,

AIR 1937 Rang 401=10 R Rang 228=172 I C 134= 39 Cr L J 79.

——Suddenness of attack is not necessarily an extenuating circumstance. (Davis J. C. and Mehta, A. J. C.) Ali Mohammad v. Emperor,

A I R 1936 Sind 31=8 R S 144=161 I C 414=37 Cr L J 483.

——Motor lorry driver not participating in crime at initial stages — Circumstances compelling him to continue—Sentence.

A motor lorry was hired for the purpose of abducting a girl, through a contractor. The driver was ignorant of the purpose. He did not take any part in the crime in its initial stages but became particeps criminis after the girl, who had been screaming and was naked, had been brought to the lorry. He, however, continued to do his part of the work :

Held, that he was in a difficult position and may have felt bound to carry on and consequently the sentence in his case should be reduced to six months' rigorous imprisonment. (Skemp J.) Mohammad Shafi v. Emperor,

AIR 1936 Lah 15=38 P L R 323=8 R L 718 = 161 I C 313=37 Cr L J 430.

CRIMINAL P. C. (V of 1898), S. 32 —4. Extenuating circumstances

——Sentence — Extenuating circumstances — See Penal Code (1860), S. 302,

AIR 1930 Lah 311.

——Provocation by gross outrage of religious feeling.

Where the accused were smarting with indignation against the outrages upon their sacred places and suffering from a gross outrage on their religious feeling every allowance should be made for their feelings. A comparative leniency in sentencing should be shown but at the same time they must be punished adequately. (Stuart C. J.) Doulat v. King-Emperor,

AIR 1927 Oudh 70 = 2 Luck 264 = 3 O W N Sup 304 = 99 I C 238 = 28 Cr L J 110.

5. Fine.

——Long term of imprisonment — Sentence of fine in addition not desirable—See Penal Code (1860), S. 53,

AIR 1953 Assam 201 = 1953 Cr L J 1568.

——Sentence of fine—Matters to be taken into account.

Where a fine is imposed on an accused person, it should be such as is commensurate with the offence, the character and conduct of the accused, the circumstances leading to the commission of the offence, the degree of 'mens rea', as well as with the financial circumstances of the accused. To impose a fine which the accused has no means to pay really means that the accused is being sentenced under the cloak of fine, to undergo imprisonment or subject himself to further legal process. The fine in no event should be either excessive or such as to make an accused feel, however wrongly, that he is being persecuted instead of being prosecuted. (Suryanarayana Rao J.) State of Hyderabad v. Kaneez Fatema,

AIR 1953 Hyd 155 = ILR (1952) Hyd 526 = 1953 Cr L J 827.

——Sentence.

Where a substantial sentence of imprisonment has been passed upon a convicted person, it is not proper that in addition to a long term of imprisonment, a sentence of fine should be passed. (Thadani C. J. and Ramlabhaya J.) State v. Dalma Marak,

AIR 1953 Assam 111 = ILR (1952) 4 Assam 270 = 1953 Cr L J 781.

——Imprisonment in default—Matters to be taken into account—See Penal Code (45 of 1860), S. 60.

AIR 1950 Kutch 73.

——Punishment—Principles—Imprisonment for substantive offence—Fine should not be added—Political offence—No incitement to violence — Sentence need not be severe: See Penal Code (1860), S. 124A.

52 Mys H C R 265.

——Substantial terms of imprisonment — Small fine at end of term need not be imposed.

There is no propriety in the imposition of small fines at the end of substantial terms of imprisonment. (Braund J.) Kammoon v. Emperor,

AIR 1942 All 225 = 15 R A 64=1942 A W R 109 = 1942 A L J 255=201 I C 518=43 Cr L J 654.

——Sentence — Fine — Representation that friend of accused would pay it.

Where fines were imposed on the accused and it was contended that the accused being unable to pay the fines, would have to stay in jail for a long period but it was found that the fine was imposed because it was represented to the Judge that a friend might pay it :

Held, that the fines were rightly imposed. (Coldstream J.) Rattan Lal v. Emperor,

165 I C 544 = 9 R L 265 = 38 Cr L J 51.

——S. 32 (c) — Substantial term of imprisonment and fine, impropriety of.

CRIMINAL P. C. (V of 1898), S. 32 — 5. Fine

It is altogether inappropriate to add a fine to a substantial term of imprisonment except in very exceptional circumstances. It is only suitable in cases where the Court thinks that the justice of the case will be met by inflicting a substantial fine but at the same time thinks that a short term of imprisonment in addition will serve as a salutary lesson to the accused or in cases where it is desired to compensate the complainant or in cases where the accused has profited financially by his misdeed. (Lort-Williams and S. K. Ghose JJ.) Islam v. Emperor,

AIR 1931 Cal 710 (2) = 35 C W N 519 = 53 C L J 455 = Ind Rul (1932) Cal 48 = 134 I C 1136 = 33 Cr L J 31.

——S. 32 (c)—Sentence.

Whether a fine is severe or not depends to a large extent on the position and status of the person fined. (Cuming J.) Jugal Kishore v. Emperor,

AIR 1931 Cal 633 = 35 C W N 436 =Ind Rul (1932) Cal. 41=134 I C 1129=33 Cr L J 28.

——S. 32 (c) — Fines under several sections — Payment into Court — Accused's right to ask for appropriation towards particular sentence.

An accused person who has been convicted and fined under different sections of the I. P. C. is entitled, on paying a certain amount into Court, to ask that the amount paid should be appropriated by the Court towards the fine inflicted on him under any particular section or sections. (Wild J. C. and Milne A. J. C.) Yakoob v. Emperor,

AIR 1931 Sind 73 = 24 S L R 437 = Ind Rul (1931) Sind 91=132 I C 475 = 32 Cr L J 922.

——Fine—Ability to pay no ground for maximum fine.

The maximum sentence whether of fine or of imprisonment, provided for by law, represents the sentence to be inflicted in extreme cases. Because a man may easily pay a fine is no ground for ordering him to pay the maximum fine fixed by law, if the nature of the offence committed by him is not of the most serious character, having regard to the description of the offence itself. (Mukerji and Niamatullah JJ.) Ganga Sagar v. Emperor,

AIR 1929 All 919 = 120 I C 435 = 1930 A L J 26 = 1929 Cr C 647=31 Cr L J 88.

——Man of small means—Heavy fine improper.

Where an accused does not appear to be a man of large means, and the greatest sufferers will be the women and children of the family a very heavy fine may not be inflicted. (Mullick Ag. C. J. and Wort J.) Dhanu Raut v. Emperor

AIR 1928 Pat 59 = 9 P L T 217 = 104 I C 705 = 9 A I Cr R 29=28 Cr L J 865.

——Sentence — Fine should not be inflicted in technical offences.

Penalties must be provided and penalty sections must be used for bad cases where the individual has been contumacious and has palpably acted mala fide. But the penalty is only intended in terrorem and not to be used vindictively for technical offences. (Walsh J.) Nihal Muhammad v. King-Emperor

AIR 1924 All 200=21 A L J 774=4 L R A Cr 226= 85 I C 41=25 Cr L J 425.

——Sentence—Fine—Extent of.

A sentence of fine should not be imposed which it is wholly impossible for the accused person to pay without ruining himself and without inflicting great hardship upon his family. The maximum fine to be imposed upon any individual should depend in every case upon hi position in life. If the offence is of an aggravated type

CRIMINAL P. C. (V of 1898), S. 32—5. Fine

sentence of imprisonment is obviously more suitable than fine. (Harrison J.) Abdulla v. Emperor

AIR 1924 Lah 81 = 5 Lah L J 271 = 71 I C 998 = 24 Cr L J 278.

6. General principles and theory of punishment.

——Sentence in case of doubt regarding commission of offence.

Every Court must award the sentence suited to the offence and the offender, and not make the sentence smaller because of any doubt regarding the commission of the offence itself. Of course, the case is different where there is a doubt whether a graver offence or a smaller offence had been committed. (Panchapakesa Aiyar J.) In re Kunda Papana

A I R 1953 Mad 877 = 1953-1 Mad L J 492 = 1953 Mad W N 283=1953 Cr L J 1646.

——Proper sentence — Principles indicated — See Penal Code, S. 53

A I R 1953 Pepsu 118 = I L R (1953) Patiala 129 = 1953 Cr L J 1261.

——Sentence — Fight not premeditated—Loss of life, no reason for severe sentence.

Where the fight was not premeditated and only a few hot words were responsible for the unfortunate result, a heavy sentence need not be passed. Loss of life, though unfortunate should not be a reason for inflicting too severe a punishment. (Kaul J.) Ghariby v. State

A I R 1953 All 491 = 1953 All W R (H C) 147 = 1953 All L J 346=1953 Cr L J 1111.

——Punishment—Principles applicable.

A delinquent is sometimes driven to commit a crime not only by his evil and reckless disposition, or bad motives. He may be induced to do it by his social or sympathetic impulses. In such a case although there should be no sympathy for the criminal who voluntarily places himself in active co-operation, the presence of such temptation in itself calls for severity of punishment. But the compelling temptation, as a disproof of the degraded disposition of which usually accompanies wrong doing, demands leniency. (Naik C. J. and Siddiqi J.) Kasim Razvi v. State of Hyderabad

A I R 1951 Hyd 97=52 Cr L J 1123.

——Offence—Seriousness.

The seriousness of the occurrence is not to be judged by the nature of the injuries; but also by the way they were inflicted in utter disregard of the administration and the forces of Law and Order. (Naik C. J. and Siddiqi J.) Kasim Razvi v. State of Hyderabad

A I R 1951 Hyd 97=52 Cr L J 1123.

——Sentence—Duty of Court.

Courts, while awarding sentence, should be cautious in making the sentence proportionate to the nature of the offence committed and should not award sentence which may seem to be of a vindictive nature. An unnecessarily severe sentence is apt to defeat the object for which it is passed. The sections prescribing sentences give the limit to which a sentence can be passed, but that does not mean that the maximum sentence should be awarded in each case. The extent of sentence has to be judged upon the circumstances of each case. (Varma and Shearer JJ.) Jainarain Sah v. Emperor

A I R 1944 Pat 16=22 Pat 600=16 R P 235=10 B R 358=25 P L T 12=211 I C 219=45 Cr L J 332.

——General principle — Every person participating in offence is punishable with maximum penalty.

The general principle in criminal cases is that every offence for which a punishment is provided is a several offence and every person who participates in that offence

CRIMINAL P. C. (V of 1898), S. 32 — 6. General principles and theory of punishment

is punishable to the extent of the maximum penalty provided by the law irrespective of the fact whether any person joint with him in committing the offence is or is not punished separately. (Mulla J.) Sat Narain v. Emperor

AIR 1942 All 440 = 1942 A L J 568 = 15 R A 324= 1942 A W R 310=I L R (1942) All 933=204 I C 129= 44 Cr L J 141.

——Sentence—Considerations.

A sentence must be passed in a criminal trial which is considered proper in all circumstances of the case, regardless of the consideration whether it should be appealable. (Shaw J.) King v. Maung Saw Han

AIR 1939 Rang 69=11 R Rang 343 = 179 I C 716 = 40 Cr L J 248.

——Impropriety of too severe sentence.

While sentences imposed on criminals should be adequate to the offence, they should not be excessive. Apart from the injustice to the offender which an excessive sentence entails, such a sentence tends to undermine public confidence in the administration of criminal justice. (Pandrang Row J.) In re, Abdul Ghani Sahib

AIR 1937 Mad 231 = 1936 M W N 985 = 71 M L J 536=44 M L W 558=9 R M 236 = 59 Mad 995 = 165 I C 387=37 Cr L J 1150.

——Element of vengeance absent — Deterrent sentence in interests of society.

One element in awarding sentences is the element of vengeance; the natural resentment of the aggrieved persons must be satisfied lest they take the law into their own hands. In a case where this element does not arise and the main reasons for awarding punishment are that the accused has done a thing which is wrong and in itself deserves punishment, and, above all, in the interest of society as a deterrent, a severe punishment is not necessary. (Skemp J.) Harnam Singh v. Emperor

AIR 1936 Lah 833= 38 P L R 203=9 R L 218 = 165 I C 146=37 Cr L J 1079.

——Theory of punishment—Penal Code, S. 53.

The theory of punishment is based upon: (a) the protection of the public: (b) the prevention of crime; and (c) the reformation of the offender. (Sulaiman C. J. and Young J.) Jhabwala v. Emperor

AIR 1933 All 690 (732) = 1933 A L J 799=6 R A 65 =55 All 1040=145 I C 481=34 Cr L J 967.

——Sentence—Extent of— Respect of law undermined — Duty of Court to hold scales even— Excessive and vindictive sentences undermine the respect for law even further.

Where the accused, a respectable woman of sixty, felt it her duty to dissuade people from drinking, a sentence of rigorous imprisonment for four months and a fine of Rs. 100 and in default of one month's rigorous imprisonment is excessive, and might even be criticised as vindictive. It is necessary at all time, and not least when respect for the law is being undermined, that, whatever the attitude of the politics of any party, the Court should in all respects scrupulously hold the scales even, observe the correct procedure and that they should not by such sentences themselves still further undermine this respect for the law. Such sentences defeat their own object and usually produce an effect contrary to what perhaps they are intended to do. (Madgavkar and Barlee JJ.) Emperor v. Sakinabai Buduruddin Lukmani

AIR 1931 Bom 70= 129 I C 346 = 55 Bom 220 = 32 Bom L R 1506=1931 Cr. C 78=32 Cri L J 283.

——Measure of punishment varies with circumstances.

The principal object of punishment is the prevention of crime and the measure of punishment must consequently vary from time to time according to the preva-

CRIMINAL P. C. (V of 1898), S. 32 — 6. General principles and theory of punishment

lence of a particular form of crime and other circumstances. (Tapp J.) Om Parkash v. Emperor

AIR 1930 Lah 867=127 I C 209= 1930 Cr C 911=31 Cr L J 1182.

——Trivial offence — Prosecution started by malice — Nominal penalty.

Where the offence is utterly trivial and the prosecution is inspired by motives other than pursuits of justice and the Magistrate is convinced of the commission of offence from evidence on record, Magistrate should give effect to his opinion by convicting the accused and imposing a purely nominal penalty. (Courtney-Terrell C. J. and James J.) Narayan Maharana v. Emperor

AIR 1930 Pat 241=125 I C 134=9 Pat 113=11 P L T 772=1930 Cr C 509=31 Cr L J 789.

——Should be proportionate to nature and gravity of crime.

It is an elementary proposition in criminal jurisprudence that sentence in each case should be proportionate to the nature and gravity of the Crime, and a Magistrate cannot claim a right to inflict a particular sentence in a particular case because he had done so in hundred other cases—some of which were more serious — without any regard to nature of facts, upon which each and every case has to be decided. (Young and Sen JJ.) Emperor v. Maiku

AIR 1930 All 279=124 I C 46 = 1930 Cr C 447 = 31 Cr L J 631.

——Principles indicated.

Iqbal Ahmad J. — The sentence passed on a convicted person should not be such as to be open to the criticism that it is an unmitigated exhibition of superior force unredeemed by a tinge of judicial balance.

Walsh J.—The question of punishment depends on two considerations: firstly, the public importance of the offence and the deterrent effect of the punishment; secondly, the deserts of the particular offender. (Mears C. J., Walsh and Iqbal Ahmad JJ.) Emperor v. Badan Singh

AIR 1923 All 150=118 I C 577=30 Cr L J 933.

——Punishment to be awarded according to the circumstances of each case.

When the legislature has laid down a maximum punishment for an offence or a series of offences, it is the duty of the trial Court to apportion punishment in each case after considering all the circumstances having a bearing upon it, and not to shirk its responsibility by imposing the maximum penalty upon every offender. (Shadi Lal C. J.) Kehar Singh v. Emperor

AIR 1929 Lah 29 = 112 I C 783 = 10 Lah 524 = 30 P L R 638=11 A I Cr R 553=30 Cr L J 15.

——Punishment should be the least that will prevent repetition of crime by offender and will deter others.

The causing of merely retributive harm, whether by the community or the individual, is itself a crime. Punishment is in itself an evil, justified only by its prevention of greater evil, that is, by its effects in deterring the offender from a repetition of the offence and in deterring others, by his example, from the commission of it. In each case also it must obviously be the least that will produce both these effects. (Hallifax A. J. C.) Mt. Nanhi Goud v. Emperor

AIR 1927 Nag 221= 101 I C 659= 8 A I Cr R 139 = 28 Cr L J 493.

——Sentence does not depend on the section.

The extent of the proper sentence does not depend ntirely or even mainly on the section under which the eentence has to be passed. That has to be decided on

CRIMINAL P. C. (V of 1898), S. 32 — 6. General principles and theory of punishment

the circumstances of the offence. (Hallifax A. J. C.) Emperor v. Akosh Kunbi.

AIR 1927 Nag 49=97 I C 1053=27 Cr L J 1229.

——Sentence — Reasons for — Maximum sentence must be recorded.

When Court inflicts the maximum sentence provided by the law for an offence, it should record its reasons for doing so. (Campbell J.) Harnam Singh v. Emperor.

AIR 1926 Lah 239=26 P L R 788=91 I C 1002=27 Cr L J 186.

——Disproportionate punishment.

A sentence of ten years' imprisonment is wholly disproportionate to any possible aspect of the crime from a moral point of view provided that that part of their misconduct, namely the setting of fire, is reasonably included in and taken to aggravate the general lawless conduct of which the accused have been convicted under Ss. 147 and 325. (Walsh Ag. C. J. and Ryves J.) Khanjan v. Emperor.

AIR 1924 All 781=82 I C 54=5 L R A Cr 140 = 25 Cr L J 1190.

——Sentence — Several responsibility of persons participating in commission of offence—Separate punishment of each.

As a principle of criminal law, all who participate in the commission of an offence are severally responsible and each must be separately punished as if he had committed the offence alone, although they may all be jointly tried and convicted. (Sanderson C. J., Woodroffe, Fletcher, Richardson and Mookerjee JJ.) Amirta Lal Bose v. Corporation, Calcutta.

AIR 1917 Cal 348=21 C W N 1016=42 I C 305=26 C L J 215=44 Cal 1025=18 Cr L J 945.

——Small sentences.

A Magistrate inflicting small sentences should be very careful to avoid doing an injury that cannot be repaired. (Blair J.) King-Emperor v. Patandin.

2 A L J 26=A W N 1905, 19=2 Cr L J 19.

7. Imprisonment.

——Sentence—Offence under S. 376, I. P. C. — Accused, young man of 20 years committing rape on girl of 14— Deterrent sentence though called for, sentence of 5 years rigorous imprisonment reduced to 3 years rigorous imprisonment—See Penal Code (1860), S. 376.

AIR 1953 All 502 = 1953 All L J 171 (2) = 1953 All W R (HC) 340=1953 Cr L J 1164.

——Sentence of imprisonment or fine or imprisonment in default of fine — Considerations — See Penal Code (1860), S. 60.

AIR 1950 Kutch 73.

——Ss. 32, 35, 537 — Person tried under two sections of Penal Code — Failure to specify separate sentences of imprisonment — Sentence passed to be treated as concurrent sentence under both sections: 10 All 58; AIR 1933 Sind 9 and AIR 1924 All 492, Ref. (Muhammad Jan J.) Zamir Hussain v. The Crown.

AIR 1950 Lah 97 = Pak Cas (1950) Lah 290=51 Cr L J 717.

——First offenders of immature age—Imprisonment not proper.

To send a youth aged 17 years, who is a first offender and commits the offence of criminal breach of trust being prompted by another person, to jail is to put him in the way of becoming a hardened criminal in association in jail with other criminals. The subordinate Courts should, therefore, ordinarily avoid passing sentences of imprisonment for short terms specially on first offenders of immature age. (Jai Lal J.) Tirath Ram v. Emperor.

AIR 1930 Lah 424 = 126 I C 578 = 31 P L R 660= 1930 Cr C 452=31 Cr L J 1076.

CRIMINAL P. C. (V of 1898), S. 32 — 7. Imprisonment

——Imprisonment for several periods at intervals — Illegal.

It is not competent for a Magistrate to award by an order imprisonment for several periods with interval between each period. (Harrison J.) Rur Singh v. Emperor.

AIR 1927 Lah 62=99 I C 55 = 7 A I Cr R 196 = 28 Cr L J 23.

——Sentence—Detention as under-trial prisoner.

A Magistrate, in awarding a sentence has no jurisdiction to direct that any portion of the period during which the accused has been detained in custody as an under trial prisoner, should be counted as part of the sentence. (Brasher J.) Dangar Khan v. Emperor.

AIR 1923 Lah 104 = 5 L L J 224 = 68 I C 817=23 Cr L J 593.

8. Matters to be considered.

(a) Character and conduct.
(b) False defence.
(c) Length of trial.
(d) Motive.
(e) Previous convictions.
(f) Youth.
(g) Status.

8. Matters to be considered.

——Offence under S. 420—Sentence—Loss of reputation and membership of board which the accused was bound to suffer taken into account in reducing sentence — See Penal Code (1860), S. 420.

AIR 1953 All 381=1953 All L J 232=1952 R D (HC) 175=1953 Cr L J 815.

——Object of punishment — That accused will lose his services how far a relevant consideration — Sentence of one year on a Railway servant convicted of offence under S. 420/511 if too severe a sentence—See Penal Code, S. 53.

A I R 1950 All 639.

——Assessment of quantum of sentence—Elements to be considered.

The Court in fixing the punishment for any particular crime will take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender, the provocation which he has received, if the crime is one of violence, the antecedents of the prisoner up to the time of sentence, his age and character. And these are all matters which must be established by evidence and not by "impressions created on the spur of the moment." (Stone C. J. and Lokur J.) Emperor v. Usman Haroon,

A I R 1947 Bom 409=49 Bom L R 346=231 I C 254 =48 Cr L J 721.

——Moral indignation of offence.

In awarding sentence, one need not take into consideration the moral indignation which may be felt on looking at the offence committed; all that is necessary to consider is, what sentence is likely to prevent the offender from committing the offence again and to prevent other persons similarly situated from committing similar offences. (Mackney J.) Mohamed Cassim v. King,

A I R 1938 Rang 220 = 11 R Rang 31 (2) = 176 I C 150=39 Cr L J 692.

——Guilt proved — Certain features rendering crime inexplicable—Sentence.

Where there are features in the case which render the crime inexplicable although the guilt of the accused has been proved, as the whole story has not been told, while passing sentence under such circumstances, it is better

CRIMINAL P. C. (V of 1898), S. 32—8. Matters to be considered

to err, if at all, upon the side of leniency. (Roberts C. J. and Spargo J.) Nga Myauk Nyo (a) Po Bein v. King,

A I R 1938 Rang 56=10 R Rang 401=174 I C 338= 39 Cr L J 412.

——Inadmissible evidence or extraneous circumstances should not influence Court.

In the matter of awarding sentences, Magistrates should not take into consideration inadmissible evidence nor should they form their opinion on extraneous circumstances. (C. C. Ghose and Duval, JJ.) Batasi Moni Dassi v. Emperor,

A I R 1926 Cal 1163=53 Cal 706 = 30 C W N 854— 98 I C 401=27 Cr L J 1329.

——Escape from custody after conviction.

Escape from custody after conviction is not a matter which could influence a Court in arriving at the amount of punishment to be inflicted. (Fforde, J.) Ishar Singh v. Emperor,

A I R 1926 Lah 617=96 I C 400=27 Cr L J 944.

8. Matters to be considered — (a) Character and conduct.

——Subsequent wrongful acts, consequence of main offence.

Though subsequent conduct is evidence against an accused, that conduct is only relevant so far as it relates to the commission of the offence of which the accused is charged and convicted. In dealing with the question of sentence, the Court should exclude from consideration the subsequent wrongful acts of the accused as irrelevant to the consideration of the offence with which he is charged and of which these subsequent wrongful acts are the consequence. (Davis C. J.) Mahmoodkhan Doulatkhan v. Emperor,

A I R 1942 Sind 106=15 R S 58 = I L R (1942) Kar 94=202 I C 681=43 Cr L J 888.

——Previous character of accused.

The previous character of an accused may be taken into account in awarding sentence. (Skemp, J.) Khuda Bakhsh v. Emperor,

A I R 1936 Lah 914 = 17 Lah 284=38 P L R 630= 9 R L 321=165 I C 909=38 Cr L J 24.

——General principles as to punishment.

Too much importance is very generally attached to the value of the property stolen in awarding sentences. The value of the property stolen is very often a mere accident, and the important question is the intention of the man and his character and attitude towards society. (Clark C. J. and Reid J.) King-Emperor v. Nur-Din,

5 P L R 89=28 P R Cr 1903=1 Cr L J 111.

8. Matters to be considered—(b) False defence.

——Punishment—Conduct of accused during trial.

Magistrates when deciding on the question of sentence are justified in taking into consideration the conduct of an accused person in his own defence. Where an accused person is clearly guilty and instead of throwing himself on the mercy of the Court defends himself by throwing mud at witnesses who are persons of standing and honour, he really is deserving of very little consideration. (Rupchand and Barlee, A. J. Cs.) Sanwaldas v. Emperor,

A I R 1929 Sind 253=128 I C 44=I R 1930 Sind 156 =1929 Cr C 682=31 Cr Cr L J 753.

——Concoction imputed to prosecution — Found baseless offence is aggravated.

Per Courtney-Terrell, C. J. — In a clear case where an advocate on the direct instructions of his client argues that the prosecution story is an entire concoction on the part of the police and no evidence whatever elucidated in cross-examination or offered by examination-in-chief is ever produced in support of this argument, the Court

CRIMINAL P. C. (V of 1898), S. 32 — 8. Matters to be considered — (b) False defence

should take this into account as a circumstance of aggravation in awarding the sentence. Where such suggestion is made by the legal practitioner without reasonable cause the legal practitioner is guilty of grossest professional misconduct. (Courtney-Terrell, C. J. and Chatterji, J.) Banslochan Lal v. Emperor,

A I R 1930 Pat 195=124 I C 396 = 1930 Cr C 278 = 10 P L T 703=9 Pat 31=31 Cr L J 641.

——False defence of enmity aggravates offence and affects question of sentence.

In a great majority of cases, the plea used in defence is the stereotyped plea of enmity. The plea is characterised by a wanton disregard of truth and in spite of laborious attempts, no malice is established between the accused and the Crown witnesses including the complainant. It ought to be generally known that a false defence of this character has a tendency to aggravate the offence and is a factor which may affect the question of sentence. (Young and Sen JJ.) Emperor v. Bindeshwari Singh,

A I R 1930 All 277=124 I C 45=1930 Cr C 445=31 Cr L J 630.

——False allegation in defence against respectable person aggravates original offence.

False allegation against innocent and respectable persons of criminal conspiracy to bring false charges, when used as defence, aggravates greatly the original offence. This type of defence is much too common in India and it ought to be recognized that where a defence of this character is obviously false, that fact ought to be taken into consideration in awarding punishment. (Young and Sen JJ.) Emperor v. Narbada Prasad,

AIR 1930 All 38=121 I C 819=1930 Cr C 54=51 All 864=31 Cr L J 356.

8. Matters to be considered—(c) Length of trial.

——Sentence — Lapse of time between offence and judgment, consideration of.

It is not possible to lay down that because a man succeeds in evading arrest for a number of years, he is entitled to a lesser sentence when he is eventually arrested, although the passage of time between the offence and the judgment may be taken into account in fixing the appropriate sentence. (Mockett & Horwill JJ.) Nallanarasimha v. Emperor,

1937 M W N 571.

——Mitigating circumstance.

However guilty an accused person may be, it is most undesirable that he should be subjected to the strain and anxiety of prolonged proceedings unless it is absolutely unavoidable. The length of the proceedings is material on the question of sentence. The strain, anxiety and mental suffering to which the accused must have been subject during long time is a matter which may legitimately be taken into consideration in passing sentence. (Sanderson C. J. and Richardson J.) P. E. Billinghurst v. Emperor,

AIR 1924 Cal 18=82 I C 545=27 C W N 821=25 Cr L J 1313.

8. Matters to be considered—(d) Motive.

——In awarding sentence, the motive is not one which merits commendation. (Niyogi J.) Sheoshanker Dhondbaji Mahar v. Emperor,

A I R 1940 Nag 410=1940 N L J 165=13 R N 14=188 I C 885=41 Cr L J 697.

——Honourable motive.

Where an offence is committed the fact that it was committed with honourable motive is an extenuating circumstance. (Adami and Scroope JJ.) Rekha Rai v. Emperor,

CRIMINAL P. C. (V of 1898), S. 32 — 8. Matters to be considered—(d) Motive

A I R 1928 Pat 159 = 6 Pat 471=104 I C 436=28 Cr L J 820.

——Sentence—Motive.

The motive for the crime should be considered in inflicting the sentence. (Wazir Hasan A. J. C.) Chintaman v. Emperor,

AIR 1923 Oudh 180=10 O L J 54.

8. Matters to be considered—(e) Previous convictions.

——Number of previous convictions should be considered. (Horwill J.) In re Venkata Subbayya,

A I R 1943 Mad 418=56 M L W 107=1943 M W N 126=(1943) 1 M L J 192=16 R M 132 = 207 I C 238=44 Cr L J 585.

——Old offender—Rule.

There seems to be an idea prevalent in the minds of some Judges that there is a rule that the sentence on an old offender should always be a little more severe than the sentence just previous. But this so-called rule cannot be supported by any good reason and can never be safely followed in the interests of the proper administration of criminal justice. (Pandrang Row J.) In re Abdul Gani Sahib,

A I R 1937 Mad 231 = 1936 M W N 985=71 M L J 536=44 L W 558=9 R M 236=59 Mad 995 = 165 I C 387=37 Cr L J 1150.

——Previous convictions influencing quantum of sentence —Propriety.

There is no reason why previous convictions should not be used by the Court in exercising its discretion in regard to the quantum of the sentence even in cases where it is not intended or possible to exceed the limits fixed by the Penal Code. (Wallace J.) Suban Sahib v. Amperor,

A I R 1929 Mad 306=52 Mad 358=29 M L W 194=2 M Cr C 65=1929 M W N 393=115 I C 483 = 12 A I Cr R 256=56 M L J 595=30 Cr L J 471.

——Even with previous convictions — Sentence must fit the crime.

Court should exercise discretion in making the penalty fit the crime. The practice of committing petty offenders to the Sessions Court after three or four convictions should cease. Even if such offenders are committed there is no necessity for the Sessions Judge to inflict a vindictive sentence. (Macleod C. J. and Shah J.) King-Emperor v. Gala Mana,

AIR 1924 Bom 453=26 Bom L R 434=86 I C 343=26 Cr L J 759.

——Previous conviction in Feudatory State under law in terms identical with Indian Penal Code, whether can be taken into account while convicting accused in British India—Limits of sentence.—See Penal Code S. 75.

2 Cr L J 749 (Nag).

——Previous conviction—Enhanced sentence — Power of First Class Magistrate—See Penal Code, S. 75.

1 Cr L J 607 (Bom).

8. Matters to be considered—(f) Youth.

——Sentence—Death sentence in case of murder — Extenuating circumstances—Youth—See Penal Code (1860), S. 302.

A I R 1953 Trav-Co 402=1953 Cr L J 1613.

——Its consideration, when proper.

Youth alone in every case is not such an extenuating circumstance as would justify the imposition of the lesser penalty in cases of murder, but it should be taken into consideration with the other facts of the case.

While for the purpose of S. 15, Burma Prevention of Crime (Young Offenders) Act, the age must be ascertained

CRIMINAL P. C. (V of 1898), S. 32—8. Matters to be considered—(f) Youth

with reference to the time when the sentence is to be passed, the age with reference to the general question as to the capacity to exercise reason and self-control must be with reference to the time of the commission of the offence. (Mya Bu and Mackney JJ.) Nga Saw Htun v. Emperor

A I R 1937 Rang 121=10 R Rang 131 = 171 I C 125 =38 Cr L J 1022.

8. Matters to be considered—(g) Status.

——Rich and influential persons.

If rich and influential persons are too lightly dealt with though they are guilty, the respect for law and order will be seriously impaired. (Medapa C. J. and Vasudevamurthy J.) State of Mysore v. K. Basappa,

A I R 1953 Mys 75=31 Mys L J 38 = I L R (1953) Mys 79=1953 Cr L J 1064.

——Superior education and social status of accused.

Where the accused have had superior education and belong to superior social status, a sentence of imprisonment will be irksome and deterrent in their cases than in the cases of hardened criminals who actually carried out the dacoity. (Dunkley J.) Tha Ka Do Maung v. Emperor,

A I R 1935 Rang 491=8 R Rang 363=160 I C 292= 37 Cr L J 280.

——Respectability — Not being hardened litigant — If grounds for mitigation.

Although in rare and extreme cases a Court may be justified in evading the statute, still accused being a respectable man or not a hardened litigant, are not circumstances of extenuation. (Jackson J.) Kunhi Rana v. Emperor,

A I R 1929 Mad 226=1929 M W N 114=29 M L W 673=2 M Cr C 75=114 I C 234=12 A I Cr R 215=56 M L J 550=30 Cr L J 247.

——High position — Good service to Government — No grounds for reduction—Loss of reputation and old age—May be considered.

A man is not entitled to get off with a small sentence merely because he is a person of high position and one who has done good service for the Government in the past. When such a man falls in this manner everybody looks to see whether it is not true that there is one law for the rich and another for the poor, and a Court cannot lightly reduce the sentence in such a case to one far below that which should have been awarded to an ignorant and poverty-stricken offender who had in the same way fallen a victim to temptation. On the other hand, the facts that the accused suffers in the loss of his reputation and of his position, a much greater punishment than would be represented by rigorous imprisonment for one year to a common man, and at an old age detention in jail under sentence of rigorous imprisonment in the hot weather is even for a short time a very severe punishment, should be considered. (Pullan J.) Rabul Ahmad v. Emperor,

A I R 1927 Oudh 319 = 1 L C 220 = 103 I C 797=8 A I Cr R 424=28 Cr L J 749.

——Sentence—Position of parties.

When passing sentence the Court should keep in view the position of the parties. (Shah Din J.) Kewala Nand Gir v. Emperor,

34 P W R 1913 Cr=317 P L R 1913 = 21 I C 478= 14 Cr L J 606.

9. 'May pass any lawful sentence'.

——It is imperative that every conviction of an offence shall be followed by the prescribed punishment, while in case no minimum is prescribed, to reduce it to something nominal is completely within the discretion of Court. (Ray C. J. and Narsimham J.) King v. Tustipada Mandal,

A I R 1951 Orissa 284=15 Cut L T 12=I L R (1950) Cut 75=52 Cr L J 837.

——Ss. 32 (2), 34, 30 — Magistrate specially empowered under S. 30 — Whether can pass sentence of imprisonment in addition to whipping.

A person who commits an offence under S. 326, Penal Code, may be punished with whipping in addition to any other punishment to which he may be liable. He may, therefore, be sentenced to a term of imprisonment not exceeding seven years and in addition to a sentence of whipping, in view of S. 32 (2), Criminal P. C. and S. 3 of Burma Act VIII of 1927. (Roberts C. J. and Dunkley J.) Nga Kyan v. Emperor,

A I R 1937 Rang 183=14 R 662 = 9 R Rang 380= 168 I C 975=38 Cr L J 670.

——Discretion—Sentence.

The law vests a discretion in the trying Magistrate to pass adequate sentence in each case and it is for him to decide after taking into consideration all the pertinent circumstances of the case, what should be the adequate sentence. No rule of thumb can be laid down by a higher tribunal as a guide for the trying Magistrate in awarding an adequate sentence. Regina v. Thornton, (1909) Cr. App. Rep. 315, Ref. (Rupchand and Barlee A. J. Cs.) Murido v. Emperor,

A I R 1930 Sind 58=I R 1930 Sind 158=125 I C 46 =1930 Cr C 122=31 Cr L J 763.

——Where there is one offence punishable with two different provisions of law, one punishment only can be lawfully imposed. (Fforde and Addison JJ.) Bhagat Singh v. Emperor,

AIR 1930 Lah 266 = 121 I C 726 = 31 P L R 73 = 1930 Cr C 298 = 31 Cr L J 290.

——Penalty may not follow conviction.

There is no law that says a penalty must always follow a conviction. The maximum penalty for each breach of the law is fixed by it, but there is no minimum, except in a few special cases. (Hallifax A. J. C.) Sitaram Kunbi v. Emperor,

AIR 1928 Nag 188 = 24 N L R 110 =11 N L J 46= 10 A I Cr R 215=109 I C 234= 29 Cr L J 506.

——Sentence—Non-executable sentence.

A sentence cannot be passed of which execution is prohibited by law. (Shadi Lal and Martineau JJ.) Akbar v. Emperor.

AIR 1920 Lah 364 = 3 LL J 395 = 55 I C 466 = 30 P R 1919 (Cr) = 21 Cr L J 306.

10. Offences against prohibition.

——Offence against prohibition — Sentence— See Madras Prohibition Act (10 of 1937), S. 4-A.

AIR 1953 Mad 877 = 1953 Cr L J 1646.

——Offences under Travancore Prohibition Act — Deterrent sentences should be passed — See Travancore Prohibition Act (VII of 1123),

AIR 1952 T-C 550 = 1953 Cr L J 69.

——General principles as to punishments — (Bombay Prohibition Act (25 of 1949), S. 65 (b)).

Though the Magistrates have a discretion to inflict less than the minimum sentences, under S. 65, Bombay Prohibition Act, that discretion has to be exercised in the manner prescribed by that section and for special and adequate reasons only. To inflict less than the minimum sentence on grounds which are transparently untenable may amount to an evasion of law. The question as to what are adequate and special reasons has to be determined with reference to the facts of each case and it is the duty of the Magistrates to consider very carefully the

CRIMINAL P. C. (V of 1898), S. 32 — 10. Offences against prohibition

question of sentence in each case and satisfy themselves that there are genuinely adequate and special reasons calling for a lenient treatment of the offender. The fact that the accused is a first offender is no reason for inflicting less than the minimum punishment. Poverty alone is also no ground for imposing less punishment. (Shah C. J. and Baxi J.) State v. Bai Ladu Dana,

6 Sau L R 181.

——Excise offences— Illicit traffic in drugs — Fine is not sufficiently deterrent — Substantive sentence should be inflicted.

Where there have been several cases of persons living on the border line of foreign territory and importing excisable articles into British territory, it is desirable that as far as possible substantive sentence of imprisonment should be inflicted to prevent their recurrence. In the case of crimes such as illicit traffic in drugs, where the offender may make great profits by breach of the law, the payment of the fine is apt to be considered merely in the nature of a tax which is not deterrent at all. (Rupchand Bilaram and Tyabji, A. J. Cs.) Emperor v. Mustabi,

AIR 1926 Sind 193 = 20 S L R 70 = 94 I C 409 = 27 Cr L J 633.

11. Political offences.

——Political offence — Youth—Sentence of fine— Object.

In the case of an offence which does not involve any moral turpitude, it is difficult to determine what sentence should be imposed. Mere youth is not a sufficient excuse for indulging in political activities but at the same time, in imposing sentence, the Court should not ignore the youth of the offender. No doubt the fine imposed on the youth will probably have to be paid by the parent, but after all parents may reasonably be expected to restrain the activities of their children when those activities conflict with the law. The effect of imposing a fine is to give the parent the option of keeping the child out of jail by a moderate payment. (Beaumont C. J. and Weston J.) Emperor v. Kamal Dattatraya,

AIR 1943 Bom 304=45 Bom L R 581= 16 R B 93= 208 I C 455 = 44 Cr L J 786.

——Political offences.

In the case of political offences, arising out of the beliefs of the accused, severe sentences defeat their object. In practice, such sentences confirm the offenders in their belief and create other offenders thus increasing the evil and danger to the public. (Sulaiman C. J. and Young J.) S. H. Jhabwala v. Emperor.

AIR 1933 All 690 = 1933 A L J 799 = 6 R A 65 = 55 All 1040 = 145 I C 481 = 34 Cr L J 967.

12. Technical offences.

——Penalty for acting mala fide — Technical offences —Vindictive imposition — Improper.

Penalties must be provided and penalty sanctions must be used for bad cases where the individual has been contumacious and has palpably acted mala fide. But the penalty is only intended in terrorem and not to be used vindictively for technical offences. (Walsh J.) Nihal Muhammad v. Emperor,

AIR 1924 All 200 = 85 I C 41 = 21 A L J 774 = 4 L R A Cr 226 = 26 Cr L J 425.

——Nominal sentence.

A nominal sentence is always sufficient where the offence committed is a technical offence. (Arthur Reid C. J. and Rattigan J.) Sant Singh v. Crown

23 P W R 1910 Cr=16 P R 1910 Cr = 6 Ind Cas 952 =191 P L R 1910=11 Cr L J 421

CRIMINAL P. C. (V of 1898), S. 32

13. Uniformity of sentence.

——Charge under Ss. 147, 149 and 325, I. P. C. against several accused—Conviction under S. 147 of all accused— Court is not justified in passing more severe sentence on one accused in absence of evidence that he had taken prominent part—See Penal Code (1860), S. 147

A I R 1952 Madh B 205=1953 Cr L J 6.

——Justice should be even-handed. Other things being equal, the same offence should receive the same punishment. (Ferrers J. C. and Aston A. J. C.) Udha Ram v. Emperor

A I R 1932 Sind 143=Ind Rul (1932) Sind 170=140 I C 23=33 Cr L J 900.

——Impossible to maintain.

The principle of uniformity in convictions and punishments cannot be maintained in all cases where there are two trials—One original and the other supplementary — one batch of prisoners being tried by one Judge and one jury and the other batch by a different Judge and different jury. (Walmsley and Suhrawardy JJ.) Mofezuddi v. Emperor

A I R 1924 Cal 435=72 I C 65=24 Cr L J 305.

14. Whipping.

——S. 32 (2)—Whipping—Rule that a certain number of lashes is equivalent to imprisonment — Whether applies when sentences of different kinds are combined.

The guide that a certain number of lashes might be taken as the equivalent of a certain number of months' imprisonment, which is of importance when questions of commutation of sentences have to be considered, is of no application in a case where a Magistrate is lawfully combining two different kinds of sentences in accordance with the powers under S. 32 (2), Cr. P. C. (Roberts C. J. and Dunkley J.) Nga Kyan v. Emperor

A I R 1937 Rang 183=14 R 662=9 R Rang 380=168 I C 975=38 Cr L J 670.

——Sentence—Whipping—When to be inflicted.

When a person inflicts pain upon another and when the offence is one which permits of the penalty of whipping, it is a good thing to inflict that penalty. There are, of course, circumstances in which the actual hurt caused is very slight and that is a circumstance to which attention has to be paid. (Mears C. J. and P. C. Banerjee J.) Badri Prasad v. Emperor

A I R 1922 All 245=44 All 538=20 A L J 388 = 66 I C 418=23 Cr L J 274.

15. Miscellaneous.

——Offence under S. 304, Part 1, Penal Code — Sentence to be commensurate with nature of offence — See Penal Code (1860), S. 304, Part I

A I R 1953 All 464=1953 Cr L J 1034.

——Offence under S. 323/34, Penal Code—Sentence—See Penal Code (1860), S. 323

A I R 1953 All 358=1953 Cr L J 817.

——Falsification of account — Sentence, nature of — See Penal Code (1860), S. 477A

1953 Mad W N 772.

——Sentence—See Motor Vehicles Act (1939), S. 112.

I L R (1952) 2 Raj 941.

——Punishment—Sentence whether excessive—Dangerous Drugs Act (1930), S. 10.

Sentence of six months' rigorous imprisonment and Rs. 500 fine on accused reported to be 65 years of age and in good health and convicted of an offence under S. 10, Dangerous Drugs Act, 1930, was held not excessive considering the quantity and purpose for which he smuggled opium. (Atma Charan J. C.) Ram Lal v. Rex

A I R 1950 Ajmer 17 (2)=51 Cr L J 920.

——Motor cases—Rash and negligent driving.

CRIMINAL P. C. (V of 1898), S. 32—S. 15. Miscellaneous

It is no part of the duty of Courts to punish with savage sentences every motorist who has the misfortune to have an accident which results in loss of life, even though the accident be due to an error of judgment on the part of the driver. The circumstances of each case must be considered in imposing sentence. (Beaumont C. J. and Wassoodew J.) Emperor v. Khan Mahomed Sher Mahomed

A I R 1937 Bom 96=9 R B 411=38 Bom L R 1111=168 I C 870=38 Cr L J 660.

——Offence, but for chance, would have been more serious —Maximum punishment called for.

Where it was only a chance that an unlawful assembly of Mahomedans did not come across any Hindu to beat, but if they had the opportunity they would have beaten and perhaps killed any Hindu coming across them.

Held, that these circumstances called for a maximum punishment. (King J.) Wajidali v. King Emperor

A I R 1927 Oudh 151=4 O W N 240=100 I C 817 = 7 A I Cr R 567=28 Cr L J 337.

——Sentence — Severity of sentence should be lessened because of service to Crown.

Where the accused has rendered service to crown, in giving evidence against some members of his gang which evidence resulted in their conviction, his conviction was altered from one of death to that of transportation for life. (Piggot, Lindsay and Sulaiman JJ.) Sardara v. King-Emperor

A I R 1924 All 220=22 A L J 85 = 5 L R A Cr 25=46 All 236=81 I C 604=25 Cr L J 956 (FB).

——No two punishments for the same act.

Where either of the two offences under different acts was constituted by the same acts, the offender could not be punished for both. (Zafar Ali J.) Bahadur Singh v. The Crown

AIR 1923 Lah 342=76 I C 689=25 Cr L J 225.

——Court's duty—Cruelty to animals.

Honorary Magistrates should deal severely with cases of great cruelty to animals. (Heald J.) Emperor v. Bejai

AIR 1924 Rang 373=3 Bur L J 155.

——Sentence—Alleviating circumstances.

The hirer of an article (a motor car) under a hire-purchase agreement sold it as his own before he had paid up all the instalments. He however paid the insurance, he paid the expenses of the Motor Traders, Ltd., representative, and he paid in the uncertain way, in which these people always pay, instalments from time to time, and he went on paying even after he had sold. The payments were accepted by the Motor Traders, Ltd. They, because they failed to get their money, launched the prosecution :

Held the circumstances justified a reduction of sentence. (Walsh J.) Cadd v. Emperor

A I R 1923 All 598 = 45 All 588 = 21 A L J 510 = L R 4 A Cr 118=73 I C 508=24 Cr L J 620.

—S. 33.

See also Penal Code, Ss. 63, 70.

——Sentence of imprisonment or fine or imprisonment in default of fine — Considerations — See Penal Code, 1860, S. 60

AIR 1950 Kutch 73.

——Under S. 33 (1), Cr. P. C., a Magistrate may award, in default of payment of fine, such a term of imprisonment as is authorised by law. (Davis C. J. and Tyabji J.) Ghulam v. Emperor

AIR 1943 Sind 124=ILR (1944) Kar 1=16 R S 26=207 I C 348=44 Cr L J 637.

——S. 33, provisos — Provisos, if extend period of imprisonment which may be awarded under S. 65, Penal Code.

CRIMINAL P. C. (V of 1898), S. 32 — 15. Miscellaneous

The provisos to S. 33, Cr. P. C., do not extend the period of imprisonment which may be awarded under the provisions of S. 65 of the I. P. C. (Dhavle J.) Goukul Chandra v. Sribodh Chandra

AIR 1941 Pat 48=21 P L T 795=7 B R 58=18 R P 264=190 I C 598=41 Cr L J 957.

——Sentence—Joint fine with terms of imprisonment in default in case of each of two accused—Legality.

Sentence of a joint fine with terms of imprisonment in default passed on two accused in the case of each of them is plainly open to the objection that it is impossible to say whether either of the convicted persons is liable to suffer the entire term of imprisonment and for what proportion of the default. Such a sentence cannot be sustained. (Dhavle J.) Safder Khan v. Gaya Municipality.

A1R 1938 Pat 271 = 10 R P 590 (1) = 4 B R 539 = 19 P L T 748=175 I C 176=39 Cr L J 531 (1).

——Accused undergoing full term of imprisonment — Release on offering security to pay fine by instalments — Re-committing him to jail — Imprisonment in default of fine, if can be inflicted.

Where a person who was sentenced to imprisonment and fine was released after undergoing his full term of imprisonment on offering security for fine payable by instalments, he cannot be re-committed to jail and imprisonment in default of fine cannot be inflicted on him. (Dalip Singh J.) Teja Singh v. Emperor

AIR 1936 Lah 348 = 37 P L R 45=8 R L 810 (2)=161 I C 886=37 Cr L J 503 (1).

——Jurisdiction — Trial for lesser offence than that charged—No jurisdiction—Time if void.

Where the offence complained of was one under S. 430, I. P. C., but the Bench tried the accused for a lesser offence under S. 426, I. P. C. and it appeared that they had jurisdiction to try the former and not the latter offence :

Held, that the proceeding was not void : 24 M 675 and AIR 1915 Mad 9, Foll. (Sundaram Chetty J.) Picha Kudumban v. Servaikara Thevan

AIR 1931 Mad 494=I R 1931 Mad 692=133 I C 4=1931 Cr C 558 = 1930 M W N 770 = 3 M Cr C 221 = 32 Cr L J 971.

——Ss. 33 and 262, Cl. (2) — Imprisonment for four months in default of fine cannot be awarded. (Wilberforce J.) Ghasita Mal v. Emperor

AIR 1921 Lah 236 = 3 Lah L J 346 = 59 I C 849 = 22 Cr L J 145.

—S. 34.

——A Magistrate specially empowered under S. 30, can pass sentence of imprisonment in addition to whipping. (Roberts C. J. and Dunkley J.) Nga Kyan v. Emperor

AIR 1937 Rang 183 = 14 R 662 = 9 R Rang 380 = 168 I C 975=38 Cr L J 670.

——Ss. 30, 34 — Magistrate empowered under S. 30 — Sentence covered by S. 34.

Once a Magistrate has been specially empowered under S. 30, by the Local Government, he can necessarily, when acting as a Magistrate, exercise the powers mentioned in S. 34; he cannot at will divest himself of the powers conferred upon him and he cannot by any action of his own, become a First Class Magistrate not empowered under S. 30. Far less by an unintentional failure or even by a habitual failure to describe himself as being so empowered, can he divest himself of his powers.

A Magistrate empowered by the Local Government under S. 30, need not mention the existence of his special powers in order to exercise them, or in order to pass any

sentence covered by S. 34. (Middleton J. C. and Mir Ahmad A. J. C.) Nadar Alam Khan v. Emperor
AIR 1935 Pesh 108 = 8 R Pesh 12 = 157 I C 211 = 36 Cr L J 1143.

——A Magistrate empowerd under S. 30 need not mention the existence of his special powers in order to exercise them, or in order to pass any sentence covered by S. 34, Criminal P. C. (Middleton J. C. and Mir Ahmad A. J. C.) Nadar Alam Khan v. Emperor,
A I R 1935 Pesh 108=8 R Pesh 12=157 I C 211=36 Cr L J 1143.

——Power to pass sentence in excess of powers of First Class Magistrate.

A Magistrate exercising powers under S. 30, but not signing himself as a Magistrate exercising powers under S. 30 cannot pass a sentence in excess of the powers which are normally conferred upon an ordinary First Class Magistrate. (Agha Haider J.) Emperor v. Sukhdeo Raj,
AIR 1934 Lah 361 (1)=7 R L 116 (1)=151 I C 265=35 Cr L J 1288 (1).

——Ss. 30 and 34 — Assistant Agent of Chicacole is empowered under S. 30 and has no power to pass sentences beyond three years. He is, therefore, not competent to try offence under S. 397, I. P. C. (Lakshmana Rao J.) Jothono Savara v. Emperor,
1934 M W N 1286.

——Stay pending civil proceedings — Grounds for—Prosecution due to spite—Ground for stay.

That a prosecution is not launched in public interest is no ground for quashing proceedings but is ground for staying them pending civil proceedings between the parties. (Venkatasubba Rao J.) Ramanathan Chettiar v. Sivarama Subramania Aiyar,
A I R 1925 Mad 39 = 47 M L J 373=81 I C 785=47 Mad 722=20 M L W 234=35 M L T 77=1924 M W N 556=25 Cr L J 1009.

——Magistrate not purporting to act under—Sentence.

Where the 1st class Magistrate was described in the heading of his judgment as being invested with S. 30 powers, but did not purport to act under it he could not pass sentence of rigorous imprisonment for more than two years (Reid, Offg. C. J.) Mahi v. Emperor,
3 P W R Cr 36=7 Cr L J 461.

——Previous conviction in Feudatory State under law identical in terms with I. P. C.—Limits of punishment in British India.—See Penal Code, S. 75.
2 Cr L J 749 (Nag).

—S. 34A.

——European British subject — Jurisdiction of Courts—Sentence that can be passed — Foreigner not European British subject, whether entitled to any privileges.

Although there is still some privilege as regards the Courts by which a European British subject can be tried, there is practically no privilege with regard to sentence and under S. 34-A, Criminal P. C., as amended by Act XXVIII of 1923, a Court of Session can pass a sentence of death, penal servitude or imprisonment with or without fine, or of fine upon a European British subject.

A foreigner who is not a European British subject is not entitled to any privileges in the matter of trial or of sentence. (Niyogi and Staples A. J. Cs.) Rego v. Emperor,
A I R 1933 Nag 136=29 N L R 251=Ind Rul (1933) Nag 153=143 I C 17=34 Cr L J 505.

—S. 35.

SYNOPSIS

1. Scope of the section.
2. Principle and theory of punishment. See S. 32.
3. "One trial."

4. Section 35, Criminal P. C. and S. 71, Penal Code.
5. "Two or more offences".
6. "May sentence".
7. Separate and aggregate sentences.
8. Consecutive sentences.
9. Imprisonment and whipping.
10. "Unless the Court directs."
11. Concurrent sentences.
12. Imprisonment or transportation.
13. Imprisonment in default of payment of fine.
14. Sentences in separate trials — Execution of. See ibid, S. 397.
15. Sub-section (2) Proviso (a).
16. Sub-section (2)—Scope.
17. Aggregate of sentences—Appeal.

1. Scope of the section.

——'May pass' — Separate sentences for each conviction.

A conviction must be under the provision of law which prescribes the penalty and must be clearly found on the facts and separate sentences must be passed on each conviction. (Rege J.) Kadar v. State,
1 Madh B L R 443.

2. Principle and theory of punishment.
See S. 32.

3. "One trial.

——Different trials.

——Court can order two or more sentences to run concurrently only when they are passed in the same trial. (Sulaiman J.) Dulli v. Emperor,
AIR 1925 All 305=85 I C 714=47 All 59 = 6 L R A Cr 10=26 Cr L J 570.

——Separate trials but concurrent sentences.

In respect of three separate acts of offence, there were three separate trials of the same accused, and three separate sentences of imprisonment, passed by the same Magistrate and on the same date, the Magistrate ordered in each case that the sentence was to run from the date of conviction. As a result the sentences were to run concurrently:

Held, that inasmuch as there had been three separate trials under S. 397, the sentences could only run consecutively and that S. 35 did not give the Court power to direct them to run concurrently inasmuch as S. 35 relates to sentences in cases of convictions of several offences at one trial. (Tudball J.) Harak Narain v. Emperor,
A I R 1921 All 126=62 I C 408=19 A L J 310=L R 2 A (Cr) 38=22 Cr L J 520.

——Concurrent sentences in different trials not legal—Nominal sentence should be passed.

There is no provision in the Code enabling the Courts to make sentences in different cases run concurrently.

Where a person is convicted of an offence and sentenced to undergo a term of imprisonment and found guilty by another Judge of a precisely similar offence in another case, it is illegal to pass a concurrent sentence along with the previous one. If the Judge is of opinion that the previous sentence is adequate he should pass a

CRIMINAL P. C. (V of 1898), S. 35—3. "One trial"

nominal sentence on the accused. (Walsh J.) Emperor v. Bhikki,

A I R 1920 All 211 = 2 U P L R (All) 96=L R 1 A Cr 145=55 I C 1006=21 Cr L J 398.

——Concurrent sentences in separate trials—Illegal.

An order that the sentences against the accused in two separate trials should run concurrently is illegal. (Chitty and Smither JJ.) Joyenallah Bepari v. Emperor,

A I R 1918 Cal 243=22 C W N 597=46 I C 158=19 Cr L J 702.

——Separate trials—Concurrent and conterminous sentences cannot be passed.

Where the accused was tried at four separate trials upon four distinct charges, no sentence can be passed against the accused so as to run concurrently, nor can sentences be passed to be served conterminously. (Parlett J.) Nga Pya v. Emperor,

6 Bur L T 67=20 I C 212=14 Cr L J 388.

——Concurrent sentences.

A Sessions Judge cannot order a sentence passed by him to run concurrently with one passed by another court in some other trial. (Tudball J.) Makbul Husain v. Emperor,

11 A L J 263=19 I C 336=14 Cr L J 240.

——Ss. 35 and 234—One trial for two charges — Concurrent sentences can be given.

The accused was tried and convicted separately for two offences of cheating on one and the same day but one after the other. For all practical purposes the trial was one and under S. 35 sentences can be ordered to run concurrently. (Chandavarkar and Heaton JJ.) Emperor v. Mahomed Isak Habib,

13 Bom L R 200=10 I C 769=12 Cr L J 241.

——Ss. 35, 397—Sentence passed at different trials.

Section 35 does not authorize any Court to direct that two or more sentences shall run concurrently except sentences passed at one and the same trial. Section 397 is explicit and gives the Court no option; a sentence of imprisonment must commence at the expiry of the previous sentence. (Irwin J.) King-Emperor v. San E,

4 L B R 147=7 Cr L J 445.

4. Section 35, Criminal P. C. and S. 71, Penal Code.

——Separate sentences— Offences under Ss. 147 and 323 or 324 or 325 or 326 read with S. 149, Penal Code — See Penal Code, S. 71,

A I R 1953 All 510=1953 Cr L J 1222.

——(as amended)—Separate sentences for being members of unlawful assembly and for common objects of unlawful assembly—Legality.

Under S. 35, as amended in 1923, separate sentences for offences under Ss. 143, 379 and 427, Penal Code, are not illegal, although the offences under Ss. 379 and 427, Penal Code, formed the common objects of the unlawful assembly. (Ellis and Ibrahim JJ.) Aftan Fakir v. Israfil Khan,

54 C W N (2 D R) 311=52 Cr L J 359 (Dacca).

——Sentence—Conviction for two offences—Punishment — Court whether can refuse to pass sentence for either of them—See Penal Code (1860), S. 71,

A I R 1950 All 610.

——Accused extorting money by wrongful confinement of complainant — Accused convicted by second class Magistrate on charges under Ss. 342 and 384, Penal Code, and sentenced to fine of Rs. 200 on each count—Offence committed being essentially one offence, imposition of two different sentences was improper—Sentence of fine in respect of charge under S. 342 set aside as being in excess

CRIMINAL P. C. (V of 1898), S. 35—4. S. 35, Criminal P. C. and S. 71, Penal Code

of Magistrate's power — See Criminal P. C. (5 of 1898), S. 32,

A I R 1948 Cal 6=48 Cr L J 389.

——Ss. 35, 397 — Separate sentences for offences under Ss. 457 and 380, Penal Code (Act XLV of 1860), if can be passed.

As S. 35, Cr. P. C., now stands, there is nothing to prevent the Court to pass separate sentences for offences under Ss. 457 and 380, Penal Code. But the question is not of much practical importance as in an overwhelmingly large number of cases, the punishment provided for any one of these two offences will be sufficient and if the Court of Appeal finds that the trial Court has wrongly passed two separate sentences but the sentences taken together are not excessive, they can be consolidated. (Mohammad Noor and Varma JJ.) Idris v. Emperor.

AIR 1939 Pat 349=12 R P 121=5 B R 907=20 P L T 736=183 I C 217=40 Cr L J 751.

——Same transaction — Multiple injuries — Sentence —(Penal Code, S. 71.)

Where more than one injury is caused in one and the same transaction, the accused should be punished for only one of them. (Blacker J.) Raju v. Emperor.

40 P L R 562.

——Ss. 35, 397 — Scope of — Charge at same trial with commission of two different offences—Conviction only for one — Conviction and sentence for the other — Necessity of — Penal Code (Act XLV of 1860), S. 71 : 1 L B R 33, Overruled.

Section 35, Cr. P. C., relates merely to the quantum of the punishment that the Court has jurisdiction to pass where the accused is convicted of two or more offences at one trial, and does not purport to provide whether, and if so under what circumstances, the Court has jurisdiction to pass or to refrain from passing sentence in respect of the offences of which the accused has been convicted, or any of them. The object and effect of S. 35, Cr. P. C., was to regulate and in some instances to increase (subject to S. 71 of the Penal Code) the punishments that the Courts in certain circumstances were competent to award (see Ss. 31 to 34); and it was not intended thereby to provide that it was not incumbent upon the Court to pass a sentence upon the accused in respect of any of the offences of which he had been convicted in the circumstances referred to in the section.

Where the accused was charged at one trial with having committed two offences, one under S. 37 and the other under S. 30, Excise Act, the accused pleaded guilty to both charges and the Magistrate convicted the accused for the second offence and imposed a fine but did not convict the accused for the first offence :

Held, that in a case where the provisions of S. 71 of the Penal Code do not come into play, the Court has no discretion whatever to pass only one sentence for one offence and decline to pass sentences for the other offences of which it may find the accused guilty. Separate sentences must be passed for the several offences of which the Court finds the accused guilty. The aggregate punishment and the length of the period of imprisonment must not exceed the limit fixed by the provisos and that the accused must be convicted under S. 37 as well : 1 L B R 33, Overruled. (Page C. J. and Ba U J.) Emperor v. Mi Hlwa.

AIR 1934 Rang 338=12 Rang 419=7 R Rang 255=154 I C 75=36 Cr L J 460.

CRIMINAL P. C. (V of 1898), S. 35—4. S. 35, Criminal P. C. and S. 71, Penal Code

——Rioting and hurt.

Where on conviction for rioting and hurt, the accused had been sentenced to rigorous imprisonment for two months for the former, and to a fine of Rs. 25 for latter offence.

Held that two separate sentences in such case were legal : AIR 1926 All 225; AIR 1926 Lah 521; AIR 1924 Rang 291 and 17 Bom 260 (FB), Foll. (Zafar Ali J.) Faqiria v. Emperor.

114 I C 331=12 A I Cr R 213=30 Cr L J 295 (Lah).

——Ss. 323, 324 and 325, I. P. C.

Separate sentence on charges under Ss. 323, 324 and 325, I. P. C., is not bad in law because the acts in respect of which such charges were made were included within the charge under S. 147 : 3 C W N 174 and 8 C W N 483 held to be no more good law. (Duval and Mitter JJ.) Fatiar Bop v. Emperor.

AIR 1927 Cal 575=31 C W N 691 = 103 I C 799=8 A I Cr R 380=28 Cr L J 751.

——Ss. 147 and 353, I. P. C.

Separate sentences under Ss. 353 and 147, Penal Code, cannot be passed when the act which converts the accused into an unlawful assembly in the same as renders them liable to punishment under Penal Code, S. 353. (Zafar Ali J.) Manak Chand v. Emperor.

AIR 1926 Lah 581=95 I C 754=27 Cr L J 834.

——Ss. 149 and 325, I. P. C.

Accused can be convicted both under S. 325 and S. 149, I. P. C., at one trial : 16 Cal 442, Foll. (Findley, Offg. J. C.) Deoji v. King Emperor.

AIR 1926 Nag 459=95 I C 606=27 Cr L J 830.

——If a person abducts a woman with intent to rape her and does rape her, he cannot be awarded separate sentences under Ss. 363 and 376, I. P. C. (Cr. A. 101 of 1914, Appl.) (Zafar Ali J.) Imam Ali v. Emperor.

AIR 1926 Lah 212=92 I C 850=27 Cr L J 338.

——Ss. 146 and 325, I. P. C.

Separate sentences for the offence of rioting and hurt are legal when it is found that each person took an individual part in the assault : 40 Cal 511, Foll.; AIR 1923 Cal 408, Dist. (Newbould and B. B. Ghose JJ.) Kapil Mandal v. Rabbani Sheikh.

AIR 1925 Cal 1039 = 89 I C 241 = 41 C L J 471=26 Cr L J 1297.

——Ss. 380 and 457, I. P. C.

There is nothing in S. 71 of the Indian Penal Code that in any way restricts the power of Court under S. 35 of the Code of Criminal Procedure of 1923. Therefore separate sentences can be passed under S. 35 as amended for an offence of house-breaking at night with intent to commit theft under S. 457, I. P. C., and of theft of ornaments from that house under S. 380, I. P. C., and the sentences of imprisonment can be made to run one after another. (Newbould and B. B. Ghose JJ.) Kanchan Molla v. Emperor.

AIR 1925 Cal 1015 = 88 I C 997 = 41 C L J 563=26 Cr L J 1253.

——Separate convictions — Separate sentences should be given.

Where there are two or more separate convictions for two or more distinct offences in the same case, S. 35 contemplates that a separate sentence should be passed for each offence. (Shadilal J.) Emperor v. Wadhawa.

AIR 1918 Lah 297=46 P R 1917, Cr = 43 I C 799= 19 Cr L J 223.

——Applicability to separable offence within the meaning of S. 71, Penal Code—Legality of separate sentences—See Penal Code (1860), S. 71.

11 Cr L J 415 (Sind).

CRIMINAL P. C. (V of 1898), S. 35—4. S. 35, Criminal P. C. and S. 71, Penal Code

——Separate sentences for offences under Ss. 342 and 352, Penal Code—See Penal Code (1860), S. 71.

4 Cr L J 69 (Cal).

——Distilling and possession of spirit—Separate sentences—Legality—See Penal Code (1860), S. 71.

1 Cr L J 552 (Burma).

——Penal Code (Act XLV of 1860), Ss. 147, 447—Conviction under—Legality of separate sentences.

Where the common object for rioting and the intention for criminal trespass was substantially the same viz., to cut the crops on the complainant's land it was held that separate convictions under Sections 147 and 447, Penal Code were illegal, having regard to the illustration in S. 35 of the Criminal Procedure Code. (Ghose and Stephen JJ.) Bhup Singh v. Emperor.

8 C W N 305=1 Cr L J 139.

5. "Two or more offences."

——Ss. 35, 397—Theft of calf and subsequent killing of it constitute two offences of theft and mischief. Separate convictions and sentences are therefore legal in such cases. (Barlee and Divatia JJ.) Emperor v. Bhawan Surji

AIR 1936 Bom 172=60 Bom 627=38 Bom L R 164= 8 R B 405=162 I C 283=37 Cr L J 553.

——Ss. 35, 397—Two dacoities by accused—Two separate offences—Separate punishments, if can be awarded.

Separate punishments can be awarded if the offences committed are two separate and distinct dacoities. (Dunkley J.) Nga Po Nyein v. Emperor

AIR 1934 Rang 122=7 R Rang 15= 150 I C 747=35 Cr L J 1161 (1).

——Sentence — Offence under the penal enactments — Punishment for one or the other only.

Where an act is punishable both under the Penal Code as well as some other penal enactment the offender can be punished under one or the other, but not under both the penal enactments. (Krishnan Pandalai J.) Veeraswami Naicken In re

AIR 1931 Mad 18=1931 Cr C 32= 129 I C 451=1930 M W N 529=33 M L W 205= 4 M Cr C 139= 15 A I Cr R 452= 32 CrL J 354.

——Separate offences.

Offence of forgery and that of using forged document as genuine are separate offences and separate sentences may be passed on an accused person who has been convicted at the same trial of both ; 23 All 84, Not Appr. (Waller and Jackson JJ.) Sriramulu Naidu v. Emperor

AIR 1929 Mad 450 =56 M L J 554=52 Mad 532=29 M L W 559=1929 M W N 279=2 M Cr C 87=119 I C 63=30 Cr L J 983.

——S. 120-B with Ss. 396 and 412, I. P. C.

The offence under S. 120-B with S. 396 is a separate offence from the offence of participation in a particular dacoity or the dishonest reception of property stolen in dacoity knowing it to be stolen. Separate sentence can be awarded to run consecutively for participation in separate dacoities and to these can also be added a consecutive sentence of participation in conspiracy. (Stuart C. J. and Raza J.) Hazari Beria v. Emperor

AIR 1928 Oudh 507 = 5 O W N 985 = 12 A I Cr R 252=115 I C 276=30 Cr L J 473.

——Ss. 411 and 414, I. P. C.

Offence of receiving stolen property under S. 411, I.P.C., and that of assisting to conceal other stolen property under S. 414, I. P. C., are distinct. (Fawcett and Mirza JJ.) Emperor v. Hanma Timma Bhandiwaddar

AIR 1928 Bom 145=109 I C 368=30 Bom L R 383= 10 A I Cr R 159=29 Cr L J 544.

——Bombay Abkari Act (1879), S. 43 (1) (a) and (b).

CRIMINAL P. C. (V of 1898), S. 35 — 5. "Two or more offences"

The offence of possessing illicit liquor is not necessarily covered by the offence of possessing the apparatus for manufacturing such liquor. The two offences are quite distinct. (1890) Rat. Unrep. Cr. C. 523, Foll. (Fawcett and Mirza JJ.) Emperor v. Pandu Anachit Bhil.

AIR 1928 Bom 141=52 Bom 277=10 A I Cr R 114=30 Bom L R 378=108 I C 512=29 Cr L J 412.

——Separate offences in the same transaction.

If the three distinct offences are committed, the offenders are liable to punishment for each offence though all three are committed in the course of the same transaction. (Zafar Ali J.) Pira v. Emperor

27 P L R 347=95 I C 594=8 L L J 198=27 Cr L J 818.

——Two offences committed — Separate transactions — Conviction of both.

If a man commits two offences he can certainly be convicted of them both more especially when they are separate transactions and the commission of one does not necessarily involve the commission of the other. (Hallifax A. J. C.) Gajanan Sakharam v. The King Emperor

AIR 1924 Nag 162=77 I C 825=25 Cr L J 473.

——Same acts constituting offences under two different statutes — Separate punishments for offences under the statutes — Legality of — See General Clauses Act (1897), S. 26.

AIR 1923 Lah 342=25 Cr L J 225.

——Manufacture and possession of excisable article.

The offence of manufacture of an excisable article necessarily includes that of possession, and the two offences cannot be called "distinct" for the purposes of S. 35 of the Criminal P. C. (1 Bom L R 344, Foll.) (Hallifax A. J. C.) Sheikh Munir v. Emperor

AIR 1924 Nag 32=76 I C 19=25 Cr L J 83.

——Separate offence — Conviction under Ss. 392 and 75, I. P. C.

A person convicted of offences under Ss. 392 and 75 of the I. P. C., is not convicted of separate offences within S. 35, Criminal P. C., and the awarding of two separate sentences for those offences is illegal. (Spencer J.) In re Muthurakka Thevan

AIR 1916 Mad 829=18 M L T 121=2 L W 631=30 I C 435=16 Cr L J 611.

——Penal Code, Ss. 357, 380—Distinct offences—Power to pass consecutive sentences — The offences under Ss. 457 and 380 of the Penal Code not being distinct offences, the trying Magistrate's ordinary jurisdiction is not enhanced by the provisions of para. 2 and proviso (b) of S. 35 of the Criminal P. C. (Aston and Heaton JJ) Emperor v. Dhondi Bapu Bhapker

8 Bom L R 850=4 Cr L J 445.

6. "May sentence."

——No legal bar to a person being convicted both under S. 302 and S. 201, Penal Code— But no punishment for accessory offence should be passed—See Penal Code (1860), S. 71.

AIR 1953 Trav-Co 402=1953 Cr L J 1613.

——Section 35 is permissive and not obligatory. (Lakshmi Narain J. C.) Muksud Ali v. Sajan Ali

AIR 1953 Tripura 8=1953 Cr L J 1536.

——'Subject to the provisions of S. 71, Penal Code.'

Acts constituting two different offences viz., under Ss. 447 and 427, Penal Code forming part of same transaction — Conviction for both — Separate sentences are not necessary—One sentence is proper. (Lakshmi Narain J. C.) Muksud Ali v. Sajan Ali

AIR 1953 Tripura 8=1953 Cr L J 1536.

——Bombay Prohibition Act (XXV [25] of 1949), Ss. 65 (b), (f) and 66 (b) — Accused tried at one trial for offences

CRIMINAL P. C. (V of 1898), S. 35 — 6. "May sentence"

under— Conviction — Separate sentences — Penal Code (1860), S. 71.

Although separate sentences can legally be passed at the same trial on a person charged with offences punishable under Ss. 65 (b), 65 (f) and 66 (b), subject to the limit as regards aggregate punishment imposed by S. 71, Penal Code, ordinarily one sentence alone should be passed for the offence of manufacturing liquor under S. 65 (b). Of course, if the accused is shown to be in possession of liquor not distilled by him, it would be proper to pass separate sentences: Cr. Rev. No. 1060 of 1949, dated 18-11-1949 and AIR 1951 Bom 186, Rel. on. (Dixit and Chainani JJ.) Pujamal v. State of Bombay

AIR 1951 Bom 244=21 Bom Cr C 27=I L R (1950) Bom 795=52 Bom L R 788.

——Ss. 35, 397 — Sentence — Person's connection with specific offence only through conspiracy—Person sentenced for conspiracy — Additional sentence for specific offence should not be passed.

Where a person's proved connection with the specific offence of cheating is only through the general conspiracy to cheat and he has already received a sentence of two years' rigorous imprisonment for his part in the general conspiracy, there should be no additional sentence on the cheating charge. (Bartley and Rau JJ.) Solomon Ezekiel v. Emperor,

A I R 1939 Cal 376=69 C L J 298=12 R C 465=186 I C 171=41 Cr L J 255.

——Ss. 35, 397 — Sentence — One sentence under two sections of the Penal Code—Whether can be passed.

A conviction of all the accused persons under Ss. 325 and 147, Penal Code, read with S. 149, Penal Code, is not correct inasmuch as there should not be one sentence under two sections of the Penal Code. (Srivastava, J.) Saun Pande v. Emperor,

A I R 1934 Oudh 279=7 R O 74=11 O W N 992=10 Luck 100=150 I C 945=35 Cr L J 1159.

——Ss. 35, 397—'May', significance of.

The word 'may' in S. 35, Criminal P. C., not only confers a power but also imposes the duty of putting it in use. (Ferrers, J. C. and Aston, A. J. C.) Emperor v. Dharamdas,

A I R 1933 Sind 9=26 S L R 416=Ind Rul (1933) Sind 46=141 I C 280=34 Cr L J 143.

——Measure — The principal object of punishment is the prevention of crime and the measure of punishment must consequently vary from time to time according to the prevalence of a particular form of crime and other circumstances. (Tapp, J.) Om Parkash v. Emperor,

A I R 1930 Lah 867=I R 1930 Lah 833=127 I C 209=1930 Cr C 911=31 Cr L J 1182.

——One sentence—Ss. 148 and 326, I. P. C.

Separate sentences under Ss. 148 and 326 read with S. 149, I. P. C., are illegal. The amendment of S. 35, Cr. P. Code, has not effected any change in the law. 16 Cal 442 (F B) and A I R 1918 Pat 227, Foll.; 17 Bom 260 (FB) and AIR 1926 Bom 64, not Foll. (Courtney-Terrell, C. J. and Allanson, J.) Baja Singh v. Emperor,

A I R 1929 Pat 263=8 Pat 274=10 P L T 353=120 I C 311=1929 Cr C 23=31 Cr L J 83.

——Ss. 148 and 326, I. P. Code—Practice.

Since the amendment of S. 35 it is legal to pass separate sentences for charges under S. 148 and S. 325 or S. 326, although in practice it is undoubtedly better to give a single sentence for all the offences or order the sentences to run concurrently. 4 P R 1901 (Cr), not Foll.; A I R 1926 Bom 64, Foll. (Skemp, J.) Ali Akbar v. Emperor,

A I R 1929 Lah 670=116 I C 216=1929 Cr C 210=12 A I Cr R 433=30 Cr L J 575.

CRIMINAL P. C. (V of 1898), S. 35 — 6. "May sentence"

——Two offences committed in one transaction.

A person committing offences of house trespass and an attempt to murder an occupant may be convicted for both offences but no separate sentence should be inflicted. 23 Bom 706 (F B), Foll. (Shadi Lal, C. J.) Barkat v. Emperor,

60 I C 54=22 Cr L J 198 (Lah).

——Sentence, inflicting of higher.

An accused should not be given a higher sentence than the greatest in any one of the sections when the same offence has been provided for, in several sections. (Walsh, J.) Dharmdeo Singh v. Emperor,

A I R 1916 All 49=35 I C 978=14 A L J 738=17 Cr L J 418.

——Offences under Ss. 366 and 373, I. P. C., forming part of one transaction — Single sentence — See Penal Code, S. 366.

10 Cr L J 176 (Kathiawar).

——Double conviction—Sentence—See Penal Code, S. 71.

7 Cr L J 76 (Burma) (FB).

——Sentence — Offences all due to dishonesty of system —Multiplicity of offences is not material.

Accused was charged in a number of cases of swindling, held that the offence consists in the dishonesty of system and not in the multiplication of instances and therefore severe sentence for one offence and nominal sentences for other offences would be sufficient. (Walsh, J.) Ahmai Nur Khan v. Emperor,

L R 1 A Cr 139.

7. Separate and aggregate sentences.

——Ss. 35, 423, 439, 537 — Single sentence for various offences.

The single sentence of imprisonment for the various offences for which an accused is convicted does not vitiate the trial, unless there had been a failure of justice and the maintenance of that sentence by an appellate or revisional Court, even when the accused is acquitted of some of the offences convicted of, will not amount to an enhancement of the sentence and such a sentence should be interpreted to mean that the trial Court awarded identically the same sentence for each of the offences of which the accused was convicted, provided of course that such a sentence was within the maximum limits of the sentence provided by law for that offence, and the trial Court had ordered the sentences to run concurrently and in cases where such a sentence went beyond the maximum limit of imprisonment provided for any of the offences of which the accused was convicted, the sentence for that offence would be deemed to be the maximum provided by law for that offence. A composite sentence of fine should be treated to be made up of separate sentences of fine, equal in amount, for each of the offences of which the accused had been convicted, provided that such amount is not more than the maximum allowed under that offence. (Raghubar Dayal and Agarwalla JJ.) Murlidhar Dalmia v. State,

A I R 1953 All 245=1952 All W R (H C) 664=1953 All L J 129=I L R (1953) 1 All 834=1953 Cr L J 612.

——Same transaction.

Imposing separate sentences, where the acts constituting the two different offences form part of the same transaction against the same accused is not justified. (Adami and Macpherson, JJ.) Mt. Champa Pasin v. Emperor,

A I R 1928 Pat 326=9 A I Cr R 545=108 I C 81=29 Cr L J 325.

——Ss. 147 and 332, I. P. C.

Separate sentences under Ss. 147 and 332 of the Indian Penal Code are not illegal in view of amended S. 35.

CRIMINAL P. C. (V of 1898), S. 35 — 7. Separate and agregate sentences

(A I R 1926 Bom 64 and 49 Bom 916, Foll.) (Dalip Singh. J.) Rahman v. Emperor,

A I R 1926 Lah 521=95 I C 600=27 Cr L J 824.

——Ss. 148 and 326, I. P. C.

Under S. 35, as amended, a Court can pass separate sentences for offences under Ss. 148 and 326, I. P. C., provided the aggregate of those sentences does not exceed the punishment provided by law for any one of the offences, or the jurisdiction of the Court sentencing the offender. 17 Bom 260 (FB); 23 Bom 706 (FB); A I R 1924 Cal 771, Foll. (Fawcett and Madgavkar, JJ.) Emperor v. Piru Rama Havaldar,

A I R 1926 Bom 64=49 Bom 916=27 Bom L R 1371 =91 I C 689=27 Cr L J 113.

8. Consecutive sentences.

——Ss. 35, 397—Offences of house-breaking with intent to commit theft and commission of theft.

As S. 71, Penal Code, now stands and as S. 35 now stands amended, they do not restrict the passing of separate sentences for house-breaking with intent to commit theft and theft which follows it. There can be no doubt that these two separate offences, though they form part of one transaction, can be punished with separate and consecutive sentences. (Davis J. C.) Baijnathsing Attarsing v. Emperor,

A I R 1939 Sind 76=11 R S 202 = I L R (1939) Kar 378=181 I C 45=40 Cr L J 466.

——Distinct offences.

Under the present law it is not necessary that the offences should be distinct in order to enable a Magistrate to pass consecutive sentences subject to the provisions of S. 71, Penal Code. (Fawcett and Mirza JJ.) Emperor v. Hanma Timma Bhandiwaddar.

AIR 1928 Bom 145=109 I C 368=30 Bom L R 383= 10 A. I. Cr R 159=29 Cr L J 544.

——Consecutive sentences of four months each in respect of four counts—Attentions of Magistrate drawn to provisions of S. 35 and sentence reduced to one year. (Aston and Heaton JJ.) Emperor v. Fatehkhan,

8 Bom L R 855=4 Cr L J 450.

9. Imprisonment and Whipping.

——House-breaking by night — Previous conviction for theft — Double sentence of imprisonment and whipping —Legality of—See Whipping Act (6 of 1864), S. 3.

3 Cr L J 348 (Burma).

10. "Unless the Court directs."

——Sentences consecutive or concurrent — Discretion of Magistrate how to be exercised.

It is laid down in S. 35 that one sentence of imprisonment will commence after the expiration of the other sentence of imprisonment unless the Court directs that such sentences shall run concurrently. Obviously the normal rule is that the sentences should be consecutive and they may be made to run concurrently only if there is some reason. Whether the sentence should run consecutively or concurrently is left to the discretion of the Court, but the Court must exercise its discretion judicially. It must not exercise it arbitrarily and must not on every occasion blindly order the sentences to run concurrently as if there were no alternative. (Desai J.) Khuda Bux v. State,

AIR 1951 All 637 = 1951 A W R (H C) 458 = 1951 All Cr R 109 = 1952 A L J 39= 1952 R D (HC) 203= 52 Cr L J 912.

11. Concurrent sentences.

——Person tried under two sections of Penal Code — Failure to specifiy separate sentences — Sentence passed

CRIMINAL P. C. (V of 1898), S. 35— 11. Concurrent sentences

to be treated as concurrent sentence under both sections —See ibid, Section 32,

AIR 1950 Lah 97=51 Cr L J 717.

——Ss. 35, 397 — Concurrent sentences of rigorous and simple imprisonments.

Simple imprisonment and rigorous imprisonment may be ordered to run concurrently. A man who is being rigorously imprisoned is also necessarily and ex hypothesi being imprisoned. (Newsam J.) Badri Sahib v. Emperor,

1937 M W N 1334.

——Ss. 35, 397 — Mistake as to concurrent nature of sentence—Benefit of doubt to be given to accused.

With respect to the sentence on a certain accused person it was stated in the trial Court's judgment that the sentences on the second and third charges are concurrent and the total term of imprisonment is three years :

Held, that if the sentences are concurrent on the second and third charges, the total term of imprisonment would be four years but the benefit of doubt as to what the Court intended must be given to the accused. (Dalip Singh and Currie JJ.) Jahangiri Lal v. Emperor,

AIR 1935 Lah 230 = 7 R L 58 = 150 I C 1056 = 35 Cr L J 1180.

——Separate trials—Sentences cannot run concurrently.

Where trials on two charges purported to have been separate :

Held, that the sentence could not be made to run concurrently. (Scott-Smith, J.) Batan Singh v. Emperor,

A I R 1925 Lah 334 = 7 L L J 39 = 86 I C 216= 26 Cr L J 731.

——Concurrent sentences.

The phrase "I pass sentence under Ss. 326/148" or whatever the sections may be, must be interpreted to mean that the Magistrate intended to pass concurrent sentences. (Daniels, J.) Shohan Abir v. Emperor,

AIR 1924 All 492=81 I C 640=22 A L J 263=5 L R A Cr 88=25 Cr L J 992.

——S. 35 (1)—Sentences passed at different trials cannot concurrently run.

Court cannot direct sentences passed in different trials on an accused for two or more offences to run concurrently. Such a direction can be given only when such sentences have been passed at one trial, (Mookerjee and Sheepshanks JJ.) Kamal Mandal v. Emperor,

AIR 1917 Cal 416=24 C L J 54=20 C W N 1300 = 38 I C 970=18 Cr L J 410.

——Concurrent sentences could be passed only in cases where a person is convicted at one trial of two or more distinct offences (Lindsay J. C.) Debi Dayal v. Emperor,

AIR 1914 Oudh 193 = 16 O C 370 = 23 I C 508= 15 Cr L J 300.

——Concurrent sentence—Different trials.

A sentence of imprisonment cannot be ordered to run concurrently with another sentence passed in another case, 4 L B R 147, Rel. on (Twomey J.) Emperor v. Eng Gyaung,

4 Bur L T 174 = 6 L B R 22 = 11 I C 1001 = 12 Cr L J 465.

——S. 35 (1)—A direction that punishments in respect of distinct offences should run concurrently can be given only when they are passed at one trial (Rattigan J.) Girdhari Lal v. Emperor,

11 P R 1911 (Cr)=32 P W R 1911 (Cr)= 146 P L R 1911 = 10 I C 156=12 Cr L J 217.

——Ss. 35 and 397—Scope — Concurrent sentences when can be passed.

The only case in which a Court may pass concurrent sentences for two offences is when the accused is convicted at the same trial for both offences (S. 35, Criminal P. C.)

CRIMINAL P. C. (V of 1898), S. 35—11. Concurrent sentences

But if the trials are separate, S. 397, Criminal P. C., applies, and the sentences must take effect consecutively. Ordinarily, the first sentence takes effect first. [S. 397 (1).] But if the second sentence is one of transportation, and the first, of imprisonment, the Court has a discretion to reverse the order and direct that the sentence of transportation shall take effect first, and the sentence of imprisonment afterwards. [S. 397 (2).] The Court has no power to direct that a sentence of transportation should take effect concurrently with a sentence of rigorous imprisonment that the accused was then undergoing. (Pratt and Hayward J. Cs.) Imperator v. Khudabux,

2 S L R Cr 23=10 Cr L J 236,

12. Imprisonment or transportation.

——Sentence — Defective —Imprisonment and transportation.

In spite of the word "or" between the terms "imprisonment" and "transportation", S. 35 (1) includes cases in which one of the punishments inflicted is imprisonment and the other is transportation.

The Court, when sentencing an accused at one trial to imprisonment as well as to transportation must determine whether the sentences are to run concurrently or consecutively; otherwise the sentence is defective. (Mookerjee and Sheepshanks JJ.) Khohuamaran v. Emperor,

AIR 1917 Cal 377=23 C L J 596 = 21 C W N 603= 34 I C 654=17 Cr L J 238.

——Imprisonment and transportation can concurrently run.(Reid C. J. and Beadon J.) Bogi v. Emperor,

AIR 1914 Lah 75=21 P R 1913 Cr=50 P L R 1914= 22 I C 420 = 15 Cr L J 68.

13. Imprisonment in default of payment of fine.

——Concurrent sentences — Imprisonment in default of fine if can be made concurrent — See Penal Code, 1860, S. 64,

A I R 1950 All 625.

——Accused found guilty of three separate offences under S. 409, Penal Code — Sentence in respect of each offence of imprisonment and of fine or in default — Additional imprisonment—Sentences including one in default directed to run concurrently—Competency—See Penal Code (1860) S. 64.

1948 Bur L R 362.

——Ss. 35, 395 and 398 — An order directing imprisonment in default of payment of fine to run concurrently with a substantive sentence of imprisonment awarded for any other offence tried in the same case is illegal. (Kuppuswami Ayyar J.) Public Prosecutor v. Balla Venkayya,

AIR 1944 Mad 448 = 57 M L W 274 =1944 M W N 294 = 17 R M 151 = 1944-1 M L J 395 = 215 I C 39= 45 Cr L J 770.

——Section 35 to be read with S. 64, Penal Code (Act XLV of 1860) — Substantive sentence of imprisonment with fine passed — Sentence of imprisonment in default of fine must be consecutive.

Section 35, Criminal P. C., does not expressly refer to substantive sentences of imprisonment but that section must be read with S. 64, I. P. C., which clearly contemplates that when imprisonment in default of payment of a fine is ordered, the imprisonment shall be in excess of any other imprisonment to which the accused may have been sentenced. When a sentence of imprisonment is to be in default of payment of a fine, the sentence of imprisonment in default must be consecutive to any substantive sentence of imprisonment which may have been passed upon the accused. There is no difference in principle between a case where two sentences of imprisonment are imposed in default of fine, and a case where there is a substantive sentence of imprisonment and a sentence of

CRIMINAL P. C. (V of 1898), S. 35 — 13. Imprisonment in default of payment of fine

imprisonment in default of payment of the fine. (Davis C. J. and Weston J.) Emperor v. Mitho Maroo Machi,

AIR 1942 Sind 80 = ILR (1942) Kar 1=15 R S 23= 201 I C 772 = 43 Cr L J 779.

——Ss. 35, 397 — Imprisonment in default of payment of fine cannot be directed to run concurrently with substantive sentence of imprisonment for different offence.

There is no provision of law enabling a Court to direct a sentence of imprisonment in default of payment of fine to run concurrently with a substantive sentence of imprisonment passed for a different offence either at the same trial or at different trials. (Bhide J.) Emperor v. Haji,

AIR 1941 Lah 209 = 43 P L R 163 = 14 R L 26 = 195 I C 3 = 42 Cr L J 642.

——Ss. 35, 397—Sentences of imprisonment in default of fines—Direction.

A Criminal Court is not competent to direct that sentences of imprisonment imposed for default in payment of fines should run concurrently. Under S. 35, Cr. P. C., which relates to the subject, such a direction can be given only in respect of sentences of imprisonment or transportation. (Pandrang Row J.) In re Kanda Moopan,

AIR 1937 Mad 406 = 45 M L W 87 = 1937 M W N 52 = (1937) 1 M L J 74 = I L R (1937) Mad 362 = 10 R M 77 (1) = 169 I C 607 = 38 Cr L J 796 (2).

——Default of fine—Concurrent sentences — Illegal.

Section 35, which empowers a Court to direct that imprisonment imposed on a person convicted at one trial of two or more offences should be concurrent does not refer to sentence of imprisonment in default of payment of fine but refers only to substantive sentences. That being so, the order that the sentences of imprisonment in default of fines should run concurrently is illegal. 5 S. L. R. 263, Rel. on. (Barlee J. C. and Kalumal Pahlumal A. J. C.) Emperor v. Ghulam Ahmed,

AIR 1929 Sind 179 = 1929 Cr C 452 = 118 I C 224= 30 Cr L J 907.

——Concurrent sentence — Illegal.

The sentences of imprisonment in default of payment of the fine cannot run concurrently. 5 S. L. R 263, Foll. (Fawcett and Madgavkar JJ.) Emperor v. Subrao Sesharao,

AIR 1926 Bom 62 =27 Bom L R 1351=91 I C 543= 27 Cr L J 111.

——Concurrent sentence—Imprisonment in default of fine.

Sentences of imprisonment in default of fines imposed for two or more offences cannot be directed to run concurrently as not being justified by S. 35, Cr. P. C. (Pratt J. C. and Crouch A. J. C.) Emperor v. Akudullah,

5 S L R 263 = 15 I C 808 = 13 Cr L J 536.

14. Sentences in separate trials — Execution of—

See ibid, S. 397.

15. Sub-sec. (2), Proviso (a).

——Ss. 35, 397 — S. 35, Proviso (a)—Scope—Consecutive sentences beyond period of fourteen years—Concurrent sentences not exceeding fourteen years.

Proviso (a) to S. 35, Cr. P. C., aims at the prohibition of the giving of consecutive sentences in one trial beyond the period of fourteen years. If the sentences given in respect of two or more convictions in one trial are directed to run concurrently instead of consecutively and the period of such concurrent sentences does not exceed fourteen years, the proviso is not in any way infringed. (Ba U J.) Nga Mya Gai v. Emperor,

AIR 1937 Rang 391 =10 R Rang 201=171 I C 912= 39 Cr L J 28 (1).

CRIMINAL P. C. (V of 1898), S. 35—15. Sub-s. (2), Proviso (a)

——Ss. 35, proviso (a), 397—Punishment — Accused convicted of several offences — Aggregate term of imprisonment.

An aggregate sentence of 20 years' rigorous imprisonment is contrary to the provisions of proviso (a) to S. 35. Section 35 applies to a person convicted at one trial of two or more distinct offences. It does not apply when a person is convicted on two or more separate trials even though in all of them the complainant is the same and the offences are similar and they are concluded on the same date. In the case of separate trials S. 397 applies. (Arthur Reid C. J. and Ryves J.) Sheo Narain v. Crown,

105 P L R 1910=8 Ind Cas 550=11 Cr L J 679.

16. Sub-s. (3)—Scope.

——Fine.

Section 35 (3) refers only to sentences of imprisonment and not of fines. (Macleod C. J. and Crump J.) Shidlingappa v. Emperor,

AIR 1926 Bom 416=28 Bom L R 668=96 I C 270 = 27 Cr L J 926.

17. Aggregate of sentences—Appeal.

——Aggregate of sentences of fines not exceeding Rs. 50—No appeal—See ibid, S. 413.

AIR 1951 Cal 454=52 Cr L J 706.

——S. 35 (3)—Conviction for several offences—Aggregate sentence exceeding four years—Forum of appeal.

Under S. 35 (3), Cr. P. C., the aggregate of consecutive sentences passed for several offences at one trial is to be deemed a single sentence.

An appeal from an order of an Assistant Sessions Judge convicting the accused at one trial for two offences and sentencing him to three years for each of the offences, the sentences to run consecutively, will lie to the High Court under S. 408 (b), Criminal P. C., and not to the Sessions Judge. (Shah Mohammad Sulaiman J.) Hamid v. Emperor,

129 I C 731=1930 A L J 1206=Ind. Rul. (1931) All. 219=32 Cr L J 469.

——Separate sentences.

Where the accused was convicted and sentenced under Ss. 366 and 376, Penal Code, and it appeared that the sentence for each offence was less than four years but the aggregate of the two exceeded that term :

Held, that the sentences should be treated as a single sentence under S. 35 (3) and that an appeal could be preferred to the High Court. (Sulaiman J.) Emperor v. Hamid,

129 I C 731=1930 A L J 1206=Ind Rul (1931) All 219 =32 Cr L J 469.

——Appeal—Concurrent sentence.

Where the total term of imprisonment to which an appellant has been sentenced, either by an Assistant Sessions Judge or by a subordinate Magistrate does not exceed four years, the appeal undoubtedly lies to the Court of the Sessions Judge. The fact that other concurrent sentence of a lesser period has been passed against the appellant under provisions of the Penal Code does not preclude the Sessions Court from dealing with the appeal. Further, appellate Court in such a matter is only concerned with the actual substantive sentence imposed, so far as the question of where the appeal lies is concerned, and the fact that the Magistrate, in determining the length of the sentence, took into account the length of time the appellant had been under trial, will not affect the question. (Findlay J. C.) Jagadish Chandra v. Emperor,

AIR 1927 Nag 255=103 I C 208=8 A I Cr R 295=10 N L J 135=28 Cr L J 672.

——Conviction by First Class Magistrate—Several offences—Concurrent running of sentences, appeal against.

When an accused is convicted for more offences than one, and is sentenced for each offence to a term of im-

CRIMINAL P. C. (V of 1898), S. 35—17. Aggregate of sentences—Appeal

prisonment which cannot be appealed against and the sentences are to run concurrently, no appeal lies to the Sessions Court on the ground that the sentences taken in aggregate amount to a term which can be appealed against. (Richardson and Shamsul Huda JJ.) Abdul Jabbar v. Emperor,

AIR 1921 Cal 152=25 C W N 613=66 I C 65 (1)=23 Cr L J 225.

——Several offences—Conviction for.

An appeal does not lie to the Sessions Court when a Magistrate of the first class has convicted an accused person of more offences than one and has sentenced him for each offence to imprisonment for one month directing at the same time that the sentences should run concurrently : Case law referred. (Richardson and Shamsul Huda JJ.) Abdul Jubbar v. Emperor,

AIR 1921 Cal 152=25 C W N 613=66 I C 65 (1)=23 Cr L J 225.

——S. 35 (2), Proviso (b) and Cl. (3)—Concurrent sentences —Aggregate sentence—Appeal.

The term "aggregate sentences" in S. 35 (3) applies only to consecutive and not to concurrent sentences. No appeal lies to the High Court where all the sentences to be served do not exceed four years.

The accused were convicted by a Magistrate, exercising powers under S. 30 of the Criminal P. C., under Ss. 209 and 467 read with S. 471, Penal Code, and sentenced to two years' and three years' rigorous imprisonment respectively, both sentences running concurrently :

Held, concurrent sentences preclude the idea of an aggregate sentence within proviso (b) to Cl. (2) and Cl. (3) of S. 35, Criminal P. C., and there was no appeal to the High Court. (Mullick and Jwala Prasad JJ.) Gurusahay Ram v. Emperor,

AIR 1917 Pat 33= 3 Pat L W 249= 3 Pat L J 138= 43 I C 250=19 Cr L J 90.

——S. 35 (2)—Concurrent sentences—Appeal.

An accused who has been sentenced to concurrent terms of imprisonment, no one of which is individually appealable, has no right of appeal against them collectively : 17 C. W. N. 72, diss. (Coxe and N. Chatterjee JJ.) Aziz Shekh v. Emperor,

40 Cal 631 = 17 C W N 825 = 19 I C 510 = 14 Cr L J 254.

——Ss. 35 (3) and 413 — Concurrent sentences must be taken in aggregate for appeal.

For the purposes of appeal, concurrent sentences must be taken in aggregate. A Deputy Magistrate convicted the accused under Ss. 143 and 365/114, Penal Code, and sentenced to one month's rigorous imprisonment under each section, the sentences to run concurrently :

Held, that an appeal lies to the Sessions Judge. (Holmwood and Imam JJ.) Ardue Khalel v. Emperor,

17 C W N 72=17 I C 813=13 Cr L J 877.

——Sentence of six months' imprisonment on each of two counts by Presidency Magistrate.

Two sentences, each of six months' imprisonment, passed simultaneously under S. 35 and directed to run concurrently, cannot be held to be a simple sentence of one year's imprisonment, but would be considered as a single sentence of six months' imprisonment. (Carnduff and Imam JJ.) Suknandan Singh v. Emperor,

17 C L J 392=17 I C 531=13 Cr L J 787.

——Ss. 35, 537 — Offences under Ss. 148 and 326, Penal Code—Separate sentences.

Where the full punishment allowed for offences under Ss. 148 and 326, Penal Code, does not exceed the period of 2 years which a Deputy Assistant Political Agent is competent to inflict for a single offence there is no ground

CRIMINAL P. C. (V of 1898), S. 35—17. Aggregate of sentences—Appeal

for interference in appeal. (Rendall J.) In re Koli Moti Hari,

18 K L R 81=8 Cr L J 41.

—S. 36.

——Separation of executive and judiciary—Effect.

Where a system of separation of judicial and executive functions obtains and there are Munsiff-Magistrates who can try cases, it is not proper for the other Magistrates to exercise judicial functions except where the Munsiff Magistrates have no power to act.

(Observations as to what powers should be exercised by the 'Executive' Magistrates. (Bannerji J. C.) The State of Vindhya Pradesh v. Govind Ram,

AIR 1951 Him Pra 49=1952 Cr L J 13.

——Ss. 36, 515—Power of Government to deprive District Magistrate of his powers under S. 515 — Criminal Procedure (Adaptation) Ordinance (31 of 1948).

It is plain from Ss. 36 and 515 that an appeal would lie to the District Magistrate from an order passed under S. 514 by any Magistrate other than a District Magistrate, unless there is some provision in the Code or the Adaptation Ordinance empowering the Government to deprive the District Magistrate of the statutory ordinary powers given to him by S. 36 and other sections of the Code and unless the Government has in valid exercise of such a power abrogated the power of the District Magistrate to hear an appeal under S. 515 of the Code. There is no such provision either in the Code or in Ordinance (31 of 1948).

The powers given to a Magistrate by the Code itself under S. 36 cannot be taken away by the use of S. 41.

The mere fact that Government has appointed a First Class Magistrate to be an Additional District Magistrate having all the powers of District Magistrate, cannot abrogate the powers which the Code itself vests in a District Magistrate.

The Notification No. 8 of 19-1-1949 and the subsequent notification of 12-3-1949, in so far as they purport to take away and restrict the powers which the Code of Criminal Procedure itself vests in a District Magistrate, are ultra vires and invalid. (Dixit J.) Kaluram v. State

A I R 1951 Madh B 67=52 Cr L J 214.

——Where, by notification, first class Magistrate's powers are conferred in the president of the Bench, the Bench has jurisdiction to exercise power under S. 106, Cr. P. C., though it is not mentioned in S. 36 or Sch. III. (Krishnan Pandalai J.) Satagopayya v. Andalamma

1932 M W N 151.

——Ss. 36, 443, 446, Sch. 3, Cls. (iii) and (v)—District Magistrate of Bangalore.

Notifications No. 680, 1 B. of 19-3-1912 and No. 732 D, of March 1913 of Government of India under Foreign jurisdiction, jointly invest the District Magistrate, Bangalore, Civil and Military Station, with all powers of a District Magistrate under Criminal P. C., not limited by provision for European British subjects. He can therefore try and sentence a European British subject for not more than two years. (Ayling and Napier JJ.) In re Bob Dori

A I R 1917 Mad 139=4 L W 405=35 I C 165=17 Cr L J 293.

——Ss. 36 and 37—Justice of the Peace—Powers of.

The powers conferred on Justices of the Peace by Notification No. 2770, F B of 14th July 1904 are the ordinary powers of a First Class Magistrate under S. 36 and are not powers with which a Magistrate of first class may be invested under S. 37. (Miller and Munro JJ.) E. R. Logan v. S. W. Romer

34 Mad 343=(1911) 2 M W N 196 = 12 I C 303=12 Cr L J 535.

CRIMINAL P. C. (V of 1898), S. 36

——Ss. 36, 107 (3) (4), 114 — District Magistrate's order detaining person not sent before him under S. 107, cl. (3).

Where an accused is not sent before a District Magistrate by any other Magistrate under sub-s. 3, the order of the District Magistrate purporting to act under S. 107 (4) cannot be supported. Even if S. 36 can be construed as giving powers which are not specially referred to in Sch. III, having regard to the term of sub-s. 3 of S. 107 the power is not one which can vest in the Magistrate to whom the accused is to be sent. Assuming that the proviso to S. 114 applies in the case of a person who is before the Court, an order of the Magistrate cannot be supported under S. 114, where he has not followed the procedure therein prescribed. (Arnold White C. J., Benson, Boddam, Wallis and Sankaram Nair JJ.) Chidambara Pillal, V. O. v. Emperor

3 M L T 311=31 M 315=7 Cr L J 360 (F B).

—S. 37.

——Ss. 37 and 39 — Conferment of powers generally or specially.

So far as second class Magistrates are concerned, the power to record statement and confessions during a police investigation is an additional power with which he may be so invested under S. 37.

Travancore-Cochin Notification No. C J 3-13967/51/C.S. Dated 5-11-1951 conferring on all second class Magistrates in the State power to record statements and confessions under S. 164, Criminal P. C., is a valid notification as the empowerment is a valid special empowerment within the meaning of S. 164 read with S. 39, Criminal P. C. (Koshi C. J. and Menon J.) K. N. Vijayan v. State

A I R 1953 Trav-Co 402 =1953 Ker L T 403=I L R (1953) T C 514=1953 Cr L J 1613.

——Jurisdiction — Magistrate entertaining complaint beyond his powers.

A Magistrate of the 2nd Class cannot take cognizance of a complaint that certain persons were guilty of murder. Where therefore he does entertain such a complaint and finding it to be false takes action under S. 190, though defect in conviction could be cured by S. 529, complainant cannot be prosecuted for false complaint. The powers of a 2nd Class Magistrate can be extended only to the extent specified in S. 37 and Sch. IV which provisions are to be read with S. 190 in such cases. (Ross and Kulwant Sahay JJ.) Bengali Gope v. Emperor

A I R 1926 Pat 400=5 Pat 447 = 7 P L T 335 = 94 I C 896=27 Cr L J 704.

—S. 39.

——Conferment of powers generally or specially — Power to record statements under S. 164, Criminal P. C. conferred on all second class Magistrates — It is a valid special empowerment—See ibid, S. 37

A I R 1953 Trav-Co 402=1953 Cr L J 1613.

——S. 39 (1) — Conferment of powers 'generally' or specially — Assam Notification No. M. E. X. 66/48 — Empowerment is special as required by S. 16, Assam Prohibition Act read with S. 39 (1), Criminal P. C. — See Assam Opium Prohibition Act (23 of 1947), S. 16

A I R 1953 Assam 35=1953 Cr L J 395 (F B).

——Ss. 39 (2), 530 — Summary trial — Magistrate not invested with summary powers at time of trial — Subsequent notification purporting to invest him with such powers retrospectively — Effect of — Criminal powers, if can be granted retrospectively.

Where at the time of the trial of a case summarily, the Magistrate had not been invested with summary powers, but it appeared he was subsequently invested and a notification purported to invest him with retrospective effect :

CRIMINAL P. C. (V of 1898), S. 39

Held that in the case of S. 39 (2), Criminal P. C., such a notification could not grant criminal powers retrospectively and that the trial Magistrate had no jurisdiction to try the case summarily. (Middleton J. C.) Gul Mohomed v. Emperor

A I R 1933 Pesh 97 (1)=6 R Pesh 38=35 P L R 310 =147 I C 757=35 Cr L J 462.

——Special power—Opium Act—Cases under.

Notification of Government published in the Fort St. George Gazette under date 4th June 1915, empowers the Second Class Magistrates mentioned in the list appended to the Notification to try cases under the Opium Act. This is a special empowering of the person within S. 39 of the Criminal P. C. A I R 1915 Mad 1159, Ref. (Ayling and Odgers JJ.) Alaga Pillai v. Emperor,

AIR 1924 Mad 256=74 I C 958=24 Cr L J 846.

——Specially empowered—Meaning of.

Section 39 throws light on what is meant by specially empowered persons in S. 3 of the Opium Act. It declares the power of the Local Government to empower a class of officials generally by their official titles or persons specially by name or in virtue of their office. When therefore a class of officials is invested with powers to try certain offences, they are 'generally' empowered. (Spencer and Seshagiri Iyer JJ.) Mahammed Kasim v. Emperor,

A I R 1915 Mad 1159=2 L W 233=17 M L T 191= 1915 M W N 269=28 I C 156=16 Cr L J 268.

—S. 40.

——Deputy Tahsildar empowered to record confessions but subsequently sent on foreign service — On being recalled, posted as Tahsildar—Power to record confessions.

A Government servant was empowered to record confessions when he was Deputy Tahsildar. Subsequently, he went on 'foreign service' as manager of an estate under the Court of Wards. But after about a year, he was recalled and posted by Government as Tahsildar. It was argued that the confessions recorded by him after his appointment as Tahsildar were invalid as no fresh notification was issued empowering him once more as Tahsildar to record confessions and the original notification empowering him to record confessions had effect only uptil the date he was deputed on foreign service :

Held, that the Government retaining some form of control over his service even when he was on foreign service had re-called him to direct service under Goverment and, then having re-called him had posted him as Tahsildar. His case, therefore, fell directly under S. 40. When he was re-appointed Tahsildar, he was a person holding an office in the service of Government within the meaning of S. 40. Consequently, the powers granted to him as Deputy Tahsildar could lawfully be exercised by him as Tahsildar and the confessions which he had recorded were not invalidated. (King and Shahabuddin JJ.) In re N. Ramaratnam,

AIR 1944 Mad 302=1944 M W N 57=(1944) 1 M L J 91=57 M L W 100=220 I C 129=46 Cr L J 667.

——Sub-Judge with powers of First Class Magistrate— Transfer to another place — Whether can exercise Magisterial powers.

Where a Sub-Judge is transferred from one place to another, he may or may not be called upon to perform additional duties of a Magistrate. He is not transferred qua Magistrate but qua Subordinate Judge. When he is required to perform additional duties of a Magistrate in the place to which he is transferred a fresh notification is issued in that behalf. When he is not so authorised in the new place, he cannot exercise the powers of a First Class Magistrate there. (Rupchand J. C. and Mehta A. J. C.) Emperor v. Karimbux,

A I R 1933 Sind 398=6 R S 92=27 S L R 427=146 I C 893=35 Cr L J 187.

CRIMINAL P. C. (V of 1898), S. 40

——Leave.

The grant of leave to a Magistrate who belongs to the Provincial Civil Service as an Extra Assistant Commissioner, does not cause the cessation of his criminal powers so as to take his case out of the category of the cases contemplated by S. 40, 2 B L R 536, Ref.; A. I. R. 1923 Mad. 598, Dist. (Jai Lal J.) Pritam Singh v. Emperor,

A I R 1930 Lah 833=I R 1930 Lah 745=126 I C 521 =1930 Cr C 850=31 Cr L J 1051.

—S. 41.

——Powers given to Magistrate by the Code itself under S. 36 cannot be taken away by the use of S. 41. (Dixit J.) Kaluram v. State,

AIR 1951 Madh B 67=52 Cr L J 214.

—S. 42.

——Ss. 42, 59.— A question whether a man is or is not a proclaimed offender is one of fact. (Davis J. C. and Haveliwala A. J. C.) Emperor v. Hafiz Murid Dood,

AIR 1937 Sind 254=10 R S 116=32 S L R 41=171 I C 672=38 Cr L J 1101.

——Ss. 42, 59—Distinction between S. 42 and S. 59, pointed out — Sub-Inspector authorizing private person to arrest not proclaimed offender—Arrest of such person by private individual.

A sharp distinction must be drawn between the provisions of S. 42 and S. 59, Criminal P. C. In S. 59 is included a proclaimed offender, but in order that a man may be a proclaimed offender, it is not sufficient for a Sub-Inspector to say or write that he is a proclaimed offender. It is a matter for the Court as laid down in S. 87, Criminal P. C., and the following sections. Under S. 59, Criminal P. C., a private person may himself arrest; under S. 42, Criminal P. C., he must assist a Police Officer to arrest but the Police Officer must be present before he can demand the private person's aid. It was never intended that this section should allow the wholesale delegation by the Police of their duties. Where a Sub-Inspector gives a written authority, which in itself contains mis-statements, to a zemindar to arrest a man, whom he states to be a proclaimed offender but who in fact is not so, and the zemindar arrests such person and brings him bound to the Police after having injured him, the action is illegal and cannot be justified under S. 42, Criminal P. C. (Davis J. C. and Haveliwala A. J. C.) Emperor v. Hafiz Murid Dood,

AIR 1937 Sind 254=10 R S 116=32 S L R 41 = 171 I C 672=38 Cr L J 1101.

——Ss. 42, 59—A person, when arrested, lying down on the ground and refusing to move—Police Officer seeking the help of the accused—Accused refusing to help :

Held, that as the person lay down in order to secure his eventual escape from being taken to the thana and the help was demanded to prevent his escape, the refusal of the accused made him liable for conviction under S. 187, Penal Code. (Boys J.) Ambica Prasad v. Emperor

AIR 1932 All 506=Ind Rul (1932) All 527=139 I C 106=33 Cr L J 736.

——Police Officer — Right to call for assistance—Whereabouts of persons sought to be arrested not known — Refusal to assist is no offence.

Members of the public are bound to assist a Police Officer reasonably demanding their aid in the taking of any dacoits or suspected dacoits whom that officer is authorised by law to arrest. The law, however, does not intend that the police officers should have a general power of calling upon the members of the public to join them in arresting a number of unknown persons whose

CRIMINAL P. C. (V of 1898), S. 42

whereabouts are not known. Refusal to assist the police officer in such a quest is not an offence under S. 287, I. P. C. (Piggott and Walsh JJ.) Joti Prasad v. Emperor

AIR 1920 All 265=42 All 314=18 A L J 169=2 U P L R (All) 88=58 I C 673=21 Cr L J 801.

—S. 44.

——No doubt under S. 44, Cr. P. C., it is the duty of every person to make a report to the police of the commission of certain specified offences, but there is no such duty cast upon a citizen, much less on a police officer, to make such a report when no facts exist. He would certainly not be acting in pursuance of S. 44, Cr. P. C., if he concocts a purely false story and then makes a report of such a false story, knowing it to be false. (Sulaiman C. J., Kendall and Rachhpal Singh JJ.) Shiam Lal v. Abdul Raof

AIR 1935 All 538 = 1935 A L J 459 = 7 R A 876 = 1935 A W R 547 = 57 All 935 = 155 I C 131 = 1935 All L R 326=1935 Cr C 560 (FB).

——First information—Hearsay—Inadmissible.

As the first information report can only be used by the prosecution for the purpose of corroborating in the witness-box the person who supplied the information contained in the document, if the informant himself can only speak from hearsay, the report cannot be used to corroborate such inadmissible evidence of the witness. (Abdul Raoof and Fforde JJ.) Sajjan Singh v. Crown

AIR 1925 Lah 418=90 I C 145=6 Lah 437=7 L L J 259=26 P L R 601=26 Cr L J 1489.

——Failure to give information is an offence.

Section 44 of Cr. P. C. enjoins a person witnessing the commission of an offence to inform the nearest police officer or Magistrate. A failure to do so is an offence under S. 202 of Penal Code. (Mitra A. J. C.) Ajodhia v. Emperor

AIR 1920 Nag 170 = 56 I C 582=16 N L R 30=21 Cr L J 486.

—S. 45.

——Ss. 45 (3), 435, 439—Order under S. 45 (3), whether revisable.

Orders of a Sub-Divisional Magistrate under S. 45 (3) and of the Additional District Magistrate passed in appeal from the order of the Sub-Divisional Magistrate are executive orders and not judicial orders of an inferior criminal Court and hence are not revisable by the High Court. (Misra J.) Fateh Bahadur Singh v. Ram Deo

AIR 1950 All 540=51 Cr L J 1489.

——S. 45 (3)—Order appointing Mukhia—Revision.

An order appointing a person Mukhia of a village under S. 45 (3) is an executive order and is not revisable under S. 435 and hence a reference by the Additional District Magistrate to the High Court that the order passed by the Sub-Divisional Magistrate appointing a Mukhia be set aside cannot be made : 29 All 563, Rel. on. (Malik J.) Salet Singh v. Bali Singh

AIR 1948 All 114=1947 A W R H C 294 (1)=ILR (1947) All 745=1947 A L J 526=49 Cr L J 31 (1).

——Ss. 45, 87 — "Proclaimed offender," scope of—Proclamation, not strictly in terms of S. 87.

The term "proclaimed offender" as used in S. 45, Cr. P. C., must be taken, not in any technical sense, but in its obvious general meaning. If a proclamation has been made in respect of person under S. 87, Cr. P. C., it is sufficient to constitute him a proclaimed offender under S. 45 of the Code. (Ziaul Hasan and Smith JJ.) Emperor v. Ram Sarup

AIR 1938 Oudh 80=10 R O 182=1938 O W N 7= 172 I C 530=39 Cr L J 154.

——Proclamation under S. 87 issued — Failure to report by the village headman :

CRIMINAL P. C. (V of 1898), S. 45

Held, that in order to find whether the accused (village headman) is guilty under S. 176, Penal Code, read with S. 45 (1), Cr. P. C., it is necessary to see whether he possessed any information respecting the proclaimed person's passage through or visit to his village. The fact that the proclamation was not made strictly in accordance with the terms of S. 87, Cr. P. C., does not render such person a proclaimed offender any the less. (Ziaul Hasan and Smith JJ.) Emperor v. Ram Sarup

AIR 1938 Oudh 80=10 R O 182=1938 O W N 7=172 I C 530=39 Cr L J 154.

——Village Munsif sending report under S. 45, Cr. P. C.: Held, that he was not acting in his capacity as Magistrate, nor he is a public servant and consequently a previous sanction of the Local Government is not necessary for his prosecution. (King J.) Pregada Balanagu v. Krosuru Kotayya

AIR 1937 Mad 578=45 L W 697=1937 M W N 638=10 R M 206 (1)=170 I C 481=38 Cr L J 950.

——Interpretation—Owner of houses.

The section is not intended to be punitive in itself, but to facilitate information as to the commission of an offence and thereby to facilitate steps being taken in the investigation of the same. The section speaks of the owner or occupier of land but not of a house. Where there are houses, it is expected that the place would be populous and the police would somehow get the information. In cases of land in the mofussil, it is necessary that the owner or occupier of the land should give such information to policeman. The section should not be extended so as to include owners or occupiers of houses. 12 Mad 92, Foll. (Mirza and Baker JJ.) Hiru Satna v. Emperor

AIR 1929 Bom 12 = 113 I C 510 = 53 Bom 184 = 30 Bom L R 1570=12 A I Cr R 67=30 Cr L J 172.

——Rumour—Knowledge of informant.

This section does not make it incumbent on the village chaukidar to communicate to the officer in charge of the Police Station any rumour of the occurrence prevailing in the village. It is only an information which he may himself possess that is to be communicated to the officer in charge of the Police Station. The word "possess" in place of the old word "obtain" in S. 45 requires only such information to be given which the informant may possess to his own knowledge as is fit to be communicated to the officer in charge of the Police Station. (Kulwant Sahay J.) Lachmi Singh v. King-Emperor

AIR 1924 Pat 691=81 I C 620=5 P L T 505=1924 P H C C 181=25 Cr L J 972.

——Contents—Police report.

Report made by any police officer is not "police report" in technical sense. But "report" in S. 45 must state facts which constitute offence. Mere assertion that offence had been committed is not enough. (Mookerjee and Chatterjee JJ.) Nagendra Nath Chakrabarthy v. Emperor

AIR 1924 Cal 476=81 I C 220=51 Cal 402=38 C L J 388=25 Cr L J 732.

——S. 45 (1) (d)—Unnatural death, meaning of.

Where the accused did not communicate forthwith to the nearest Police Station the accidental death of a person who fell from a tree and died of the fall within two days and were charged under S. 45, Cr. P. C. Held however unnatural, in the ordinary sense of the word, the cause of the death might be, it would not come within meaning of the word unnatural as used in S. 45 so as to require to be reported immediately, unless it occurred fairly soon after the cause. (Halifax A. J. C.) Domar Singh v. Emperor.

AIR 1922 Nag 87=66 I C 1001=23 Cr L J 345.

——Scope of — No duty to supply information already known to the police.

CRIMINAL P. C. (V of 1898), S. 45

The provisions of S. 45, Cr. P. Code are not intended to be punitive in themselves but are intended to facilitate information as to the commission of an offence and thereby to facilitate steps being taken in the investigation of the same. Where the police are already informed of a fact, there is no obligation to repeat the information: 4 Cal 623, 20 Cal 316 and 7 Mad 436, Ref. (Wazir Hasan A. J. C.) Rampal v. Emperor.

AIR 1921 Oudh 227 = 4 U P L R (O C) 17=65 I C 626=8 O L J 590=23 Cr L J 162.

——S. 45 (1) (c)—Information of commission of offence, what is.

Under S. 45 (1) (c) a Village Magistrate is bound to communicate to Police information regarding the commission of non-bailable offence. Where the evidence showed that, the only information the village munsiff had, was that a jewel was missing, whether it had been stolen or it was lost, he cannot be said to have information of the commission of the offence of theft, which he was bound to communicate to the Magistrate or Police under S. 45 (1) (c), Criminal P. C., 1898. Therefore, his conviction under S. 176, Penal Code, would be illegal. (Munro and Abdur Rahim JJ.) In re Vemi Reddi Lacha Reddi.

5 M L T 257=1 Ind Cas 245=9 Cr L J 224.

——False report to Village Magistrate—Report forwarded to sub-magistrate—Offence under S. 211, if committed —See Penal Code (1860), S. 211.

9 Cr L J 170 (Mad) (FB).

——Ss. 45 (3) and 435 — Order dismissing a headman passed by a District Magistrate under rules framed under S. 45 (3) is an executive order not subject to revision by the High Court. (Banerji J. C.) In the matter of the petition of Damma.

29 All 563=1907 A W N 168=5 Cr L J 476.

—S. 46.

——In police custody—Statement by suspect — See Evidence Act (1872), S. 27.

ILR (1953) Patiala 711.

——Ss. 46 (1) and 164 (1)—Illegal arrest — Effect of, on confession.

The fact that the accused was not formally extradited at the time his confession was recorded does not vitiate the confession. (Bannerjee J. C.) Nathu Ram v. State.

AIR 1951 Him Pra 1=52 Cr L J 50.

——Neighbour of person at whose house he had seen dacoity being committed, chasing dacoits—On way some other persons becoming suspicious joining pursuit — These men have right to attempt to arrest dacoits—Dacoits have no right to shoot in self-defence — See Criminal P. C. (1898), S. 59.

AIR 1951 All 3 (FB).

——Confinement and rough handling are not permissible when there is submission to custody.

Under first part of S. 46, confinement and rough handling are not permissible and are contrary to law, when the person to be arrested submits to the custody, that is, to the restraint which is necessary and sufficient for the purposes of the arrest. An arrest is completed when there is a submission to the custody by word or action. Every police officer knows that in making an arrest he must not subject the person to be arrested to unnecessary brutality, and that he cannot confine any person unless the person refuses to submit to custody and it becomes necessary to confine him, and Cl. 2 of S. 46 is brought into application. (Tyabji C. J. and Mehar J.) Pandhikhan Nandokhan v. Emperor.

AIR 1948 Sind 67=49 Cr L J 178.

CRIMINAL P. C. (V of 1898), S. 46

——S. 46 (2)—"All means necessary to effect the arrest" —Person seeing thieves—Thieves running away—Person can seek help of neighbours in arresting them — Arrest by neighbours is legal — No right of private defence against neighbour.

The persons who have actually seen the thieves at the back of their house are clearly authorised under S. 59 of the Code to arrest them and when the thieves start running away from the house, they would, in accordance with the provisions of sub-s. (2) of S. 46, Criminal P. C., be authorised to use all means necessary to effect the arrest and this would include the seeking of help from their neighbours in arresting them. Raising of alarm by them obviously means a call to their neighbours to come to their assistance and no evidence that they actually call their neighbours to come and help them in arresting the thieves is necessary. When therefore a neighbour chases the thieves on seeing them running, the thieves have no right of private defence against any attempt made by him to arrest them. (Harish Chandra and Akbar Hussain JJ.) Sheo Balak Dusadh v. Emperor.

AIR 1948 All 103 = 1947 A L J 573 = 1947 A W R H C 352=I L R (1948) All 3=49 Cr L J 62.

——Supposed offender taking shelter in his house and not coming out when required by Police Officer desiring to effect his arrest—Police Officer firing at the house shot which killed offender — Offender not seen from place of firing—Police officer held did not commit any offence—His subordinates held could not have common intention to commit any offence—See Penal Code (1860), S. 34.

1946 Rang L R 246.

——A person who makes a statement to a responsible Police Officer, voluntarily confessing that he has committed an act which the Penal Code regards as an offence, is submitting himself to custody within the meaning of S. 46 (1). (Grille and Gruer JJ.) Bharosa Ramdayal v. Emperor.

AIR 1941 Nag 86 = 1940 N L J 623 = I L R (1940) Nag 679=13 R N 318=193 I C 6=42 Cr L J 390.

——Warrant of arrest — Person sought to be arrested creating disturbance so that substance of warrant could not be communicated—Disturbance put down and warrant shown and arrest effected.

Where a Police party came to arrest a woman with a bailable warrant, she, with her companions, offered resistance and created such disturbance that the substance of the warrant could not be notified. The head constable and others overcame the assault and then showed the warrant and effected the arrest :

Held, that there was no irregularity in the procedure in effecting the arrest. The irregularity, if any, was not such as to bring the case outside the scope of S. 99, Penal Code, and give the accused a right of private defence. (Bennet J.) Ramjit v. Emperor.

AIR 1938 All 120=1937 A L J 1334 = 10 R A 501= 1938 A W R 17=173 I C 734=39 Cr L J 360.

——Person entering house to carry out amours with married woman—Person armed and evading arrest :

Held, that the owner has right to use all means necessary for securing the person entering in the house. (Mir Ahmad A. J. C.) Said Mahmud v. Emperor

A I R 1935 Pesh 83 (83)=8 R Pesh 5=156 I C 704= 36 Cr L J 1135.

——S. 46 (1)—Statement to Police Officer — Evidence — Strength of evidence to be considered before conviction.

When a person states that he has done certain acts which amount to an offence, he accuses himself of committing the offence ; and if he makes the statement to a

CRIMINAL P. C. (V of 1898), S. 46

Police Officer as such, he submits to the custody of the officer within the meaning of S. 46 (1), Cr. P. C. and is then in the custody of a Police Officer within the meaning of S. 27 of the Evidence Act.

The strength of the evidence against the accused is a matter to be considered before but not after conviction.

Where a Sessions Judge having convicted the accused of a murder by assassination, sentenced them to imprisonment for life instead of to death on the ground that the evidence was not of a sufficiently convincing character to justify the latter punishment :

Held that the Sessions Judge was wrong in not giving the capital sentence. (Courtney-Terrell C. J., Scroope and Agarwala JJ.) Santokhi Beldar v. Emperor

A I R 1933 Pat 149 = 14 P L T 82 = Ind Rul (1933) Pat 139=12 Pat 241=142 I C 474 = 1933 Cr C 404=34 Cr L J 349 (SB).

——S. 46 (1)—Accused shown a warrant to sign and asked to follow — Accused refusing to do either — Accused untouched by the process-server, by way of arrest :

Held, that there was no arrest. (Pakenham Walsh J.) Peddireddi Chennareddi v. Emperor

1932 M W N 856 (2).

——Mode of arrest.

In making an arrest, the person authorized to make it shall actually touch the body of the person to be arrested, unless there be a submission to the custody by word or action : 6 W R 690, Rel. on. (Heald and Maung Ba JJ.) U Thwe v. A Kim Fee

A I R 1930 Rang 131=123 I C 137=7 Rang 598.

——Non-compliance—S. 80, Cr. P. Code.

A Police Officer, who has made an arrest without having observed the provisions of S. 80, may be able to justify his action under the provisions of S. 46 (2). (Rankin C. J. and Buckland J.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Darbesh Ali

A I R 1929 Cal 174=116 I C 723 = 33 C W N 284= 49 C L J 264 = 56 Cal 881 = 13 A I Cr R 129 = 30 Cr L J 703.

——Mere oral declaration—Legality.

An arrest by a mere oral declaration without the actual touch of the process server is not a legal arrest within the meaning of S. 46 (1) of the Cr. P. Code. (Kinkhede A. J. C.) Har Mohan Lal v. Emperor

113 I C 288=30 Cr L J 128 (Nag).

——Every trial which is preceded by a police investigation in which the police have failed to comply with Ch. V of the Cr. P. Code need not necessarily be bad in its entirety. 25 Mad 61 (PC), Dist. (Baguley J.) A. V. Joseph v. Emperor .

A I R 1925 Rang 122=85 I C 236 = 3 Bur L J 265= 3 Rang 11=26 Cr L J 492.

——Custody—Evidence Act, S. 27.

The submission to the custody of a Police officer within the meaning of S. 46 is 'custody' within the meaning of S. 27, Evidence Act. (Teunon and Ghose JJ.) Legal Remembrancer v. Lalit Mohan Singh

A I R 1922 Cal 342=49 Cal 167=25 C W N 788=62 I C 578=22 Cr L J 562.

——Illegality of arrest.

Legality or illegality of arrest does not affect the jurisdiction of the Court to try the accused and a conviction is not bad merely because the accused was illegally arrested. (Reid C. J. and Chatterji J.) Jumo v. King Emperor

17 P R 1906 Cr=60 P L R 1907=5 Cr L J 89.

——Ss. 46 and 128—All means necessary to effect arrest —Penal Code (1860), Ss. 34 and 302.

The accused were a gang of dacoits some of whom had escaped from lawful custody. They were heavily armed

and it was their common intention to kill anybody who sought to arrest or interfere with them. There was an encounter between the accused and the police when the latter sought to arrest the accused. Both sides used guns resulting in deaths on both sides.

Held that the police were entitled under Ss. 46 and 128, Criminal P. C. to resort to adequate measures which might lawfully extend to causing their death. The gang had of course no legal right to defend themselves against police and each killing done by them was an act of murder for which each and all of them were severally responsible. (Westropp Esq.) King Emperor v. Kala Nanji

14 K L R 184=1 Cr L J 920.

—S. 47.

——Ss. 47, 48, 54 — Offence under S. 363, I. P. C., committed—Sub-Inspector during investigation going to petitioner's home and asking him to produce girl and person suspected to have kidnapped her—Petitioner denying the presence of such persons — Sub-Inspector having no warrant under S. 100 seeking to search house — Assault on him by the petitioner :

Held, that under S. 47, the petitioner was bound to allow the Sub-Inspector free ingress. (Dhavle J.) Lachuman Singh v. Emperor

A I R 1942 Pat 281=8 B R 307=14 R P 376=197 I C 827=43 Cr L J 279

——Summons case — Complainant and accused absent—Acquittal of accused.

The accused can be acquitted under S. 247, Cr. P. C. if the complainant is absent on the day appointed for the appearance of the accused, even though the accused is also absent and the case is a summons case. (Walsh J.) Suram Sriramulu v. Virragadu

A I R 1932 Mad 563=1932 M W N 647=36 M L W 379 = Ind Rul (1932) Mad 546 = 138 I C 288 = 33 Cr L J 579.

——Ss. 47 and 48—Scope — Duty to afford to the Police facilities for search.

Section 47 of the Code does not restrict the powers of the police to enter the place to be searched, but on the contrary it compels house-holders to afford to the police facilities for the search and S. 48 provides that if difficulties are placed in the way of police officer, he may use force to make his ingress. (Woodroffe and Beachcroft JJ.) Romesh Chandra v. Emperor

A I R 1914 Cal 456=41 Cal 350=18 C W N 498=23 I C 985=15 Cr L J 385.

—S. 51.

——Search of person without his arrest.

Section 51, Criminal P. C., comes into operation only after a person has been arrested either under a warrant or without a warrant. The law gives to a Police Officer no authority whatsoever to search a person until he has arrested him. (Mulla J.) Ramain Rai v. Emperor,

AIR 1942 All 424 (425) = 1942 A L J 528 = 15 R A 281 = ILR (1942) All 914 = 1942 A W R (H C) 300= 203 I C 467 = 44 Cr L J 67.

——Money found on person of accused and placed in safe custody under S. 51 — Sentence of fine — Order to recover fine from money found on accused and placed in custody :

Held, that the order was not legal and justifiable. (Beaumont C. J. and Barlee J.) In re A. B. Samant,

AIR 1934 Bom 193 = 36 Bom L R 324=7 R B 66 = 151 I C 472 = 35 Cr L J 1344.

——Medical examination of accused without consent —Evidence of doctor.

Per Lort-Williams J. — It is not permissible under Criminal Procedure Code, forcibly to take hold of a

prisoner and examine his body medically without his consent for the purpose of qualifying some medical witness to give medical evidence in the case against that accused. Any such examination without the consent of the accused amounts to an assault and the Police are not entitled without statutory authority to commit assault upon prisoners for the purpose of procuring evidence against them.

Per S. K. Ghose J. — The examination of an arrested person in hospital by a doctor, not for the benefit of the prisoner's health, but simply by way of a second search, is not provided for by the Code; and in such a case, the doctor may not examine the prisoner without his consent. It would be a rule of caution to have such consent noted in the medical report so that the doctor would be in a position to testify to such consent if called upon to do so. But mere absence of such consent will not constitute an assault.

Under S. 51, Criminal P. C., a Police Officer has power to search arrested persons. It is not necessary that the purpose of the search should always be to look for something definite, such as an incriminating article. The searching officer may and should take notice of anything worthy of attention such as marks of injury and if called as a witness he may depose to such marks.

In the case of injuries, the ends of justice require that the examination should be by a doctor, and it would be anomalous to admit the evidence of a searching Police Officer and not to admit that of an examining doctor. (Lort-Williams and S. K. Ghose J.) Bhondar v. Emperor,

AIR 1931 Cal 601 =35 C W N 1212=54 C L J 499= Ind Rul (1932) Cal 13 = 134 I C 1053=33 Cr L J 11.

—S. 54.

SYNOPSIS

1. Scope of the section.
2. "Any police officer".
3. Cl. (1)—"Concerned in any cognizable offence."
4. "Reasonable complaint",
5. "Credible information."
6. "Reasonable suspicion".
7. Cl. (2)—Person in possession of implement of house-breaking.
8. Cl. (5)—Obstruction to police officer.
9. Cl. (6)—Deserter.
10. Cl. (7)—Arrest of fugitive criminal.
11. Cl. (9)—Arrest on requisition.

1. Scope of the section.

——S. 54 (1) — Power of police officer to arrest without warrant.

The Legislature has under S. 54 (1) given wide powers to police officers to arrest persons without a warrant. But at the same time it has provided some safeguards against indiscriminate arrest. This power of arrest can be exercised only (i) if a person is concerned in any cognizable offence, (ii) if a reasonable complaint has been made against him, (iii) if credible information has been received, or (iv) if a reasonable suspicion exists. On mere suspicion a police officer cannot arrest a person without warrant. The suspicion must be reasonable or else there must be credible information that the person has been concerned in the commission of a cognizable offence. (Narsimham and Mohanty JJ.) The State v. Maheswar,

ILR (1953) Cut 751.

——Liability—Arrest—What should justify.

The detention and arrest of members of the public are not matters of caprice, but are governed by and must be conducted upon certain rules and principles which the law

CRIMINAL P. C. (V of 1898), S. 54—1. Scope of the section

clearly lays down. To arrest persons without any justification is one of the most serious encroachments upon the liberty of the subject which can well be contemplated. The fact that because a party of persons are in a certain place at a certain time it cannot be said simply from these circumstances that they are about to engage in a criminal act, and therefore there is no legal justification for the arrest of those persons by the police, and they are not guilty of rioting if they oppose their arrest. (Bucknill J.) Ramprit Ahir v. Emperor,

AIR 1926 Pat 560 = 7 P L T 218 = 90 I C 712 = 26 Cr L J 1608.

——Object—Prevention.

The Code of Criminal Procedure is dealing rather with the arrest for crimes that had been committed than with the arrest for the prevention of crimes, although there are specific instances given permitting the arrest of persons suspected of crimes. (Schwabe, C. J., Philips, Devadoss, Venkatasubba Rao and Wallace JJ.) Gopal Naidu v. Emperor,

AIR 1923 Mad 523 = 73 I C 343 = 46 Mad 605 = 17 M L W 592 = 32 M L T 352 = 1923 M W N 425= 44 M L J 655 = 24 Cr L J 599 (FB).

——Ss. 54 (1) and 537 — Arrest without justifying substance of warrant—Irregularity—Effect.

An arrest under S. 54, Cr. P. C., is not illegal merely because a warrant has been issued. The omission to give notice to the person arrested of substance of the order for his arrest is an irregularity covered by S. 537, Cr. P. C. (Knox J.) Rampal v. Emperor,

AIR 1917 All 85 = 40 I C 314 = 18 Cr L J 666.

——S. 54 (1)—Power to arrest without warrant by whom can be exercised—See Penal Code (1860), S. 225,

10 Cr L J 118 (Lower Burma).

2. "Any police officer."

——Ss. 54 and 59—Arrest by police officer of Jammu and Kashmir in Travancore-Cochin for offence in former State —Legality.

The Police Officer referred to in S. 54 must be an Officer who is a member of the Police force enrolled under the Indian Police Act V (5) of 1861. That Act has not been extended to the State of Jammu and Kashmir and therefore a Police Officer of that State cannot be regarded as a member of the Police force coming within the category of Police Officers who are referred to in the Indian Police Act.

Where a person is arrested in Travancore-Cochin by a Sub-Inspector of Police of Jammu and Kashmir to which the Criminal P. C. is not extended, for an offence alleged to have been committed within the State of Jammu and Kashmir, the arrest cannot come within the purview of S. 59, Criminal P. C., and is not warranted by law. (Kunhi Raman C. J. and Sankaran J.) Mahesh Chander v. State,

A I R 1952 Trav-Co 201 = 1951 Ker L T 541=1952 Cr L J 943.

——Ss. 54, 56—Village chaukidar, if a Police Officer.

The village chaukidar has the limited powers of arrest provided under S. 27, Village Administration Act, and has not the full powers of arrest of a Police Officer laid down in S. 54, Criminal P. C. He cannot be regarded as a Police Officer within the meaning of S. 54. (Harries, C. J. and Meredith, J.) Jograj Mahto v. Emperor,

A I R 1940 Pat 696 = 13 R P 358 = 7 B R 236 = 22 P L T 80=191 I C 590=42 Cr L J 199.

——Interpretation—Village chowkidar.

A village chowkidar is not a "police officer" within the meaning of S. 54. The whole of the Code shows that "Chowkidars" who have been given a distinctive name

CRIMINAL P. C. (V of 1898), S. 54 — "Any police officer"

were not intended to be included under the terms "police officer." (Sen, J.) Bhagwan Din v. Emperor,

A I R 1929 All 935=120 I C 205 = 11 L R A Cr 8 = 1930 A L J 242=13 A I Cr R 126=1929 Cr C 663 = 31 Cr L J 12.

——Chowkidar if police officer — See Penal Code, S. 223.

5 Cr L J 277 (All).

3. Clause (1)—"Concerned in any cognizable offence."

——Ss. 54, 51 — Sub-Inspector suspecting accused to be in possession of papers "connected with Congress" attempting to search him on railway platform — Refusal by accused to allow search—Sub-Inspector attempting to take accused's jhola by force — Accused catching hold of Sub-Inspector's hand whereupon accused thrown down and beaten by Sub-Inspector — Accused prosecuted under S. 353, Penal Code.

A Police Sub-Inspector suspecting that the accused had some papers with him "connected with the Congress" wanted to search the accused on the platform of a railway station. When the accused refused to allow a search of his person, he caught hold of the accused's jhola and wanted to remove it by force. It was then that the accused caught hold of the Sub-Inspector's hand whereupon the accused was thrown down by the Sub-Inspector and was also beaten. The accused was prosecuted under S. 353, I. P. C. :

Held, that the only section which could have enabled the Sub-Inspector to arrest the accused without any warrant was S. 54, Cr. P. C., cl. (1) of which alone applied to the facts of the case. Having papers "connected with the Congress" was not a cognizable offence and S. 54, Criminal P. C., could not, therefore, come into operation and the Sub-Inspector could not have arrested the accused without a warrant and he could not have searched the accused under any provision of law. The conduct of Sub-Inspector was very high-handed and utterly without any justification in law. The accused could not, therefore, be convicted under S. 353, I. P. C. (Mulla, J.) Ramain Rai v. Emperor,

A I R 1942 All 424 = 15 R A 281=I L R (1942) All 914=1942 A L J 528=1942 A W R (H C) 300=203 I C 467=44 Cr L J 67.

——Ss. 54, 56 — Being in company of revolutionary or bad character.

There is nothing in law to prevent any person from being seen in the company of a revolutionary or a bad character. That does not by any means constitute a cognizable offence. (Mulla, J.) Ramain Rai v. Emperor,

A I R 1942 All 424=1942 A L J 528=15 R A 281 = I L R (1942) All 914=1942 A W R (H C) 300=203 I C 467=44 Cr L J 67.

——Ss. 54, 56 — Evidence on points in question introduced at appellate stage.

Evidence on the question whether the substance of the hukumnama was read over to the accused or whether the Police Officer did have credible information to the effect that the accused was concerned in a cognizable offence cannot be introduced at the appellate stage as the temptation to fill in blanks would be extremely strong. (Henderson and Mohamed Akram JJ.) Raja Mea v. Emperor,

A I R 1940 Cal 321=44 C W N 502 = 13 R C 106= 189 I C 480=41 Cr L J 744.

——Ss. 54, 56—Accused wanted for offence under S. 186, Penal Code — His arrest without warrant — Accused escaping.

Held, that the arrest without warrant was illegal and the accused commits no offence if he escapes from the

CRIMINAL P. C. (V of 1898), S. 54 — 3. Cl. (1)— "Concerned in any cognizable offence"

custody of the constable who arrests him. (Rowland, J.) Raghuni Prasad v. Emperor,

A I R 1936 Pat 249 (250)=2 B R 227=8 R P 370 = 17 P L T 81=160 I C 604=37 Cr L J 318.

——Scope of—Powers of Police Officers.

There is nothing in the language of S. 54 to suggest that a Police Officer may not arrest a person suspected of having committed a cognizable offence, when a warrant has been issued against him and the exercise of that power is not confined to the officer to whom the warrant is directed. 14 Cal 76; 18 All 246; 19 Mad 314, Dist. Napier J. — The only limitation of the wide power given to Police Officers in cognizable cases, is the necessary requirement of reasonability and credibility of information to prevent the misuse of the powers. (Ayling and Napier, JJ.) In re Ratna Mudali,

A I R 1918 Mad 514 = 40 Mad 1028 = 40 I C 709= 18 Cr L J 709.

4. "Reasonable complaint".

——S. 54 (1), Para 7 — 'Reasonable complaint', what amounts to — To justify arrest under S. 54 (1), Para. 7, there must be in existence as a fact, as opposed to belief, warrant issued under Extradition Act (XV of 1903).

What is a reasonable complaint or suspicion depends on the circumstances of each case but it must be founded on some definite fact or some tangible proof which is sufficient to establish in the mind of a reasonable Police Officer, the reasonableness or credibility of the charge, information or suspicion. Further, to justify an arrest under S. 54 (1), para. 7, Criminal P. C., there must be in existence as a fact, as opposed to any belief which may be entertained by any person, a warrant which has been issued under the Extradition Act. (Harries C. J. and Agarwala J.) Haramohan Patnaik v. Emperor,

AIR 1939 Pat 129 (133)=18 Pat. 121=19 P L T 909 =5 B R 491=11 R P 533=180 I C 787=43 Cr L J 500.

——Ss. 54, 56 — Responsibility of Police — "Reasonable suspicion" and "credible information" must relate to definite averments which must be considered before taking action.

Per Ferrers J. C. — Section 54, Criminal P. C., gives very wide powers to the Police and ought to be rigorously construed. The "reasonable suspicion" and the "credible information" referred to in S. 54 must relate to definite averments which the Police Officer must consider for himself before he acts under this section. The authority which the section confers is personal and the responsibility is personal also. (Ferrers J. C. and Aston A. J. C.) Saindino Jakhro v. Emperor,

AIR 1934 Sind 197 (199)=28 Sind L R 205=7 R S 132=153 I C 361=36 Cr L J 332.

——S. 54 (1) cl. (1)—Arrest without warrant by constable —Cognizable offence—Reasonable complaint.

Where a Magistrate after taking down the statement of the complainant acts upon it on a complaint of a non-cognizable offence and issues a warrant there is a reasonable complaint of the accused being concerned in a cognizable offence, and a constable is justified in arresting the accused person without warrant. It is not necessary that the complaint must have been made by the constable who makes the arrest; it is sufficient, if there is a reasonable complaint made by any person. (Lindsay J.) Aley Mahomed v. Emperor,

AIR 1922 All 457=64 I C 278=L R 2 A (Cr.) 109= 22 Cr L J 758.

5. "Credible information."

——Complaint recorded by Magistrate sufficient information.

CRIMINAL P. C. (V of 1898), S. 54 — 5. "Credible information"

A complaint of cognizable offence recorded by a Magistrate and sent by him to Police for investigation and report is sufficient information to justify resort to the provisions of S. 54. (Mullick & Bucknill JJ.) Emperor v. Bhola Bhagat,

AIR 1923 Pat 547=2 Pat 379=4 P L T 521 = 1 Pat L R 248 Cr=72 I C 375=24 Cr L J 375.

6. "Reasonable suspicion".

——S. 54 (1) (vii)—"Reasonable suspicion" — "Credible information"—Duty of police officer.

Under S. 54 (1) (vii) the police officer cannot take shelter under the belief or judgment of another police officer. What is a 'reasonable suspicion' or 'credible information' must be at least founded on some definite fact tending to throw suspicion on the person arrested and not on mere vague surmise or information. (Shinde and Chaturvedi JJ.) Roshan Lal v. Superintendent, Central Jail, Lashkar,

AIR 1950 M B 83.

——S. 54 (1)—"Reasonable suspicion"—Enmity between Police Officer concerned and person arrested — High standard of evidence is required to establish good faith.

In order to justify a police officer taking action under the first clause of S. 54, there must be reasonable complaint or reasonable suspicion of the person to be arrested having been concerned in a cognizable offence. What is reasonable complaint on reasonable suspicion must depend upon the circumstances of each case but it should, at least, be founded upon some definite fact other than personal feelings tending to throw suspicion on the person arrested and not on a mere vague surmise. The term "reasonable suspicion" does not mean that the police are limited only by their own discretion as to what persons they may arrest without warrant. Their powers in this respect are strictly defined by the Code and where there is personal enmity between the police officer concerned and the person arrested, a very high standard of evidence would be required to prove that the police officer acted in good faith. (Walford J.) Tribhawan Singh v. Rex,

AIR 1949 Oudh 74=1948 A W R C C 62=1948 O A C C 62=50 Cr L J 578.

Absence of warrant—Does not matter.

After a complaint is lodged a constable was sent after the accused, but he had no warrant with him. Held, he had sufficient authority under S. 54, Criminal P. C. to arrest, on the suspicion, of an offence being committed. (Kanhaiya Lal J.) Mahadeo Rai v. Emperor,

AIR 1924 All 201=21 A L J 791=9 O & A L R 900 =L R 4 A 251 (Cr)=81 I C 140=25 Cr L J 652.

7. Cl. (2)—Person in possession of implement of house-breaking.

——S. 54 (1), cl. (ii) — Police officer must have definite knowledge or information about person to be arrested being in possession of implement.

Under cl. (ii) of S. 54 (1), Criminal P. C., what the law contemplates is that the police officer acting in the exercise of the powers given by that clause must have definite knowledge or at least definite information that a certain person is in possession of an implement of house-breaking before putting that person under arrest. Where, therefore, the only information the constables had was that some bad characters were in a certain place, the arrest of such persons cannot be justified even though house-breaking implements are recovered from them after arrest. (Mohammad Ismail and Mulla JJ.) Emperor v. Abdul Hamim

AIR 1942 All 74=1942 A L J 32=ILR (1942) All 35 =14 R A 277=1941 A W R (H C) 353=198 I C 264= 43 Cr L J 338.

CRIMINAL P. C. (V of 1898), S. 54

8. Cl. 5—Obstruction to police officer.

——S. 54 (1) — Constable assaulted while attempting to arrest accused without warrant or authority to do so — No allegation by constable that he proceeded under S. 54 (1) :

Held, that S. 54 (1) did not apply. (Ghulam Hasan J.) Raghubar v. Emperor

AIR 1941 Oudh 335=1941 A W R (C C) 151=1941 O W N 602=13 R O 541=193 I C 887=42 Cr L J 501.

——A complaint had been made by a certain girl that she had been raped by two persons named Mahesh and Ram Lal. The Sub-Inspector deputed certain police constables to arrest the accused. When these constables reached the place, Mahesh and Ram Lal ran inside the house of Ujagar and when the constables wanted to enter that house to arrest them, they were stopped by the applicants who, armed with lathis, threatened to attack the constables, if they moved further towards the house :

Held, that though the constables were not armed with a warrant of arrest and were not in their uniforms they had sufficient authority under S. 54, Criminal P. C., to effect the arrest. (Kannaiya Lal J.) Mahadeo Rai v. Emperor

AIR 1924 All 201 = 81 I C 140 = 21 A L J 791 = 4 L R A Cr 251=25 Cr L J 652.

9. Cl. (6) — Deserter.

—— Ss. 54, 56 — Police officer, when can arrest without warrant — Police officer himself knowing that person ordered to be arrested by superior officer was deserter from army and arresting him — Arrest is legal under S. 54, even if there is no written order under S. 56.

If a police officer has himself a reasonable suspicion that a person is a deserter from the army, he is entitled, under S. 54, Criminal P. C., to arrest him without order from a Magistrate or a warrant but not otherwise. On the other hand, if he receives an order in writing under S. 56 of the Code, he is then entitled to make the arrest whether he has any personal knowledge or suspicions himself or not. Where, therefore, a police officer arresting a person under the oral orders of his superior officer himself knows that the person ordered to be arrested is a deserter from the army, the arrest would be legal under S. 54, even if there is no order in writing from the superior officer under S. 56 for the arrest. (Almond J. C. and Mir Ahmad J.) Emperor v. Mirwal

AIR 1945 Pesh 46=1946 Pesh Rul 17=222 I C 424= 1945 Pesh L J 46=47 Cr L J 452.

——An arrest of a deserter, without the warrant of arrest, is legal because of S. 54 (1) of Criminal P. C. (Byers J.) In re Thangapandian Nadar

AIR 1943 Mad 280=(1943) 1 M L J 59=1943 M W N 47=56 M L W 34=15 R M 965=ILR (1943) Mad 827 =206 I C 307=44 Cr L J 465.

10. Cl. (7) — Arrest of fugitive criminal.

——S. 54 (1), cl. (7)—Scope.

There is nothing in cl. (7) of S. 54 (1) which requires that the person to be arrested under this clause should be charged of such an offence as would make him liable to be arrested without warrant in British India : Dictum of Mukerjee J. in A I R 1925 Cal 278, not approved. (Horwill and Kuppuswami Aiyar JJ.) Verghese Vaidar v. Emperor

A I R 1947 Mad 358 = 1947 M W N 108 = 1947-1 M L J 2 = 60 M L W 10 = 229 I C 173 = ILR (1947) Mad 640=48 Cr L J 299.

——S. 54 (7)—Interpretation of.

Section 54 (7), Criminal P. C., means that at the time the police take action, there must be in existence as a fact, as opposed to any belief which may be entertained

CRIMINAL P. C. (V of 1898), S. 54 — 10. Cl. (7) — Arrest of fugitive criminal

by any person, a warrant which has been issued under the Extradition Act. The concluding words of the clause do not merely define the nature of the offence which must have been committed. (Harrison and Dailp Singh JJ.) Emperor v. Kalu

AIR 1933 Lah 159 = Ind Rul (1933) Lah 402 = 144 I C 67=34 Cr L J 679 (2).

——Bail.

Magistrate has power to grant bail to an accused who has been arrested in pursuance of S. 54 (7) of the Criminal P. C., whom he has been asked to retain in custody, by the District Magistrate of a Native State.

Per Fawcett J. — As S. 54 (7) does not apply to arrest in Bombay, when the accused is arrested without warrant in Bombay, he must be deemed to have been arrested under S. 33 (g). But even in such a case, under S. 23 of the Extradition Act, the Magistrate has power to grant bail. (Morten and Fawcett JJ.) Sriram Shambhudayal, In re

AIR 1925 Bom 104=87 I C 100=26 Bom L R 984= 26 Cr L J 948.

——Grounds—'Credible and reasonable cause'—Essentials of S. 54 (7).

Per Walmsley J. — The expressions "credible and reasonable" in cl. 7 of S. 54 must refer to the mind of the person by whom the information is received and mere assertions cannot form the material for the exercise of an independent judgment, by such person.

Per Mukerji J.— There are two conditions necessary to satisfy the requirements of S. 54, cl. 7. The first is one which contemplates either the proof of a fact, viz., the fact of the person having been involved in the act or a reasonable complaint of credible information or a reasonable suspicion of his being concerned therein. The second is that the person is liable for such act to be apprehended or detained in custody in British India under any law relating to extradition or under the Fugitive Offenders Act, 1891, or otherwise. Under the first requisite, the arresting police officer has to exercise his own judgment and form his own opinion as to whether he should or should not act and to enable him to do so he must have the necessary facts before him. Under the second requisite, what is necessary is the existence of the present liability for apprehension or detention and not a future contingent liability. Such liability would be created by the issue of some sort of process under the law, though the process may not arrive and may not be available for execution, It is the duty of the police when all the conditions necessary to fulfil the requirement of S. 54, cl. 7 are present and an arrest is validly and lawfully made, to forthwith produce the arrested person before a Magistrate. (Walmsley and Mukerji JJ.) Subhodh Chandra Roy Choudhuri v. Emperor

AIR 1925 Cal 278 = 85 I C 913 = 40 C L J 489 = 29 C W N 98=52 Cal 319=26 Cr L J 625.

——Arrest—Illegal extradition proceedings—Effect on.

Illegality of arrest does not vitiate extradition proceedings if the further action was gone through correctly : 31 W R 60; R. v. Wall. 9 Q B D 701, Foll. (Woodroffe, Mookerjee and Chitty JJ.) In re Rudolph Stallman

39 Cal 164=15 C W N 1053=14 C L J 375 = 12 I C 273=12 Cr L J 505.

——S. 54 (7) — Extradition proceedings and Extradition Act (1903) — Enquiry into truth of accusation by British Court if condition precedent to issue of warrant — See Extradition Act (15 of 1898), S. 7.

2 Cr L J 439 (Bom).

CRIMINAL P. C. (V of 1898), S. 54

11. Cl. (9)—Arrest on requisition.

——S. 54 (1) (ix)—"Requisition.".

The word "requisition" in S. 54 (1) (ix) is quite general and clearly covers a message communicated by telephone or wireless. But it is necessary for a police officer when he is asking another police officer to do what he could have done himself to disclose under S. 54 (1) not only the identity of the person whom he wishes to be arrested but also the offence or the reason for which the arrest is to be made. (Shinde and Chaturvedi JJ.) Roshan Lal v. Superintendent, Central Jail, Lashkar

AIR 1950 M B 83.

——Ss. 54, 56 —S. 54 (1), cl. (9), if limits other clauses —S. 56, whether restricts S. 54.

Clause 9 of S. 54 (1) does not seek to limit in any way the application of the other clauses. It merely introduces another class of persons who can be arrested without a warrant, viz., those persons for whose arrest a requisition had been received from another Police Officer. Section 56 (1) does not purport to confine or restrict the application of S. 54. It lays down the procedure to be adopted by an officer in charge of a Police Station desirous of requiring an officer subordinate to him to arrest without a warrant. (Horwill J.) In re Mohamed Meera Sahib

A I R 1943 Mad 207 = 1942 M W N 723 = (1942) 2 M L J 710=15 R M 839=205 I C 158=44 Cr L J 272.

——Ss. 54 (1) (ix) and 56—"Requisition" in S. 54 (1) (ix), if covers telephonic message — Order for arrest of person by telephone.

There is no warrant for the proposition that a Police Officer cannot order the arrest of a person by means of a telephonic message. The word "requisition" in S. 54 (1) (ix), Criminal P. C., is quite general and clearly covers a message communicated by telephone, although it will be necessary for him when he is asking another Police Officer to do what he could have done himself to disclose not only the identity of the person whom he wishes to be arrested but also the offence or the reason for which the arrest is to be made. This has to be done for the reason stated in the last clause of S. 54 (1).

Section 54, Criminal P. C., applies to all Police Officers whether superior or subordinate. It is not limited by the provisions of S. 56 in all cases. Section 56 only applies to such Police Officers as are in charge of a Police Station or as are making investigations under Chap. XIV. If in their capacities as such officers, they depute their subordinate to arrest without a warrant (otherwise than in their presence) they have to give that order in writing. But if they are not acting in that capacity, a compliance of the general provisions contained in S. 54 (1) (ix) would be enough. (Abdur Rahman and Somayya JJ.) Gurucharan Kour v. Province of Madras

AIR 1942 Mad 539=15 R M 614=(1942) 2 M L J 14 =1942 M W N 602= I L R (1942) Mad 696 = 203 I C 45=44 Cr L J 45.

——Ss. 54, 56—Power under S. 54, if limited by written order under S. 56.

Power conferred by S. 54, Criminal P. C., is not limited by issue of a written order under S. 56. (Varma and Madan JJ.) Jioo Mian v. Emperor

AIR 1938 Pat 229=19 P L T 247 = 16 Pat 763 =10 R P 623 =4 B R 584=175 I C 335=39 Cr L J 563.

——Ss. 54, 56 — Police constable acting under S. 56, arresting accused—No order in writing.

Section 56, Criminal P. C., applies to cases where a Police Officer is acting not on his own information but on the order of his superior, but where facts exist which do attract the application of S. 54, Criminal P. C., itself, there appears no reason why a Police Officer should not

CRIMINAL P. C. (V of 1898), S. 54 — 11. Cl. (9) — Arrest on requisition

act under that section even if the formalities required by S. 56, Criminal P. C., are not complied with.

Where the Police constables knew of their own knowledge and upon the information supplied by the Head Constable and the complainant that a complaint had been made by the complainant, of house-breaking against the accused :

Held, that they could have acted under S. 54 as well as under S. 56, if they had the order in writing required by S. 56; the fact that they did not have this order, could not preclude the application of S. 54 when the provisions of that section were satisfied. (Davis J. C. and Haveliwala A. J. C.) Achar Bilawal v. Emperor

AIR 1937 Sind 308=10 R S 137 = 32 Sind L R 63= 172 I C 149=39 Cr L J 107.

——Ss. 54, 56 — Scope — S. 54, whether controlled by S. 56—Arrest without warrant in cognizable case — Sub-Inspector directing constable, on complaint to him of cognizable offence, to bring offender before him—Arrest of offender without written order — Resistance to arrest — S. 353, Penal Code.

The terms of S. 54, Criminal P. C., are very wide and they are not controlled by S. 56. A police constable is entitled to arrest, under S. 54, independently of S. 56, the person required without a warrant, in a cognizable case. The word 'complaint' in the first clause of S. 54 does not admit of a restricted meaning that the complaint should be made to the arresting constables for action. And it is immaterial whether the police constables were then conscious of the specific provisions of the Code to which their acts were referable.

Where, therefore, the constables are directed by the Sub-Inspector of police to bring the offender before him, on a complaint being made to him, the constables shall be acting within their powers under S. 54 (1). The offender who refuses to submit and those who prevent the constables from carrying out the arrest are guilty under S. 353, Penal Code. (Broomfield and Wassoodew JJ.) Keshavlal Harilal v. Emperor

A I R 1937 Bom 56=38 Bom L R 971=I L R (1937) Bom 127=9 R B 249=166 I C 632=38 Cr L J 267.

——Ss. 54, 56 — Cognizable offence — Arrest without authorisation in writing—Police constable merely deputed by superior officer to arrest — Whether can arest without observing formalities mentioned in S. 56.

Section 54, Criminal P. C., does not give an unqualified power in all cases to any Police Officer to arrest, without an authorisation in writing, a person concerned in a cognizable offence but its provisions are limited by those of S. 56. Where a Subordinate Police Officer is not acting independently, but is merely deputed by a superior officer to arrest some one concerned in a cognizable offence, he cannot do so without observing the formalities mentioned in S. 56. (Mosely J.) Mohamed Ismail v. Emperor

A I R 1936 Rang 119=13 Rang 754=8 R Rang 480 =161 I C 459=37 Cr L J 462.

——Ss. 54 and 491 — Arrest on the strength of a letter from a brother officer not proper.

The arrest effected by a Police Officer in Calcutta under S. 54 only on the strength of a letter from a Police Officer in the Bombay Presidency but without personal knowledge of the facts is not proper as S. 54 requires great discretion, caution and circumspection in exercising the wide powers vested by it in Police Officers. (Chaudury J.) In the matter of Charu Chandra Majumdar

A I R 1917 Cal 253=44 Cal 76 = 37 I C 57=20 C W N 1233=18 Cr L J 73.

[But Cl. 9 added to the Section under the New Code enables such arrest to be made. Ed.]

CRIMINAL P. C. (V of 1898) —S. 55.

——Ss. 55 and 109 — Proceedings under S. 109 — Person need not be arrested under S. 55 — Sections are independent.

A person need not be arrested in accordance with the provisions of S. 55 before he can be proceeded against under S. 109. A person not arrested in accordance with the provisions of the former section can be proceeded against under the latter section. The two sections relate to different subjects and are independent of each other. (Seth J.) Rex v. Ram Dayal

A I R 1950 All 134 = I L R (1950) All 935 = 1949 A L J 413=51 Cr L J 436.

——Arrest under — Police, if bound to release arrested persons immediately, on bail — Custody, if illegal merely because they are not informed that they are entitled to be released on bail.

When the Police make an arrest under S. 55, Criminal P. C., they are not bound to release the persons arrested on bail immediately after the arrest. Nor can it be said that their custody is illegal merely because they were not informed that they are entitled to be released on bail. (Lort-Williams and Jack JJ.) Superintendent & Remembrancer of Legal Affairs, Bengal v. Jair Ali

164 I C 1007 = 63 Cal 189 = 9 R C 331 = 37 Cr L J 1070.

——It is enough for the Police Officer in his requisition to specify S. 55 and by so doing, he conveys sufficient information to the person to be arrested. (Bennet J.) Rameshwar v. Emperor

A I R 1934 All 879 (880) = 7 R A 230 = 1934 A L J 997=4 A W R 107=151 I C 834=35 Cr L J 1452.

——Independent of—Chap. VIII, I. P. C.

Section 55, Criminal P. C., is independent of Chap. VIII of the Code, which includes S. 110 although proceedings under that chapter might follow an arrest, under S. 55 as a natural sequence and a Police Officer can therefore arrest or cause to be arrested without warrant or an order of a Magistrate any person who comes within provisions of S. 55. (Macpherson J.) Ramnandan Singh v. Emperor

A I R 1930 Pat 103 = I R 1930 Pat 446 = 124 I C 638=1930 Cr C 79=31 Cr L J 717.

——Habitual offender—Clause of S. 35 shall be specified.

If it is intended that the police officer should arrest a man with a view of taking proceedings under S. 110, it is strictly and specially necessary that he should specify one of the clauses given in S. 55, although it may be for the cause so stated that he intends to proceed under S. 110. (Kincaid J. C. and Kennedy A. J. C.) Hardyal Singn v. Emperor

A I R 1926 Sind 190 = 94 I C 404=20 S L R 85=27 Cr L J 628.

——Immunity.

The mere fact there is an intention to act under Ch. 8 by the police does not grant to the accused persons immunity from preliminary arrest. (Kincaid J. C. and Kennedy A. J. C.) Hardyal Singh v. Emperor

A I R 1926 Sind 190 = 94 I C 404=20 S L R 85=27 Cr L J 628.

——Suspicion.

Arrest under S. 55 (c) is not justified by mere suspicion that the accused was concerned in several offences since the section refers to reputed habitual offenders. (Krishnan J.) Appaswamy Mudali, In re

A I R 1924 Mad 555=46 M L J 447 = 81 I C 51=47 Mad 442=19 M L W 504 = 34 M L T 95 = 25 Cr L J 563.

——Liability of surety.

CRIMINAL P. C. (V of 1898), S. 55

Surety's liability to produce accused to answer one charge does not extend to producing the accused to answer charges for other offences. (Martineau J.) Mana v. Emperor,

AIR 1924 Lah 622=76 I C 227=25 Cr L J 131.

——Discharge from custody—Order for further detention.

Where by order, a Magistrate discharges from custody an accused on the ground of insufficient evidence, he has no power to direct his further detention in connection with a different matter unless and until he has been re-arrested under S. 55 of the Code. (Piggott J.) Rahu v. Emperor,

AIR 1921 All 278 = 43 All 186 = 18 A L J 1114=59 I C 547=L R 2 A (Cr) 76=22 Cr L J 115.

——Ss. 55 and 57 — Acquittal on charge of dacoity — Detention—Re-arrest.

Detention of persons after orders for his immediate release by Court, may expose the Magistrate or the Police Officer to serious results. The re-arrest of a person after his acquittal on a charge of dacoity and his detention by the Police for 12 days is illegal. (Knox J.) Maiku v. Emperor,

AIR 1919 All 160=41 All 483=17 A L J 458=1 U P L R H C 19=50 I C 989=20 Cr L J 381.

——Ss. 55 and 110 — Police Officer, power of — Arrest without warrant.

Section 55, Criminal P. C., is independent of Chap. VIII of the Code and a Police Officer may arrest a person against whom proceedings under S. 110 are contemplated without a warrant or order from a Magistrate. (Tudball J.) Nepal v. Emperor,

35 All 407=11 A L J 596=21 I C 666=14 Cr L J 618.

——S. 55 (6)—Applicability — Arrest by an Inspector of Police in Calcutta—Legality of—See Criminal Procedure Code (Act V of 1898), S. 1 (2) (a).

1 Cr L J 535 (Cal).

—S. 56.

See also, Criminal P. C., S. 54.

——Investigation of offence taken up by Sub-Inspector.

Assistant Sub-Inspector accompanying him to locality to effect arrests — Arrest made by Assistant Sub-Inspector not in presence of Sub-Inspector and without written order from him is not legal : A I R 1946 Cal 314, Disting. (Roxburgh and Ellis JJ.), Superintendent and Remembrancer of Legal Affairs, Bengal v. Sona Mia,

AIR 1948 Cal 95=229 I C 611=48 Cr L J 464.

——Sub-Inspector not present on spot asking constable to bring certain person to thana — Order, if direction for arrest—Use of force by constable — Person resenting it—Scuffle following and brickbats thrown.

Where a Police Sub-Inspector who is not present on the scene asks the constables to bring certain persons with some papers to the Police Station, his order does not amount to a direction to arrest those persons, as contemplated by S. 56, Criminal P. C., unless the order is given in writing. If in such a case the constables try to take one of the persons to the thana by force, the use of the force is illegal and if such person resents it and it is followed by a scuffle in the course of which brickbats are thrown, the person resenting cannot be convicted under S. 224, I. P. C., nor can the persons assisting him be convicted under Ss. 225 and 353, I. P. C. (Dhavle J.) Gulabi Mahto v. Emperor,

A I R 1940 Pat 361 = 21 P L T 144 = 13 R P 125 =6 B R 835=189 I C 539=41 Cr L J 742.

——Station Officer directing constable to arrest without warrant—Authority in writing.

Where a police constable was in no way acting independently no complaint had been made to him and no credible

information had been received by him independently, but he was acting on definite instructions from his Station-house Officer and was required by that officer to arrest without a warrant :

Held, that the Police constable could not effect the arrest unless he had in his possession an authority in writing as required by S. 56, Criminal P. C. (Grille J.) Maroti Bansi v. Emperor,

AIR 1939 Nag 95 = I L R (1939) Nag 488 = 1939 N L J 101=12 R N 101=184 I C 231=40 Cr L J 905.

——Applicability.

Per Broomfield J. — Section 56 is not superfluous. It applies to subordinates other than Police Officers, for instance, chaukidars : and moreover; there may be cases where it is necessary to give orders to Police Officers who cannot act under S. 54, not having the requisite knowledge as to the existence of credible information or reasonable suspicion. (Broomfield and Wassoodew JJ.) Keshavlal Harilal v. Emperor,

A I R 1937 Bom 56=I L R (1937) Bom 127=38 Bom L R 971=9 R B 249=166 I C 632=38 Cr L J 267.

——Ss. 56, 55 — Police Officer specifying S. 55 in his requisition—Sufficiency of.

As no particular form is prescribed under S. 56, Cr. P. C., it is enough for the Police Officer in his requisition to specify S. 55, Cr. P. C., and by so doing he conveys sufficient information to the person to be arrested. (Bennet, J.) Rameshwar v. Emperor,

AIR 1934 All 879 = 7 R A 230 = 4 A W R 107 = 1934 A L J 997 = 151 I C 834=35 Cr L J 1452

——Endorsement of names of constables actually making arrest.

There is no provision in S. 56 requiring an endorsement of the names of the constables who actually go to make the arrest. (Bennet J.) Rameshwar v. Emperor,

AIR 1934 All 879 = 7 R A 230 = 4 A W R 107 = 1934 A L J 997 = 151 I C 834=35 Cr L J 1452.

——A Chowkidar is officer subordinate to officer-in-charge of Police Station.

Chowkidar's duties as set out in S. 39 of the Village Chowkidari Act (VI of 1870, B. C.), show it clearly that he is an officer subordinate to an officer-in-charge of a Police Station, within the meaning of S. 56 of the Crim. Pro. Code. An arrest of a person, therefore, by a chowkidar, on the authority of an order in writing delivered to him in conformity with the provisions of S. 56 (1) of the Crim. Pro. Code, is legal. (Pargiter and Woodroffe JJ.) Bahubal Sircar v. Emperor,

10 C W N 287 = 3 Cr L J 201.

—S. 57.

——Accused not committing offence under R. 7 (1) of Motor Vehicles Act — Head Constable demanding name and address of accused — Accused not complying— Constable mounting foot-board of lorry and telling accused that he is under arrest under S. 128, Motor Vehicles Act —Accused pushing aside the constable, abusing him and decamping :

Held, that the accused was not guilty and S. 57 did not apply as no known cognizable offence was committed. (Din Mohammad J.) Devaki Nandan v. Emperor,

AIR 1941 Lah 422 = 14 R L 205 = 197 I C 136=43 Cr L J 127.

—S. 58.

——Jurisdiction — Foreign subject—Irregularly arrested.

Where a subject of country A who has committed an offence in country B is irregularly arrested by the Police Officer of country B in country A but has been validly surrendered by the authorities of country A to the trying Court in country B, the proceedings are perfectly regular

and in order. The validity of his trial or of his conviction therein is in no way affected by the irregularity in his arrest and irregularity of such arrest is no plea to the jurisdiction of the Court to try him. (On facts held that the trial was perfectly valid and was not vitiated by any illegality in the accused's arrest.) (Lords Macmillan, Wright, Porter and Clauson and Sir George Rankin) Prabhu v. Emperor,

AIR 1944 P C 73 = 57 M L W 408 = 1944 A L J 385 = 1944 M W N 502 = 11 B R 94 = 1944 A W R (P C) 38=46 Bom L R 838 = 48 C W N 493 = 71 I A 75 = ILR (1944) Kar P C 269=215 I C 63= 46 Cr L J 119 (PC).

——Omission to notify — Cases where the constable can arrest under S. 54.

Where a command certificate has been given to a constable under S. 56 for effecting the arrest of a person, but the constable arrests that person without notifying to him the substance thereof the arrest does not become illegal if facts of the case are such that the constable can arrest the person under S. 54 without a warrant, irrespective of a command certificate under S. 56. (Ross and Kulwant Sahay JJ.) Kishun Mandar v. Emperor,

AIR 1926 Pat 424 = 5 Pat 533 = 8 P L T 237 = 98 I C 254 = 27 Cr L J 1310.

——Chaukidar.

Section 56 (1) does not require a chaukidar on his own initiative to show to the accused an order given to him by the officer in charge of the Police Station. (Ashworth A. J. C.) Umrao v. Emperor,

AIR 1925 Oudh 544 =86 I C 427 = 26 Cr L J 795.

——Arrest of person in Gwalior, for offence in British India is illegal.

The arrest of a person at the Gwalior Railway station for an offence committed in British India is illegal. The British Government has no jurisdiction in such area in respect of offences not connected with the Railway administration. (Martineau J.) Radha Kishan v. Emperor,

AIR 1920 Lah 235 = 1 Lah 406 = 55 I C 351 = 21 Cr L J 303.

——Written statement by accused—Illegality of.

There is no provision in the Code for the making of a written statement by the accused and the practice of refusing to answer questions in Sessions Courts and of putting in a written statement is a pernicious one and tends to defeat the provisions of S. 342 of the Code which has been enacted for the benefit of the accused. (Chitty and Beachcroft JJ.) Emperor v. Dwijendra Chandraji,

AIR 1916 Cal 633 = 19 C W N 1043 = 31 I C 164= 16 Cr L J 724.

—S. 59.

——Arrest by police-officer of Jammu and Kashmir in Travancore and Cochin for offence in former State— Legality—See ibid, S. 54.

AIR 1952 T-C 201 = 1952 Cr L J 943.

——Ss. 59, 46 — Neighbour of person at whose house he had seen dacoity being committed, chasing dacoits — On way some other persons becoming suspicious joining pursuit — Whether these men have right to attempt to arrest dacoits — Dacoits, if have right to shoot in self-defence—Penal Code (1860), S. 96.

The words "in his view" in S. 59, Criminal P. C., must be given a liberal interpretation. They mean not only "in his sight" but also "in his presence."

Section 46 (2), Criminal P. C., authorises a private person to "use all means necessary to effect the arrest". Words "all means" are very wide and include the taking of assistance from others in effecting the arrest.

CRIMINAL P. C. (V of 1898), S. 59

A neighbour who had seen a dacoity being committed at another's house, upon the dacoits escaping with booty chased them by footprints to a distance. On the way he came across them and recognized some of them. He continued the pursuit. The dacoits when crossing a field were accosted by the men working there, whose curiosity was aroused on their seeing that dacoits were armed. Their suspicion was heightened by the replies they got from the dacoits. On their raising a hue and cry, they were joined by others from the village. All of them started the pursuit. The dacoits thereupon fired back pistols, as a result of which one of the chasers was killed and some were injured by gunshots :

Held that the chasers had a right to attempt to arrest the dacoits and the dacoits had no right to shoot them in self-defence. AIR 1948 All 103, Approved. AIR 1925 Cal 884, Relied on; 35 Cal 361, A I R 1947 Sind 107, A I R 1922 Lah 73, AIR 1933 Pat 508, Dissent. (Sankar Saran, Wanchoo and Bind Basni Prasad JJ.) Nazir v. Rex,

A I R 1951 All 3=ILR (1952) 1 All 445=1950 A L J 770 (FB).

——Owner of house apprehending accused breaking into house at night — Owner has right to arrest accused and keep him in custody. (Baxi J. C.) Bhudhia Debji v. Shamji Khimji.

AIR 1951 Kutch 11.

——Person seeing offender running away immediately after commission of crime is entitled to arrest him — No right of private defence against such person—Penal Code (1860), S. 99.

When a man is found committing a non-bailable and cognizable offence and then tries to escape the whole is to be treated as one single transaction and any person who either sees him committing the offence or finds him running away immediately after the commission of the offence would be entitled to arrest him under S. 59, Criminal P. C. The offender has no right of private defence against any attempt made by any such person to arrest him : (1824-37) 1 Moody's Crown Cases 207 and AIR 1924 Mad 384, Ref. (Harish Chandra and Akbar Hussain JJ.) Sheo Balak Dusadh v. Emperor,

A I R 1948 All 103=1947 A L J 573 = 1947 A W R H C 352=ILR (1948) All 3=49 Cr L J 62.

——Private person entitled to effect arrest under S. 59 cannot authorise third person to act as his agent. A I R 1933 Pat 508 and 35 Cal 361, Rel. on; A I R 1925 Cal 884, Expl., and Disting. (Constantine and Meher JJ.) Fakiro v. Emperor,

A I R 1947 Sind 107 = I L R (1946) Kar 443=1947 A W R Sup 129=1947 O A Sup 129 = 48 Cr L J 823.

——Sch. II — Foodgrains (Movement Control) Order, 1943, S. 3.

An offence under S. 3, Foodgrains (Movement Control) Order is both cognizable and bailable. (Munir J.) Dost Mohd. v. Emperor,

AIR 1945 Lah 334=47 P L R 229=ILR (1945) Lah 403.

——Arrest without warrant—Distinction between powers of Police Officer and private individual must be made.

In considering the question of the lawfulness of an arrest or imprisonment, distinctions have been, and will have to be, drawn between the powers of a Police Officer and that of a private citizen. There may be cases where the former may without a warrant arrest on reasonable suspicion, "reasonable" being understood to mean a bona fide belief that an offence had been committed or is about to be committed necessitating the arrest of the person concerned. [Bona fide on part of Police Officers held

CRIMINAL P. C. (V of 1898), S. 59

absent.] (Chandrasekhara Ayyar J.) K. V. Muhammad v. Chakkappayyan Kannan,

AIR 1943 Mad 218=1942 M W N 725=15 R M 942 =(1943) 1 M L J 447=56 M L W 331=206 I C 220.

——Accused entering the house of a woman with deadly weapon to commit cognizable offence—Woman not known to be of low character :

Held, that any person can arrest the accused and cause death if necessary, and the right of private defence is not available to the accused. (Almond J. C. and Mir Ahmad A. J. C.) Mohtasham Aslam v. Emperor,

A I R 1937 Pesh 92 = 10 R Pesh 32 = 1937 Pesh L J 97=171 I C 346=39 Cr L J 35.

——In S. 59, is included a proclaimed offender but in order that a man may be a proclaimed offender, it is not sufficient for a Sub-Inspector to say or write that he is a proclaimed offender. (Davis J. C. and Haveliwala A. J. C.) Emperor v. Hafiz Murid Dood,

A I R 1937 Sind 254=10 R S 116=32 Sind L R 41= 171 I C 672=38 Cr L J 1101.

——Ss. 59, 46—Frontier Crimes Regulation (III of 1901), S. 38 — Person entering house to carry out amours with married woman—Right of owner to arrest him — Person armed and evading arrest—Right to use all means necessary for securing him.

Where a person goes to a house with the intention of carrying out his amours with a married woman, which is an offence under S. 448, I. P. C., and is cognizable, the owner of the house has every right to arrest him. If such person is armed with a dagger and evades arrest, the owner is perfectly justified under S. 59, Cr. P. C., to pursue him for arrest and under S. 56, Cr. P. C., read with S. 38, Frontier Crimes Regulation, to use all means necessary for securing him. (Mir Ahmad A. J. C.) Said Mahmud v. Emperor,

A I R 1935 Pesh 83 = 8 R Pesh 5 = 156 I C 704 =36 Cr L J 1135.

——Ss. 59, 46—Right of private persons to arrest criminals—Extent of.

The right of private persons to arrest offenders is more restricted in India than in England where private persons are not only permitted but also required to arrest any person, who, in their presence, commits a felony or dangerous wounding, etc., and are empowered to arrest on a reasonable suspicion of the commission of these and some other offences, but that right must be taken with its restrictions in applying the I. P. C. (Dhavle and Rowland, JJ.) Abdul Aziz v. Emperor,

A I R 1933 Pat 508 = 14 P L T 464 = 6 R P 490 =148 I C 574=35 Cr L J 725.

——Ss. 59, 46—Scope of.

Section 59, Criminal P. C., only entitles a private person to arrest any person who, in his view, commits a non-bailable and cognizable offence, and the words "in his view" mean "in his presence" or "within sight of him" and not "in his opinion."

Per Rowland J. — A private person is entitled to arrest only a criminal whom he sees in the act of committing the crime but not one whom he sees in the act of flight immediately after. (Dhavle and Rowland, JJ.) Abdul Aziz v. Emperor,

A I R 1933 Pat 508=14 P L T 464=6 R P 490=148 I C 574=35 Cr L J 725.

——Quaere.—Whether in India a private person responsible for an arrest cannot look for protection elsewhere than in S. 59. (Ameer Ali J.) Graham v. Henry Gidney,

A I R 1933 Cal 708 = 6 R C 450 = 60 Cal 955 = 148 I C 262.

CRIMINAL P. C. (V of 1898), S. 59

——S. 59 (as amended in 1923) — Arrest by private individual — Accused escorted in charge of chaukidar—Rescue of accused from chaukidar's custody—Penal Code (Act XLV of 1860), S. 225—Offence under—If committed.

Under S. 59, Criminal P. C., as amended in 1923, a chaukidar, though not a Police Officer, has power to receive the custody of a person arrested under S. 59 by a private individual and to take such person to the Police Station. Consequently, where such a person is rescued from the custody of a chaukidar, an offence under S. 225, Penal Code, is committed. (Rowland J.) Chotu Hajam v. Emperor,

A I R 1932 Pat 214=13 P L T 321 = Ind Rul (1932) Pat 171 (1)=138 I C 95=33 Cr L J 572.

——Non-compliance—Where accused suspecting the complainant to have committed an offence under S. 366, I. P. Code, arrested him but instead of taking him to Police Station took him to a Dharamsala where he happened to see a police inspector to whom the complainant was then handed over.

Held, that the accused was not protected by S. 59 and was thus guilty under S. 342, I. P. Code. (Kulwant Sahay, J.) Anant Prashad Ray v. Emperor,

98 I C 594=8 P L T 204=27 Cr L J 1378.

——Interpretation—'In his view.'

The words "in his view" in S. 59 mean "in presence of" or "within sight of" and not "in his opinion." (Kulwant Sahay, J.) Gokul Tatwa v. Emperor,

A I R 1926 Pat 53 = 7 P L T 65 = 89 I C 1030=26 Cr L J 1462.

——Where persons went to their cocoanut tope to see if any theft of toddy was going on and saw a man standing on the ground with a pot of toddy in his hands and two of his confederates climbing the trees, and arrested the man on the ground:

Held, the latter should be deemed to be committing theft "in the view of" his arrestor. The toddy should be regarded to be in process of being removed from the tope. 35 Cal 361 and A I R 1922 Lah 73, Dist. Failure to hand over the arrested person to a passing beat constable or taking the arrested person to a Chavadi on the way to the Police Station is not necessarily an unnecessary delay vitiating legality of arrest. (Krishnan, J.) Arumuga Goundan v. Emperor,

A I R 1924 Mad 384 = 81 I C 312=18 M L W 818= 25 Cr L J 792.

——Powers of a private person to arrest — When can be exercised.

Section 59 of the Criminal Procedure Code, gives the powers to a private person to arrest any person, who, in his view, commits a non-bailable and cognizable offence. Arrest of the offender by a person in whose presence the offence is not committed, is not justified. Unless it is proved by the evidence on record that the intention of the accused was to prevent the arrest, or that the pursuers were lawfully empowered to arrest him; persons stopping them from doing so are not liable under S. 225, Indian Penal Code. (Abdul Raoof and Abdul Qadir JJ.) Alawal v. Emperor,

A I R 1922 Lah 73 = 19 P L R 1922 = 64 I C 371= 4 U P L R (Lah) 21=23 Cr L J 3.

——Chowkidar—Not a Police Officer—Escape.

A Chowkidar is not a Police Officer within S. 59 of the Code and escape from his custody is not unlawful. 27 Cal 366, Foll. (Imam and Chapman JJ.) Purna Chandra Kundu v. Emperor,

41 Cal 17 = 17 C W N 978 = 20 I C 750 = 14 Cr L J 494.

CRIMINAL P. C. (V of 1898), S. 59

——Private person making arrest—Obligation to personally take arrested person to police station—See Penal Code (1860), S. 224.

6 Cr L J 10 (All).

—S. 60.

——Scope.

The Magistrate cannot delegate responsibility of accepting sureties to another Magistrate unless the law expressly empowers. The very fact that Ss. 60, 76 (1), 85 and 86 were deemed necessary by the Legislature indicates that they are exceptions and are no part of the general law. (Bose J.) Emperor v. Banarsidas,

I L R (1937) Nag 168 = 9 R N 275 = 168 I C 876= 38 Cr L J 633.

——Procedure—On a complaint of a limited company in Ahmedabad which charged its commission agents with breach of trust, the commission agent was arrested by C. I. D. Officer, Poona, under S. 61 of Cr. P. Code on 5th March 1924. He produced him before the Chief Presidency Magistrate who granted the accused bail and asked him to appear in Ahmedabad Court on 16th March.

Held, that the mere statement of an investigating police officer was not sufficient for an action by the Magistrate who should have asked for the production of a warrant from Ahmedabad and who should have released the prisoner on bail, calling upon him to appear before himself when required. The precautions laid down in these sections seem to be designed to secure that within 24 hours some Magistrate shall have seisin of what is going on and some knowledge of the nature of the charges against the accused, however incomplete the information may be. (Greaves and Duval, JJ.) Dwarka Das Haridas v. Amba Lal Ganpatram,

A I R 1924 Cal 893 = 82 I C 131 = 28 C W N 850= 25 Cr L J 1203.

—S. 61.

——Applicability.

Section 61 does not apply to the Calcutta Police: A I R 1925 Cal 587, Foll. (Suhrawardy and Duval JJ.) Srilal Agarwalla v. Emperor

AIR 1926 Jour 190 (3) (Cal)=97 I C 945=44 C L J 134=27 Cr L J 1185.

——Procedure—Expiry of 15 days.

On the expiry of the period of 15 days allowed under Ss. 61 and 167, the police must either release the accused under S. 167, security being taken if required or the Magistrates must take cognizance on a report under S. 173 if the report according to the Magistrate makes out a prima facie case or the Magistrate must release him. (Greaves and Panton JJ.) Bholanath Das v. Emperor

AIR 1924 Cal 614 = 83 I C 628 = 28 C W N 490 = 26 Cr L J 68.

——Procedure—Investigation.

On a complaint of a limited company in Ahmedabad which charged its commission agents with breach of trust, the commission agent was arrested by C. I. D. Officer Poona, under S. 61 of Criminal P. C. on 5th March 1924. He produced him before the Chief Presidency Magistrate who granted the accused bail and asked him to appear in Ahmedabad Court on 16th March.

Held, that the mere statement of an investigating police officer was not sufficient for an action by the Magistrate who should have asked for the production of a warrant from Ahmedabad and who should have released the prisoner on bail, calling upon him to appear before himself when required. The precautions laid down in these sections seem to be designed to secure that within the 24 hours some Magistrate shall have seisin of what is going on and some knowledge of the nature of the charges

CRIMINAL P. C. (V of 1898), S. 61

against the accused, however incomplete the information may be. (Greaves and Duval JJ.) Dwarkadas Haridas v. Amba Lal Ganpatram

AIR 1924 Cal 893 = 82 I C 131 = 28 C W N 850 = 25 Cr L J 1203.

——Object.

Intention of Legislature is that accused should be brought before Magistrate competent to try or commit, with least delay. (Mookerjee and Chatterjee JJ.) Nagendra Nath Chakravarty v. Emperor

AIR 1924 Cal 476=81 I C 220=51 Cal 402=38 C L J 388=25 Cr L J 732.

—S. 62.

——Report by police — Magistrate ordering to challan accused if should ask accused whether he consented to be tried by him.

A report by police under S. 62 falls within the ambit of the words "police report" under cl. (b) of S. 190 and therefore where the Magistrate orders the police such report to challan the accused it is not necessary for him to ask the accused before the commencement of the trial whether he consented to be tried by him. To such a case the provision of cl. (c) of S. 190 does not apply and it is not necessary for the Magistrate to proceed under S. 191. (Johnstone J.) Abdulla v. Emperor

35 P W R 1909 Cr = 3 P R 1910 Cr = 4 I C 1025 = 164 P L R 1910=11 Cr L J 150.

—S. 64.

——Ss. 64, 196—S. 196, if controls powers of Magistrate under Code—Person committing offence under S. 171-D, Penal Code in presence of Magistrate—If can be arrested under S. 64 — Previous sanction of Local Government, whether necessary to take cognizance of such offence.

Section 196, Criminal P. C., does not control the powers of a Magistrate under the Code, but only prevents a Court from taking cognizance of certain offences without there being a complaint made by order of, or under authority from, the Governor-in-Council, the Local Government or some officer empowered by the Governor-General-in-Council in this behalf. Therefore, a Magistrate not functioning as a Court but only as a Magistrate acting under S. 64, Criminal P. C., is fully authorized to arrest and to release on bail, a person who has committed an offence in his presence under S. 171-D, I. P. C., and no previous sanction of the Local Government is necessary for the Magistrate to take cognizance of such an offence. The word "offence" used in S. 64, Criminal P. C., is obviously wide enough to include an offence under S. 171-D, I. P. C. (Mulla J.) Brahma Nand Misra v. Emperor

AIR 1939 All 682 = 1939 A L J 779 = 1939 A W R 696 = 12 R A 273=ILR (1939) All 924=184 I C 662= 41 Cr L J 85.

——Illegal confinement—See Penal Code, S. 220

1 Cr L J 146 (Kathiawar).

—S. 65.

See also Bombay Prevention of Gambling Act (4 of 1887), S. 4.

——Ss. 65 and 190 (1) (e)—Arrest of accused under direction of Magistrate—Suit for damages does not lie.

On a complaint under S. 448, I. P. C., a Sub-Magistrate went to a temple, where the accused were hiding, and arrested them without making any final order on the occurrence report received by him the day before :

Held, that independently of the occurrence report, the Magistrate's action was right and he was not liable for damages. (Wallis C. J. and Kumaraswami Sastri J.) Ramamurthi Ayyar v. Parasaram Mangayacharyulu

AIR 1919 Mad 30 (2)=52 I C 609.

CRIMINAL P. C. (V of 1898), S. 65

——Applicability — Warrant issued under S. 6, Bombay Act 4 of 1887 — See Bombay Prevention of Gambling Act, IV of 1887, Ss. 4, 5, 6 and 7, 9

6 Cr L J 60 (Bom).

——Illegal confinement—See Penal Code, S. 220

1 Cr L J 146 (Kathiawar).

—S. 68.

——Summons served by unregistered post — Service is irregular — Summons returned unserved — No inference can be drawn against accused. (Kania C. J., Fazl Ali and Patanjali Sastri JJ.) Sudhir Kumar Dutt v. The King

AIR 1949 F C 6=1948 M W N 753=1948 F L J 1= 1948-2 M L J 37=52 C W N (F R) 44=1948 F C R 86 =29 P L T 437=51 B L R 21=50 Cr L J 294 (FC).

——Case under Road Traffic Act (English) (1930)—Person summoned to give information as "any other person"— Court finding him owner — Defect is not material — See Motor Vehicles Act (1939), S. 113

(1949) 2 All E R 747.

——Omission to enter in summons full particulars with which accused is charged—Whether of itself vitiates trial.

Mere omission in the summons to enter full particulars of the offence with which the accused is charged does not by itself vitiate the trial, unless the accused is prejudiced by such an omission or by a defect in the proceedings at the trial. Such a defect is cured by S. 537, Criminal P. C. The question whether the accused has been prejudiced or not should be the sole criterion in such case. (Radhakrishna and Bennett JJ.) Emperor v. Abdul

AIR 1940 Oudh 77=1939 A W R 248=12 R O 138= 1939 O W N 960 = 184 I C 742 = 1939 O L R 647 = 41 Cr L J 92 (2).

——Ss. 68, 537—Summons not containing particulars of offence—Accused is entitled to know what offence he has committed — Prosecution responsible for irregularities — Accused incurring large expenses—Retrial—Motor Vehicles Act (VIII of 1914), S. 16.

Section 16, Motor Vehicles Act, is a penalty clause and it is the duty of the Court to specify in the summons to the accused alleged to be guilty, what particular rules were contravened by him. A summons issued by a Magisterial Court which does not contain in the form prescribed by statute (S. 68 of the Criminal P. C., read with the form given in Sch. V of the Code), particulars of the place where, the time when, and the nature of the offence charged, may be disregarded by the person summoned, and proceedings taken thereon, if objected to, must necessarily be invalid. The accused is entitled under the law to know what offence he has committed and it is the duty of the prosecution to put in the sections of the Rules which the accused was alleged to have contravened. When this is not done, the accused will be prejudiced in his trial. Where the case has been going on since a long time and the accused has already incurred a great deal of expense in defending himself and the prosecution is no doubt responsible for a good many irregularities in the case, a re-trial is not to be ordered. (Thomas J.) Lal Chand v. Emperor

AIR 1934 Oudh 370 (2)=11 O W N 828=7 R O 75 =150 I C 941 = 1934 O L R 656 = 1934 Cr C 1156 = 35 Cr L J 1161 (2).

——Oral prayer.

Under the law a verbal prayer for issue of summons to an accused is sufficient. (Mukerji J.) Muhammad Gul v. Fazley Karim.

AIR 1929 Cal 346=33 C W N 446=122 I C 205=56 Cal 1013=14 A I Cr R 57=31 Cr L J 369.

——Contents—Rule imperative.

A summons issued by a Magisterial Court which does not contain in the form prescribed by the statute parti-

CRIMINAL P. C. (V of 1898), S. 68

culars of the place where, the time when, and the nature of the offence charged, may be disregarded by the person summoned, and proceedings taken thereon, if objected to, must necessarily be invalid. (Walsh and Banerji JJ.) Emperor v. Rananjai Singh.

AIR 1928 All 261=26 A L J 331 = 9 A I Cr R 341= 9 L R A Cr 49=108 I C 230=29 Cr L J 357.

——Form—Motor Vehicles Act, Sch. V.

The procedure of issuing summonses by the Magisterial Courts purporting to charge motorists, owners or drivers of offences under the Act without giving the slightest particulars of the offence alleged is not justified by law. S. 68, Cr. P. Code, incorporates the form of summons, which is a statutory form contained in Sch. V to the Code, which summons is to be issued to accused persons. (Walsh and Bannerji JJ.) Emperor v. Kunwar Rananjai.

AIR 1928 All 261=108 I C 230=9 L R A Cr 49 = 9 A I Cr R 341=26 A L J 331=29 Cr L J 357.

——Summons not duly sealed — Prosecution for disobedience.

A summons not sealed as required by S. 68 is illegal and prosecution for disobeying such summons is not sustainable : AIR 1915 Cal 737, Ref. (Sadasiva Aiyar and Burn JJ.) Abdul Rahim Beg, In re.

37 M L J 558 = 10 L W 554 = 58 I C 528 = 21 Cr L J 800.

——Ss. 68 and 71—Summons—Mode of service.

The law for service of summons in criminal cases is on the same lines as the rules for the service of a summons in a civil case. (Batten A. J. C.) Tukaram Kunbi v. Punjab Rao.

AIR 1918 Nag 46=2 N L J 383 = 53 I C 720=20 Cr L J 816.

—S. 69.

——Scope.

Section 69 (3) provides for the service of summons under S. 136 (4) of the Companies Act. (Reuben J.) Sudhir Ranjan v. N. K. Mazumdar.

AIR 1944 Pat 210 = 11 B R 136 = 216 I C 312 = 17 R P 164=46 Cr L J 168.

——Ss. 69, 70 — Conviction without proper service of summons.

A summons is not properly served where it is left with the 'durwan' without any attempt being made to find out the accused. (Cuming J.) Mon Mohan Pande v. Corporation of Calcutta.

AIR 1932 Cal 62 = 35 C W N 868 = Ind Rul (1932) Cal 183=1932 Cr C 10=17 A I Cr R 399=136 I C 135 33 Cr L J 264.

——Interpretation—'Tender.'

Personal service may be made either by delivering or tendering, but the tender must be real tender of a document which is understood by the person to be served, and he must have voluntarily waived actual delivery and indicated in some way that a tender was sufficient. (Walsh J.) Budhan v. Emperor.

AIR 1928 All 118 =107 I C 563 = 9 A I Cr R 52=9 L R A Cr 1=26 A L J 107=29 Cr L J 263.

——Substituted service—S. 71, Cr. P. Code.

The procedure, which is provided by S. 71, cannot be made use of unless service in the manner mentioned in both Ss. 69 and 70 cannot be effected by the exercise of due diligence. (Sanderson C. J. and Rankin J.) Beni Madhab Sapui v. Jadu Nath Sapui.

AIR 1926 Cal 1208=43 C L J 113=31 C W N 148 = 94 I C 907=27 Cr L J 715.

——Service of summons—What is.

CRIMINAL P. C. (V of 1898), S. 69

A mere tender of summons is sufficient to effect service. (Knox J.) Shadeo Rai v. Emperor.

AIR 1918 All 409 = 40 All 577 = 16 A L J 453=46 I C 522=19 Cr L J 746.

—S. 70.

——Service.

Issue of summons effected by serving upon the mother of the accused is not warranted by the Code. (Fforde J.) Swan Singh v. Emperor.

AIR 1926 Lah 50 = 26 P L R 291 = 89 I C 705=26 Cr L J 1393.

—S. 71.

——Applicability.

The procedure, which is provided by S. 71, cannot be made use of unless service in the manner mentioned in both Ss. 69 and 70 cannot be effected by the exercise of due diligence. (Sanderson C. J. and Rankin J.) Beni Madhab Sapui v. Jadu Nath Sapui.

AIR 1926 Cal 1208=43 C L J 113=31 C W N 148 = 94 I C 907=27 Cr L J 715.

—S. 72.

——Railway Police.

Summons to a Sub-Inspector of Railway Police should be served through the Superintendent of Railway Police for the District. (Kulwant Sahay J.) Gouri Shankar v. The Collector of Muzafferpur.

AIR 1925 Pat 553=87 I C 421=6 P L T 215=3 Pat L R Cr 127=26 Cr L J 965.

——Summons—Police investigation.

Section 72, Cr. P. C., applies only to summonses issued by a Court of Justice and not to orders of police officers investigating crime under Chap. XIV. (Spencer J.) In re Gumparthi Venkataramiah.

AIR 1918 Mad 815=40 I C 733=18 Cr L J 733.

—S. 74.

——Application for cancellation of bail — Proof of fact that witnesses are being intimidated by accused—Evidence that can be tested by cross-examination must be tendered and not affidavit—See ibid, S. 497.

AIR 1952 J & K 28=1952 Cr L J 1223.

—S. 75.

See also Public Gambling Act (III of 1867), S. 5.

——Warrant — Requisites of—Seal.

After issuing the warrant, there was a direction endorsed on the warrant requiring the Policeman who was entrusted with it to arrest and produce the accused by the date to which the case stood adjourned. The arrest could not be effected by that date. The case was consequently adjourned to a later date and a similar endorsement for the production of the accused on the adjourned date was again made on the warrant. Owing to the inability of the Police Officer to execute the warrant according to these directions, a series of subsequent endorsements had to be made on the warrant and on a piece of paper annexed to the warrant fixing the date by which it should be executed. It was only the warrant that bore the seal. These subsequent endorsements did not bear the seal of the Court :

Held that the warrant did not in terms specify that it was to remain in force only for a particular period. It bore the seal of the Court that issued it. The directions endorsed on the warrant and in the paper annexed to it were merely directions given to the Policeman to whom the warrant was addressed and absence of the seal on these endorsements could not invalidate the warrant itself especially in view of the second part of Section 75. The period during which the warrant remained in force did not expire prior to the date on which it was executed by

CRIMINAL P. C. (V of 1898), S. 75

the arrest of the accused. (Kunhi Raman C. J. and Subramania Iyer J.) Kandan Narayanan v. State,

A I R 1952 Trav-Co 459=1952 Ker L T 704=I L R (1952) Tra-Co 133=1952 Cr L J 1592.

——Ss. 75, 88, 87—Process under Ss. 87 and 88—Parentage of person not mentioned—Person not to be mistaken—Process held not invalid.

Where process issued under Ss. 87 and 88, Criminal P. C., described a person by his name and as resident of a particular village but his parentage was not given :

Held, that though the process was defective to that extent, still as the person could not be mistaken as the other person with the same name was not a resident of the village, the process was not invalid. (Varma and Shearer JJ.) Bisundayal Mahton v. Emperor,

AIR 1943 Pat 366=22 Pat 504=10 B R 189=16 R P 110=210 I C 124=46 Cr L J 322.

——Ss. 75, 72 (1), 1 (2), 82, 83 — Warrant contemplated by S. 75 — Code, if provides for issue of warrant to be executed outside British India.

By reading Ss. 72 (1), 1 (2), 82 and 83, Criminal P. C., together it becomes clear and beyond all question that the warrant contemplated in S. 75 is a warrant issued by a Court in British India and that such warrant is executable at any place in British India within or without the local limits of the jurisdiction of the Court issuing the warrant. There is no provision in the Criminal P. C., authorising the issue of a warrant to be executed at any place outside British India. (Lobo J. C. and O'Sullivan J.) Emperor v. Karimbux Rahmatan,

AIR 1940 Sind 154 = 13 R S 121=190 I C 661 = 42 Cr L J 49.

[Overruled in AIR 1941 Sind 20=42 Cr L J 326]

——S. 75 (2)—Magistrate writing to another Magistrate to return warrant unexecuted—Warrant is cancelled.

A warrant is an order addressed to a certain person directing him to arrest the accused and to produce the accused before the Court. The warrant may have a further provision for admitting the accused to bail. But in each case, the warrant is an order directed to some one to arrest a certain accused and bring him before the Court, and the person to whom it is addressed may if he is a Magistrate or Police Officer endorse the warrant to some one serving under him. When the Magistrate writes to the District Magistrate in another province asking him to return the warrants unexecuted then it is clear that the warrants are cancelled. Section 75 (2), Criminal P. C., does not require that there should be any formal order on the record, of cancellation. (Bennet J.), Jagdish Narain Bajpai v. Emperor,

AIR 1940 All 178 =1940 A L J 104 = 12 R A 575= 1940 A W R 79=187 I C 682=41 Cr L J 500.

——Officer directing issue of warrant — Whether should necessarily sign warrant — Warrant signed by another Magistrate during absence on duty of Magistrate issuing warrant — Resistance — Penal Code (Act XLV of 1860), Ss. 224, 225, 353.

The Presiding Officer who alone can sign a warrant under S. 75, Criminal P. C., is not necessarily the officer who has taken cognizance of the offence. He must, therefore, be the officer who presides in the Court at the time when the warrant comes to be signed and not necessarily the Magistrate who has presided the Court at the time when cognizance was taken of the offence.

Where a Sub-Divisional Officer receiving information of an alleged offence took cognizance of the offence and directed the issue of a warrant, but after directing issue of the warrant, he went away from the station on duty and the warrant was ultimately signed during his absence

CRIMINAL P. C. (V of 1898), S. 75

by a First Class Magistrate with powers under Ss. 190 (a) and (b), 143, 144 and 192, Criminal P. C., and who performed the functions of the Sub-Divisional Officer during his absence :

Held, that the warrant was legal and that resistance to the execution of the warrant constituted an offence under Ss. 224, 225 and 353, I. P. C. (Courtney-Terrell C. J.) Kartick Chandra v. Emperor,

A I R 1932 Pat 175=13 P L T 167 = Ind Rul (1933) Pat 129=142 I C 192=1932 Cr C 351=34 Cr L J 297.

——Warrant directed by one officer — Another officer signing warrant where a complaint was filed before the Sub-Divisional Magistrate and he directed the issue of a warrant but it was, however, signed by another first class Deputy Magistrate for Sub-Divisional Officer, the latter being absent on tour.

Held, (Scroope J. dissenting)—That the Legislature had not intended a delegation of the duty of signing warrants and the warrant, signed as it was by a person who did not direct it, was not valid.

A warrant which is expressed to issue from the Court of the Sub-Divisional Magistrate and signed "for the Sub-Divisional Magistrate by a Magistrate who himself would have jurisdiction in the matter, is a valid warrant and such an officer is a "presiding officer" for the purposes of S. 75. (Scroope and Dhavle JJ.) Kartickchandra v. Emperor,

A I R 1932 Pat 171 = 13 P L T 135=Ind Rul (1932) Pat 190=138 I C 844=1932 Cr C 347=33 Cr L J 706.

——Bail — No proper complaint.

Where in a complaint under S. 124-A, I. P. C. no original or translation of the alleged speech was attached although the Local Government sanction contained extracts, and on application to the Magistrate bail was refused.

Held, that there was no proper complaint and the Magistrate did not direct his mind to question of presence or absence of proper complaint and the order refusing bail was not passed on proper appreciation of the facts and non-bailable warrants should not have been issued. (Dalip Singh J.) Ram Chand v. Emperor,

AIR 1929 Lah 284=120 I C 10=30 Cr L J 1129.

——Service—After returnable date.

Service of a warrant even after the passing of its returnable date is valid unless it is cancelled by the Court which issued it or until it is executed. (Adami and Wort, JJ.) Emperor v. Binda Abir,

AIR 1928 Pat 466 (1)=7 Pat 478 = 112 I C 223=11 A I Cr R 240=29 Cr L J 1007.

——Rightful resistance—Essentials of an arrest.

When a constable arrests a man and tells him expressly that he is doing so under a particular authority, which he claims to have, to arrest him and if such arrest is resisted, it will be for the prosecution afterwards to establish that the constable who arrested the man had power to act under the authority that he claimed to have. It is not sufficient for the prosecution afterwards to say that the constable had authority under some other provision of law. Any man who is being arrested has a right to ask the officer arresting him to show him what power he has to do so. If the arrest is under a warrant, the man arrested is entitled to ask that the warrant be shown to him to see that he is being properly arrested and when the warrant is not shown to him and the arrest is made, such an arrest will not be a legal arrest. A man is entitled to know when a constable is arresting him, under what power he is acting and if he (constable) states that he acts under certain power, which the man knows he has not got, he is entitled to object to

CRIMINAL P. C. (V of 1898), S. 75

arrest and to escape from custody when he is arrested. (Krishnan J.) Appaswamy Mudali, In re,

A I R 1924 Mad 555 = 81 I C 51 = 47 Mad 442= 19 M L W 504 = 34 M L T 95 = 46 M L J 447 = 25 Cr L J 563.

——Ss. 75 and 537—Warrant not signed by Magistrate.

A Magistrate is guilty of gross carelessness in not signing his name in full on a warrant but it is a mere irregularity covered by S. 537. (Mullick and Thornhill JJ.) Bankey Behary Singh v. Emperor,

AIR 1918 Pat 613 = 5 P L W 117=3 Pat L J 493= (1918) Pat H C C 269=46 I C 523=19 Cr L J 747.

——Penal Code, S. 353 —Resistance to warrant.

A warrant signed by a Magistrate who is not the presiding officer within S. 75 of the Criminal P. C., is invalid and resistance to an arrest made under such warrant is not an offence under S. 353 of the Penal Code. (Chamier C. J. and Sharfuddin J.), Jagpat Koeri v. Emperor,

AIR 1917 Pat 17=2 Pat L J 487 = 1 Pat L W 306= (1918) Pat H C C 48=39 I C 494=18 Cr L J 526.

——Warrant—No seal—Arrest if illegal.

The seal of the Court is essential to the validity of a warrant and its absence makes the warrent void. An arrest made in execution of such warrant is not legal. (Jenkins C. J. and Teunon J.) Mahajan Sheikh v. Emperor,

AIR 1915 Cal 737=42 Cal 708 = 19 C W N 224=28 I C 672=16 Cr L J 336.

——Search warrant issued under Public Gambling Act—Failure to affix Court seal—Warrant signed by Magistrate at a place outside his jurisdiction—Legality of warrant—See Public Gambling Act (3 of 1867), S. 5.

11 Cr L J 570 (Lah).

——Ss. 75, 76—Warrant of arrest—Endorsement for bail — Expiry of date for appearance of accused—Warrant remains in force—Direction for bail lapses.

Sections 75 and 76 of the Criminal P. C. must be read together. Section 76 (1) is permissive where a warrant was issued with a provision endorsed for bail to be taken for the appearance of the accused on 26th October and he was arrested on the same warrant on the 29th, the date fixed for the appearance of the accused having past, the direction to take bail lapsed, but the warrant itself did not lapse, and the arrest was legal. (Caspersz and Ryves JJ.) Ranshan Singh v. Emperor,

13 C W N 1091=4 I C 31 =10 Cr L J 479.

——S. 75 (2) — Power to cancel warrant and substitute summons —See Criminal P. C. (1898), Ss. 205, 75 (2).

8 Cr L J 454 (Lah).

——Warrant — Cancellation — Issue of summons — See Criminal P. C. (1898), Ss. 204, 75.

8 Cr L J 187 (Sind).

—S. 76.

——Direction of physical delivery.

The Court can only order the release of the person arrested and can lay down the condition for the release. It has no power to order the physical delivery of the person arrested to another person. (Raghubar Dayal and Wanchoo JJ.) Chotey v. Emperor,

AIR 1948 All 72=1948 A L J 35=1948 A W R (H C) 88=1948 O A H C 88=49 Cr L J 1.

——Ss. 76 and 77 — Warrant of arrest — Case pending before Sub-Magistrate.

A bailable warrant should be issued where the accused is alleged to have committed robbery in respect of property which he admittedly claims to be his. (Sankaran Nair J.) Marula Sidda Sivamulu v. Emperor,

(1911) 1 M W N 452=11 I C 614=12 Cr L J 430.

CRIMINAL P. C. (V of 1898), S. 76

——Ss. 75 and 76 should be read together — S. 76 (1) is permissive—See Criminal Procedure Code (Act V of 1898), S. 75.

10 Cr L J 479 (Cal).

—S. 77.

——The procedure on the Sessions Court upholding a sentence of imprisonment is to issue a warrant to the jail under S. 383, Criminal P. C., and where the accused is on bail and is not present the Court issues a warrant for his arrest to a Police Officer under S. 77, Criminal P. C. (Bennet and Iqbal Ahmad JJ.) Mumtaz v. Chhutwa,

AIR 1940 All 386=13 R A 115= 1940 A W R 334= 1940 A L J 309 = I L R (1940) All 507= 189 I C 468= 41 Cr L J 741.

——Legality — Conditions for entrusting warrants to stranger.

First of all there must be the necessity to arrest and then there must be the necessity for immediate arrest and then there must be the third condition, that no police is immediately available. In the absence of these three conditions a Court is not justified in entrusting a warrant to a forest officer for execution and the endorsement of the warrant in favour of the watcher does not empower the watcher to arrest any person. (Devadoss J.) Pasupathia Pillai v. Emperor

AIR 1928 Mad 624=51 Mad 873=1928 M W N 310= 28 M L W 141=109 I C 365=1 M Cr C 115=55 M L J 220=29 Cr L J 541.

——Obstruction—Irregularity in search warrant.

Where the legality of the warrant was not challenged at the time of the search or in the Magistrate's Court on the ground that the search warrant was directed to a certain Thana for execution without specifying name and designation of the Police officer concerned which search warrant was endorsed by the Police Station Officer to a police constable.

Held, the conviction should not be set aside as the accused was not prejudiced by what was at most a clerical error. (Baguley J.) Ma Kin v. Emperor

A I R 1924 Rang 383=86 I C 669=3 Bur L J 182 = 26 Cr L J 845.

——Ss. 77 and 78 — Person not mentioned in warrant— Search is illegal.

Warrant for search and arrest not addressed to any particular person with authority to make the search and arrest is irregular. A search of the room in charge of a person not mentioned in the warrant is an irregularity and the accused must be acquitted. (Kanhaiya Lal J. C.) Emperor v. Shanker Dayal

A I R 1922 Oudh 224 = 25 O C 111 = 71 I C 62 = 9 O L J 667=24 Cr L J 14.

——Requirements of.

Section 77 does not require that the name and designation of the Police Officer should be inserted in the warrant. (Mullick and Thornhill JJ.) Bankey Behary Singh v. Emperor

A I R 1918 Pat 613=5 Pat L W 117=3 Pat L J 493 =(1918) Pat H C C 269=46 I C 523=19 Cr L J 747.

—S. 79.

——Warrant under S. 5, Public Gambling Act—Endorsement.

Warrants issued under S. 5, Public Gambling Act may be endorsed in accordance with the provisions of S. 79. (Pollock J.) Ram Prasad v. Emperor

A I R 1945 Nag 216=1945 N L J 237 = I L R (1945) Nag 649 = 1946 Nag Rul 29 = 221 I C 292 = 47 Cr L J 148.

——Warrant for arrest — Endorsement on separate piece of paper, validity of—Resistance to arrest—Offence.

CRIMINAL P. C. (V of 1898), S. 79

The Resident Magistrate issued a warrant to the Sub-Inspector of Police for the apprehension of the accused and the Sub-Inspector gave the warrant to a mounted constable to arrest the accused. He did not make any endorsement on it, but gave a letter to the City Magistrate who forwarded the letter with the words "perused ; for favour of service to City Police Inspector." The letter ran thus : "I have the honour to forward herewith per Daryakhan, mounted constable of Police, the accompanying warrant in original and to request that you will be good enough to endorse the same and hand it over to the said mounted constable for the purpose of serving the same, as the accused is known quite well to the said mounted constable who will make special efforts and be able to apprehend the accused."

Held, (Rupchand A. J. C., contra)—That the meaning of the letter was that the Sub-Inspector showed the constable as the man authorised by him to execute the warrant and the Magistrate was merely to endorse it and hand it over to him for execution and, therefore, the letter was a sufficient delegation of authority by the Sub-Inspector to the constable to execute the warrant.

Under S. 79, Cr. P. C., it is immaterial whether the authority is on the warrant itself or on a separate piece of paper but so long as the authority is delegated, and the authority is there, it satisfies the requirements of S. 79. (Haveliwalla A. J. C. on difference of opinion between Rupchand Bilaram A. J. C. and Milne A. J. C.) Mangharam Jeramdas v. Emperor

A I R 1931 Sind 89=25 Sind L R 117=Ind Rul (1931) Sind 81=132 I C 465=1931 Cr C 489=32 Cr L J 916.

——Applicability—Foresters.

Section 79 has no application to forest officers and the endorsement of the warrant, even if it be legal, by the foresters in favour of the watcher can confer no power upon the watcher to arrest the person named in the warrant. (Devadoss J.) Pasupathia Pillai v. Emperor

A I R 1928 Mad 624=51 Mad 873 = 1 Mad Cr C 115 109 I C 365=28 M L W 141 = 1928 M W N 310 = 55 M L J 220=29 Cr L J 541.

——Search warrant under Public Gambling Act — Police Officer endorsing same to other police officer low in rank—See Public Gambling Act (1867), Ss. 5, 6.

7 Cr L J 19 (All).

—S. 80.

——Applicability and scope — See Bombay Prevention of Gambling Act (4 of 1887), S. 7

A I R 1952 Sau 81=1952 Cr L J 1208.

——Prosecution, if must prove that warrant was shown or its substance notified to accused.

There is a presumption that all official acts are properly performed and, therefore, it is not necessary for the prosecution to prove under S. 80, Cr. P. C., that the Police Officer notified the substance of the warrant to the accused or showed him the warrant. (Almond J. C.) Zarkhan Nurkhan v. Emperor

A I R 1940 Pesh 10=12 R Pesh 37=188 I C 78 = 41 Cr L J 543.

——Non-compliance.

A Police Officer who has made an arrest without having observed the provisions of S. 80, may be able to justify his action under the provisions of S. 46 (2). (Rankin C. J. and Buckland J.) Supdt. and Remembrancer of Legal Affairs, Bengal v. Darbesh Ali

A I R 1929 Cal 174=33 C W N 284=49 C L J 264= 116 I C 723 = 56 Cal 831 = 13 A I Cr R 129 = 30 Cr L J 703.

——Ss. 80 and 537 — Omission to explain warrant to accused.

CRIMINAL P. C. (V of 1898), S. 80

The omission by the constable to explain to the accused the particulars of the warrant after showing him the warrant would not invalidate the arrest. (Mullick and Thornhill JJ.) Bankey Behari Singh v. Emperor

A I R 1918 Pat 613=5 Pat L W 117=3 Pat L J 493 =(1918) Pat H C C 269=46 I C 523=19 Cr L J 747.

—S. 82.

——Ss. 82, 83 — British Baluchistan is part of British India — Warrant issued by Courts there, can be executed in any part of British India — Magistrate exercising jurisdiction in Baluchistan Agency Territories cannot issue warrant for arrest of person in British Baluchistan ; AIR 1940 Sind 154 : 42 Cr L J 49, OVERRULED.

British Baluchistan is part of British India. Therefore, warrants issued by Courts in British Baluchistan can be executed under S. 82, Cr. P. C., at any place in British India. Hence the action of the District Magistrate of Sibi in sending the warrant of arrest of an accused in the District of Nawabshah, under S. 83, is legal.

The Baluchistan Agency Territories are not part of British India, but are areas in which by lease, treaty or otherwise, the Governor-General-in-Council, now to be replaced by the Crown representative has acquired jurisdiction. Hence, a Magistrate exercising jurisdiction in those places cannot issue a warrant of arrest of a person in British India and require its execution under S. 83; AIR 1940 Sind 154 : 42 Cr L J 49, OVERRULED. (Davis C. J., Lobo and Weston JJ.) Emperor v. Karimbaksh Rehmatkhan,

AIR 1941 Sind 20 = 13 R S 206 = I L R (1941) Kar 247 = 192 I C 806 = 42 Cr L J 326 (FB).

—S. 83.

See also Criminal P. C., S. 82.

——Exercise of powers.

The power of directing the arrest of some person at a place outside the local limits of the jurisdiction of a Court, particularly when that place is far removed from the local limits, is one which should be exercised with the utmost circumspection and must be based on substantial reasons. (Beaumont C. J. and Wassoodew J.) In re Sagarmal Khemraj,

AIR 1940 Bom 397=42 Bom L R 904=13 R B 199= ILR (1941) Bom 16=191 I C 605=42 Cr L J 205.

——Section 83, in the case of a warrant to be executed outside the local limits of jurisdiction of the Court issuing it, would override the express direction of S. 77, that a Presidency Magistrate must direct the warrant to a Police Officer. (Beaumont C. J. and Wassoodew J.) In re Sagarmal Khemraj,

AIR 1940 Bom 397=42 Bom L R 904=13 R B 199= ILR (1941) Bom 16 = 191 I C 605=42 Cr L J 205.

——Ss. 83, 77—S. 83, if overrides S. 77.

Section 83, Criminal P. C., in the case of a warrant to be executed outside the local limits of jurisdiction of the Court issuing it, would override the express direction of S. 77, that a Presidency Magistrate must direct the warrant to a Police Officer. (Beaumont C. J. and Wassoodew J.) In re Sagarmal Khemraj,

AIR 1940 Bom 397=44 Bom L R 904=13 R B 199= 191 I C 605=ILR (1941) Bom 16=42 Cr L J 205.

——S. 83 — Warrant of arrest giving only names of accused addressed for execution to Police Officer who could not be ascertained.

Non-bailable warrants were issued by the Chief Presidency Magistrate of Calcutta on June 25, 1940, stating that the accused stood charged with the offence under S. 392, I. P. C., that is to say, of robbery. The warrants were addressed to the "O/C. concerned" and referred to the accused merely by their names. In the margin of

CRIMINAL P. C. (V of 1898), S. 83

the warrant was a note initialled by the Chief Presidency Magistrate, Calcutta, to this effect; "Forwarded to the Third Presidency Magistrate, Bombay, for favour of execution and return." There was no reference either to the address, description or occupation of the accused :

Held, that warrants must be dealt with strictly, and since the marginal note forwarding the warrants to the Third Presidency Magistrate, Bombay, could have no effect given to it, because there was no such officer as the "Third Presidency Magistrate" the warrants were invalid. They were further invalid because they did not sufficiently specify the persons to be arrested. (Beaumont C. J. and Wassoodew J.) In re Sagarmal Khemraj,

AIR 1940 Bom 397 = 42 Bom L R 904 =ILR (1941) Bom 16 = 13 R B 199 = 191 I C 605 = 42 Cr L J 205.

——Quetta does not form part of British India and consequently a warrant issued by a Court in Quetta cannot be executed in British India. (Almond J. C.) Devkinandan v. Emperor,

AIR 1940 Pesh 30 = 13 R Pesh 24 = 190 I C 203 = 41 Cr L J 857.

——District Magistrate of Dhenkanal State cannot issue warrant under S. 83 to Railway Police in charge of railway lands in that State to arrest person alleged to have committed offence in that State—Such arrest is, however, justified by virtue of Notification No. 34 I. B. of January 14, 1937, issued by Governor-General-in-Council.

Dhenkanal State is a Native State bordering upon the Province of Orissa. Dhenkanal Garh Railway Station is within the State of Dhenkanal; but the Dhenkanal State authorities have no jurisdiction within the limits of railway land in that State. The position with regard to railway lands in the State of Dhenkanal is defined by a Notification No. 754 I. B. dated March 28, 1912, issued by the Governor-General-in-Council in exercise of the powers conferred upon him by the Indian (Foreign Jurisdiction) Order in Council, 1902. Under the Notification, the laws in force in the District of Cuttack shall be in force in the railway lands situate in the State of Dhenkanal and further the Local Government and officers subordinate to it exercising executive authority in the Cuttack District shall exercise similar authority within the railway lands situate in Dhenkanal State. A Magistrate of a Native State cannot issue a warrant directing the Police or Officials in British India to arrest a person accused of committing a crime within a Native State. Therefore, even if the Criminal P. C., has been adopted by the Dhenkanal State authorities, that would not give the Dhenkanal State authorities a right to issue a warrant and obtain the arrest of a person in the manner directed by S. 83, Criminal P. C. The effect of the adoption of the Criminal P. C., by the Dhenkanal State authorities is to make the provisions of that Code part of the law of Dhenkanal State. It is still a State wholly outside British India and therefore the provisions of S. 83, cannot apply to the State in its relation with British India. An arrest of a person alleged to have committed an offence in the Dhenkanal State, on the Dhenkanal Railway Station by the Government Railway Police in pursuance of a warrant issued by the District Magistrate of Dhenkanal purporting to act under S. 83, cannot be justified under S. 83. The arrest, however, is justified by virtue of Notification No. 34 I. B. of January 14, 1937 by the Governor-General-in-Council in exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902. (Harries C. J. and Agarwala J.) Haramohan Patnaik v. Emperor,

AIR 1939 Pat 129 = 19 P L T 909 = 5 B R 491=11 R P 533=18 Pat 121 = 180 I C 787 = 40 Cr L J 500.

——Nasirabad lies outside British India and so a warrant of arrest of a person residing in British India cannot be

CRIMINAL P. C. (V of 1898), S. 83

issued by a Nasirabad Magistrate. Such warrant, if issued, cannot be executed in British India and if it is executed, the proceedings can be quashed by the High Court. (Rupchand Ag. J. C. and Lobo J.) Tahilram Khanchand v. Emperor,

AIR 1938 Sind 46 = 10 R S 203 = 32 S L R 134 = 173 I C 322 = 39 Cr L J 298.

——Native State—Custody of.

Political Agent of a Native State cannot be directed by High Court to produce a person in custody in the Native State, as he is not in the vicarious custody of the said person : A. I. R. 1926 Bom. 332, Dist. (Dalal J.) Shiva Prasad v. Emperor

AIR 1929 All 347 (2)=119 I C 527 = 1929 A L J 520 =10 L R A Cr 84=12 A I Cr R 1=30 Cr L J 1083.

—S. 85.

——Ss. 85 and 86 — The effect of Ss. 85 and 86 is that the person arrested outside local limits of the jurisdiction of the Court issuing the warrant has to be taken before a Magistrate or Commissioner or District Superintendent of Police, and such Magistrate or Commissioner or District Superintendent of Police has to satisfy himself that the person arrested appears to be the person intended by the Court which issued the warrant, and when so satisfied, he is bound to direct the removal of the arrested person in custody to the Court which issued the warrant. (Beaumont C. J. and Wassoodew J.) In re Sagarmal Khemraj

AIR 1940 Bom 397=13 R B 199=42 Bom L R 904= I L R (1941) Bom 16=191 I C 605=42 Cr L J 205.

—S. 87.

See also Criminal P. C., S. 88.

SYNOPSIS

1. Proclamation, when can be issued.
2. Proof of issue of warrant.
3. "Not less than thirty days from date of publishing."
4. Sub-section (2) — Publication of proclamation.
5. Sub-section (3) — Statement in writing by Court.

1. Proclamation, when can be issued.

——Process under S. 88, if can be issued before first issuing process under S. 87.

It cannot be said that processes under S. 88 cannot be issued unless processes under S. 87 had been issued first. (Varma and Shearer JJ.) Bishundayal Mahton v. Emperor

AIR 1943 Pat 366=16 R P 110=22 Pat 504 =10 B R 189=210 I C 124=46 Cr L J 322.

——Issue of processes under Ss. 87 and 88 — Requisites of.

It is not necessary that processes under S. 88 should be delayed till the time fixed in the process under S. 87 has elapsed. But processes under Ss. 87 and 88 cannot be issued unless it is established that a warrant had already been issued against the person wanted and that person was absconding.

Where there was no such warrant issued before the prayer was made under Ss. 87 and 88:

Held, that the processes that were issued were without jurisdiction. (Varma and Shearer JJ.) Bishundayal Mahton v. Emperor

AIR 1943 Pat 366=22 Pat 504=10 B R 189=16 R P 110=210 I C 124=46 Cr L J 322.

——Ss. 87, 69, 70—Substituted service.

If there was absence of reasonable diligence in attempting to serve, the substituted service is bad. (Prideaux A. J. C.) Jadho v. Manik Lal

AIR 1923 Nag 55 (1)=6 N L J 63= 69 I C 627 = 23 Cr L J 39.

CRIMINAL P. C. (V of 1898), S. 87 — 1. Proclamation, when can be issued

——Absconder—Person arranging to get bail in superior court is not an absconder.

Action under S. 87 can be taken only when Court has reason to believe that any person against whom a warrant has been issued has absconded or is concealing himself so that such warrant cannot be executed. But a man who files a petition against the order issuing the warrant and takes steps to procure an order of a superior Court that he should be allowed to remain on bail after such warrant has been issued, can neither be said to be absconding nor concealing himself. (Abdul Qadir J.) Qamardin v. Emperor

AIR 1922 Lah 475 (2)=66 P L R 1922=67 I C 726=23 Cr L J 454.

——Ss. 87, 88, 110, 112 and 114 — Warrant for arrest of person who had left Court's jurisdiction is illegal.

The person proceeded against under S. 114 must be actually and physically present in the district in which the Magistrate exercises jurisdiction and the Magistrate cannot legally issue a warrant under S. 114, for the arrest of a person who has already left the local limits of the Magistrate's jurisdiction. A warrant under S. 114 was issued for the arrest of a person who had left the district and subsequently a proclamation against the person was issued and proceedings taken under Ss. 87 and 88, Held, the warrant, proclamation and attachment were all illegal. (Batchelor and Rao JJ.) In re Ramji Bhai

14 Bom L R 889=17 I C 540=13 Cr L J 796.

——Ss. 87, 88, 90—Scope—Where according to the fourth schedule of the Code of Criminal Procedure, 1898, the Magistrate has in the absence of any special grounds mentioned in S. 90, to issue a summons and such a process is, as a matter of fact issued by him, he cannot after the issue of a summons, order the issue of a warrant, unless he first placed on record his reasons for considering that the accused had been duly served and that, in spite of such service, he had failed to appear without reasonable excuse.

To lay a foundation for the issue of a proclamation under S. 87 with an accompanying order of attachment under S. 88 of the Code, it is necessary to comply strictly with the provisions of the law relating to the issue of a warrant in a case, where a summons is the ordinary mode of enforcing attendance. Those provisions have been embodied in the Code to safeguard the rights of the subject and anything done in defiance of them can have no force.

Obiter—Just as in the case of the summons, so in the case of the warrant, before the Magistrate could proceed under the above sections, he is bound to satisfy himself that the accused was absconding or concealing himself for the purpose of avoiding the execution of the warrant. (Bipin Krishna Bose A. J. C.) Yasin Khan v. Emperor

3 Ind Cas 575=5 N L R 125=10 Cr L J 306.

——Ss. 87, 88, 90—Absconding of accused—Proclamation and attachment. When issued. When a Magistrate is asked to proclaim an accused person, he should first take evidence that the person has absconded, and, when the absconding is proved, he shoould record evidence of the offence under S. 512. If he considers there is sufficient prima facie proof of the offence, he can then proceed under Ss. 87 and 88.

Magistrates must also use their discretion, towards refusing to proclaim an accused when the offence is a petty one.

A warrant of arrest cannot be issued in cases in which a summons should ordinarily issue, unless the summons should be proved to have been duly served in good time.

CRIMINAL P. C. (V of 1898), S. 87:— 1. Proclamation, when can be issued

A Police Officer's report that he served the summons is not evidence of service of the summons under cl. (b) of S. 90 of the Code. (Irwin J.) Emperor v. Po Ni,

3 L B R 116=3 Cr L J 353.

2. Proof of issue of warrant.

——Proclamation under—Whether legal evidence of issue of warrant of arrest.

A proclamation issued under S. 87, Criminal P. C., reciting that a warrant of arrest had been issued, is neither legal evidence of the issue of the warrant and cannot prove the same, nor is it equivalent to notice of its contents either to the public or even to the inhabitants of the locality where it is published. The only evidence permitted by law to prove warrant of arrest is that defined in Ss. 62, 64 and 65 of the Evidence Act namely, either the original order or a certified copy thereof. (Lord Macmillan, Lord Wright and Sir George Rankin) Easwaramurthi Goundan v. Emperor

A I R 1944 P C 54=1944 M W N 440=10 B R 667=1944 A W R P C 40=1944 A L J 388 = 17 R P C 26=46 Bom L R 844 = 48 C W N 477 = 71 I A 83 = 57 M L W 374=214 I C 1=I L R (1945) Mad 237=I L R (1944) Kar P C 273 = (1944) 1 Mad L J 515 = 45 Cr L J 721 (PC).

3. "Not less than thirty days from date of publishing."

——Proclamation directing accused to appear within thirty days from date of its issue is invalid and renders subsequent attachment under S. 88 invalid—Presumption under S. 87 (3) cannot be raised in such a case.

A Court issued a proclamation under S. 87 directing the accused to appear before him 'within 30 days from today.' A copy of the proclamation was not affixed to the court house as required by S. 87. The only statement with regard to the publication of the proclamation made by the Court was that the reports regarding the proclamation and the warrant of attachment had been received and that the proclamation had been issued without mentioning the date on which the publication was made. The accused applied under S. 89 for restoration of property :

Held that the proclamation was invalid as the time fixed for appearance of the accused was less than 30 days from the date of its publication and therefore, the subsequent attachment under S. 88 was also illegal, and the accused was entitled to the restoration of the property :

Held also, that no presumption under S. 87 (3) could be raised in such a case firstly, because the order of the Court under S. 87 (3) did not mention the date on which proclamation was made and secondly, because the proclamation itself was invalid : A I R 1919 Lah 57 and 19 Mad. 3, Rel. on. (Teja Singh J.) Jagdeo Khan v. Emperor

A I R 1948 Lah 151=I L R (1947) Lah 615=230 I C 404=48 Cr L J 624.

——Ss. 87, 88— Attachment in proceedings under Ss. 87, 88 — Failure to give notice — Irregularity, if curable by S. 537.

In proceedings under Ss. 87, 88, Criminal P. C., the failure to give the necessary notice of thirty days from date of publication does not amount to more than an irregularity which can be cured by an application of S. 537, Criminal P. C. (Young C. J. and Rangi Lal J.) Hansraj v. Emperor

A I R 1934 Lah 987 = 36 P L R 262=7 R L 482=16 Lah 466=153 I C 954=1934 Cr C 1391=36 Cr L J 457.

CRIMINAL P. C. (V of 1898), S. 87 — 3. "Not less than thirty days from date of publishing"

——Thirty days must be counted from the date of the publication of the proclamation. (Broadway J.) Mala Singh v. Emperor

A I R 1916 Lah 49 = 45 P L R 1917=35 I C 974=6 P R Cr 1917=40 P W R Cr 1916=17 Cr L J 414.

——Time to be given for appearance of person against whom proclamation issued under S. 87 is issued must be at least 30 days from the date of publication of the proclamation. If the period is less, then the proclamation is bad in law. (Subrahmanya Aiyar J.) In re Subba Naicken

17 M L J 438=6 Cr L J 332.

4. Sub-section (2)—Publication of proclamation.

——There are three requirements of S. 87 and all of them must be fulfilled. The failure to fulfil any one of these three requirements amounts to failure of justice within the meaning of S. 537. (Blacker J.) Mt. Jawai v. Emperor

A I R 1942 Lah 214 = 44 P L R 300=15 R L 112 = 202 I C 15=43 Cr L J 791.

——Ss. 87, 45—Proclamation under S. 87 issued — Duty of headman of village to report to Police the visits of such person to his village — Failure to report — S. 176, Penal Code (Act XLV of 1860).

Where it has been proved by the evidence on the record that a proclamation under S. 87, Criminal P. C., was made in respect of a person in order to find whether the accused (village headman) is guilty under S. 176, I. P. C., read with S. 45 (1) (b) of the Criminal P. C., it is necessary to see whether he possessed any information respecting the proclaimed person's passage through or visit to his village. Where it appears that he became aware of such person's visit to the village, but failed to give the required information to the Police, he is liable under S. 176, Penal Code. The fact that the proclamation was not made strictly in accordance with the terms of S. 87, Criminal P. C. does not render such person, a proclaimed offender any the less. (Zia-Ul-Hasan and Smith JJ.) Emperor v. Ram Sarup

A I R 1938 Oudh 80=10 R O 182=1938 O W N 7 = 172 I C 530=1938 O L R 8=39 Cr L J 154.

——Time and place of publication.

Proclamation under S. 87 must be published in the place where the accused resided and 30 days should be counted from the day of such proclamation. Under S. 87 (3) the Magistrate must make an endorsement in writing validating the proclamation. (Broadway J.) Mala Singh v. Emperor

A I R 1916 Lah 49 = 40 P W R Cr 1916 =6 P R Cr 1917=35 I C 974=45 P L R 1917=17 Cr L J 414.

——Where the proclamation was not published in accordance with sub-s. 2, the proclamation is invalid and all the proceedings, viz. attachment are null and void. (Stanley C. J. and Burkitt J.) Mian Jan v. Abdul

27 All 572=2 A L J 348 = 1905 A W N 102 = 2 Cr L J 247.

5. Sub-section (3)—Statement in writing by Court.

——Proclamation invalid — Order under S. 87 (3) not mentioning date on which proclamation was made — No presumption under S. 87 (3) held could be raised in such a case firstly, because the order of the Court under S. 87 (3) did not mention the date on which proclamation was made and secondly, because the proclamation itself was invalid. (Teja Singh J.) Jagdeo Khan v. Emperor

A I R 1948 Lah 151=230 I C 404=I L R (1947) Lah 615=48 Cr L J 624.

——S. 87, cl. (3)—Applicability.

CRIMINAL P. C. (V of 1898), S. 87 — 5. Sub-s. (3)—Statement in writing by Court

The provision of S. 87, cl. (3), Criminal P. C., is only applicable when a statement in writing by the Court specifies the date on which the proclamation was published. Where this is not done, the recording of such an order will not suffice to take the place of direct evidence of publication and service of the proclamation. (Rowland J.) Raghuni Prasad v. Emperor

A I R 1936 Pat 249 = 2 B R 237 = 17 P L T 81=8 R P 370=160 I C 604=1936 Cr C 273 = 37 Cr L J 318.

——S. 87 (3)—Proclamation — Failure to specify date of —Effect.

An order under S. 87 (3) stating that the proclamation was duly published but omitting to specify the date of publication is not conclusive evidence of the fact that the requirements of S. 87 have been complied with. (Smith and Martineau JJ.) Emperor v. Multan Singh

A I R 1919 Lah 57=32 P R Cr 1919 = 2 Lah L J 82 =54 I C 994=21 Cr L J 210.

——Ss. 87 and 89—Proclamation—Order under S. 87 (3) —Absconder, if can contest validity of proclamation.

Section 89 of the Cr. P. C. prescribes a remedy where there is a good and legal publication but offers no facility for the contesting of the legality of the proclamation. Although the petitioner could not contest the legality of the proclamation in his application under S. 89 there is nothing to prevent the Court from considering it in its revisional jurisdiction. An order of the Court under S. 87 (3) of the Code which only states that the proclamation under the section has been duly published cannot, under the circumstances, be considered conclusive evidence that the requirements of S. 87 have been complied with. As the requirements as to publication contained in S. 87 (2) (a) and (c) had not been complied with and as such publication took place less than 30 days from the date fixed for the appearance of the petitioner, the publication was not in accordance with the law and the subsequent proceedings were therefore also invalid. (Scott-Smith and Martineau JJ.) Emperor v. Multan Singh

A I R 1919 Lah 57 = 32 P R Cr 1919=54 I C 994=2 Lah L J 82=21 Cr L J 210.

——Under S. 87 (3) the Magistrate must make an endorsement in writing validating the proclamation. (Broadway J.) Mala Singh v. Emperor.

AIR 1916 Lah 49 = 45 P L R 1917 = 35 I C 974=6 P R Cr 1917=40 P W R Cr 1916=17 Cr L J 414.

——Ss. 87 and 88—Attachment of property — Proclamation or copy not preserved—Evidence insufficient to show that legal formalities were observed.

The Magistrate in proceeding under S. 87 and S. 88 ought to take particular care to preserve proclamations and the record must be so clear as to satisfy the Court that the legal formalities were duly observed. When neither the proclamation nor any copy is forthcoming and the only evidence consists of a statement of one of the accused that a proclamation of some undescribed sort was at some unspecified time issued, the evidence does not sufficiently show that the legal formalities were observed by the Court. Before a Criminal Court makes an order confiscating private property the materials on the record must show with certainty, that a proclamation was properly issued: 19 Mad 8, Ref. (Chandavarkar and Batchelor JJ.) Emperor v. Jina Badhar.

14 Bom L R 163=14 I C 757=13 Cr L J 293.

—S. 88.

SYNOPSIS

1. Object of the section.
2. Court which can order attachment.
3. Foundation for attachment.

CRIMINAL P. C. (V of 1898), S. 88

4. Property which can be attached.
5. Attachment by civil Court.
6. "At the disposal of Government."
7. Suit to recover property.
8. Revision.

1. Object of the section.

——The object of S. 88 is to compel an accused person to appear in obedience to summons or warrant issued by criminal Courts. The attachment and sale of his property provided for are a penalty sought to be enforced against the accused to coerce him to respond to the orders of the criminal Courts and to take his trial and not avoid the reach of justice. (Manohar Lall J.) Bindeswari Prasad v. Lal Mungari Lal.

AIR 1937 Pat 642=1937 P W N 762=18 P L T 814 =172 I C 198.

2. Court which can order attachment.

——Jurisdiction.

An attachment of property is not authorised in a district other than that of the issuing Magistrate except when the order of attachment has been endorsed by the District Magistrate within whose District the property to be attached is situate, and an attachment made in contravention of this provision is illegal. (Macpherson J.) Ganu Shukul v. Emperor.

AIR 1930 Pat 347 (1)=14 A I Cr R 393=123 I C 397 =11 P L T 402=1930 Cr C 719=31 Cr L J 494.

3. Foundation for attachment.

——Ss. 88, 89 and 87— Proclamation directing accused to appear within thirty days from date of its issue is invalid and renders subsequent attachment under S. 88 invalid — Presumption under S. 87 (3) cannot be raised in such a case—See Criminal P. C., S. 87.

AIR 1948 Lah 151=48 Cr L J 624.

——Warrant of attachment of accused's property, when warrant of his arrest could not be executed, when can be issued.

When the Magistrate is informed that the accused had already left India, the orders for attachment of his property and proclamation are without jurisdiction, unless he is satisfied that the accused was wilfully absconding, knowing of the warrant. (Somayya J.) N. M. V. Vellayappa Chettiar v. Alagappa Chettiar.

AIR 1942 Mad 289=1941 M W N 763=54 L W 478 =14 R M 331=197 I C 102=43 Cr L J 11.

——Scope.

To lay the foundation for issue of a proclamation under S. 87 with an accompanying order of attachment under S. 88, it is necessary to comply strictly with the provisions of law relating to the issue of warrant in a case where a summons is the ordinary mode of enforcing attendance. In such a case before issuing warrant the Magistrate must place on record his reasons for considering that the accused has been duly served and that in spite of such service he had failed to appear without reasonable excuse. (Bipin Krishna Bose A. J. C.) Yasin Khan v. Emperor.

3 Ind Cas 575=5 N L R 125=10 Cr L J 306.

——Ss. 88 and 87—Sale on a proclamation not published in accordance with S. 87 is a nullity. (Stanley C. J. and Burkitt J.) Mian Jan v. Abdul.

27 All 572=1905 A W N 102 = 2 A L J 348 = 2 Cr L J 247.

4. Property which can be attached.

——Attachment of interest of member of Hindu joint family—Hyderabad Criminal P. C., S. 78.

Where the property attached is only the interest of a member of a Hindu joint family the only procedure that

CRIMINAL P. C. (V of 1898), S. 88 — 4. Property which can be attached

can be adopted is to appoint a receiver for the collection and realization of the absconder's share in the income of the property attached. (Ahmed Mohiuddin Ansari and Srinivasa Chari JJ.) Tigala Veerrya v. Hyderabad State.

AIR 1951 Hyd 81 = 1951 B L R (Hyd) 75 = I L R (1952) Hyd 184=52 Cr L J 707 (1).

——Police party having no right to seize goods of accused persisting in seizing them — They do not act in good faith under colour of office — Accused are entitled to resist seizure and use minimum force — Process of attachment against member of joint family — Movables belonging to joint family cannot be attached — Other members can resist seizure — See Penal Code (1860), S. 352.

AIR 1947 Pat 232=48 Cr L J 60.

——Property which is sold under S. 88 is the property of the accused and if the accused has, before the sale under S. 88 transferred any interest in the property that interest cannot obviously be sold—Where the accused before sale has mortgaged the property what the Government can sell and could sell is nothing more than the equity of redemption which on that day is in the mortgagor. The Government by attaching the property does not get any rights in its favour beyond what the section specifically provides. (Manohar Lall J.) Bindeswari Prasad v. Lal Mungari Lal.

AIR 1937 Pat 642=1937 P W N 762=18 P L T 814 =172 I C 198.

——Frames of doorway embedded in the wall.

The doors of a house have never been considered anything else but part of the furniture of the house and moveable property, but the frames, if embedded in the walls or floor, are to be considered immovable and accordingly the action of the police officers in digging the walls or floors to remove them does not seem to be technically correct and amounts to serious irregularity in connexion with a house search : AIR 1915 All 208, Ref. (Rowland J.) Ramji Ahir v. Emperor.

AIR 1930 Pat 387=1930 Cr C 800 = 11 P L T 878= 125 I C 784=31 Cr L J 937.

——Attachment—Death of absconder.

The property of an absconder against whom proceedings under Ss. 87 and 88 of the Cr. P. Code have been taken should be freed from attachment on the death of the absconder. With regard to the ancestral lands in the Punjab it has been settled that all that can be attached in proceeding under Ss. 87 and 88 of Cr. P. Code is the interest of the absconder and that on his death the land must be released in favour of his heirs : 18 P R 1908 (FB); A I R 1915 Lah 12, applied. (Le Rossignol J.) Shah Muhammad v. Emperor.

AIR 1925 Lah 629 = 88 I C 460 = 7 L L J 540 = 26 P L R 395=26 P L R 831=26 Cr L J 1148.

——Undivided joint family land cannot be attached.

An attachment could not be made of undivided land of a joint family to which an absconder against whom proclamation and attachment were issued belonged under S. 87, Cr. P. Code. Therefore no conviction under S. 188, Penal Code can be had against one or the other members of the family who cultivated the lands in spite of an order under S. 87, Criminal P. C. (Atkinson J.) Bisi Bihari v. Emperor.

AIR 1917 Pat 505=2 Pat L W 179 = 42 I C 781=18 Cr L J 1037.

——Share of a member of a joint family can be attached.

The attachment under S. 88 of the property of a member of a joint Hindu family who has absconded does not sever his share in the joint family properties. By attaching his property, the Government takes the position

CRIMINAL P. C. (V of 1898), S. 88 — 4. Property which can be attached

of the absconder; and it is liable to fluctuations by subsequent births in the family. The undivided interest of a member of an undivided Hindu family who has absconded can be attached under S. 88. The share may be realised by a receiver by a suit for partition or otherwise. (Wallis, C. J., Kumaraswami Sastri and Phillips, JJ.) The Secretary of State v. Rangaswami Aiyangar,

A I R 1917 Mad 366=39 Mad 831=31 M L J 84 and 120=20 M L T 58 and 60=(1916) 2 M W N 88 and 90 =4 L W 21 and 24=35 I C 168=17 Cr L J 296 (F B).

——Ss. 87 and 88—Sale of property of absconder — Suit by collaterals—Adverse possession.

Where a person accused of murder absconded and his land was sold under the provisions of Ss. 87 and 88 of the Cr. P. Code, the sale only transferred the personal rights of the absconder, and plaintiffs as the reversioners were entitled to succeed to the property after his death. The vendee's possession did not become adverse to the plaintiffs till after the death of the original owner and the collateral's suit was not therefore barred by limitation. 18 P R 1895; 25 P R 1911; 4 C 327, Ref. (Chevis and Shadi Lal, JJ.) Niamat Ali v. Secy. of State,

A I R 1915 Lah 12 = 52 P R 1915 = 30 I C 71=256 P W R 1915.

5. Attachment by civil Court.

——Lis pendens.

The doctrine of lis pendens applies not merely to sales by private parties but also to sales through Civil Courts or by Government including revenue sales and sales under S. 88, Cr. P. Code. (Madgavkar, J.) Narayan Kondaji Temkar v. Govind Krishna Abhyankar,

A I R 1929 Bom 200=116 I C 271=31 Bom L R 345.

——Priority — Seizure of absconder's property — Subsequent attachment by creditor.

The Police seized certain property belonging to two absconding accused but before the property was declared to be at the disposal of the Government under S. 88 of the Cr. P. Code the applicant sought to attach the said property in execution of his decree against the said accused. Held the Government had established no right to the property and the applicant had at the time established a right to have the right, title and interest of the judgment-debtors (the absconders) in it sold by the Civil Court. An order of the District Magistrate refusing to hand over the property to the Civil Court for disposal was wrong. (Hartnoll, J.) Subramania Chetty v. Emperor,

5 Bur L T 113 = 6 L B R 57 = 15 I C 984 = 13 Cr L J 568.

6. "At the disposal of Government."

——If the proclaimed person appears or is arrested within the time specified in the proclamation, the attachment will cease. (Courtney-Terrell, C. J., Kulwant Sahay and James, JJ.) Suraj Narain Prasad Singh v. Emperor,

A I R 1934 Pat 181=15 P L T 57=1934 Cr C 370 = 6 R P 464=13 Pat 317=148 I C 321=35 Cr L J 682 (SB).

——Rights of Government over the property.

The position of the Government in relation to the property attached under S. 88 is not simply that of an attaching decree-holder. It is at least analogous to that of a receiver in possession and management. The Government has such an interest in the property as to entitle its being made a party to a suit on a mortgage of that property.

Quaere.—What is the precise nature of the rights derived by the Government under S. 88, Cl. (7) ? Do the properties vest in the Government as owners ? Or does the Government become the absolute owner of the income for these properties after the period fixed in that clause ?

CRIMINAL P. C. (V of 1898), S. 88—6. "At the disposal of Government"

(Anantakrishna Ayyar and Sundaram Chetty, JJ.) Alagammal v. Sadasiva Padayachi,

A I R 1930 Mad 1017=1930 M W N 1021=32 L W 843=129 I C 47=60 M L J 72.

——When the title of the Government commences.

The words in S. 88, Cl. 7 "at the disposal of Government" do not imply that from the moment the absconder fails to appear on the date ordered, all his right, title and interest in the property immediately pass over to Government. It has that effect only from the date of attachment. (9 Cal 861 and 6 L B R 57, Rel. on.) (Madgavkar, J.) Narayan Kondaji v. Govind Krishna Abhyankar,

A I R 1929 Bom 200=116 I C 27=31 Bom L R 245.

7. Suit to recover property.

——Ss. 88 (6-D), 488 — One of the co-wives obtaining maintenance order under S. 488 — Certain property attached and money deposited in Court — Claim by other co-wife rejected—Suit by her under S. 88 (6-D)—Scope—Secretary of State, if necessary party.

One of the wives got a maintenance order under S. 488, Criminal P. C., and in execution thereof, got certain property attached. The property was sold and money deposited in Court. The claim of the other wife having been rejected, she instituted a suit against the co-wife under S. 88 (6-D), Criminal P. C., with a prayer that the order in the claim proceedings was incorrect:

Held, (i) that the mere fact, that on account of the sale of the attached property, the plaintiff asked for a decree for money instead of a declaration, did not take the suit out of the category of the suits contemplated by S. 88 (6-D);

(ii) that the suit need not have been for a declaration as attached property having been converted into money, the relief that should have been and was in fact claimed on behalf of the plaintiff was for that money itself;

(iii) that the money which had been realised although capable of being realised as fine under S. 488, cl. (3) was not in fact a fine itself and was not being held by or at the disposal of the Government for its own purposes and, therefore, the Secretary of State was not a necessary party. (Abdur Rahman J.) Gangayya v. Lakshmi Devi,

A I R 1942 Mad 93=54 L W 362=1941 M W N 865 =(1941) 2 M L J 510=14 R M 424 = 198 I C 203=43 Cr L J 325.

——S. 88 (6-D) — Suit to establish title to attached property—Claim under sub-s. (6-a) if should first be filed.

Sub-section 6 (d) of S. 88, Criminal P. C., does not prevent a person from filing a suit to establish his title to attached property without first filing a claim or objection under sub-s. 6 (a). (Panckridge J.) R. Ezekiel v. Province of Bengal,

A I R 1939 Cal 746=I L R (1939) 2 Cal 52 = 12 R C 350=185 I C 214=41 Cr L J 134.

——Property attached under S. 88 — Person claiming interest in it, if can prefer suit—Decree in such suit before final disposal of property by Government—Property of Hindu attached—Right of maintenance of his deceased coparcener's widow and unmarried daughter is burden on property — Such interest of widow and daughter, liability to attachment.

There is nothing in S. 88, Criminal P. C., which compels a person who claims an interest in the absconder's property to prefer his claim before the Magistrate, issuing the order for attachment. The right of the aggrieved person to prefer a suit without going to the Magistrate under this section has not been taken away. So long as the property has not been sold by Government or otherwise disposed of, and so long as Government have continued to remain in possession of the attached property, it

CRIMINAL P. C. (V of 1898), S. 88 — 7. Suit to recover property

would be open to any party claiming an interest in it to obtain a decree of a civil Court declaring his right in the property, and if he succeeds in obtaining such a decree before Government have finally disposed of the property, that decree would be binding against Government and the property could be disposed of subject to the rights established under such decree.

Under the Hindu law, if a coparcener takes the property of another deceased coparcener by survivorship, he takes it with the burden of maintaining the widow and unmarried daughters of the deceased coparcener. It cannot be said that this right of maintenance is merely personal in the sense that it has no reference to the property which he gets by survivorship. It may be that in the technical language it may not fall within the definition of "charge" under S. 100, T. P. Act. This charge is a later creation by statute, but the Hindu law has always regarded the widow's right as a burden on the property. The right of maintenance attaches to the property itself which is taken by survivorship. Such interest is not liable to attachment because, although it may not be a legal charge, Government acting under S. 88, Criminal P. C., are not in the same position as a purchaser for value. The holder of such interest for maintenance amounting as it does to a burden on the property, is entitled as a matter of right to ask the Court to create a formal charge, and that being so, it cannot be attached by Government who are only concerned with confiscating the absconder's right, title and interest in the property. (Divatia J.) Secretary of State v. Ahalyabai Narayan,

A I R 1938 Bom 321=40 Bom L R 422 = 11 R B 41 =I L R (1938) Bom 454=176 I C 453.

——Prior to sale under S. 88, accused mortgaging property —Government can sell only equity of redemption — Suit on mortgage after sale of property by Government.

Property which is sold under S. 88, Criminal P. C., is the property of the accused, and if the accused has, before the sale under S. 88, transferred any interest in the property, that interest cannot obviously be sold. Applying this reasoning, where the accused before sale has mortgaged the property what the Government can sell and could sell is nothing more than the equity of redemption which on that day is in the mortgagor, and Government or its transferee cannot acquire any higher rights than the mortgagor had on that day. The Government by attaching the property does not get any rights in its favour beyond what the section specifically provides. In a suit by the mortgagee for the mortgage decree after the sale of the attached property by Government under S. 88, Criminal P. C., the Government is not a necessary party because on the day of the mortgage suit, the Government had transferred its right and, therefore, the only person who is a necessary party in this mortgage action is, besides the mortgagor, the person who was then in possession of the property as a subsequent purchaser of the equity of redemption, that is to say, the auction-purchaser. (Manohar Lall, J.) Bindeswari Prasad v. Lal Mungari Lal,

A I R 1937 Pat 642=18 P L T 814 = 4 B R 125=10 R P 315=172 I C 198.

——Confiscation and re-grant, effect of.

On absconding of the plaintiff his property was confiscated and re-granted to defendant No. 1; held a suit for possession of the property cannot be maintained on the mere chance that something which might be decided in the Civil Courts might influence the revenue authorities in matters in which the decision is entirely within their province. (Macleod, C. J. and Crump, J.) Dattaji Nana v. Narayanrao,

A I R 1923 Bom 198=25 B L R 228.

CRIMINAL P. C. (V of 1898), S. 88 — 7. Suit to recover property

——Ss. 88 and 89 — Absconder — Suit for recovery of property

Ss. 88 and 89, Cr. P. C., debar an absconder from suing for the recovery of his property. (Mullick and Sultan Ahmed JJ.) Secretary of State for India v. Lowg Karan Marwari

AIR 1920 Pat 182=1920 Pat H C C 253=1 Pat L T 451=5 Pat L J 321=56 I C 507=21 Cr L J 475.

——Claim to attached property by third person—Practice —Remedy on rejection of claim.

Where property is attached under S. 88 as the property of an absconder and a third person prefers a claim to it as his own, he should be given an opportunity of establishing his right. But where claim is rejected the claimant's only remedy is by way of a civil suit against the Secretary of State and the person at whose instance the attachment was effected. (Shaw J. C.) Nga Po Aung v. Emperor

(1910) 1 U B R 66=11 I C 256=12 Cr L J 392.

——Ss. 88, 439 — Claim by third person — Civil suit — Revision.

There is no provision of law requiring a Magistrate who has attached property under S. 88 to investigate the claims of third persons to the ownership of such property. But the Magistrate should stay the sale to give the claimant time to establish his right; if the Magistrate errs, the remedy of the aggrieved party is by civil suit and not by criminal revision petition. (Hartnoll J.) Su We v. King-Emperor

4 L B R 109=7 Cr L J 81.

——Ss. 87 and 88—Sale on a proclamation not published in accordance with S. 87.

Where Court, acting under the provisions of Ss. 87, 88, Criminal P. C., attaches and sells the property, but the proclamation of sale is not published as required by S. 87, the sale is a nullity and passes no estate to the purchaser who is bound to enquire whether the Court had issued a statement in writing to the effect that the proclamation was duly published. (Stanley C. J. and Burkitt J.) Mian Jan v. Abdul

27 A 572=1905 A W N 102=2 A L J 348=2 Cr L J 247.

——Ss. 88 and 89—Suit to recover property attached and sold under an illegal warrant—Maintainability.

A suit by an alleged absconder to recover his property which was attached and sold by a Court under S. 88, Criminal P. C. under an illegal proclamation of sale is maintainable against the auction-purchaser. (Blair J.) Abdul v. Kazim Begam

24 A W N 159=1 Cr L J 616.

8. Revision.

An order under S. 88 is a proceeding within the meaning of S. 435 and is subject to the revisional jurisdiction of the High Court. (Shadi Lal C. J.) Santha Singh v. King-Emperor

AIR 1924 Lah 617=76 I C 18=25 Cr L J 82.

——Ss. 88, 435 and 439 — Order of attachment under S. 88—Interference in revision.

The Chief Court can under S. 439, interfere with the order of a Magistrate, under S. 88, attaching the property of an absconder and adjudicating the claim of a third party. The order is a proceeding under S. 435. (William Clark C. J. and Reid J.) Ilam Din v. Emperor

9 P R 1908 Cr = 29 P W R 1908 Cr = 3 P W R Cr 81=8 Cr L J 260.

—S. 89.

SYNOPSIS

1. **Applicability and scope.**
2. **Sale of property.**
3. **Civil suit—See also Criminal P. C., S. 88.**

CRIMINAL P. C. (V of 1898), S. 89

4. Illegal attachment — See Note 1 — Applicability and scope.
5. "Within two years."
6. Who can apply.
7. Revision.

1. Applicability and scope.

——Burden of proof.

Under S. 89, the onus to prove that the accused did not abscond for the purpose of avoiding execution of warrant and that he had no notice of the proclamation issued under S. 87 lies on the accused. (Teja Singh J.) Jagdeo Khan v. Emperor

AIR 1948 Lah 151=230 I C 404=I L R (1947) Lah 615=48 Cr L J 624.

——Restoration of attached property — Conditions for—Burden of proof.

Under S. 89, Criminal P. C., before the property under attachment, which is at the disposal of the Provincial Govt. under S. 88 (7) can be delivered to the proclaimed person, it is absolutely necessary for him to prove that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant and that he had not such notice of the proclamation as to enable him to attend within the time specified therein. The burden of proof lies upon him and not upon the Crown :

Held, on facts that the conduct of the accused against whom a proclamation had been issued under Ss. 87 and 88, Criminal P. C. led to the inference that he did not abscond or conceal himself and was entitled to restoration of his property. (Ghulam Hasan J.) Forbes v. Emperor

AIR 1943 Oudh 325 = 1943 A W R C C 54 = 1943 O W N 269=19 Luck 149=16 R O 103=209 I C 28=44 Cr L J 804.

——Ss. 89, 87—Proclamation issued by Magistrate's predecessor under S. 87, invalid—Magistrate's jurisdiction to interfere under S. 89.

The fact that a proclamation under S. 87, issued by the Magistrate's predecessor was not valid does not give the Magistrate jurisdiction to interfere which he can do only within the four corners of S. 89. (Blacker J.) Mt. Jawai v. Emperor

AIR 1942 Lah 214=44 P L R 300=15 R L 112=202 I C 15=43 Cr L J 791.

——Absconder — Attachment of property — Absconder acquitted—Property, when can be released.

Section 89, Cr. P. C., lays down that before release the person suspected of absconding must prove that he did not abscond and that he did not have notice of proclamation. Before becoming entitled to the release of attached property, he should prove these two facts. Where these conditions are not satisfied, the land concerned will remain the property of the Government. (Middleton J. C.) Emperor v. Arab Gul

165 I C 602=9 R Pesh 51=38 Cr L J 99.

——Absconding accused—Attachment of property—When can be released.

Where in the case of an absconding accused, the Court has taken proceedings under Ss. 87 and 88, Cr. P. C., the only way the accused can proceed to obtain the release of his property under the Cr. P. C. is by an application under S. 89. A Magistrate has no jurisdiction to set aside the order of attachment whether irregular or not except by virtue of this section. He has no inherent jurisdiction to set aside an order passed by another Magistrate or even

CRIMINAL P. C. (V of 1898), S. 89—1. Applicability and scope

by himself even if that order was irregular or illegal. The accused has to prove, in order to have an order of attachment set aside, that he had not "absconded or concealed for the purpose of avoiding execution of the warrant" and that he had no proper notice of the proclamation. Where he has not proved the first of these essentials, he cannot have the attachment set aside. (Young C. J. and Rangi Lal J.) Hans Raj v. Emperor

AIR 1934 Lah 987 = 36 P L R 262 = 7 R L 482 = 16 L 466=153 I C 954=1934 Cr C 1391=36 Cr L J 457.

——Illegal attachment.

Where land has been attached under S. 88 without a warrant, the High Court would interfere under inherent powers to set right the irregularity though not according to S. 89. (Harrison J.) Butta Singh v. Emperor

AIR 1926 Lah 662 = 8 L L J 608 = 27 P L R 825= 96 I C 977=27 Cr L J 1025.

——It is only when the applicant for restoration of property shows both that he had not absconded and that he had not proper notice, that the property can be restored. (Harrison J.) Butta Singh v. Emperor

AIR 1926 Lah 662 = 8 L L J 608 = 27 P L R 825= 96 I C 977=27 Cr L J 1025.

——Applicability—Absconder—Application for restoration of attached property—Revision.

Section 89 applies to a case where the validity of the attachment proceedings is challanged and the absconding person can prove (1) that he was not absconding, (2) that there was no publication at all or that the proclamation was defective, e. g., that no date was specified. Mere omission to affix a copy to the Court-house unless it prejudices the accused is an irregularity curable by S. 537. A person aggrieved by an illegal attachment can apply for revision. (Shadi Lal and Rossignol JJ.) Malli v. Emperor

AIR 1917 Lah 438 = 39 P R 1917 (Cr) = 48 P W R 1917 Cr=42 I C 595=18 Cr L J 979.

2. Sale of property.

——Applicant can get only sale proceeds.

Where property has been sold and subsequently an application under S. 89, Cr. P. C. is made and allowed, the applicant can only get the nett proceeds of the sale of the property. (Campbell J.) Emperor v. Fazal Dad

AIR 1924 Lah 420=73 I C 269 =24 Cr L J 573.

——Ss. 89 and 439—Absconder—Attachment and sale of property—Sale once effected cannot be set aside.

There is no provision of law under which the Chief Court acting in the exercise of its powers under S. 439, Cr. P. C. can set aside a sale. Once the sale of the property has been duly effected, it cannot be set aside even at the instance of the absconder, or any relation of his who may apply for sale to himself. (Shah Din J.) Emperor v. Goman

104 P L R 1911=13 P W R 1911 (Cr)=8 P R 1911 (Cr)=9 I C 826=12 Cr L J 142.

3. Civil suit.

See also Criminal P. C., S. 88.

——No civil remedy.

A "proclaimed" person, whose immovable property has been attached and sold by a Criminal Court in proceedings under Ss. 87 and 88, Cr. P. C., has no right to maintain an ordinary civil action for the restoration of the property sold, even though the procedure laid down for issuing the

CRIMINAL P. C. (V of 1898), S. 89—3. Civil suit

proclamation and attachment have not been strictly followed: 8 W R 207; AIR 1920 Pat 182 and AIR 1923 Bom 198, Dist.; 27 All 572, Diss. from and Dist.; A I R 1917 Lah 438, AIR 1919 Lah 57 and AIR 1926 Lah 662, Rel. on. A Civil suit for the purpose of setting aside such a sale is impliedly barred by the provisions of Cr. P. C. (Tekchand and Bhide JJ.) Dewa Singh v. Fazal Dad

AIR 1928 Lah 562=111 I C 508=10 Lah 338.

——Suit to recover property of alleged absconding offender attached and sold under an illegal warrant — Maintainability—See Criminal Procedure Code, S. 88

1 Cr L J 616 (All).

4. Illegal attachment.

See Note 1—Applicability and scope.

5. "Within two years."

——Period.

It is not only necessary to make the petition but also to prove the necessary facts within the period of two years: 15 Bom L R 175, Rel. on. (Harrison J.) Butta Singh v. Emperor

AIR 1926 Lah 662=8 Lah L J 608=27 P L R 825=96 I C 977=27 Cr L J 1025.

——Application after two years.

An application made after two years for releasing the attached property is out of time. S. 89 is inapplicable where attachment and sale are irregular and invalid. (Broadway J.) Mala Singh v. Emperor

AIR 1916 Lah 49=40 P W R (Cr) 1916=6 P R Cr 1917=45 P L R 1917=35 I C 974=17 Cr L J 414.

——Attachment of property for restoration.

The phrase "within two years from the date of the attachment" in S. 89 qualifies also the word "proves" which is connected with the word "appears" by the conjunction and under S. 89, it is necessary that the proof that the accused person had not absconded should be offered within two years from the date of attachment and it is not enough to show that the accused appeared voluntarily or was apprehended or brought before the Court within that period. The section requires proof that the offender did not abscond or conceal himself for the purpose of avoiding arrest, and that he had not such notice of the proclamation as to enable him to attend in time. It is not necessary that the absconding accused should himself personally apply for the restoration of his property but any one on his behalf may apply if he satisfies the other requirements of this section. (Batchelor and Rao JJ.) In re Nilkanta Ramchandra Kulkarni

19 I C 332=15 Bom L R 175=14 Cr L J 237.

6. Who can apply.

——Claim by third parties.

Section 89 of the Code provides for application by the absconding offender only for restoration of the property attached, and not for claims by third parties to such property. (Shah Din J.) Emperor v. Goman,

104 P L R 1911=13 P W R 1911 (Cr) = 8 P R 1911 (Cr)=9 I C 826=12 Cr L J 242.

——Ss. 88, 89—Application by legal representative to set aside attachment.

The legal representatives of a person whose property has been attached under S. 88 have no locus standi to apply to set aside the attachment. It is only the person whose property has been attached that can apply for its restoration. (Nanjundayya O. C. J. & Chandrasekhara Aiyar O. J.) Ramiah v. Govt. of Mysore,

CRIMINAL P. C. (V of 1898), S. 89 — 6. Who can apply

12 M C C R 173=10 Cr L J 260.

7. Revision.

—— Ss. 89, 87—Application purporting to be under S. 89—Magistrate finding that proclamation issued by another Magistrate was invalid but declining to interfere on ground of want of jurisdiction under S. 89 — Decision upheld by Sessions Judge:

Held, that the High Court can, in revision, consider the legality of original proceedings. (Blacker J.) Mt. Jawai v. Emperor,

AIR 1942 Lah 214=44 P L R 300=15 R L 112=202 I C 15=43 Cr L J 791.

——Ss. 89 and 439—Absconder—Forfeiture of property—Application to set aside forfeiture—Proclamation, whether validity can be questioned.

A person applying under S. 89 to set aside an order of forfeiture of his property cannot contest the legality of the proclamation under that section but the High Court can consider it in the exercise of its revisional jurisdiction. (Smith and Martineau JJ.) Emperor v. Multan Singh,

A I R 1919 Lah 57 = 32 P R Cr 1919=54 I C 994=2 Lah L J 82=21 Cr L J 210.

—S. 90.

——Ss. 90, 76 — Whether warrant issued under S. 90 to person charged with bailable offence must contain endorsement under S. 76.

The terms 'bailable warrant' and 'non-bailable warrant' are nowhere employed in the Criminal P. C. There are bailable offences and non-bailable offences. There is nothing in the Code anywhere which says that a warrant issued under S. 90, to a person who is charged with a bailable offence must contain an endorsement under S. 76. Whether such a direction should be given or not is entirely in the discretion of the Court. (Allsop J.) Lachmi Narain v. Emperor,

A I R 1939 All 156=1938 A L J 1229=11 R A 398=I L R (1939) All 272=1939 A W R 63=179 I C 899=40 Cr L J 283.

——Reasons—Legality of warrant issued without reasons — S. 555, Criminal P. C. — Scope of. 11 I C 593 : 12 Cr L J 409, Overruled.

Per Curiam — Where the warrant is good and valid on the face of it and it is sufficient to inform the person against whom it is issued, of the reason for its issue the Magistrate is justified in issuing the warrant on the materials before him, and such a warrant would not be invalid merely by reason of the fact that the Magistrate did not record in writing on the order sheet of the case the reason for its issue which might be the same as that which he had stated in the warrant itself. 38 Cal 789, Cons. S. 555 deals with the form of the warrant itself and nothing more and the words of S. 555 are not intended to supersede the provisions of S. 90. The words "after recording his reasons in writing" in S. 90, are not imperative but directory. Magistrates should record their reasons specifically in writing before issuing a warrant and should not be satisfied with signing their names to warrants in the form given in the schedule. 11 I C 593 : 12 Cr L J 409, OVERRULED.

Chatterjee J.—The mere signing of the warrant which states that 'the Court has reason to believe,' is not sufficient compliance with the law. A warrant issued by a

CRIMINAL P. C. (V of 1898), S. 90

Court without recording its reasons in writing is an illegal process. The words "after recording its reasons in writing" show that it must be done before issuing the warrant. The Legislature had some object in making the provision. The objects are first to insure deliberation on the part of the Magistrate before issuing the warant, and, secondly, that the person to whom the warrant is issued may know the reasons why it is issued so that such person may come before a higher Court and show that it has been wrongly issued. 36 Cal 433, Ref. The question of inconvenience or consequences should be considered not only with reference to the person executing the process, but also with reference to the person who is to be affected by the process and for whose benefit the provision is made. In cases affecting the liberty of the subject there is weighty authority for holding, that even in matters of form, every form and every step in the process be followed with extreme precision. Dale's Case, 6 Q. B. D. 376, Foll. (Sanderson C. J., Chatterjee, Richardson, Buckland and Panton JJ.) The Government of Assam v. Sahebullah,

A I R 1924 Cal 1 = 27 C W N 857=38 C L J 77=75 I C 129=51 Cal 1=24 Cr L J 881 (FB).

——Failure to record reasons is only irregularity.

In a prosecution under S. 498, I. P. C., the Magistrate issued a warrant in the first instance for arrest of the abducted woman on the application of the complainant that she would escape, without recording reasons for doing so. Held, the omission of the Magistrate to record the reasons for the issue of a warrant in the first instance amounted to a mere irregularity and not to an illegality and persons who forcibly rescued the woman from the custody of the constable who had arrested her under the warrant were guilty. (Gokul Prasad J.) Mahar Singh v. Emperor,

AIR 1920 All 245=18 A L J 1149=59 I C 415=L R 2 A (Cr) 14=22 Cr L J 111.

——Ss. 90 and 514 — Offence under S. 498, I. P. C. — Warrant issued for woman enticed away—Reasons—Bond executed by surety—Forfeiture.

In a case under S. 498, I. P. C. a Magistrate can issue a warrant for the attendance of the woman alleged to have been enticed away after recording proper reasons under S. 90 of the Cr. P. Code. If the Magistrate fails to record the reasons, the warrant is illegal and a bond given by a surety for the woman's attendance is of no force and cannot be legally forfeited for non-appearance of the woman. (Rattigan C. J.) Bala Singh v. Emperor,

AIR 1919 Lah 67 = 7 P W R Cr 1918 = 50 P L R 1918 = 44 I C 971 = 19 Cr L J 443.

——Warrant without reasons given — Invalid.

It is a necessary preliminary for a warrant issued under S. 90 that reasons should be given in writing. (Tyabji J. In re Karuthan Ambalam,

AIR 1916 Mad 1063 = 38 Mad 1088 = 33 I C 308 = 17 Cr L J 132.

——Jurisdiction of Magistrate — Drawing warrant — Co-conspirator standing alone.

Where two persons were tried for murder but acquitted, and it was alleged that they together with another were co-conspirators, a warrant can be issued against that other, though the others were acquitted. (Holmwood and Sharfuddin JJ.) Manindra Chandra Ghose v. Emperor,

AIR 1914 Cal 886 = 41 Cal 754 = 18 C W N 580 = 23 I C 1002 = 15 Cr L J 402.

CRIMINAL P. C. (V of 1898), S. 90

——Warrant—Issue of in the first instance—Reasons not recorded in writing — Adoption of printed form whether sufficient.

The issue of a warrant in the first instance without any reasons being recorded, is illegal; resistance to such a warrant is not an offence. The language of S. 90 is imperative and requires a Court issuing a warrant in the first instance to record its reasons; the adoption of stereotyped printed form is not a sufficient compliance with the requirements of the section. (Caspersz and Sharfuddin JJ.) Sukheswar Phukan v. Emperor,

38 Cal 789 = 15 C W N 1001 = 15 C L J 186 = 11 I C 593 = 12 Cr L J 409.

[Overruled in AIR 1924 Cal 1=24 Cr L J 881 (FB).]

——Absconding of accused—Proclamation and attachment —When issued—See Criminal Procedure Code (5 of 1898), S. 88.

3 Cr L J 353 (Low Bur).

——Scope — See Criminal P. C., Ss. 87, 88, 90.

5 N L R 125=10 Cr L J 306.

—S. 91.

——Magistrate, if can go to house of persons and ask them to execute personal bond under S. 91.

Section 91, Cr. P. C. is only applicable to persons who are present in Court and cannot authorise the Magistrates to go to the houses of persons and compel them to execute bonds for appearance in Court nor could he lawfully proceed to try the case unless he had issued a process as required by S. 204, Cr. P. C. (Niyogi A. J. C.) Ajodhya Prasad Sonar v. Municipal Committee, Khurai,

163 I C 413 = 18 N L J 320 = 9 R N 1 = 37 Cr L J 837.

——Surety bond—For production before police — Void.

A surety bond for the production of any person before the Police taken by the Police Officer is void ab initio. (Martineau J.) Hamid Ali v. Emperor,

AIR 1925 Lah 152 (1) = 81 I C 200= 25 Cr L J 712.

——Forfeiture.

——Surety's liability to produce accused to answer one charge does not extend to producing the accused to answer charges for other offences. (Martineau J.) Mane v. King-Emperor,

AIR 1924 Lah 622 = 76 I C 227 =25 Cr L J 131.

——Ss. 91 and 92 — Bond for appearance—Magistrates's powers.

A Magistrate can demand a bond for appearance and the accused must obey the terms of the bond and appear and answer the charge even though ultimately it turns out that the accused was not at all guilty. (Richards C. J.) Gurden v. Emperor,

AIR 1919 All 158 = 17 A L J 503 = 50 I C 992 = 20 Cr L J 384.

——Ss. 91, 87 and 88 — Summons issued against accused —Subsequent order for issue of warrant —Duty of Magistrate—Non-execution of warrant—Proclamation—Attachment of accused's property.

Where the case is one in which, according to the fourth schedule of the Code the Magistrate shall ordinarily issue a summons and where such a process was, as a matter of fact, issued, the Magistrate cannot subsequently order the issue of a warrant under Section 90 (b) unless before issuing it, the Magistrate, by an exercise of judicial discretion applied to the considerations of the materials before him, comes to the conclusion that the accused after being duly served had deliberately disobeyed the summons, or that he was keeping out of the way to evade

its service. The Magistrate must record his reasons for issuing the warrant

A proclamation and an order of attachment of accused's property, issued on the non-execution of a warrant issued without proof of service of summons are illegal and must be set aside. (Bipin Krishna Bose A. J. C.) Yasinkhan v. Emperor,

5 N L R 125 = 3 Ind Cas 575 = 10 Cr L J 306.

—S. 92.

——Witnesses, bound over, not appearing—It is for Court to take action.

Where the witnesses who were bound over fail to appear, it is for the Court to take action on the breach of the Court's order, and not for the complainant. (Grille J.) Rahat Ali Amjadali v. Muhammad Murad,

AIR 1938 Nag 103 = 10 R N 161 = 172 I C 113 = 39 Cr L J 62.

—S. 93A.

——Application to Commissioner of Police, Madras — Warrant of arrest from Jammu and Kashmir addressed to Police Commissioner—Executability.

There are no provisions in the Madras City Police Act making S. 93A apply to the Commissioner of Police. Nor is there any notification of the Government under S. 1, Cl. (2) proviso of the Code. Hence S. 93A does not apply to the Commissioner of Police.

Section 93A is the only provision under which warrants received from external Courts can be executed. A warrant of arrest of a person forwarded to the Commissioner of Police, Madras, by the Inspector-General of Police, Jammu and Kashmir Government, cannot therefore be executed by the Commissioner of Police, both for the reason that the Commissioner of Police is not a Court and that S. 93A of the Code does not apply to him. (Somasundaram J.) In re Ramnath Bholgothra

AIR 1953 Mad 953=1953 M W N 488=1953-2 M L J 399=1953 Cr L J 1737.

——Warrant of arrest for detention in Jammu and Kashmir—Execution in Madras.

If a person is arrested in one State because he is wanted by another State for detention in that State such an arrest is illegal. If this is so, in the case of State 'inter se' within the Union, a 'fortiori' a person cannot be arrested in Madras for the purpose of detention in the State of Jammu and Kashmir. If the person is wanted for an offence, it must be clearly stated in the warrant, with necessary particulars and descriptions and S. 93A must be strictly followed. (Somasundaram J.) In re Ramnath Bholgothra

AIR 1953 Mad 953 = 1953 Mad W N 488 = 1953-2 M L J 399=1953 Cr L J 1737.

—S. 93C

——Warrant for arrest received from Bhopal before assumption of its administration by Central Government —Need for extradition after assumption.

Where a warrant for the arrest of certain persons was received from a Court in Bhopal before its administration was assumed by the Central Government, after the assumption, the warrant has to be executed under S. 93C as if it were a warrant received from the Court in the Indian Union. In such a case no question of extradition arises. (V. Bhargava J.) Abdul Hasan v. Rex

AIR 1952 All 365 = 1950 A L J 242 = 1950 A W R H C 406=1950 A Cr C 121= I L R (1951) 1 All 736 = 1952 Cr L J 690.

—Chap. 7.

——Object of.

The primary object of Chap. 7 is that persons of ill-repute should be put on security, not that they should be

imprisoned as a punishment of safeguard. Consequently, imprisonment in default of security should be the exception, and not the ordinary consequence of an order under the Chapter. (Bigge J.) Nga Po Aung v. Emperor

13 Bur L R 91=5 Cr L J 377.

—S. 94.

SYNOPSIS

1. Bankers' Books.
2. Court.
3. Discretion to issue summons.
4. Document or thing—See Note 3—Discretion to issue summons.
5. Document or thing in possession of accused.
6. Documents protected—Sub-section (3).
7. Documents subject to solicitor's lien.
8. Income-tax returns and statements.
9. Inquest report.
10. Inspection of document.
11. 'Is necessary or desirable.'
12. Revision — See Note 3. Discretion to issue summons.
13. Scope.
14. Seizure of account books.
15. Summons or order.

1. Bankers' book.

——Commercial concerns, if entitled to protection.

Commercial concerns are entitled to protection from disclosure of matters which have nothing to do with the case before the Court, which disclosure may be detrimental generally to their interests and may therefore be used by the persons accused as a lever to secure withdrawal of the prosecution. (Davis C. J. and Weston J.) E. F. Graves v. Pitumal Hoondamal

AIR 1943 Sind 51= I L R (1942) Kar 292 = 15 R S 124=205 I C 107=44 Cr L J 324.

——Prosecution against auditors of a Bank — Allegations of false statements made in the balance sheet of the Bank —Summons against Managing Director for production of documents and books—Certain documents held as relevant —Complainant was entitled to the inspection of those documents—There was no conflict between the provisions of S. 94, Criminal P. C., and Bankers' Books Evidence Act, Ss. 5 and 6. (Broomfield and Wadia JJ.) P. D. Shamdasani v. Sir Hugh Golding Cooke

ILR (1938) Bom 31.

2. Court.

——Ss. 94, 155, 165 — When a Civil Court conducts an inquiry under S. 476, it has no jurisdiction to act under S. 94. (Gruer J.) Bishambhar Das v. Mukta

AIR 1942 Nag 73= 14 R N 317 = 1942 N L J 188 = ILR (1942) Nag 667=200 I C 68 (FB).

——"Court"—Who is — There must be proceeding before Magistrate to constitute him a "Court" — Magistrate conducting house search under S. 25, Arms Act, whether 'Court'—See Arms Act (1878), S. 25.

12 C W N 973=8 C L J 75.

3. Discretion to issue summons.

——Application for production of document—Court, when can order production — Such order, if involves obligation on Court to give inspection of all books produced to complainant — Question of inspection should be considered at later stages either at trial or inquiry or on special application. AIR 1938 Bom 33=39 Cr L J 207, Overruled.

When an application is made to a Court or to a Police Officer in the mofussil under S. 94, Criminal P. C., for production of documents, the Court is bound to consider whether there is a prima facie case for supposing that the

CRIMINAL P. C. (V of 1898), S. 94—3. Discretion to issue summons

documents are relevant. If he thinks they are, then he can order production and of course, his decision may be influenced by a desire to prevent the books being taken away or tampered with. But such an order for production does not involve an obligation on the Court to give inspection of all the books produced, to the complainant, though the Court has power to order such inspection. The Magistrate must consider that question at a later stage of the proceeding, either at the trial or inquiry, or on a special application, at which he can hear the accused as well as the complainant, and he should only order inspection of those books which the complainant satisfies him, are really relevant. AIR 1938 Bom 33=39 Cr L J 207, Overruled. (Beaumont C. J., Divatia and Macklin JJ.) Hussenbhoy Abdoolabhoy v. Rashid B. Vershi

AIR 1941 Bom 259=43 Bom L R 523= I L R (1941) Bom 492 = 14 R B 120 = 196 I C 267 = 42 Cr L J 831 (FB).

——Principle governing exercise of powers under S. 94.

The discretion under S. 94, Cr. P. C., must be exercised judicially, in such a way as not to conflict with the policy of the Legislature as disclosed in S. 162 of the Code and in Ss. 123 to 125, Evidence Act. Statements made to the Police are in their nature confidential and S. 162 of the Code illustrates the limited purposes for which their production should be required. It is necessary also to bear in mind, that under S. 125, Evidence Act, a Police Officer cannot be compelled to say whence he got any information as to the commission of any offence. No exception can be made in favour of a statement made by the informant. (Beaumont C. J. and Wassoodew J.) Emperor v. Bilal Mahomed,

AIR 1940 Bom 361=42 Bom L R 787=13 R B 139= I L R (1940) Bom 768=190 I C 779=42 Cr L J 58.

——Production of documents—Discretion of Court.

Section 94, Cr. P. C., applies to all cases including summons cases and gives the Magistrate discretion about the production of documents. When the discretion has been used judicially, the High Court will not interfere. (Gruer J.) Chhotey Miyan v. Emperor,

A I R 1936 Nag 250=9 R N 228=I L R (1937) Nag 165=167 I C 860=1936 Cr C 1042=38 Cr L J 482.

——Ss. 94, 517, 561-A — Search warrant, when can be ordered — Discretion of Court not absolute — Accused forging signature of complainant on cheque and depositing money in bank—Money, if can be attached from the bank.

Although the language of S. 94 is very wide, the Court's discretion under it is not absolute. The Court's discretion must be exercised judicially. Anything which may reasonably be regarded as forming part of the evidence in the case may be ordered to be produced, and that is the primary object of these provisions. Some things not necessary for evidentiary purposes may also come within them if there is any direct connection between the thing and the subject-matter of the proceeding, for instance, if the thing forms part of the proceeds of an offence. There is nothing to prevent an order being made under S. 94 for the production of a thing in anticipation of an order to be made under S. 517 at the conclusion of the trial, and there may be cases in which it is very proper to make such an order. But before doing so, the Court ought to consider the nature of the order which it will be in a position to make under S. 517. It would be futile to order the production of a thing, not required as evidence for the purposes of the inquiry or trial itself, if the only order which the Court can make with respect to it will be that it should be returned to the person producing it.

CRIMINAL P. C. (V of 1898), S. 94—3. Discretion to issue summons

It is doubtful whether it can properly be said to be necessary to secure the ends of justice that the Court should make the order suggested, especially when the necessary relief must be obtainable somehow or other from the Civil Court.

The accused was charged with stealing a blank cheque and forging the signature of the complainant after making it out for Rs. 6000. The cheque was cashed in notes of Rs. 1000 each and they were subsequently converted into notes of Rs. 100 each and he deposited Rs. 5000 in the savings bank account of a bank. Shortly after, he withdrew Rs. 1000 from the bank. The Magistrate issued a search warrant and recovered Rs. 4000 from the bank.

Held, that neither the accused nor the complainant through the accused had any right to any particular sum of money lying in the bank. The accused had a credit for Rs. 4000, on actionable claim for that amount; that claim could be proved but it could not be produced in Court. The money was no part of the proceeds of the offence and had no real connection with the subject-matter of the charge. Consequently, the search warrant should be quashed and the money returned to the bank. (Broomfield and Divatia JJ.) In re Lloyds Bank, Limited,

AIR 1934 Bom 74=36 Bom L R 88=58 Bom 152= 6 R B 409=149 I C 1005=1934 Cr C 306=35 Cr L J 1028.

——Summons to produce documents — Propriety of.

The Chief Presidency Magistrate of Calcutta issued a search warrant in execution of which the books of the petitioner's firm were taken by the police in their custody. The Magistrate's order was set aside by the High Court in revision and thereupon the Magistrate issued a notice on the petitioner to take delivery of the books personally or by agent. The books were made over to the petitioner's agent and simultaneously a notice under S. 94 was served on the petitioner's agent and the books were re-taken. Held, that the order under S. 94, Cr. P. C., was proper. (Choudhury and Newbold JJ.) T. R. Pratt v. Emperor,

A I R 1920 Cal 349=47 Cal 647=24 C W N 410= 31 C L J 188=57 I C 97=21 Cr L J 577.

4. 'Document or thing' — See Note 3—Discretion to issue summons.

5. Document or thing in possession of accused.

——Ss. 94 and 96 — Applicability to accused persons— Constitution of India, Art. 20 (3).

The provisions of Ss. 94 and 96, Cr. P. C., apply to the case of an accused person who is on trial. The words 'any person' in S. 94 are wide enough to cover a person accused : 12 C. W. N. 1016 : 8 Cr. L. J. 224, 38 Cal. 304 : 12 Cr. L. J. 8, 9 I. C. 64 and 9 I. C. 564 : 12 Cr. L. J. 98 (Cal.), Overruled.

The procedure under Ss. 94 and 96, Cr. P. C., cannot possibly be said to conflict with any provision making it illegal to compel an accused person to give evidence or to answer any questions addressed to him by the Court. S. 94, Cr. P. C., merely contemplates compelling an accused to produce a document for what it is worth. What use will be made of that document and how it will be proved are not matters in which the accused can be compelled to assist.

Such a construction of S. 94 would not make the section ultra vires of Art. 20 (3) of the Constitution. That Article does not create any new right fundamental or otherwise. Even before the Constitution no accused person in India could be compelled to be a witness against himself and this clause simply repeats what the law was before the Constitution. Calling upon an accused person to produce a document is not compelling the accused to give evidence against himself. The document may of

course prejudicially affect him later, but it does not prejudice by reason of the accused being compelled to give evidence against himself.: 12 C. W. N. 1016 : 8 Cr. L.-J. 224; 38 Cal 304 : 9 I. C. 64 : 12 Cr. L. J. 8 and 9 I. C. 564 : 12 Cr. L. J. 98, OVERRULED. (Harries C. J., Banerjee and Das Gupta JJ.) Satya Kinkar v. Nikhil Chandra,

A I R 1951 Cal 101=55 C W N 627=I L R (1952) 2 Cal 106=52 Cr L J 946 (FB).

——Summons — Non-production — Incriminating document.

During the pendency of an appeal against an order refusing sanction to prosecute defendants for perjury and forgery, the defendants with the leave of the Court withdrew the account books and when required to produce them failed to do so. Held, that defendants were not in the position of accused persons and were therefore bound to produce the book although it might incriminate them. (Jwala Prasad J.) Damri Ram v. Emperor,

A I R 1918 Pat 590=4 Pat L W 65=43 I C 793=19 Cr L J 217 (2).

——Ss. 94 and 165 — Applicability to accused persons—Search for specific stolen property after arrest.

The powers under Ss. 94 and 165 of the Code extend to accused persons. A Police Officer is empowered to search an accused's house even after his arrest for specific stolen property under S. 165 of the Code, though a general search of the house for stolen property may not be authorised by law. 38 C. 304, Expl., 15 Cal. 109; 17 I. C. 76, Rel. on. (Richardson and Imam JJ.) Bisser Misser v. Emperor,

41 Cal 261=17 C W N 1209=20 1 C 229=14 Cr L J 405.

——Summons to produce document — Incriminating nature.

Under S. 94 of the Criminal P. C., a Magistrate can issue summons to an accused person to produce a document or other thing, the production of which might tend to incriminate him. 15 C. 109, Foll.; 19 Cal. 52, Ref.; 12 C W N 1016, Not foll. (Benson J.) Kondareddi v. Emperor,

37 Mad 112=15 I C 493=13 Cr L J 493.

——Ss. 94 and 165—Scope.

Section 165 does not authorise a general search. It speaks of specific document or thing which may be the subject of a summons under S. 94 and does not refer to stolen articles or incriminating articles in the possession of an accused person. It therefore does not authorise search of stolen property in the house of absconding offender. (Holmwood and Sharfuddin JJ.) Bajarangi Gope v. Emperor,

38 Cal 304=15 C W N 343=13 C L J 639=9 I C 64 =12 Cr L J 8.

[Overruled in A I R 1951 Cal 101 = 52 Cr L J 946 (FB).]

——Omission to produce incriminating document by an accused on trial.

Section 94, Criminal P. C., is not applicable to the case of an accused person on his trial to whom a notice has been issued to produce an incriminating document. Hence where an accused, who is on his trial for offences under Ss. 471 and 193, Penal Code, and is directed to produce a certain incriminating document, but does not produce the document the accused cannot be convicted under S. 175, Penal Code. (Brett and Ryves JJ.) Ishwar Chandra Ghoshal v. Emperor,

12 C W N 1016=8 C L J 320=8 Cr L J 224.

[Overruled in 52 Cr L J 946 = A I R 1951 Cal 101 (FB).]

6. Documents protected—Sub-sec. (3).

——S. 94 (3) — Documents protected under S. 126—Evidence Act (I of 1872), whether exempted under S. 94 (3).

Clause 3 of S. 94, Criminal P. C., does not exempt documents protected under S. 126, Evidence Act, and the production of such documents is incumbent under S. 162, Evidence Act, notwithstanding any objection which there may be to the production or admissibility. (Lakshmana Rao J.) Public Prosecutor, Madras v. M. S. Menoki,

A I R 1939 Mad 914=50 L W 428 = (1939) 2 M L J 634=(1939) M W N 1127=12 R M 563=185 I C 419= 41 Cr L J 186.

7. Documents subject to solicitor's lien.

——Lien — Solicitor's general lien — Order under S. 94, for production of documents — Solicitor's general lien, if good answer.

A Solicitor's lien is a right exercisable against the client, and gives the Solicitor no higher right against third persons than the client himself possesses. Thus, notwithstanding the lien, the Solicitor can be compelled to produce the papers in his possession if his client would have been bound to produce them.

Therefore, a Solicitor's general lien upon documents is no answer to an order made under S. 94, Criminal P. C. Where for the purpose of substantiating the charge under S. 497, Penal Code, against the accused, it is necessary that the Crown should use the documents as evidence against the accused, the Court is entitled under S. 94, Criminal P. C., to issue a summons for the production of any such document necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings under the Code as provided by that section. Such an order can be made by the Court summoning the complainant to produce such documents, these documents being the property of the complainant. If, therefore, the complainant can be ordered by the Court to produce documents belonging to him, similarly, his Solicitor or Attorney may be ordered to produce them if they are in his possession, and this, regardless of whether he has a lien upon them or not. (Lort-Williams and Jack JJ.) Allan E. Ker v. Promotha Nath Sarkar,

163 I C 224=39 C W N 917=62 C 1037 = 8 R C 722 =37 Cr L J 825.

8. Income-tax returns and statements.

——Ss. 94 and 96 — Police officer requesting under S. 94, Income-tax officer to hand over certain income-tax returns and statements — Refusal under S. 54 of Income-tax Act — Warrant to obtain possession of such documents is illegal—Income-tax Act (1922), S. 54 (1)—(Per Kapur J.) Police officer had no power to issue requisition under S. 94. (Weston C. J., Khosla, Harnam Singh, Kapur and Soni JJ.) Income-tax Officer, Jullundur v. The State,

A I R 1950 E P 306=52 P L R 229 = 1950-18 I T R 688=51 Cr L J 1273 (FB).

——Section, if repealed pro tanto by S. 54, Income-tax Act—Income-tax Act (1922), S. 54.

Per Kapur J. — As, therefore, the object of S. 54, Income-tax Act is secrecy and S. 94 of the Code is destructive of that object, S. 94 must be taken to have been repealed pro tanto by the subsequently legislated S. 54 of the Income-tax Act. (Weston C. J., Khosla, Harnam Singh, Kapur and Soni JJ.) Income-tax Officer, Jullundur v. The State,

A I R 1950 E P 306=52 P L R 229=1950-18 I T R 688=51 Cr L J 1273 (FB).

9. Inquest report.

——Calling for inquest report.

In a murder case the accused has a right to a copy of the statement made by the witnesses at the inquest

CRIMINAL P. C. (V of 1898), S. 94—9. Inquest report

inquiry. Even if the inquest report is not in Court, S. 94 of the Criminal P. C. empowers the Magistrate to call for its production by the police. (Spencer Offg. C. J.) Chanlet In re,

A I R 1925 Mad 424=85 I C 42 = 20 M L W 745 = 26 Cr L J 426.

10. Inspection of documents.

——Right of accused.

Denial to the accused of an opportunity to inspect certain documents on the ground of privilege was held to be a case of handicap to the accused. (Sinha J.) Krishna Dayal v. Emperor,

A I R 1946 All 227=1945 A W R (HC) 298 (2)=227 I C 269=47 Cr L J 1041.

——Inspection of documents—Case of technical nature—Counsel not having technical knowledge — Knowledge available through instructions — Refusal of inspection of documents to accused with his counsel held wrong.

The case was of a highly technical character, which it was not possible for a counsel to follow without the assistance of someone familiar with the papers. It required knowledge of a highly technical character, which the counsel was not expected to possess. That knowledge could come to the counsel for the defence only through proper instructions from the accused and those instructions should have been available to him at every stage when, either studying the case or inspecting the record, he was trying, step by step, to disentangle the skin of intricacies. As against this the Crown counsel had at his service the entire machinery of the Department :

Held that the Magistrate wrongly refused inspection of the documents to the accused with his counsel merely because the latter had made inspection twice or thrice. (Sinha J.) Krishna Dayal v. Emperor,

A I R 1946 All 227=1945 A W R H C 298=227 I C 269=47 Cr L J 1041.

——Inspection of documents — Refusal on ground that they were not referred to by prosecution is bad—Accused must be given wider scope.

Admissibility of a document is the rule and not the exception.

Every document, particularly in a criminal trial, must be admitted in evidence to throw light on the obscure corners of the case. That light should always be welcome, unless its entry in the Court is shut out for very special reasons, because, the object of a trial in every case is to ascertain the truth in respect of the charge made. Hence denial of an opportunity to inspect documents because they were not referred to by Crown counsel is wrong. A cross-examining counsel is entitled to cover a much wider field and refer to many more documents than the counsel who has conducted the examination-in-chief, if for nothing else, to test the veracity of the witness. (Sinha J.) Krishna Dayal v. Emperor,

A I R 1946 All 227=1945 A W R H C 298=227 I C 269=47 Cr L J 1041.

——Order for production of document — Court, if must give inspection—Order under S. 94, Criminal P. C., directing inspection of books — Bank, if can object— Powers of Court in matter of granting inspection — Prima facie relevancy of books must be established.

Obiter : There is no justification whatever for the suggestion that when a Magistrate makes an order for production under S. 94, Criminal P. C., which he can do whenever he thinks such an order necessary or desirable for the purposes of the proceedings before him, he thereby commits himself to the proposition that inspection of all the documents, production of which is ordered, must necessarily follow: Usually, inspection should only be

CRIMINAL P. C. (V of 1898), S. 94 — 10. Inspection of documents

given of particular documents shown to be relevant, and not of documents, in bulk and the party producing the documents in compliance with the order of the Court is not precluded from objecting to their subsequent inspection. (Beaumont C. J., Rangnekar and Norman JJ.) Central Bank of India Ltd. v. P. D. Shamdasani,

A I R 1938 Bom 33 = 39 Bom L R 1187 = 10 R B 291=I L R (1938) Bom 119 = 172 I C 684 = 39 Cr L J 207 (SB).

[Overruled in A I R 1941 Bom 259=42 Cr L J 831.]

——Courts' jurisdiction to order production of document, whether includes right to allow inspection.

The jurisdiction of the Court to order the production of a document or thing carries with it the jurisdiction to allow the right of inspection. (Mehta, O'Sullivan and Lobo A. J. Cs.) Muhammad Rahim v. Emperor,

A I R 1935 Sind 13=7 R S 167 = 29 Sind L R 92 = 154 I C 762=1935 Cr C 124=36 Cr L J 581 (FB).

11. 'Is necessary or desirable'.

——Scope — Document must be prima facie relevant evidence in the case.

Section 94, Criminal P. C., gives power to the Court to require the production of documents when it considers their production necessary or desirable for purposes of investigation, and if documents are considered necessary or desirable for that purpose, before an order under this section can be made, it must appear, at least prima facie that they are likely to be relevant evidence in the case.

If the nature of the documents asked for is such that in the circumstances of the case, their relevance, at least prima facie, speaks for itself, it is not necessary for the accused, seeking production, to state explicitly the purpose for which they required them or to elaborate in their application what in fact was obvious. But where the relevancy of the documents asked for does not speak for itself, and the application itself discloses no grounds why production of document is necessary or desirable, it is the duty of the Magistrate to consider whether their production was necessary or desirable, and it is not open to him to evade his responsibility on the plea that he might have to hear the nature of the defence which the accused might make. (Davis C. J. and Weston J.) E. F. Graves v. Pitumal Hoondamal,

A I R 1943 Sind 51 = I L R (1942) Kar 292=15 R S 124=205 I C 107=44 Cr L J 324.

12. Revision.

See (1) ibid, S. 94, Note 3—Discretion to issue summons.

(2) ibid, S. 435.

13. Scope.

——Stage for filing evidence.

No definite stage for filing evidence is prescribed by the Criminal Procedure Code and it is certainly open to the complainant to summon it at any stage. (Beg J.) Samresh v. State,

AIR 1953 All 781=1952 A W R (H C) 93=1952 R D (H C) 207=1952 A L J 253=1952 A Cr R 29=1953 Cr L J 1806.

——Filing of documents by prosecution—Accused cannot compel their production.

When the prosecution is its own judge of the order in which witnesses are to be produced, it follows that documents which require to be proved can lawfully come on the record only when the witnesses who prove those documents are examined, and that therefore, the stage for the coming on the record of the provable documents will be in the discretion of the prosecution, and the accused cannot force the prosecution to produce any documents at

CRIMINAL P. C. (V of 1898), S. 94—13. Scope

any stage. (Raghubar Dayal J.) Munshi Singh v. The State,

AIR 1953 All 197=1952 All L J 668=1952 R D (HC) 333=1952 A W R H C 626 = 1952 A Cr R 170 = 1953 Cr L J 546.

——Ss. 94, 561A — Order in the nature of attachment before judgment.

In a criminal case the accused has to be presumed innocent till he is adjudged guilty. An order to his prejudice which has the effect of attaching property would be inconsistent with this fundamental principle of criminal jurisprudence. In a prosecution under Ss. 420 and 406, Penal Code, stopping of payment of certain bills presumably with a view to passing some order with regard to the amount due from a third person to the accused at the termination of the proceedings is evidently not covered by S. 94. Such an order is in the nature of attachment before judgment. Such an order would not be covered even by S. 561A: A.I.R. 1934 Bom. 74, Rel. on. (Ram Labhaya J.) Prafulla Kumar Deb v. Suresh Chandra De,

AIR 1952 Assam 24=I L R (1951) 3 Assam 27.

——Ss. 94, 257—Court's power in using machinery provided by S. 94, if controlled by S. 257 — Ss. 94 and 257, whether antagonistic—Scope of: A. I. R. 1914 Sind 135= 16 Cr L J 245, Overruled.

Per Full Bench.—Sections 257 and 94, Criminal P. C., are not antagonistic; they are interdependent. Section 94, Criminal P. C., affords any party to an inquiry, trial or other proceedings under the Code, the facility of having documents and things produced at any stage of such enquiry, trial or proceeding. The facility is restricted. The restriction lies in the fact that the necessity or desirability of the production must be shown to the satisfaction of the Court. Section 257, Criminal P. C., gives an accused person a right, subject to another, but lesser restriction, to claim the same facility. This restriction consists in the accused having to satisfy the Court that his demand is not made for the purpose of vaxation or delay or for defeating the ends of justice : A. I. R. 1914 Sind 135 : 16 Cr. L. J. 245, Overruled. (Mehta, O'Sullivan and Lobo A. J. Cs.) Muhammad Rahim v. Emperor,

A I R 1935 Sind 13 = 7 R S 167=29 Sind L R 92 = 154 I C 762=1935 Cr C 124=36 Cr L J 581 (FB).

——Ss. 94 and 162—The provisions of S. 162, Criminal P. C., do not apply to the statements recorded by Excise Inspector at his enquiry which is neither an inquiry nor a judicial proceeding within the meaning of S. 4, cls. (k) and (m) of the Criminal P. C. But accused is entitled for original statements under S. 14 of Evidence Act and they can be sent for under S. 94, Criminal P. C. (Lakshmana Rao J.) Michail v. Emperor,

1933 M W N 1270.

14. Seizure of account books.

—— Ss. 94, 155, 165—Combined effect of Ss. 94, 155 and 165—Authority to Police Officer to investigate one case—Books seized not demanded for that case — He cannot investigate another non-cognizable offence under that authority — He cannot exercise powers under S. 94 and S. 165, for the other case.

The combined effect of Ss. 94, 155 and 165, Criminal P. C., is that without an order of a competent Magistrate, a Police Officer cannot investigate a non-cognizable case and further that even if he is so authorised, he has to observe the formalities as laid down in Ss. 94 and 165, before he can compel the production of any document or seize any incriminating article. Where the Magistrate has authorised a Police Officer to investigate the case against G but the books seized were not demanded in connection

CRIMINAL P. C. (V of 1898), S. 94 — 14. Seizure of account books

with that case, then, under this authority he cannot investigate a separate non-cognizable case in which he could require the production of books and unless he is so authorised, he cannot use any powers which are vested in an officer in charge of a Police Station or in a Police Officer making an investigation as contemplated in Ss. 94 and 165, Criminal P. C. The seizure is, therefore, unauthorised and obviously illegal. (Din Mohammad and Blacker JJ.) Durgadas v. Emperor,

AIR 1943 Lah 28=44 P L R 549=I L R (1943) Lah 805=15 R L 266=204 I C 535=44 Cr L J 301.

——Ss. 94, 96, 192—Account books, production of—Procedure to be followed.

Where on a complaint that the accused had fraudulently tampered with the account books of a partnership business the Magistrate directed the Police "to enquire and report and to take possession of the khata books".

Held, that if the production of the account books was necessary, the Magistrate should have issued either a summons to produce under S. 94 or a search warrant under S. 96. His order to the police to take possession of the account books was illegal. (Chatterjee and Teunon JJ.) Hari Charan Gorai v. Srish Chandra Sadhukhan,

13 C L J 43=38 Cal 68 = 7 Ind Cas 747= 11 Cr L J 525.

15. Summons or order.

——Verbal order under S. 94—Legality.

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. Under S. 94, no discretion is vested in a Police Officer to issue a written order and he cannot demand the production of books in any manner that he likes, for example, verbally. (Din Mohammad and Blacker JJ.) Durgadas v. Emperor,

A I R 1943 Lah 28 = 44 P L R 549 = I L R (1943) Lah 805=15 R L 266=204 I C 535=44 Cr L J 301.

—S. 96.

SYNOPSIS

1. Scope of the section.
2. "Court."
3. "Has reason to believe".
4. Record of reasons.
5. "Person" if includes an accused person.
6. "Document or thing"—See also S. 94.
7. Document, etc., in custody of Postal or Telegraph authorities.
8. General search or inspection.
9. "May issue a search-warrant."
10. Right to obtain copy of order.
11. Who may issue a search-warrant.
12. Search-warrant under a special or local law.
13. Search for persons in wrongful confinement—See S. 100.
14. Presumption.
15. Inspection.
16. Form of search-warrant.
17. Who may make the search — See Ss. 77 and 101.
18. Magistrate, if can search himself — See S. 105.
19. Illegality of warrant or search.
20. Disposal of things produced — See Ss. 99 and 517.
21. Revision.

CRIMINAL P. C. (V of 1898), S. 96

1. Scope of the section.

——Ss. 96, 105, 165—Search-warrants.

Per Maclean C. J. — The scheme as regards searches under the Criminal P. C. is reasonably clear. The Court can issue a search-warrant under S. 96 or in lieu of that the Magistrate may himself search under S. 105; S. 165 deals with searches by a Police Officer and not by a Magistrate.

A Magistrate can only act under S. 105 where he is competent to issue a search-warrant i. e., when he is acting as a Court. (Harington J.) Clarke v. Brojendra Kishore Roy Chowdhry,

36 Cal 433=13 C W N 458=9 C L J 293 = 5 M L T 367=2 Ind Cas 436.

2. "Court."

——Ss. 96 and 105—Search warrant — Power of District Magistrate when not sitting as a Court—General search.

The word "Court" in S. 96, Criminal P. C. includes "Magistrate" and a Magistrate is perfectly within his jurisdiction in directing a search to be made in his presence, not merely when actually sitting as a Court, but in view of any enquiry about to be made by him. Where it appeared that a serious riot had been committed within the jurisdiction of a District Magistrate and it was his duty to inquire into the offence and he accordingly searched the respondent's cutcheries for arms :

Held, that under Ss. 96 and 105, Criminal P. C. he was authorised so to do. (Lords Macnaughton, Atkinson, Shaw, Sir John Edge and Mr. Ameer Ali) Clarke v. Brojendra Kishore Roy,

39 Cal 953 = 39 I A 163 = (1912) M W N 760 = 12 M L T 171=10 A L J 193=16 C L J 231 = 16 C W N 865=23 M L J 32=14 Bom L R 717=16 I C 501 = 13 Cr L J 693 (P C).

3. "Has reason to believe".

——Ss. 96 and 103 — Search warrant signed by Deputy Commissioner of Police — Misdescription of premises— Omission to state that officer had reason to believe that place was used as common gaming house :

Held, that the warrant was not invalid. (Cornish J.) Subbier v. Emperor,

A I R 1935 Mad 98=40 M L W 841=58 Mad 867=7 R M 478=1935 M W N 249=68 M L J 348 = 154 I C 741=1934 M Cr C 276=1935 Cr C 151=36 Cr L J 566.

4. Record of reasons.

——Issue of search warrant — Recording of reasons for belief not necessary.

Under S. 96, the Magistrate is not bound to record his reasons in writing before he issues a search warrant. All that the section requires is that the Magistrate must himself be satisfied that there is necessity for the search warrant to be issued, because the thing would not be produced otherwise. (Harries C. J. and S. R. Das Gupta J.) Manicklal Mondal v. State,

A I R 1953 Cal 341 = 56 C W N 551 = 1953 Cr L J 783.

——Duty of Magistrate before issuing search warrant.

The Magistrate should be satisfied that it is absolutely necessary to issue a search warrant and he should exercise his judicial mind and must give his reasons for the issue of such a warrant. (Chandra Reddi J.) Meyyamma Achi v. Venkatachalam Chettiar,

(1951) 1 M L J 12.

5. "Person" if includes an accused person.

——Applicability to accused persons—See ibid, S. 94.

A I R 1951 Cal 101=52 Cr L J 946.

——"Person" meaning of—Powers of Magistrate—Document in possession of accused.

CRIMINAL P. C. (V of 1898), S. 96 — 5. "Person" if includes an accused person

Under S. 96 a Magistrate can issue a search warrant for documents in possession of the accused and such documents can be inspected by the prosecution or by any expert appointed by the Court. The words "a person" in Ss. 94 and 96 include the person accused in the case and the words "document or thing" in the sections are general and cover any document the production or inspection of which is necessary or desirable. (Johnstone J.) Municipal Committee, Jhang v. Muhammad Hayat,

A I R 1914 Lah 587=68 P W R 1914 (Cr) = 36 P R (Cr) 1914 = 27 I C 897 = 227 P L R (Cr) 1915 = 16 Cr L J 225.

——Scope—Accused on trial.

A search warrant under S. 96 cannot be addressed to an accused person on his trial and he cannot be prosecuted under S. 115 on his failure to do so. (Holmwood and Sharfuddin JJ.) Raj Chandra v. Hara Kishore,

9 I C 564 = 12 Cr L J 98 (Cal).

[Overruled in A I R 1951 Cal 101 = 52 Cr L J 946 (F B).]

6. "Document or thing".—See also S. 94.

——Account books, production of — Procedure to be followed—See Criminal P. C. (Act V of 1898), S. 94.

11 Cr L J 525 (Cal).

——Scope—Warrants that can be issued.

Warrants for the production of documents or things only can be issued under the section. (Stephen and Coxe JJ.) Bisu Haldar v. Emperor,

11 C W N 836=6 C L J 127=6 Cr L J 38.

7. Document, etc., in custody of Postal or Telegraph authorities.

——Search warrant issued by Magistrate other than District or Chief Presidency Magistrate — Validity — See S. 530 (b).

8. General search or inspection.

——Ss. 96 and 165—Warrant under S. 96 before investigation under Chap. XIV for general search.

It is of paramount importance to confine the issue of search-warrants whether of a general nature or of a particular nature to the strict requirements of law. But it is equaliy important in the larger interests of the administration of justice that public officers engaged in the discharge of their duties connected with investigation or inquiry relating to offences or suspected offences should be afforded fair and reasonable facilities for searches in the course of such investigation or enquiry if applied for on reasonable grounds and if calculated to further such investigation or inquiry. Accordingly, the duty of balancing these two conflicting considerations has been vested by S. 96 in the Magistrate and to a very limited and circumscribed extent only in the police officer under S. 165, Criminal P. C.

In order that a search is to fall outside the category of a general search, it must relate to a particular document or thing specifying the same as far as may be possible. It is not necessary, however, that the search should be confined to a single document or thing, nor is it necessary that the specification should be in any sense precise or give the exact description of each and every one of the document to be seized. Prima facie warrants issued for the production of a particular category of documents with reference to an alleged or suspected but particular offence, may well be a warrant for a particular search as opposed to a general search.

A search warrant issued to an Inspector, Special Police, New Delhi, under S. 96 to carry on search in the State of Orissa for the seizure of certain "documents and correspondence with the overseas suppliers in respect of import license No. 602626/51 CCI and documents in relation to the sale and disposal of the aforesaid license and the goods

CRIMINAL P. C. (V of 1898), S. 96 — 8. General search or inspection

imported thereunder, "when the officer was neither engaged in any investigation under Chap. XIV nor any charge sheet had been filed in respect of any particular offence, but was engaged in collecting information prior to investigation, contemplated by the Criminal P. C., is not open to challenge on the ground that it had been applied for by the Inspector of Special Police, or at a stage before any investigation under Chap. XIV of the Criminal P. C. had started.

While the absence of the word "investigation" in Cl. (iii) of sub-s. (1) of S. 96 indicates the requirement of a higher and stricter standard for general searches, it cannot be said as a matter of law, that a general search cannot be ordered before an investigation under Chapter 14 of the Criminal P. C. has been commenced.

The phrase "for purpose of" in Cl. (iii) of sub-s. (1) of S. 96 which is a very comprehensive term, is not to be construed as meaning "during the pendency of." All that is necessary is that the Court issuing the search-warrant should consider on reasonable grounds, that the purposes of any inquiry, trial or other proceedings under the Code will be served by a general search.

What is necessary in such cases is that the Magistrate should be reasonably satisfied that the search is likely to to be a link in the chain which in the normal course will lead to an inquiry under the Criminal P. C., if the expected material is found on the search and that he should also be satisfied that there is reasonable ground for the expectation.

The fact that the Special Police Officer, New Delhi, has not been authorised under S. 6, Delhi Special Police Establishment Act, 1946, is immaterial. It cannot be said that preliminary enquiry will not be followed by an investigation under Criminal P. C. (Jagannadhadas C. J. and Narasimham J.) Kalinga Tubes Ltd. v. D. Suri,

A I R 1953 Orissa 153 = 19 Cut L T 103 = 1953 Cr L J 1041.

——S. 96 (1) (iii) — Warrant for general search before investigation under Code — (Constitution of India, Art. 226).

Magistrate should be reasonably satisfied that search is likely to be a link in chain normally leading to inquiry under Code — In a writ application challenging the issue of warrant the High Court has to see whether as a fact there were sufficient grounds for the issue of the search warrants in question and whether the Magistrate applied his mind judicially to the requirements of the law in this behalf, and whether he had relevant and adequate material for the purpose and satisfy itself that the warrants were not arbitrarily asked for and unreasonably issued — High Court cannot sit in judgment over his opinion.

Held on facts that there were sufficient grounds for issue of warrant, that the Magistrate had applied his mind judicially to the requirement of law and that the fact that there was no record of the reasons for the belief of the Magistrate that the persons concerned would not produce the documents if a summons were issued was not of material consequence. (Jagganadhadas C. J. and Narsimham J.) Kalinga Tubes Ltd. v. D. Suri,

AIR 1953 Orissa 153=19 Cut L T 103= 1953 Cr L J 1041.

——S. 96 (1) (3) — S. 96 (1) (3), if empowers issue of warrant to help investigation by Police or Customs Officers.

Clause 3 of S. 96 (1), Criminal P. C. has nothing whatsoever to do with an investigation. It does not provide for any step to be taken in aid of an investigation but it provides for something which the Magistrate may do for the purpose of serving an inquiry, trial or other proceeding under the Code. Clause 3 of S. 96 (1) does not

CRIMINAL P. C. (V of 1898), S. 96 — 8. General search or inspection

empower a Magistrate to issue a warrant to help the investigation by the Police and the Customs Authorities. (Khundkar and Sen JJ.) Hoshide v. Emperor,

AIR 1940 Cal 97=44 CWN 82=12 R C 510 = I L R (1940) 1 Cal 231=186 I C 486=41 Cr L J 329.

——S. 96 (1)—Issue of warrant in anticipation of inquiry or trial.

For a Magistrate to use his powers under S. 96 (1) (3) it is not necessary that there should be an inquiry, trial or other proceeding pending at the time the search warrant was issued and a Magistrate can use his powers under this clause in anticipation of such inquiry or trial. (Khundkar and Sen JJ.) Hoshide v. Emperor,

AIR 1940 Cal 97=12 R C 510=ILR (1940) 1 Cal 231 =44 C W N 82=186 I C 486=41 Cr L J 329.

——S. 96 (1) — Where an Inspector is conducting an investigation under S. 156, Criminal P. C., and not an enquiry, the issue of a search warrant in general terms and not for search of particular document or things, is illegal under S. 96 (1). (Spargo J.) M. I. Mamsa v. Emperor,

AIR 1937 Rang 206=10 R Rang 111=170 I C 870 = 38 Cr L J 983.

——S. 96 (1) — Warrant, if can be issued when proceedings are in contemplation.

A warrant can be issued not only in proceedings already started but also when proceedings are in contemplation. (Spargo J.) M. I. Mamsa v. Emperor,

AIR 1937 Rang 206=10 R Rang 111=170 I C 870 = 38 Cr L J 983.

——Search warrant — Enquiry about to be made — Proceedings not pending — Warrant, if can be issued — Warrant on letter of Customs Authorities — Issue of warrant — Sea Customs Authorities—Issue of warrant— Sea Customs Act (VIII of 1878), S. 167 (72).

A warrant may be issued for the purposes of an enquiry about to be made, provided it is an enquiry under the Criminal P. C., but not for the purpose of an enquiry either being made or about to be made otherwise than under the Code. There need not be a proceeding actually pending before the Magistrate at the time he issues the warrant under S. 96, Criminal P. C.

The premises of a firm of which the petitioner was one of the partners were searched by order of the Chief Presidency Magistrate on August 15, 1933, and a large number of books and files belonging to the firm were seized and handed over to the Customs Authorities. A warrant was issued under S. 96 of the Criminal P. C., on the strength of a letter addressed to the Chief Presidency Magistrate by the Collector of Customs, Bombay. The letter was presented by a Customs Officer to the Magistrate and the officer was examined on solemn affirmation before warrant was issued :

Held, that the inquiry which the Customs Authorities were making, not being an inquiry under the Criminal P. C., the issue of the warrant was not justified by the terms of S. 96 (1), cl. (3), Criminal P. C., and that as possession of the documents had been obtained by illegal process, the documents should be returned to the petitioner.

Although the first two clauses of S. 96 (1), Criminal P. C., relate back to S. 94, cl. (3) does not and is independent of the provisions of S. 94. (Broomfield and Divatia JJ.) In re Mohammad Vahir,

AIR 1934 Bom 104=36 Bom L R 96 = 6 R B 406 = 149 I C 1021=1934 Cr C 364=35 Cr L J 1024.

——General search warrant—Issue of, when justifiable.

Per Chaudhuri J. — An order under S. 96, Cr. P. Code cannot be made to further a police investigation which may or may not result in an enquiry, but the section

CRIMINAL P. C. (V of 1898), S. 96 — 8. General search or inspection

refers to an enquiry now being made or about to be made. Per Newbould J. — There is a difference between investigation that is being made and an enquiry about to be made. A Magistrate can under S. 96 issue a search warrant before proceedings about an enquiry about to be made are begun. (Chaudhuri and Newbould JJ.) Jagannath Agarwalla v. Emperor.

AIR 1920 Cal 352 = 24 C W N 405 = 57 I C 93=31 C L J 267=21 Cr L J 573.

——S. 96 (3) — General search warrant — No pending enquiry or trial—Effect of.

On the application of an officer specially appointed to detect munitions scandals, to the effect that the books and accounts of the petitioner's firm were necessary for the purpose of the said investigation the Magistrate issued a general search warrant, in respect of the books and documents. Held, that there was no enquiry or trial or other proceedings under the Code and there were no materials before the Magistrate on which he could decide and that the search warrant was illegal. (Per Newbould J.) When the law requires the sanction of a Magistrate before the issue of a search warrant, it means that the Magistrate should apply his mind to the facts and he ought not to issue a search warrant simply because the Police officer asks him to do so. (Chaudhuri and Newbould JJ.) T. R. Pratt v. Emperor.

AIR 1920 Cal 43=47 Cal 597 = 24 C W N 403 = 31 C L J 345=55 I C 473=21 Cr L J 313.

9. "May issue a search warrant."

——Exercise of powers under section—Judicial discretion.

Per Kapur J. — Section 96 gives very wide powers to Magistrates but in exercising them they have to use their discretion judicially. Such powers should not be exercised without fully appreciating the gravity of the step. (Weston C. J., Khosla, Harnam Singh, Kapur and Soni JJ.) Income-tax Officer, Jullundur v. The State,

AIR 1950 E P 306 = 52 P L R 229 = 1950-18 I T R 688=51 Cr L J 1273 (FB).

——S. 96 (1) — Search warrant, when should be issued—Duty of Magistrate in this respect.

A search warrant is not to be issued automatically or for the mere asking. It can only be issued when the Court considers that the purposes of an enquiry would be served. The Magistrate must apply his judicial mind to the question and must satisfy himself that the issue of the warrant is necessary and that the requirements of the law for the issue of the warrant are present. He must see whether there are sufficient materials before him to justify the drastic action which he is being invited to take. When it appears that a Magistrate has not applied his mind in this way and when it appears that action has been taken on insufficient material, the High Court will always interfere. (Khundkar and Sen JJ.) Hoshide v. Emperor,

AIR 1940 Cal 97 = I L R (1940) 1 Cal 231 = 12 R C 510=44 C W N 82=186 I C 486=41 Cr L J 329.

——Legality.

Where a search warrant is issued upon an application in which certain offences are disclosed as having been committed by the accused after cognizance of those offences has been taken by the Magistrate, he is quite within his power in issuing search warrant under S. 96. (Mukerji and Graham JJ.) Ayoj Krishna v. S. G. Bose,

AIR 1929 Cal 176=49 C L J 164 = 33 C W N 369= 116 I C 721=30 Cr L J 705.

——Search warrants—Conditions must be strictly adhered to.

Search warrants are always open to very serious objections and very great particularity is justly required by law in cases where they are authorised before the privacy of a man's premises is allowed to be invaded by the minister of the law. (C. C. Ghose and Chotzner JJ.) Walvekar v. Emperor.

CRIMINAL P. C. (V of 1898), S. 96 — 9. "May issue a search warrant"

AIR 1926 Cal 966 = 53 Cal 718 = 30 C W N 713 = 96 I C 264=27 Cr L J 920.

——Ss. 96 and 98 — Search warrant—Object of — Theft case.

The object of a search warrant in a theft case is to secure identification of the property for the purpose of the trial and to ascertain if it is really in the possession of the accused or not; delay in the issue thereof defeats the purpose for which it is issued. (Chitty and Smither JJ.) Bilas Roy v. Ram Gopal,

AIR 1919 Cal 959 = 22 C W N 719=46 I C 291=19 Cr L J 707.

——Search warrant, issue of—Duty of Court.

The issuing of a search warrant being a judicial act, Magistrate must weigh the circumstances before issuing it. A mere statement in an affidavit that in the opinion of the deponent a summons may not have the desired effect, is not sufficient to justify the issue of a warrant. (Seshagiri Iyer J.) Iyavoo Chetty v. Jehangir,

AIR 1918 Mad 587=(1917) M W N 494=6 L W 287 =41 I C 661=18 Cr L J 837.

——Search warrant, scope and object of — Penal Code, Ss. 482 and 486.

The power of issuing a search warrant is not to be used for giving complainants an opportunity of fishing for evidence. The warrant is intended for use in respect of documents believed to exist, which must be clearly specified in the warrant, and before issuing it the Magistrate must have before him some information or evidence that the documents are necessary or desirable for the purposes of the inquiry before him. To issue a search warrant for the search of a man's house and for the production of all papers and books in it for the purposes of an inquiry as to whether he had used or sold articles with a counterfeit Trade Mark, is a gross perversion of the law. (Fox C. J.) V. S. M. Moideen Brothers v. Eng Thaung and Co.

AIR 1917 L B 131=9 L B R 45=10 Bur L T 216 = 36 I C 591=17 Cr L J 543.

——Duty of Court.

Before issuing a search warrant, the Court must consider whether a summons to produce would not have the desired effect. The Court must appreciate the seriousness of the step. Issue of a search warrant without examination of the complainant is at least irregular. The statement of a counsel appearing for the complainant is not information on which a Magistrate is entitled to issue a search warrant. (Richards J.) Mul Chand v. Emperor.

8 A L J 517=9 I C 991=12 Cr L J 175.

10. Right to obtain copy of order.

——Ss. 96 and 548—Person against whom search warrant is issued is entitled to copy of order—Whether entitled to copy of report upon which order is passed — (Evidence Act (1872), S. 74.)

Where a Magistrate passes a formal order before issuing the search warrant person against whom it is issued would be ordinarily entitled to a copy thereof, though there may be no legal obligation prescribed by any provision of the Code to record such an order before issuing a search warrant. A recorded order for the issue of a search warrant by a Magistrate comes directly within the scope of the definition of public document in S. 74, Evidence Act. Besides, since under S. 96, Criminal P. C., the Magistrate who issues the search warrant, issues it

CRIMINAL P. C. (V of 1898), S. 96 — 10. Right to obtain copy of order

as a Court it would be difficult to say that an order of a Court actually passed for whatever purpose, is not public document. It may be suggested that this view would lead to a disclosure of the material relating to investigation at a premature stage. That however need not be the case if the Magistrate in passing his order takes the care to avoid pointed reference to matters still under investigation and merely places on record an enumeration of the materials which were placed before him and the conclusions reached by him, on the basis of which an order for issue of search warrant is made, so that a superior Court when called upon to do so, may satisfy itself that the search warrant has been issued after judicial consideration of the relevant circumstances and materials.

It seems that there is no absolute right to copies of police report, upon which search is directed without considering the facts of each case.

Where an order for search had been made on the basis of an application of the Inspector of Special Police Establishment, which is not in itself a police report, setting out the materials collected in the investigation, there is no legal objection to the grant of a copy thereof. Indeed, if a person affected by the search, is entitled to a copy of the order, if any, issued for search, it is reasonable to say that he is equally entitled to obtain a copy of the application (as distinguished from a police report) on which the order itself was based, in order that such order may be fairly understood. (Jagannadhadas C. J. and Narasimham J.) Kalinga Tubes Ltd. v. D. Suri,

AIR 1953 Orissa 49=1953 Cr L J 514.

11. Who may issue a search-warrant.

——Ss. 96 (1), 537 — Power to issue search warrant — Curing of defect in search warrant.

Where a District Magistrate receives information regarding commission of an offence, he cannot issue a search warrant under S. 96 (1) before he acts judicially on the information. S. 537 cannot legalise a defective warrant. (Stephen and Holmwood JJ.) Rash Behary Lal Mandal v. Emperor,

35 Cal 1076=12 C W N 1075=8 Cr L J 235.

12. Search warrant under a special or local law.

——Police officer requesting Income-tax officer to hand over certain income-tax returns and statements—Income-tax officer declining—Issue of search warrant against Income-tax officer on application of Police officer—See S. 94.

AIR 1950 E P 306=51 Cr L J 1273 (FB).

——Madras Gaming Act, 1930, Ss. 5, 6— Defects in warrant—Remarks in judgment supplying defects.

The remarks of a Magistrate which are intended to supply the omission or defects found in a warrant and to vary its terms are not admissible as evidence. The warrant is to be in writing and must contain all the matters that the law requires to be stated therein. (Pandrang Row J.) Emperor v. Subramania Sastri,

AIR 1935 Mad 648=7 R M 582 = 1934 M W N 1170 =68 M L J 421=41 M L W 679 = 155 I C 496 = 1934 M Cr C 349=1935 Cr C 927=36 Cr L J 799.

——Search warrant — Copyright—Production of infringing books, etc.

A Magistrate has power under S. 96, Criminal P. C., to issue a search warrant for the production of copies of the infringing book, proofs, plates printed, and set-up matters together with letters with reference to the book for the purpose of making an order under S. 10 of the Copyright Act. If a person against whom such a search warrant is issued prays for the stay thereof and offers an undertaking not to sell copies of the infringing books but to produce them before the Court whenever required the

CRIMINAL P. C. (V of 1898), S. 96 — 12. Search warrant under a special or local law

Magistrate has jurisdiction to stay execution of the warrant conditionally on the execution of a bond to produce the copies in Court. 7 C W N 522, Dist. (Sanderson C. J., and Duval J.), Kishori Mohan Baghi v. Hari Das Bysack,

A I R 1920 Cal 83 = 47 Cal 164 = 55 I C 999=21 Cr L J 391.

13. Search for persons in wrongful confinement — See S. 100.

14. Presumption.

——Warrant issued under S. 96 — The presumption of common gaming house referred to in S. 6 of the Madras Gaming Act does not apply. (Pandrang Row J.) Emperor v. Subramania Sastri,

AIR 1935 Mad 648= 1934 M W N 1170 = 68 M L J 421=41 M LW 679=7 R M 582 = 155 I C 496 = 1934 M Cr C 349=1935 Cr C 927=36 Cr L J 799.

15. Inspection.

——Defence—Rights of accused —Right of inspection.

Neither the Criminal P. C., nor the High Court (Mad.) Rules contain any provision as to the right of inspection by the accused of the records in the custody of the Court in which he is being tried. Permission will be refused if the object is to fish for information. If there are documents relied upon by the accused to dislodge the prosecution case or to build up his case, he will have to take out a summons for them. Same procedure has to be followed when the documents are in private custody. If they are not produced, then a search warrant under S. 96, Criminal P. C., has to be taken out. In respect of documents not summoned, he will not be entitled to inspect them till they are tendered in evidence. (Kuppuswami Ayyar J.) In re T. S. Swaminathan,

AIR 1944 Mad 419= 1944-1 M L J 397=57 L W 338 =1944 M W N 348=217 I C 201=46 Cr L J 242,

——Complaint— Right to inspect.

Per Mukerji J. — Once articles are brought before the Court in execution of a search warrant, inspection thereof may be allowed to the complainant. 15 Cal 109, Rel. on. (Mukerji and Graham JJ.) Ayoj Krishna v. S. G. Bose

AIR 1929 Cal 176= 49 C L J 164 = 33 C W N 369= 116 I C 721=30 Cr L J 705.

16. Form of search-warrant.

——Description of place adequate to identify it—Omission of boundaries, if material.

If the description in the search warrant is otherwise adequate to identify the place without ambiguity, it is immaterial that the boundaries are not given. (Gruer J.) Emperor v. Govind Prasad,

AIR 1941 Nag 16=1940 N L J 297 = 13 R N 158= ILR (1942) Nag 134=190 I C 764=42 Cr L J 32.

17. Who may make the search—See Ss. 77 and 101.

18. Magistrate, if can search himself—See S. 105.

19. Illegality of warrant or search.

——If a Magistrate issues search-warrant proceeding merely on the suspicions as regards the nature of a person's business and the assurance given by the police that a general search is necessary, such order is illegal. A I R 1920 Cal 43, Rel. on. (Bhide J.) C. S. Ghai & Co. v. Emperor,

AIR 1929 Lah 837=121 I C 499=1929 Cr C 565=31 A I Cr R 408=31 Cr L J 272.

——Resistance — Illegal warrant.

Where the sapurdar of the attached property of a judgment-debtor failed to deliver it when called upon to do so, and the executing Court, therefore, issued a warrant of attachment of his movable property and with this warrant the bailiff along with some seven men went to his residence and there attached his cattle, and the accused rescued the same, and caused slight injuries while so rescuing,

CRIMINAL P. C. (V of 1898), S. 96 — 19. Illegality of warrant or search

held that a sapurdar is not a receiver appointed by Court and therefore, the provisions of the Code of Civil Procedure relating to a Receiver appointed by Court do not apply to a sapurdar. Therefore, the warrant was illegal and the sapurdar and his partisans were competent to resist the removal of his cattle from his house, and were not guilty of any offence if in the exercise of that right they inflicted slight injuries to the companions of the bailiff. 11 C W N 836, Foll. (Zafar Ali J.) Allah Dad v. The Crown,

AIR 1924 Lah 667 (2)=75 I C 731=25 Cr L J 43.

——S. 96 (1)—Issue of search warrant—Legality.

The Magistrate has no authority to issue a search warrant merely on the complainant's application and the reason that the accused will not produce the goods on summons is not a sufficient reason. (Shah Din J.) Piyare Lal v. Thakar Dat Sharma,

AIR 1916 Lah 274 = 12 P W R 1916 (Cr) = 32 I C 652=17 Cr L J 60.

——Issue of search warrant without examining complainant on oath.

A District Magistrate who took cognisance on a complaint transferred the case to the Deputy Magistrate without examining the complainant on oath. The Deputy Magistrate also without examining him issued a search warrant under S. 96.

Held that the warrant was illegal and should be discharged. (Munro and Sankaran Nair JJ.) In re Sinagurunatha Pillai,

7 I C 895 = 8 M L T 416 = 1910 M W N 818 = 11 Cr L J 535.

20. Disposal of things produced—See Ss. 99 and 517.

21. Revision.

——Ss. 96 and 99 — Illegal seizure of goods — Pending revision, prosecution against person from whom goods seized commenced under S. 411, Penal Code — Revision not affected—Criminal P. C., S. 439. (H. V. Divatia C. J. and H. P. Shukla J.) Kansara Gokaldas Tribhowandas v. Parekh Mansukhlal Shantilal,

2 Sau L R 210.

—S. 98.

——Special warrant —Endorsement illegal.

The special warrant when issued authorizes the officer or officers named therein to do all the things that are detailed in the warrant. It cannot be endorsed over to any other police-officer of similar rank. The only person who can execute such a warrant is the officer who is named in the warrant. (Mirza and Baker JJ.) Emperor v. Thavarmal Rupchand.

AIR 1929 Bom 157=116 I C 251 = 53 Bom 367= 31 Bom L R 158=12 A I Cr R 466=30 Cr L J 595.

——Search warrant—Necessity.

Search warrant under S. 98 is necessary for a general search for stolen property in the house of an absconding offender. (Holmwood and Sharfuddin JJ.) Bajrangi Gope v. Emperor,

38 Cal 304=15 C W N 343=13 C L J 639= 9 I C 64 =12 Cr L J 8.

—S. 99.

——Illegal seizure of goods — Pending revision, prosecution against person from whom goods seized commenced under S. 411, Penal Code — Revision not affected — See ibid, S. 96.

2 Sau L R 210.

—S. 99A.

——Ss. 99A, 99D—Grounds for setting aside order.

When the Court is satisfied on a perusal of the booklet that it contains matter which promotes enmity or hatred

CRIMINAL P. C. (V of 1898), S. 99A

between two communities the order of proscription cannot be set aside on the technical ground that the very words which are used in the section are not used in the order. (Nawalkishore C. J., Ranawat and Sharma JJ.) Premi Khem Raj v. Chief Secretary.

A I R 1951 Raj 113 = 1951 Raj L W 86 = 52 Cr L J 600 (SB).

——Order under section proscribing book made long before Constitution—Interference with order by reason of Art. 19 of the Constitution—See Constitution of India, Art. 19.

AIR 1951 Raj 113=52 Cr L J 600 (SB).

——Translation of original book written by non-Indians —Book directed against supposed capitalists who exploit the working classes — Original authors not having His Majesty or British Government in India in mind.

It cannot be laid down as any general proposition that translations should be permissible when the originals are not proscribed. Translations in Indian Vernaculars may become accessible to a very large population and the danger arising therefrom may be immensely greater, calling for the intervention of the Government. The Courts are not concerned with the policy underlying such forfeitures. The sole consideration is whether the books contain any objectionable matter referred to in S. 99-A, Criminal P. C.

Where the authors of the original books did not have His Majesty the King-Emperor or the Government established by law in British India particularly in mind and were attempting to deal with certain supposed conditions prevailing in the entire world, it is very difficult to hold that these books bring or attempt to bring into hatred or contempt or excite or attempt to excite disaffection towards His Majesty or the Government established by law in British India. It is possible that such writings may have the remote effect of causing some disaffection. But it cannot be said that there was any such intention directly implied. When they seem to be directed against supposed capitalists who exploit the working classes, the translation cannot be brought within the scope of S. 99-A. (Sulaiman C. J., Allsop and Bajpai JJ.) M. L. Gautam v. Emperor,

AIR 1936 All 561 = 9 R A 135 =1936 A W R 638= 1936 A L J 786 = I L R (1937) All 69 = 164 I C 253= 1936 A L R 722=1936 Cr C 739=37 Cr L J 943 (SB).

——S. 99-A, scope of—Conditions of applicability.

In order to make S. 99-A applicable, two things are necessary : (1) promotion of feeling of enmity or hatred and (2) between different classes of the subjects. Everything done which may have a remote bearing on promoting feelings of hatred or enmity would not be an offence. There should either be the intention to promote such feelings or such feelings should be promoted as a result of such publications. Again feelings of enmity and hatred should be aroused between two classes of His Majesty's subjects, that is to say, between two sections of the people which can be classified as two groups opposed to each other. A vague, indefinite and nameless body, even though given one name, may not in certain circumstances be considered as a class by itself, particularly if individuals overlap indiscriminately, although it is not necessary that the classes should be so distinct and separate as to make it easy to put an individual in one class or the other. The section does not contemplate the penalising of political doctrines, even though of the extreme kind like communism, but merely such writings as directly promote feelings of hatred or enmity. (Sulaiman C. J., Allsop and Bajpai JJ.) M. L. Gautam v. Emperor

A I R 1936 All 561=9 R A 135 = 1936 A L J 786 = 1936 A W R 638=I L R (1937) All 69 = 164 I C 253= 1936 A L R 722=(1936) Cr C 739=37 Cr L J 943 (SB).

CRIMINAL P. C. (V of 1898), S. 99A

——Scope of S. 99A, is wider than S. 153-A, Penal Code (Act XLV of 1860).

The scope of S. 99A, Cr. P. C., is wider than that of S. 153-A, I. P. C., because "intention" falls short of "attempt" and has in addition been made an alternative ground. (Sulaiman C. J., Thom and Niamat Ullah JJ.) M. L. C. Gupta v. Emperor

A I R 1936 All 314 = 1936 A L J 165 = 1936 A W R 227 = 8 R A 873 = 58 All 849=162 I C 507 = 1936 A L R 436=1936 Cr C 480 = 37 Cr L J 599 (SB).

——Powers under, are in public interest.

When the Government acts under S. 99-A, Criminal P. C., and suppresses a publication, it does so in the public interest and it is not concerned with the intention of the author of the publication. The powers given to the Government by S. 99-A were clearly for the purpose of enabling the Government to take steps to avoid trouble which such publication might possibly cause. (Sulaiman C. J., Thom and Niamat Ullah JJ.) M. L. C. Gupta v. Emperor

A I R 1936 All 314=58 All 849 = 1936 A L J 165 = 1936 A W R 227=8 R A 873=162 I C 507=1936 A L R 436=1936 Cr C 480=37 Cr L J 599 (SB).

——Advertisements.

Document though advertisement can be forfeited under S. 99-A — However, advertisement of forthcoming book unless seditious by itself, cannot be forfeited because it is intimately associated with seditious book. (Boys, Banerji and King JJ.) R. Saigal v. Emperor

A I R 1930 All 401=52 A 775=I R 1930 A 678=125 I C 470=1930 Cr C 625=1930 A L J 730=14 A I Cr R 183=11 L R Cr 128=31 Cr L J 840 (FB).

——Justification.

In order to justify forfeiture under S. 99A, it is necessary tor the Government to satisfy the Court that on the evidence produced by the prosecution a conviction could have been had under S. 153-A, I. P. C. (Fforde, Addison and Coldstream JJ.) Lajpat Rai v. Emperor

A I R 1928 Lah 245=9 Lah 663=29 P L R 385=111 I C 659=11 A I Cr R 120=29 Cr L J 899 (SB).

—S. 99-B.

——Order of forfeiture of publication sought to be set aside—Burden of proof—Who should open the case.

The language of S. 99-B, Cr. P. C., is very clear, and it allows the applicant to have the order set aside by the High Court on the ground that the book in respect of which the Local Government's order was made did not contain any seditious matter or other matters referred to therein. There is nothing in the framework of the section or its language which would suggest that the initial burden of proof is on the Government and that, therefore, the Crown counsel must open the case and support the order of the Local Government and then have the final right of reply. On the other hand, the language clearly indicates that it is the applicant who has to make out a case in his favour. Consequently, it is the right of the applicant to open the case. (Sulaiman C. J., Thom and Niamat Ullah JJ.) M. L. C. Gupta v. Emperor

A I R 1936 All 314=58 All 849 = 1936 A L J 165 = 1936 A W R 227=8 R A 873=162 I C 507=1936 A L R 436=1936 Cr C 480=37 Cr L J 599 (SB).

——Burden of proof.

Where an application is made under S. 99, I. P. C., to have an order of forfeiture set aside on the ground that the matter published does not fall within the mischief of S. 153-A, I. P. C., it is for the applicant to convince the Court that for the reasons he gives the order is a wrong order. (Walsh Ag. C. J., Lindsay and Banerji JJ.) Kali Charan Sharma v. Emperor

A I R 1927 All 649=112 I C 56=49 All 856 = 29 Cr L J 968 (SB).

CRIMINAL P. C. (V of 1898)

—S. 99-D.

——Grounds for setting aside order—Failure to use words of the section in the order if a ground — See also ibid S. 99-A.

A I R 1951 Raj 113=52 Cr L J 600 (SB).

——Powers of Special Bench.

When an application is made under S. 99B to the High Court the only grounds on which the Court can set aside the order of proscription are those given in S. 99D. (Nawalkishore C. J., Ranawat and Sharma JJ.) Premi Khem Raj v. Chief Secretary

A I R 1951 Raj 113=1951 R L W 86=52 Cr L J 600 (SB).

——External evidence—Necessity.

It is not necessary to look for any external evidence when the words used in the booklet are such as have a clear tendency to promote class hatred. (Nawalkishore C. J., Ranawat and Sharma JJ.) Premi Khem Raj v. Chief Secretary

A I R 1951 Raj 113=1951 R L W 86=52 Cr L J 600 (SB).

——Intention—Proof of.

When the words used do promote hatred etc., it is not necessary for the prosecution further to establish that the writer had the intention to promote such hatred. (Nawalkishore C. J., Ranawat and Sharma JJ.) Premi Khem Raj v. Chief Secretary

A I R 1951 Raj 113=1951 R L W 86=52 Cr L J 600 (SB).

——Actual hatred or enmity—Necessity of.

The only thing that the High Court has to see is whether the words used encourage hatred and enmity between two communities or excite one community against another. It is not necessary to find that they actually brought enmity and hatred between the different communities. (Nawalkishore C. J., Ranawat & Sharma JJ.) Premi Khem Raj v. Chief Secretary

A I R 1951 Raj 113=1951 R L W 86=52 Cr L J 600 (SB).

——Onus of proof — Evidence Act (1872), Ss. 101 to 103.

The words being clearly such as to have a tendency to promote hatred and enmity between two classes, it is for the author to show what were the special circumstances obtaining at the time when the booklet was published or when it was forfeited which would take the sting out of the objectionable matter contained therein. (Nawalkishore C. J., Ranawat and Sharma JJ.) Premi Khem Raj v. Chief Secretary

A I R 1951 Raj 113=1951 R L W 86=52 Cr L J 600 (SB).

——Special Bench not satisfied that book is objectionable — Passage capable of two interpretations — Order of forfeiture.

The language of S. 99-D, Cr. P. C., makes it perfectly clear that if the Special Bench is not satisfied that the book contained objectionable matter, it shall set aside the order of forfeiture. It would, therefore, follow that even where a passage is open to two interpretations and the matter is in doubt, the Bench would not be satisfied that the matter is objectionable, and must, therefore, set aside the order of forfeiture. (Sulaiman C. J., Thom and Niamat Ullah JJ.) M. L. C. Gupta v. Emperor

A I R 1936 All 314=1936 A W R 227=8 R A 873= 1936 A L J 165=58 All 849=162 I C 507=1936 A L R 436=1936 Cr C 480=37 Cr L J 599 (SB).

——Two views.

——Where a document admits of two reasonably possible views the applicant must have the benefit of that which

CRIMINAL P. C. (V of 1898), S. 99D

is most favourable to him. (Boys, Banerji and King JJ.) R. Saigal v. Emperor

A I R 1930 All 401=52 A 775=I R 1930 A 678=125 I C 470=1930 Cr C 625 = 1930 A L J 713 = 14 A I Cr R 183=11 L R Cr R 128=31 Cr L J 840 (FB).

——Burden of proof.

It is manifestly most convenient that Government Advocate should begin and state the case in support of the Local Government. But where both parties have been heard fully the question of onus is of very little or no practical importance. A I R 1925 All 195, Rel. on. (Boys, Banerji and King JJ.) R. Saigal v. Emperor

A I R 1930 All 401 = 52 A 775 = I R 1930 A 678 = 125 I C 470=1930 Cr C 625 = 1930 A L J 713=14 A I Cr R 183=11 L R Cr 128=31 Cr L J 840 (FB).

——Meaning.

——The explanation of S. 99-D is that if the High Court is left in doubt after hearing the application it should set aside the order, which may be said to be contrary to the ordinary practice in an appeal in a civil suit. (Walsh Ag. C. J., Lindsay and Banerji JJ.) Kali Charan Sharma v. Emperor

A I R 1927 All 649=112 I C 56=49 All 856 = 29 Cr L J 968 (SB).

——Point in issue.

When an application is made to the High Court under S. 99-B in respect of a document, the High Court is precluded by S. 99-D from considering any other point than the question whether in fact the matters contained in the document were seditious or not, and come within the mischief aimed by S. 124-A. (Mears, C. J., Piggott and Mukerji JJ.) Baijnath Kedia v. Emperor

A I R 1925 All 195=47 All 298 =23 A L J 1=6 L R A Cr 65=86 I C 55=26 Cr L J 679 (F B).

——Several books.

Where the applicant is alleged to have published a series of books, the whole series must be looked to, to determine whether the passages contained therein are seditious. (Mears, C. J., Piggott and Mukerji JJ.) Baijnath Kedia v. Emperor

A I R 1925 All 195=47 All 298=23 A L J 1=6 L R A Cr 65=86 I C 55=26 Cr L J 679 (F B).

—S. 99F.

——Procedure—Costs.

The proceedings under S. 99F are sui generis but the particular exclusion by S. 99-F of the practice in suits and the very provisions for an order for the payment of costs suggest that regard is intended to be had to the practice in civil miscellaneous proceedings. It is therefore reasonable that the cost of the other side so far as it may be found to have been reasonably incurred should be paid by the person to whose action the incurring of those costs was due. (Boys, Banerji and King JJ.) R. Saigal v. Emperor

A I R 1930 All 401=14 A I Cr R 183= 11 L R Cr R 128=1930 A L J 713 = 52 All 775 = I R 1930 A 678=125 I C 470=1930 Cr C 625=31 Cr L J 840 (F B).

—S. 100.

——Proceedings under — Allegations of ill treatment of wife by husband — Wife not examined — Order directing wife to go to her husband and also directing husband to execute a bond of good behaviour is not warranted.

Under Sec. 100 of the Code the Magistrate has no doubt powers to make an order as in the circumstances of the case seems proper but these powers do not include the power to decide the course which the wife is to adopt.

Where in a proceeding under S. 100 started against the husband on behalf of the wife on ground that the

CRIMINAL P. C. (V of 1898), S. 100

wife was being ill-treated by the husband and confined in the house, the Magistrate passes an order without examining the wife with a view to ascertain the truth of the allegations against the husband, directing the wife to go to her husband and ordering the husband to execute a bond for good behaviour, the order is not warranted and must be set aside. (M. C. Shah C. J. and J. A. Baxi J.) Aher Gogan Malde v. Aher Naga Paba

5 Sau L R 76.

——Warrant for arrest of woman illegally confined — Illegality in issuing warrant — Liability of persons resisting the arrest—See Penal Code (1860), S. 99

A I R 1951 All 637=52 Cr L J 912 (2).

——Scope — Warrant for arrest of a woman illegally confined issued under S. 552 instead of S. 100 — Legality of—See ibid, S. 552.

A I R 1951 All 637=52 Cr L J 912 (2).

——Jurisdiction — Complaint under S. 498, Jaipur Penal Code — Magistrate ordering release of wife unlawfully detained and referring case to District Magistrate for passing order under S. 552 — District Magistrate has no power to pass order under S. 552 — Trial Magistrate can pass proper order under S. 100—See ibid, S. 552.

1949 J L R 19.

——Condition precedent.

Section 100 requires that the Magistrate must have reason to believe, before issuing the warrant, that the person for whom the warrants are sought, was being confined under circumstances which would amount to offence. (Ghulam Hasan J.) Khaliqan v. Emperor

A I R 1945 Oudh 170 = 1945 O W N (C C) 19=1945 A W R (C C) 9 (1) = 1946 Oudh Rul 16 = 221 I C 6=47 Cr L J 76.

——Offence under S. 363, Penal Code, committed — Sub-Inspector during investigation going to petitioner's house and asking him to produce girl and person suspected to have kidnapped her—Petitioner denying presence of such persons— Sub-Inspector having no warrant under S. 100, seeking to search house—Assault on Sub-Inspector:

Held, that as the Sub-Inspector was investigating the offence under S. 363, Penal Code, which is cognizable, he could arrest the petitioner without having the warrant of arrest under S. 100, Cr P. C. (Dhavle J.) Lachuman Singh v. Emperor

A I R 1942 Pat 281 = 8 B R 307 = 14 R P 376=197 I C 827=43 Cr L J 279.

——Complaint by person against certain persons under S. 497, Penal Code (Act XLV of 1860), that they were carrying on intrigue with his wife — Wife living in her mother's house — No allegation that wife was confined under circumstances amounting to offence — Issue of warrant for wife's arrest under S. 100.

A person lodged a complaint against four persons charging them with an offence under S. 497, Penal Code. The gist of the complaint was that they were carrying on an intrigue with his wife. The information before the Magistrate was that the wife was living in her mother's house, and there was not even a suggestion in the complaint that she was being detained by her mother against her will. On receipt of that complaint, the Magistrate issued a warrant under S. 100, Criminal P. C., against the wife and when she had been arrested under that warrant, he proceeded to make an order consigning her to a certain Ashram :

Held, that there was no allegation in the complaint that the woman was confined under circumstances in which that confinement would amount to an offence. Without such an allegation in the complaint, there was no jurisdiction to issue a warrant under S. 100 and the

subsequent order directing what amounted to detention in custody of the person arrested under that warrant was clearly also without jurisdiction. (Bartley and Henderson JJ.) Thakamani Debi v. Nepal Chandra

A I R 1938 Cal 704=11 R C 355 (2)=43 C W N 363 =178 I C 405=40 Cr L J 58.

——"So confined" in S. 100, scope of — Police officer executing search warrant, whether should look to its legality — Constables executing warrant under colour of office and in good faith — Technical flaw in warrant — Persons against whom it was issued whether have right of private defence.

The words "so confined" in S. 100, Criminal P. C., should be taken in the context in which they occur, and should be taken to imply "believed to be so confined." The section which in this respect is not happily worded, lays down that it is for the Magistrate to find whether there are reasons for believing that any person is in wrongful confinement; and if he is so satisfied and issues a search warrant, the Police Officer, to whom the warrant is addressed, has merely to execute it according to its tenor. He must search for the person believed by the Magistrate to be unlawfully detained. The Officer charged with the execution of the warrant is not expected to disregard the finding of the Magistrate, and all that he is to do is to search for the person in question and to take him to the Magistrate. (Niamat Ullah J.) Kallan Beg v. Emperor

A I R 1936 All 306 = 1936 A W R 223 =1936 A L J 468=8 R A 862=162 I C 339 = 1936 A L R 425=1936 Cr C 459=37 Cr L J 548.

——Basis.

A Magistrate can issue a warrant under S. 100 merely upon an application of a complainant. Otherwise it would necessitate the Magistrate almost in every case to try out a case before he could determine the question whether it was a bona fide application that was being made to him. (Wort J.) Chepa Mahton v. Emperor

A I R 1928 Pat 550=11 P L T 31=12 A I Cr R 24= 113 I C 578=30 Cr L J 175.

——Deputation—Special warrant.

An officer, to whom a search warrant was issued under S. 100 to search a house of a particular person to find out a woman alleged to be detained there, endorsed it on to another officer stating that the officer to whom he endorsed it might execute the warrant if the person was confined outside.

Held, that there was no justification for the police officer to do so. (Wort J.) Chepa Mahton v. Emperor

A I R 1928 Pat 550=11 P L T 31=12 A I Cr R 24= 113 I C 578=30 Cr L J 175.

——Place.

Obiter — It is not illegal for a Magistrate to issue a warrant under S. 100 without confining it to any particular place. (Wort J.) Chepa Mahton v. Emperor

A I R 1928 Pat 550=11 P L T 31=12 A I Cr R 24= 113 I C 578=30 Cr L J 175.

——Child—Order for removal—Health and safety.

On an application for recovery of a child by its adoptive mother from the natural father, the health or safety of the child in his being allowed to live with his natural parents should be a paramount consideration for the Court. (Walmsley and Huda JJ.) Chagan Raj v. Hera Lal Doosaj

A I R 1920 Cal 562=24 C W N 104 =52 I C 889=29 C L J 603=20 Cr L J 729.

——Ss. 100 and 96 —Warrant — Adoption of form under S. 96—Legality of.

There being no prescribed form of warrant under S. 100, the Magistrate who issued it adopted a form

under S. 96 to the provisions of S. 100, by altering the figures and also by drawing up the warrant in terms required by S. 100. Held, that the warrant was perfectly legal. It is immaterial what form is used provided that the substance of the warrant complies with the requirements of S. 100. (Chitty and Smither JJ.) Superintedent and Remembrancer of Legal Affairs, Bengal v. Mozam Molla

A I R 1918 Cal 74=48 I C 687=45 Cal 905=28 C L J 304=20 Cr L J 47.

——Ss. 100 and 552 and Penal Code (Act XLV of 1860), Ss. 147 and 532 — Warrant — Destruction by accused — Presumption of legality.

Where a warrant was issued under S. 100 on an application made under S. 532, but the accused snatched it and tore it away, held, that the warrant must be presumed to contain what is stated in S. 100. (Holmwood and Sharfuddin JJ.) Gurameah v. Emperor

39 Cal 403 = 16 C W N 336 = 13 I C 1002 = 13 Cr L J 186.

——Accusation that husband has kept wife in confinement —Procedure to be adopted on the complaint.

A magistrate must not pass an order declaring the wife to be at liberty to go wherever she pleased on the complaint against the husband of keeping her in confinement without hearing the husband's side. The proper procedure to follow is to cause the girl to be produced before him in the presence of the husband and make an enquiry before passing an order which may seem necessary to him. If as a result of the enquiry he comes to the conclusion that the confinement of the wife was an offence he must let go the girl and warn the husband from interfering with her except through a civil Court. If he comes to a different conclusion he must advise the girl to go back with the husband at the same time warning the husband from using coercion against her to make her go with him and should file the papers. (Johnstone J.) Sher Sha v. Mst. Sakina Begam,

29 P W R 1910 Cr = 7 Ind Cas 354=11 Cr L J 450.

——Stay of proceedings.

On a complaint by a guardian a search warrant was issued for the production of a ward, alleged to have been wrongfully confined. The boy, who was quite grown up and able to look after himself, voluntarily appeared and denied the complainant's allegations of wrongful confinement.

Held that the Magistrate should have declined to take any further action in the criminal proceeding, leaving the complainant to take such civil action as he may be advised for the recovery of the person of the ward under S. 25 of the Guardians and Wards Act. (Pratt and Hayward J. Cs.) Imperator v. Piru,

2 S L R 2 Cr = 10 Cr L J 219.

—S. 101.

——Exercise of power — Search warrant.

Search warrants are always open to very serious objections and very great particularity is justly required by law in cases where they are authorized before the privacy of a man's premises is allowed to be invaded by the minister of the law. (C. C. Ghose and Chotzner JJ.) B. Walvekar v. King Emperor,

AIR 1926 Cal 966 = 53 Cal 718 = 30 C W N 713 = 96 I C 264 = 27 Cr L J 920.

——Police officer — Warrant under S. 6 of the Burma Gambling Act — Endorsement of.

A police officer to whom a warrant under S. 6 of the Burma Gambling Act has been directed, has no power to endorse the warrant to any other officer. S. 101 of the

CRIMINAL P. C. (V of 1898), S. 101

Cr. P. Code does not apply to warrants under the Gambling Act. (Parlett J.) Po Thwai v. Emperor,
AIR 1920 Low Bur 49 = 12 Bur L T 165 = 54 I C 57= 21 Cr L J 9.

——Search warrant under Public Gambling Act — Police officer endorsing same to other police officer lower in rank —See Public Gambling Act (1867), Ss. 5, 6,
7 Cr L J 19 (All).

—S. 102.

——S. 102 (1)— In the case of search warrants the officer executing the warrant is required to keep the warrants with him — In the absence of any provisions regarding search warrants and warrants of arrest in the Gambling Act the provisions of S. 102 (1) and S. 80, Criminal P. C. apply—See Bombay Prevention of Gambling Act (4 of 1887), S. 7.
AIR 1952 Sau 81 = 1952 Cr L J 1208.

——Case of murder — General investigation — Formalities.

Section 102 relates to search warrants issued under S. 96 or S. 98, that is to say, formal searches. In an emergency in a case of investigation of the alleged murder, when the Police are not going in for the purpose of a search for any specified object but for a general investigation, there is no provision in the Code which imposes on them the duty of searching respectable citizens or themselves before the public, before commencing the search. (Mockett and Bell JJ.) In re Chinna Obigadu,
AIR 1945 Mad 523 = (1945) 2 M L J 249 = 1945 M W N 556 = 58 Mad L W 491.

——Criminal case, if a proceeding.

Per Iqbal Ahmad C. J. — A criminal case is a "proceeding" within the meaning of S. 102 and the burden of proof in such a proceeding lies on the prosecution, for the simple reason that if neither the prosecution nor the defence leads evidence the accused is entitled to be acquitted. (Iqbal Ahmad C. J., Collister, Allsop, Bajpai, Mohammad Ismail, Braund and T. N. Mulla JJ.) Parbhoo v. Emperor,
AIR 1941 All 402 = 1941 A W R (H C) 320 = 1941 A L J 619 = ILR (1941) All 843 = 14 R A 209 = 197 I C 525 = 43 Cri L J 177 (FB).

——Applicability—Bengal Excise Act.

Ss. 102 and 103, Cr. P. Code, do not apply to the search made under the Bengal Excise Act. (Suhrawardy and Mitter JJ.) Harbhajan Soo v. Emperor,
AIR 1927 Cal 527 = 54 Cal 601 = 31 C W N 667 = 102 I C 547 = 8 A I Cr R 114=28 Cr L J 579.

——Search by police —Mode of—Obstruction to—Offence.

In a search by the police there are two stages, — (i) The persons whose houses have got to be searched have to give reasonable facilities at the bidding of the police. (ii) Where no facilities are given, such obstruction is an offence.

In this particular case the police were driven off and an affray took place. This amounted to a grave and wanton disregard of law. (Piggot and Walsh JJ.) Hardeo v. Emperor,
L R 3 A 117 (Cr).

——Ss. 102 and 103—"Occupant of the place" explained.

The words "occupant of the place" in S. 103 of the Code do not cover any person who may happen to be there at the time but only apply to a person residing in or being in charge of the place. (Woodroffe and Beachcroft JJ.) Romesh Chandra v. Emperor,
AIR 1914 Cal 456 = 41 Cal 350 = 18 C W N 498 = 23 I C 985 = 15 Cr L J 385.

CRIMINAL P. C. (V of 1898), S. 102

——Search witnesses —Headman of wards — See Burma Gambling Act (1 of 1899), Ss. 6, 7.
7 Cr L J 479 (LB).

——Searches under Opium Act (1878) — See Opium Act (1878), Ss. 14, 15,
7 Cr L J 87 (LB).

——'Respectable inhabitants of the locality' — Headman of wards — Burma Gambling Act (1 of 1899), Ss. 6, 7.

The provisions of Ss. 102 (2) and 103 of the Code are applicable to searches made under S. 6 of the Burma Gambling Act. S. 103, Criminal P. C. obviously contemplates that two respectable inhabitants of the locality, unconnected in any way with the Government and officialdom should be called in to witness a search. So, the calling in, and employment of, headmen of wards as witnesses for a search is not in compliance with the above provisions; and the premises so searched could not, therefore, be deemed to have been duly entered and searched under S. 6 of the Burma Gambling Act. Hence, the presumption under S. 7 that the place was a common gaming house cannot legitimately be applied. Object of S. 103, Criminal P. C. pointed out. (Fox Offg. C. J.) Ah Tuck v. Emperor,
3 L B R 229 = 12 B L R 248 = 4 Cr L J 390.

—S. 103.

SYNOPSIS.

1. Scope, applicability and object.
2. Searches under other Acts.
   See Note 1. Scope, applicability and object.
   Note 10. Irregular search.
3. Procedure.
   See Note 1. Scope, applicability and object.
4. Search witnesses — "Respectable inhabitants."
5. Search witnesses — "Of locality."
6. Evidence of search witnesses.
7. Prosecution's duty to examine search witnesses.
8. Search list.
9. Right of occupant.
10. Irregular search.

1. Scope, applicability and object.

——Applicability to search under Burma Gambling Act— See Burma Gambling Act (1 of 1899), Ss. 6 and 7.

——S. 103—Applicability to search under Opium Act (1878) —See Opium Act (1878), S. 14.

——Applicability to search under Public Gambling Act— See Public Gambling Act (1867), S. 5,
AIR 1953 Mad 243 = 1953 Cr L J 492.

——Ss. 103 and 307 —Search party—Their persons to be searched — Refusal of occupant.

It seems strange to a degree to hold that where the members of a search party offer their persons to be searched, but the individual whose house or room is being searched declines to search them, it can still be perverse for the jury not to hold or at least bear in mind that in the absence of a search the articles alleged to have been found might have, in reality, been planted by the search party. (Chakravartti and Sinha JJ.) State v. Anil Ranjan Dutta,
AIR 1952 Cal 534 = 1952 Cr L J 1154.

——Search of persons.

Section 103, Criminal P. C., is inapplicable to searches of persons. (Mosely J.) Aung Kim Sein v. King,
AIR 1941 Rang 333 = 1941 Rang L R 552 = 14 R Rang 140= 197 I C 580 = 43 Cr L J 217.

CRIMINAL P. C. (V of 1898), S. 103 — 1. Scope, applicability and object

——Section 103 does not apply to searches made under the Public Gambling Act. (Grille J.) Ram Prasad Ganesh Prasad In re,

AIR 1937 Nag 251 = 9 R N 296 = 169 I C 42 = 38 Cr L J 702.

——A search under the Gambling Act is not covered by the provisions of S. 103. (Nanavutty J.) Mahadeo Prasad v. Emperor,

AIR 1934 Oudh 90 = 6 R O 257 = 11 O W N 62 = 9 Luck 355 = 147 I C 317 = 1934 Cr C 260 = 1934 OLR 108 = 35 Cr L J 397.

——Whether applies to search of persons.

Section 103, Criminal P. C., refers only to the search of places and not of persons. An officer intending to search the person of a suspect cannot issue an order in writing to any inhabitants of the locality directing them to remain at a place until the suspect arrived. (Macnair J. C.) Local Government v. Nainsukh Teli

AIR 1933 Nag 99 = 29 N L R 67 = Ind Rul (1933) Nag 227=144 I C 240=1933 Cr C 364 = 34 Cr L J 721.

——Excise raid—Search — Duty to search constable and search witnesses, object and importance of the rule — Penal Code (Act XLV of 1860), S. 71 — U. P. Excise Act (IV of 1910), S. 60 (b) (f) — Separate sentences under, legality of.

The rule that the constables and the search witnesses should be searched before they enter the premises to be searched ought never to be neglected.

Failure to carry out this rule must give to the defence a very strong argument against conviction. It is also in the interests of the public that this necessary rule should be strictly complied with.

Where an informer, as in the case under the Excise Act, obtains a substantial reward for information leading to a conviction, there is a very great temptation for him, acting in conjunction with the police constables, to plant in the house of a suspected person excisable articles in order that he may obtain the reward.

It is unreasonable, when a man is found guilty of the major offence of illicitly manufacturing excisable articles, that he should also be severely punished for keeping in his possession materials for manufacturing those articles and for possessing them. The one offence includes all the others. (Young J.) Mahmud Ali Khan v. Emperor,

A I R 1933 All 438 = Ind Rul (1933) All 333 = 55 All 557 = 1933 A L J 746 = 143 I C 781 = 1933 Cr C 744 = 14 L R A Cr 197 = 20 A I Cr R 83 = 34 Cr L J 641.

——Should be present throughout the search.

Both the letter and the spirit of S. 103, namely, the provisions that the panchas are to attend and witness the search, and that the search shall be made in their presence, require that the panchas should actually accompany the persons making the search and should be actual witnesses to the fact of the finding of the property. It is not a sufficient compliance with this section that the panchas should merely be summoned and kept present outside a building while the search is being carried on within it, and then called in to see what has been found. (Mirza and Broomfield JJ.) Dinkar Nhanu v. Emperor,

A I R 1930 Bom 169=1930 Cr C 545=125 I C 713= I R 1930 Bom 377=54 Bom 471=32 Bom L R 344= 31 Cr L J 927.

——Compliance with provisions essential.

The object of the section is presumably to obtain as reliable evidence as possible of the search and exclude the possibility of any concoction or malpractice of any kind. It is incumbent upon the police to try to comply with the provisions of the section. There is no harm in the police

CRIMINAL P. C. (V of 1898), S. 103 — 1. Scope, applicability and object

officer who makes the search being called as witness at the trial but such officer cannot be deemed to be an entirely satisfactory witness for the purposes of proving the search. (Graham and Lort-Williams JJ.) Emperor v. Balai Ghose,

A I R 1930 Cal 141=I R 1930 Cal 438=124 I C 486= 50 C L J 518=1930 Cr C 141=31 Cr L J 667.

——U. P. Gambling Act, S. 103.

Where a warrant has been issued for search under S. 5, Gambling Act, S. 103, Criminal P. C., is not applicable. AIR 1922 Lah 458, Foll. (Sen J.) Rure Mal v. Emperor,

AIR 1929 All 937=120 I C 266=1930 A L J 229=13 A I Cr R 138 = 11 L R A Cr 21 = 1929 Cr C 665=31 Cr L J 35.

——Witnesses helping the search—Gambling Act, S. 7.

The object of the section is to ensure that searches are conducted fairly and squarely and that there is no "planting" of articles by the police. Therefore, where before entering, the witnesses are given an opportunity of satisfying themselves that the police had nothing on their persons, the mere fact that the witnesses actually helped the police in making the search will not make the search one in contravention of S. 103 so as to destroy the presumption under S. 7, Gambling Act. Obiter dictum in A I R 1914 L B 128, Diss. (Maung Ba J.) King-Emperor Wan v. Ma,

A I R 1927 Rang 241 = 103 I C 557=5 Rang 291=8 A I Cr R 391=28 Cr L J 701.

——Opium Act, Ss. 14, 15.

The provisions of S. 103 of the Criminal P. C., are applicable to searches made under S. 14 of the Opium Act, but not to searches in an open place under the provisions of S. 15. (Mya Bu, J.) Kali Kumar De v. Emperor,

AIR 1927 Rang 170=100 I C 980=7 A I Cr R 549= 6 Bur L J 11=28 Cr L J 372.

——Applicability—Section does not apply to searches under Gambling Act.

A search conducted after the issue of a warrant under S. 5 of Act 3 of 1867 is not a search under Chapter VII of the Criminal P. C., and S. 103, Criminal P. C., can have no application. In the case of searhes under the Opium Act the provisions of the Criminal P. C., have been expressly made applicable by S. 16, but Act 3 of 1867 contains no corresponding section. (Brasher J.) Khilinda Ram v. Emperor,

A I R 1922 Lah 458=3 Lah 359=68 I C 845=23 Cr L J 621.

——S. 103 (2)—Search—Procedure.

The procedure prescribed by the section should be strictly followed in conducting searches. (Twomey J.) Nga San Nyein v. Emperor,

A I R 1915 L B 64=8 Bur L T 131=28 I C 152=16 Cr L J 264.

——Search under Opium Act—See Opium Act (1 of 1878), S. 14.

1 Cr L J 993 (Burma).

2. **Searches under other Acts**—See Note 1. Scope, applicability and object and Note 10. Irregular search.

3. **Procedure**—See Note 1. Scope, applicability and object.

4. **Search witnesses—"Respectable inhabitants".**

——Panch witness—Duty of police.

As far as possible the police and the investigating officers should avoid utilising persons as panch witnesses when these persons have already acted as panchas. They should have panch witnesses who have had nothing to do with the police at all, whom the police-officer does not know at all, and about whose independence and impartiality there

CRIMINAL P. C. (V of 1898), S. 103 — 4. Search witnesses—"Respectable inhabitants"

can be no question at all. (Chagla C. J. and Gajendragadkar J.) S. K. Fernandez v. State,

A I R 1951 Bom 468=53 Bom L R 713=1951 B L R (Bom) 347=21 Bom Cr C (Sup) 1=I L R (1952) Bom 207=52 Cr L J 1528.

——S. 103 (2)—Some persons as search witnesses.

It is objectionable to be calling the same persons to witness searches. (Mosely J.) Aung Kim Sein v. King,

AIR 1941 Rang 333=1941 Rang L R 552=14 R Rang 140=197 I C 580=43 Cr L J 217.

——S. 103 (2) — Search witnesses previous convicts and one of them having civil suit against accused.

On a search of the house of the accused by Excise Officer, a quantity of illicit liquor and materials for illicit distillation were recovered from the house. There were serious discrepancies in the evidence given by the two search witnesses and the search witnesses had been previously convicted of criminal offences and one of them had a civil suit against the accused :

Held, that the search was conducted in a manner which amounted to violation of the law. (Bartley and Khundkar JJ.) Haradhan Maity v. Emperor,

AIR 1938 Cal 701=11 R C 355 (1)=178 I C 409=40 Cr L J 52.

——Every process in conduct of search must be witnessed by respectable witnesses.

Per Varma J.—Section 103, Criminal P. C., enacts that searches must be conducted with all due care, that there must be respectable persons present at them to bear testimony to the fact that the manner of the search was above board. Every process in the conduct of the search must, therefore, be witnessed by such witnesses. (Varma, Manohar Lall and Chaterjee JJ.) Ram Prasad v. Emperor,

A I R 1938 Pat 403 = 19 P L T 461=4 B R 772=11 R P 107 = 17 Pat 632 = 176 I C 787 = 39 Cr L J 796 (FB).

——S. 103 (2)—"Respectable witness" who is.

Respectability does not connote any particular status or wealth or anything of that kind. Any person is entitled to claim respectability, provided he is not disreputable in any way, that is, if he is not a thief or a criminal of some kind or a person perhaps of grossly immoral habits. Being a prosecution witness is not sufficient to deprive one of one's title to respectability. (Allsop J.) Ashfaq v. Emperor,

AIR 1936 All 707=1936 A L J 958=9 R A 247 (1)= 1936 A W R 731 = 165 I C 25 = 1936 A L R 886 = (1936) Cr C 893=37 Cr L J 1108.

——S. 103 (2) — Search — Witnesses to be selected — Qualification—Inference.

Where respectable persons can be found in the neighbourhood, and the Police Officer making a search takes with him persons whose respectability is questionable or who come from a distant locality, the inference is that he was prompted by a desire to have such witnesses as would be easily persuaded to support any story which he might put forward. (Niamat-Ullah J.) Sadlu v. Emperor,

AIR 1934 All 374=7 R A 926=155 I C 406=1934 Cr C 438=36 Cr L J 742.

——S. 103 (2) — A person having suffered conviction for forgery and robbery is altogether unsuitable as a search witness. Where the Sub-Inspector takes with him such a person as a search witness and he is put forward as search witness, the action of the Sub-Inspector suggests that it is not a genuine case even if all suggestions for defence have not been established, especially when the Sub-Inspector was a subject of adverse comment by High Court in a

CRIMINAL P. C. (V of 1898), S. 103 — 4. Search witnesses—"Respectable inhabitants"

previous case, along with the brother of such a search witness. (Bennet J.) Ramchandra v. Emperor,

A I R 1935 All 520=7 R A 781=1935 A W R 313= 154 I C 635=1935 All L R 219=1935 Cr C 544=36 Cr L J 551.

——S. 103 (2)—Dismissed constable, whether 'respectable' person.

A dismissed constable is not a respectable inhabitant of the locality within the meaning of S. 103, Criminal P. C. (Agha Haider J.) Indar Datt v. Emperor,

A I R 1931 Lah 408 (416)=Ind Rul 1931 Lah 537= 132 I C 185=1931 Cr C 648=32 Cr L J 818.

——Search—Independent witness.

Independent witnesses are necessary for valid search. (Abdul Qudir J.) Sher Ali v. Emperor,

AIR 1923 Lah 79=68 I C 833=23 Cr L J 609.

——House search — Witnesses to be of respectable status —Object of the legislature.

The intention of the legislature in S. 103 is to protect the person whose house is searched and to give confidence to the neighbours. The persons called in at the time of the search should be of some standing whose words can be believed, and not necessarily those living within a stone's throw of the house to be searched. The stress is on the word "respectable" and not on the word 'locality' in sub-section (1). (Parlett J.) Ah Pok v. Emperor,

AIR 1917 L B 91=42 I C 753=18 Cr L J 1009 (2)

——Witnesses to search — Respectable inhabitants — Burma Gambling Act, S. 7. 10 I C 796 : 12 Cr L J 251, OVERRULED.

Except at Rangoon ward-headmen in towns are competent witnesses of searches under S. 103 of the Code. It is not within the province of the judiciary to construe the word "respectable" in the section as meaning respectable and independent or unconnected with the police. 10 I C 796: 12 Cri L J 251, OVERRULED. (Hartnoll, Offg. C. J., Twomey Parlett, Young, Robinson and Ormond JJ.) Tiya v. Emperor,

A I R 1914 L B 128=7 Bur L T 143=24 I C 321=8 L B R 38=15 Cr L J 441 (FB).

——Respectable inhabitants.

The words 'respectable inhabitants' in S. 103, Criminal P. C., do not include ward-headman and block-elders appointed by the D. C. (Ormond, Hartnoll, & Twomey JJ.) Emperor v. Kanhaw,

4 Bur L T 91=10 I C 796=12 Cr L J 251.

[Overruled in A I R 1914 L B 128=15 Cr L J 441 (FB)]

——Respectable inhabitants—See Gambling Act (3 of 1867) Ss. 6, 7, 11.

8 Cr L J 413 (Burma).

——Search witnesses — Ward headman — See Burma Gambling Act (1 of 1899), Ss. 6, 7.

7 Cr L J 479 (L B).

——Ss. 102 (2) and 103 — 'Respectable inhabitants of locality'—Headman of Wards—See Criminal P. C., 1898, S. 102.

4 Cr L J 390 (L B).

5. Search witnesses — "Of locality".

——Search raid — Witnesses not from locality — Search held not necessarily vitiated especially where object of search would have been frustrated. (Beg J.) Swami Dayal v. State,

A I R 1953 All 353=1953 A I Cr R 397=1952 A W R H C 341=1953 Cr L J 762.

——Search witness — Man living at some distance from place of search.

The word "locality" has not been defined and in Malabar where houses are situated furlongs from one another there is nothing wrong in a man living at some distance

CRIMINAL P. C. (V of 1898), S. 103 — 5. Search witnesses—"Of locality"

being chosen as the search witness. (Ramaswami J.) Public Prosecutor v. Velayangat Devassia,

AIR 1952 Mad 604=1952-1 Mad L J 12=1951 M W N Cr 272=1951 M W N 852=1952 Cr L J 1198.

Although S. 103 requires that ordinarily panch witnesses should be respectable men of the locality, the mere fact that men are taken from one locality to another should not be looked upon as a factor militating against the respectability of the panch witness. (Chagla C. J. and Gajendragadkar J.) S. K. Fernandez v. State,

A I R 1951 Bom 468=53 Bom L R 713=1951 B L R (Bom) 347=21 Bom Cr C 206=1952 A W R (Sup) 1= ILR (1952) Bom 207=52 Cr L J 1528.

——Disregard of provisions — Onus is on prosecution to prove that compliance was not possible — Both search witnesses from different locality—No evidence that respectable witnesses of locality were not available or were unwilling—Other evidence also showing prejudice to accused —Trial held vitiated by illegality of the search. (Seth J.) Bishnath Rai v. Rex,

AIR 1950 All 147=1950 A L J 216=1950 A W R 404 =1950 All Cri Cas 118=51 Cr L J 456.

——Section is mandatory — Search witnesses present not belonging to locality — One of them belonging to rival party of accused and was also challaned in criminal case— Search, held was vitiated and prosecution could not be sustained.

The provisions of S. 103 are mandatory and require that the officer in charge of the search should make honest efforts to secure the presence of 'two or more respectable inhabitants of the locality,' before undertaking the search, but the search will not be vitiated if no such witness is available.

Where neither of the two search witnesses belonged to the locality and one of them belonged to the rival party of the accused and was also challaned in a criminal case under S. 107, Criminal P. C. :

Held that the provisions of S. 103 were not complied with and therefore, the prosecution could not be substained: A I R 1934 All. 374 and A I R 1935 All. 520, Rel. on. (Sinha J.) Inderjit v. Emperor

AIR 1947 All 165=1947 A W R H C 59 = 1947 O A H C B 35=1947 A L J 248 = 230 I C 321 = 48 Cr L J 611.

——One witness coming from immediate neighbourhood and others from some little distance.

It is true that S. 103, Criminal P. C., directs that the officer making the search shall take with him two respectable persons "of the locality." It is, however, clear that, as far as the word "locality" goes at any rate this provision must be regarded as directory rather than mandatory. If, therefore, it is found that only one witness came from the immediate neighbourhood, and the other came from some little distance, it cannot be held that the search is on that account illegal. (Young C. J. and Blacker J.) Emperor v. Darshan Singh

AIR 1941 Lah 297=ILR (1941) Lah 370= 43 P L R 536=14 R L 136=196 I C 106=42 Cr L J 812.

——Search witnesses not coming from vicinity.

The mere fact that the witnesses present at the time of the search of the accused's house and deposing that the opium was found therein did not come from the immediate vicinity, could not justify the Court in rejecting the evidence that the opium was found in the accused's house at the time of the search. (Spargo J.) Nga Shwe Toe v. Emperor

AIR 1937 Rang 434=10 R Rang 314 = 173 I C 27= 39 Cr L J 278 (2).

CRIMINAL P. C. (V of 1898), S. 103 — 5. Search witnesses—"Of locality"

——Search—Mashirs—Qualifications, necessary.

In a search under S. 103, Criminal P. C., it is immaterial from what quarters mashirs are drawn so long as they are respectable men. The word "locality" in S. 103, Criminal P. C., does not mean the same quarter of the town as the place which is searched. The stress is on the word "respectable" and not on the word "locality" in sub-s. (1), S. 133, Criminal P. C. (Mehta A. J. C.) Ghandalal Kalidas v. Emperor

AIR 1934 Sind 159= 28 SLR 41 = 7 R S 181 = 154 I C 1038=1934 Cr C 1261=36 Cr L J 704.

——Locality, meaning of.

The word "locality" used in S. 103, Criminal P. C., is a comprehensive word, and may well include villages within three or four miles of the village where the search is to be conducted. (Raza and Pullan JJ.) Emperor v. Mast Ram

AIR 1931 Oudh 115= 8 O W N 128=Ind Rul (1931) Oudh 201=6 Luck 472=131 I C 441=1931 Cr C 275 = 16 A I Cr R 299=32 Cr L J 699.

——From whom to be selected.

The provision that the witnesses of the search should be inhabitants of the locality is intended to operate in favour of the accused and in a densely populated town means persons in the immediate vicinity. (Young J.) Ma Htway v. Emperor

AIR 1925 Rang 205 (1)= 86 I C 475=4 Bur L J 2 = 26 Cr L J 827.

——"Locality"—Meaning of.

"Locality" in S. 103 does not mean the same quarter of the town as the place which is searched. (Twomey J.) Ah Sein v. Emperor

4 Bur L T 222=12 I C 87=12 Cr L J 479.

——Object of S. 103—"Locality"—"Respectable."

The object of S. 103, Criminal P. C., in requiring that respectable inhabitants of the "locality" should be called to witness the search, is to ensure that false evidence may not be fabricated. The important point is that the men called in should be persons of some standing, whose word can be believed, not that they should be persons living within a stone's throw of the house which is to be searched; the stress is on the word "respectable" and not on the word "locality." Therefore, for the purposes of S. 103, a person living in a quarter within hail of the place to be searched may reasonably be regarded as an inhabitant of the locality, even if a river flows between. (Twomey J.) Emperor v. Sit Nyein

8 Ind Cas 988=3 Bur L T 143=11 Cr L T 746.

6. Evidence of search witnesses.

——Search witness found independent witness and not subject to police influence— His evidence cannot be discarded merely because he came from village 8 miles away. (Rajadhyaksha and Vyas JJ.) Rangrao Bala Mane v. State

A I R 1952 Bom 327 = 54 Bom L R 325 = 1951-21 Bom Cr C 329=ILR (1952) Bom 979.

——Ss. 103, 367, 423—Panch witness — Appreciation of evidence.

The law provides that the house or the shop of a citizen cannot be searched in the absence of panchas. The Courts are bound to attach the greatest importance to the evidence of panch witnesses, and in order that the Court should attach such importance to panch witnesses it is essential that panch witnesses should be independent witnesses, unbiased and without being in any way under the control of the police. It is only when panch witnesses are independent that the liberty of the subject can be safeguarded as far as searches are concerned. If it is established that a panch witness is likely to be a pliable agent in the hands of the police or is likely to be amen-

CRIMINAL P. C. (V of 1898), S. 103—6. Evidence of search witnesses

able to the influence of the police or he may be looked upon as a police agent, the evidence of such a witness cannot be relied upon. Primarily it is for the Magistrate to come to the conclusion whether a panch witness suffers from the infirmity. He has to appreciate evidence and primarily it is for him to say whether evidence of a particular panch witness should be believed or not. But the Court of appeal must be vigilant in seeing that convictions are not based upon the evidence of panch witnesses whose evidence should not be accepted as suffering from the infirmity of being in a position where they might be looked upon as police agents. In deciding whether the evidence of a panch witness should be believed or not, undoubtedly, his status and position in life should be considered ... It should also be considered as to whether he is in the habit frequently of acting as a panch, because the very fact that a man constantly acts as a panch may lead to the inference that he is easily available to the police and he would be prepared to be amenable to their influence. The nature of the evidence given by the particular panch witness should also be borne in mind. The mere fact that a man has acted on several occasions as a panch witness should not be sufficient by itself to lead to the inference that the man is a police agent. (Chagla C. J. and Gajendragadkar J.) S. K. Fernandez v. State

AIR 1951 Bom 468=53 Bom L R 713 = 21 Bom Cri C 206 = 1952 A W R (Sup) 1 = ILR (1952) Bom 207 =52 Cr L J 1528.

——Conviction or acquittal depends on credibility.

Conviction or acquittal depends upon the credibility of the witnesses as assessed by the Court and not on the question whether their presence on the scene of the alleged offence was in accordance with a particular legal procedure. The failure to comply with the provisions regulating searches may cast doubt upon the bona fides of the officers conducting the search. But when once the evidence has been believed, it is obviously no defence to say that the evidence was obtained in an irregular manner. There is nothing in the law which makes such evidence inadmissible. Accused is not entitled to acquittal on the mere fact that the search witnesses did not come from the same locality. (Bartley and Henderson JJ.) Bonomali Bhattacharjee v. Emperor

AIR 1940 Cal 85= 12 R C 499 = I L R (1939) 1 Cal 210=186 I C 471=41 Cr L J 316.

——Conviction under S. 9 (a), Opium Act (I of 1878), set aside in appeal on ground that search witnesses did not substantiate evidence of Excise Officers — Evidence of officers substantiated by documentary evidence — Provisions of S. 103 are meant for greater certainty and security.

The provisions of S. 103 of the Criminal P. C., are enacted for greater certainty and security and not because the statements of certain officers can, under no circumstances, be accepted.

The accused was convicted under S. 9 (a) of the Opium Act and sentenced to suffer three months' rigorous imprisonment and to pay a fine of Rs. 200, in default, to suffer further two months' imprisonment. On appeal the Additional Sessions Judge acquitted her, his main reason being that the evidence of the three witnesses who were called to witness the search did not substantiate the evidence of the Excise Officers, and that in view of the provisions of S. 103, Criminal P. C., their statements must be believed in preference to those of the searching officers:

Held, that the two Excise Officers should not be disbelieved when their evidence was supported by such distinct documentary corroboration. Moreover, the three witnesses had not been able to explain why they, presumably intelligent persons, should have signed documents without knowing what the contents were. The evidence of this type should not be preferred to that of the officers. (Mackney J.) Emperor v. Ma Thein

AIR 1936 Rang 15 (16)=8 R Rang 434=160 I C 816 1931 Cr C 21=37 Cr L J 331.

——Ss. 103, 165 — Panchnama containing confession—Admissibility—Mode of proof — Evidence Act (I of 1872), Ss. 26, 159, 161.

Although an entry in any public record stating a relevant fact and made by a public servant in the discharge of his official duty, or by any other person in performance of the duty specially enjoined by the law, is itself a relevant fact, yet where panchnamas contain a confession which is not admissible in evidence on account of S. 26, Evidence Act, the proper way of dealing with panchanama containing such an entry is to place it into the hands of a witness and to allow him to use it to refresh his memory. If he finds in it anything of which evidence can lawfully be given, he may give such evidence in the ordinary way; but the document itself should be excluded. (Ferrers J. C. and Aston A. J. C.) Baloch Pirwali v. Emperor,

A I R 1933 Sind 220 (222) = 6 R S 8=144 I C 772= 1933 Cr C 722=34 Cr L J 848.

——Persons having acted as witness in previous house search.

The evidence of a person cannot be distrusted solely on the ground that on a previous occasion, he had acted as a witness in a house search. (Macnair J. C.) Local Government v. Mainsukh Teli,

A I R 1933 Nag 99=29 N L R 67 = Ind Rul (1933) Nag 227=144 I C 240=1933 Cr C 364=34 Cr L J 721.

——Evidence—Search witnesses.

Two of the witnesses present at the search stated that the articles produced, viz., silver bank and band were produced from a tind, but a third witness stated that the tind contained a silver bank and made no mention of the other articles. No explanation was even suggested as to how the other article came to be there—Held that the circumstances under which these things were produced were not altogether beyond suspicion. (Fforde J.) Saudagar Singh v. Emperor,

A I R 1923 Lah 683=5 Lah L J 572=77 I C 895=25 Cr L J 495.

——Search—Witnesses — Weight due to the evidence of.

A Court is not bound to accept as true the evidence of witnesses called in under S. 103 to witness a search, if it can be shown to be false. (Piggot J.) Baburam v. Emperor,

A I R 1918 All 113=16 A L J 721=47 I C 801 = 19 Cr L J 949.

7. Prosecution's duty to examine search witnesses.

——Omission of search witnesses—Inference — Evidence Act (1872), S. 114.

The only inference that can be drawn against the prosecution on account of the omission of search witnesses is that they would have deposed against the prosecution. It will still be a matter for the Court to believe any set of witnesses and if the Court believes the prosecution witnesses in preference to defence witnesses, it commits no illegality or irregularity. (Raghubar Dayal J.) State v. Badruddin,

A I R 1950 All 436=1950 A L J 263 = 1950 A W R 345=1950 All Cr Cas 106=51 Cr L J 1152.

——Panchanama—Panchnama can be used only to refresh panch's memory—Police Officer cannot bring panchnama on record in his evidence-in-chief — Police holding panchnama but not offering to call panch — Adverse inference.

CRIMINAL P.C. (V of 1898), S. 103—7. Prosecution's duty to examine search witnesses

The panchnama is merely a record of what a panch sees, and the only use to which it can properly be put is that when the panch goes into the witness-box and swears as to what he saw, the panchnama can be used as a contemporary record to refresh his memory. But a Police Officer is not entitled to give evidence of what the panch told him that he saw, and that is what it comes to if a Police Officer is allowed to put in the panchnama. A Police witness may state that he held a panchnama and offer to produce the record if the accused asks for it, but he cannot bring it on record in his evidence-in-chief. If the Police hold a panchnama, and do not offer to call the panch, an inference may be drawn against them from the fact that the panch is not submitted for cross-examination. The putting in of a panchnama without calling panch is not only an infringement of the rules of evidence against the admission of hearsay evidence, but it is unfair to the accused because it enables the Police to get the advantage of evidence in corroboration without putting that evidence to the test of cross-examination. (Beaumont C. J. and Sen J.) Mohanlal Bababhai v. Emperor,

AIR 1941 Bom 149=43 Bom L R 163=13 R B 365=194 I C 326=42 Cr L J 556.

——Panchnama — Identification parade — Police relying on panchnama must call panch to prove it — Object of calling panch witness.

If the Police relied on a panchnama, they must call a panch to prove it; the practice of allowing a panchnama to be put in by a Police witness is wrong. The object of having panch witnesses is to provide evidence which is independent of the Police. In searches under Chap. VII, Criminal P. C. or the City of Bombay Police Act, it is necessary to call panchas, but S. 103 (2) of the Code provides that they need not be called as witnesses unless they are specially summoned. That does not mean that the panchnama can be used if no panch is called apart from searches. It is, of course, not a rule of law or practice that Police evidence must be corroborated; but in case of an identification parade, and where it is of vital consequence to show that the accused was duly identified, it is obviously desirable to have some independent evidence that the parade was properly and fairly held. (Beaumont C. J. and Sen J.) Mohanlal Bababhai v. Emperor,

A I R 1941 Bom 149 (151) = 43 Bom L R 163 = 13 R B 365=194 I C 326=42 Cr L J 556.

——S. 103 (2) — Search witnesses when to be called—Omission to call.

Under S. 103 (2), Cr. P. C., search witnesses are not to be called except on the special summons of the Court. The Statute lays it upon the prosecution to explain why it desires the search witnesses to be called and does not lay it upon the prosecution to explain why it does not call the search witnesses. (Macpherson and James JJ.) Mosaddi Rai v. Emperor,

A I R 1933 Pat 100 = 13 P L T 702 = 11 Pat 807 = Ind Rul (1933) Pat 180 = 142 I C 841 (2) = 1933 Cr C 253=34 Cr L J 427.

——Search witness—Duty of prosecution to produce.

The search lists and the search witnesses should invariably be produced by the prosecution, and they will be guilty of suppression of material evidence if they do not produce the same, although the prosecution can prove the recovery of the incriminating article by other evidence as well. (Bajpai J.) Mohd. Bashir v. Emperor,

A I R 1932 All 185=1932 A L J 104=Ind Rul (1932) All 634 = 140 I C 246 = 1932 Cr C 201 = 17 A I Cr R 370=13 L R A Cri 66=33 Cr L J 943.

CRIMINAL P. C. (V of 1898), S. 103—7. Prosecution's duty to examine search witnesses

——Panchnamas.

Putting in panchnamas signed by panchas as part of the evidence of a Police Officer is worthless except to corroborate the evidence of the officer that panchas were employed and to show that the provisions of S. 103 (1) and (2) of the Criminal P. C., have been complied with. (Beaumont C. J. and Broomfield J.) Rustam Cursetji v. Emperor,

A I R 1932 Bom 181 = 34 Bom L R 267 = Ind Rul (1932) Bom 228 = 136 I C 868 = 1932 Cri R C 240 = 18 A I Cr R 4=33 Cr L J 389.

——Witnesses for search.

It is not the duty of the prosecution to put every search witness into the witness box. The discretion is left to the Court to require or not the attendance of such witnesses: 9 C. W. N. 438, Diss. from. (Buckland, Suhrawardy and Commiade JJ.) Hari Narayan Chandra v. Emperor,

A I R 1928 Cal 27 (FB)=46 C L J 368= 106 I C 545 =9 A I Cr R 228=29 Cr L J 49.

——Proof of search list.

The fact that the inhabitants of the locality whose signatures appear on the list prepared by the police at the time of the search had not been examined in the case would not render the search itself illegal: 23 M. L. J. 445, Rel. on. If the list cannot be proved, the contents of the list can be proved by other evidence: 34 Mad. 349, Rel. on. (Agha Haider J.) Bachan v. Emperor,

A I R 1927 Lah 149 = 99 I C 49 = 28 Cr L J 17.

——Search of premises—Duty of prosecution to examine.

It is the duty of the prosecution to call as witnesses the persons who witnessed the search by the notice, unless the prosecution is of opinion that they would misstate the facts and misrepresent what happened. But the fact that the prosecution believed that some of them formed an opinion unfavourable to the prosecution story regarding it, is no reason why those persons should not be called by the prosecution. What those persons would be required to state in their depositions is what they observed, and not what they thought. (Harington and Pargiter JJ.) Munui Sonar v. Emperor

9 C W N 438=2 Cr L J 176.

8. Search list.

——Object of.

Search lists are made for the purpose of fastening possession of articles on a particular person. Therefore, separate search should be made with respect to each person and the persons who are sought to be made liable with the help of the search list should be asked to sign the search list. The failure of the officer to observe these elementary precautions renders search-list useless. (Sen and Chunder JJ.) Chandrama Prasad Chammar v. State

ILR (1951) 1 Cal 539.

——Search of house — Evidence of—Mashirnama is not substantial evidence.

A Mashirnama written out by the person making a search of a house is not the substantial evidence to prove the search. (Davis C. J. and Thadani J.) Emperor v. Chabaldas Deomal

AIR 1947 Sind 112=I L R (1946) Kar 174=228 I C 170=48 Cr L J 109.

——Accused signing search list having endorsement to effect that certain thing was found in his possession.

It is doubtful how far an admission by an accused by merely signing the search list containing an endorsement to the effect that a certain thing was found in his possession, could be legal proof in a criminal trial. The mere signing by the accused, who was not present at the search of this document, does not, at the most, show more than

that the particular thing was found at his house. (Bannet J.) Suraj Narain v. Emperor

AIR 1938 All 513=1938 A W R 453=11 R A 201= 1938 A L J 649 = ILR (1938) All 776 = 177 I C 462= 1938 A L R 751=39 Cr L J 925.

——Search witness refusing to sign list.

According to the well-known principles of jurisprudence, the requirements of a statute must be strictly observed and complied with before the liberty of the subject can be taken away by sending him to jail or by exacting a fine from him. Where no order in writing is issued by the officer concerned under S. 103, Criminal P. C., to attend and witness a search, no person is bound by law to render assistance to him in making the search. It will be unreasonable to hold that if person who is not bound by law to do a certain act voluntarily agrees to do it, he will be deemed to have made himself subject to any criminal liability that may attach to the non-performance of the act. Criminal liability is the creation of statute and cannot be created by agreement. If, therefore, the witnesses attend and witness a search on a verbal request of the officer concerned but refuse to sign the search list, they are not guilty of an offence under S. 187, Penal Code, as they are not bound to sign it. (Varma, Manohar Lall and Chatterji JJ.) Ram Prasad v. Emperor

AIR 1938 Pat 403 = 19 P L T 461 = 4 B R 772 = 11 R P 107=17 Pat 632=176 I C 783=39 Cr L J 796.

——Prosecution's duty to prove case with regard to different items severally.

When in a case there are several search lists, in each of which several items of property are mentioned, the prosecution ought to prove their case with regard to the different items severally, and the different items of property or different groups thereof mentioned in a search list ought to be separately and consecutively numbered either by letters or figures or by some other distinguishing marks and the same numbering should be followed while recording the evidence of witnesses relating to the searches to which those search lists refer. If that procedure is adopted, there will be no difficulty on the part of the Court in appreciating the evidence that is adduced in respect of the searches. (Derbyshire C. J., Mukerji and Costello JJ.) Rafiqueuddin Ahmad v. Emperor

AIR 1935 Cal 184 = 39 C W N 368 = 62 Cal 572= 7 R C 606=155 I C 687=1935 Cr C 241=36 Cr L J 808 (FB).

——Identification by witnesses — Giving of exhibit numbers.

When the articles in an exhibit list are each of a different kind, it might be excusable to refer to the article by describing its kind such as a jacket, a shirt, a shawl; but where there are four white short sleeve shirts and three other shirts, the neglect by the Court to mention which particular shirt is meant by the witness who says : "I identify the exhibit white short sleeve shirt, or I identify the exhibit shirt" is quite inexcusable. The Court should give exhibit numbers to articles identified. (Mya Bu J.) Rajalingam v. Emperor

AIR 1934 Rang 80 = 6 R Rang 300 = 149 I C 31 = 1934 Cr C 512=35 Cr L J 994.

——Addition of new items.

Uunder S. 103, Cr. P. C., a police officer should not add new items to a search list after it has been signed by witnes-es but his doing so would not invalidate the search. (Twomey J.) Htaung v. Emperor

AIR 1914 L B 258=7 Bur L T 163=7 L B R 275= 24 I C 835=15 Cr L J 523.

——Whether excludes oral evidence as to matters recorded therein—(Evidence Act (1872), S. 91.)

A search list is a declaration made by a police officer and persons present at a search that certain formalities were observed and certain events took place. A search list is thus not evidence of the matter stated therein and it does not therefore exclude oral evidence of such matters. Section 91, Evidence Act, does not apply to a search list. For that section pre-supposes that, where a certain matter is required by law to be reduced to writing, the writing is itself evidence of the matter so reduced.

The informalities in the manner in which a search is conducted may diminish the weight of the evidence given as to possession of the incriminating articles by the accused but they do not preclude the admission of oral evidence. (Subramania Aiyar and O'Farell JJ.) Public Prosecutor v. Sarabu Chinnayya

33 M 413=8 I C 809=11 Cr L J 716.

——Ss. 103 and 166 — Admissibility of—Parol evidence of the contents of search list.

The provisions of S. 91 of the Evidence Act cannot have been intended to apply to mere observations of physical facts which under the ordinary law have to be proved by testimony in the Court. If a narrative of an extrinsic fact has been committed to writing it may be proved by parol evidence and this would be so even though such writing is required by law. Therefore, when a search has been conducted under S. 103, Criminal P. C., parol evidence can be given regarding the things seized in the course of the search and regarding the places in which they were respectively found, even though the law in the section directs a search list to be drawn up containing these particulars. (Abdur Rahim, Krishnaswami Aiyar and Aiyling JJ.) In re Solai Naik

8 I C 178=8 MLT 451=21 MLJ 281=11 Cr L J 576.

——Proof of contents.

The search list is not the only evidence admissible as to the matters dealt with therein. Its contents can be proved by other evidence also. (Ralph Benson and Abdur Rahim JJ.) Elamathan v. Emperor

5 I C 438=7 M L T 362=33 Mad 416=11 Cr L J 136.

——List of things searched how to be made—See Burma Gambling Act (1 of 1899), Ss. 6, 7

7 Cr L J 411 (LB).

9. Right of occupant.

——Penal Code (Act XLV of 1860), S. 338 — Search — Duty of police to permit occupant to attend — Police excluding occupant — Resistance and hurt to police — Offence.

In conducting a search, the police are bound to allow the occupant of the place to attend during the search.

Where the police refuse to allow the occupant to enter the house which is being searched and be present at the time of the search, the police cannot be said to be acting in the discharge of their duty and if the occupant causes hurt to a police officer in attempting to enter into his house on physical resistance being offered by the latter, the occupant is not guilty of an offence under S. 332, Penal Code, or under any other section of the Code. (Niamatullah J.) Bhikugir v. Emperor

AIR 1932 All 449=1932 A L J 530=Ind Rul (1933) All 147=142 I C 790=13 L R A Cr 92=1932 Cr C 570 18 A I Cr R 41=34 Cr L J 439.

——Absence of accused.

It is not necessary that the person whose premises are searched must be present at the search. View of Beachcroft J., in A I R 1914 Cal 456, Diss. from. (Buckland, Suhrawardy and Commiade JJ.) Hari Narayan Chandra v. Emperor

AIR 1928 Cal 27=46 C L J 368=106 I C 545=9 A I Cr R 228=29 Cr L J 49 (FB).

CRIMINAL P. C. (V of 1898), S. 103 — 9. Right of occupant

——S. 103 (2)—Search—Right of occupant to be present —Omission—If irregularity substantial.

The occupant of a place searched has a right to be present at the search, and where he is denied this right, the violation is not one merely of technicality but of substance so that the accused can ask the Court to consider and scrutinise the evidence so formed carefully. (Woodroffe and Beachcroft JJ.) Romesh Chandra v. Emperor

AIR 1914 Cal 456=18 C W N 498=41 C 350=23 I C 985=15 Cr L J 385.

10. Irregular search.

——Ss. 103, 439 — Search by Excise Sub-Inspector — Failure to call witnesses of the locality—Evidence should be reviewed in revision. (Kaul J.) Tittar v. State

AIR 1953 All 506 = 1953 A W R H C 159 = 1953 A L J 248=1953 Cr L J 1181.

——Ss. 103, 367 and 537—Search—Irregularities—Effect —Conviction based on uncorroborated testimony of police officers — Legality — Bombay Abkari Act (V of 1878), S. 43 (1).

Where the law requires that the search should be made in the presence of the panchas, a panchanama should usually be insisted upon and the conviction should not ordinarily be based on the uncorroborated testimony of police officers. Where, however, it is not possible to make a search in the presence of the Panchas or where property is found without a search being made, or where under the law it is not obligatory to make a panchanama, it would be open to the Court to convict the accused under S. 43 (1) of the Bombay Abkari Act on the evidence of police officers alone, if after examining that evidence carefully the Court feels satisfied that is it true. (Rajadhyaksha and Chainani JJ.) Emperor v. Kisan Narayan

AIR 1951 Bom 186 = 52 Bom L R 280 = 1950 Bom Cr C 169=52 Cr L J 41.

——Ss. 103, 537—Irregular search—Evidence of — Evidence of admissibility—Conviction based on such evidence —Legality.

Although the failure to comply with the provisions regulating searches may cast doubt upon the bona fides of the officers conducting the search, there is nothing in law which makes evidence relating to an irregular search inadmissible and a conviction based on such evidence is not invalid on that ground alone. (Hemeon J.) Ramrao Ekoba v. Crown

AIR 1951 Nag 237 = I L R (1951) Nag 349 = 1952 N L J 20=1952 A W R (Sup) 30.

——Irregularities in search — Search under Opium Act made in contravention of S. 14 of that Act—Local witnesses not called to witness the search—Effect on legality of the trial—See Opium Act (1878), S. 14

AIR 1950 All 436=51 Cr L J 1152.

——Disregard of provisions — Onus is on prosecution to prove that compliance was not possible — Both search witnesses from different locality — No evidence that respectable witnesses of locality were not available or were unwilling — Other evidence also showing prejudice to accused—Trial held vitiated by illegality of the search.

Where the provisions of S. 103, Criminal P. C., which are very salutary provisions for the protection of the interests of an accused person are departed from, the burden lies upon the prosecution to explain the circumstances under which it was not possible to comply with those provisions. Where there is no evidence to prove that respectable witnesses were not available in the locality or that the witnesses residing in the locality were unwilling to come forward as search witnesses on account of the greater influence of the accused, a search, in which both the witnesses were from different locality, one being the driver of the truck leading the police party to the place of the raid and both were not very respectable, was held illegal and as there was other evidence also to show prejudice to the accused the trial was held vitiated by the illegality. (Seth J.) Bishnath Rai v. Rex

AIR 1950 All 147 = 1950 A L J 216 = 1950 A W R 404=1950 Cr C 118=51 Cr L J 456.

CRIMINAL P. C. (V of 1898), S. 103 — 10. Irregular search

——Search witnesses coming from localities different from where search was carried out—No attempt to secure respectable persons from locality to witness search — Search held not good one and could not form basis of prosecution. (Agarwala and Bhargava JJ.) Dr. Jai Nand v. Rex,

A I R 1949 All 291 = 1949 A W R H C 13 = 1949 A L J 60=50 Cr L J 498.

——Non-cognizable offence under S. 11, Suppression of Brothels Act (Burma Act)—Report by Police Officer after illegal search — Magistrate taking cognizance on such report — Illegal entry held did not vitiate subsequent prosecution—See ibid, S. 190 (b).

1948 Bur L R 91.

——While conducting search, procedure laid down in S. 103, Criminal P. C., not followed—Evidence discovered by search is not made inadmissible — Evidence otherwise admissible does not become inadmissible — Conviction based on such evidence is not illegal—Only effect of non-observance of S. 103 is that evidence of persons conducting search may be viewed with more than ordinary caution : A. I. R. 1938 Cal. 701, Expl. (Roxburgh and Ormond JJ.) Legal Remembrancer, Bengal v. Mamtaz Uddin Ahmed,

I L R (1947) 1 Cal 439.

——Ss. 103 and 165 — Search — Presence of witnesses— Object—Scope and applicability of S. 165.

Presence of witnesses at a search is always desirable and their absence will weaken and may sometimes destroy the acceptance of the evidence as to the finding of the articles but their attendance at the search is not always essential in order to enable evidence as to the search to be given.

Where it is alleged and proved that the articles were produced by the accused himself, S. 165 does not apply. That section is meant to be used where a search warrant would be made use of in the ordinary course, but lack of time renders it impolitic to use it. Where the section does apply, proof of the search might be inadmissible for other reasons, but there would be no necessity to call either of the witnesses to the search having regard to the express terms of S. 103 (2). (Lords Thankerton, Porter, Goddard, Sir Madhavan Nair and Sir John Beaumont.) Malak Khan v. Emperor.

A I R 1946 P C 16=1945 M W N 778=12 B R 280= 59 L W 9= 1946 A L J 29 (2) = (1945) 2 M L J 486= 222 I C 273=50 C W N 145=72 I A 305 = 47 Cr L J 489 (P C).

——Technical objections.

Where a search is genuine technical objections should not be allowed to prevail. (Thomas C. J.) Jagannath v. Emperor,

A I R 1942 Oudh 221 = 1941 O W N 1369 = 1941 A W R (C C) 402=14 R O 449=17 Luck 516=198 I C 714=43 Cr L J 416.

——Proceedings, if invalidated.

Irregularity in the search does not necessarily invalidate the proceedings. It always affords ground for scrutiny, and if, after careful scrutiny, the Court comes to the conclusion that an excisable article was recovered from the possession of the accused, then the conviction is a sound one. (Mosely J.) Aung Kim Sein v. King,

A I R 1941 Rang 333 = 1941 Rang L R 552 = 14 R Rang 140=197 I C 580=43 Cr L J 217.

CRIMINAL P. C. (V of 1898), S. 103 —10. Irregular search

——Failure to comply with the provisions regulating searches may cast doubt upon the bona fides of the officers conducting the search. But when once the evidence has been believed, it is obviously no defence to say that the evidence was obtained in an irregular manner. The accused is not entitled to acquittal on the mere fact that the search witnesses did not come from the same locality. (Bartley and Henderson JJ.) Bonomali Bhatta Charjee v. Emperor,

A I R 1943 Cal 85=I L R (1939) 1 Cal 210 = 12 R C 499=186 I C 471=41 Cr L J 316.

——Evidence of search, if can be given irrespective of evidence of search list.

Per Manohar Lall J. — Where a search has been conducted under S. 103, Criminal P. C., evidence can be given regarding things and the places in which they were found irrespective of the evidence of the list which the law directs to be drawn up relating to the particulars of the property found and the provisions of the Evidence Act do not prevent the adoption of this course. A search cannot be made in writing and the observations of physical facts must always and can be allowed to be proved by oral testimony in Courts. (Varma, Manohar Lall and Chatterji JJ.) Ram Prasad v. Emperor,

A I R 1938 Pat 403=176 I C 287 = 19 P L T 461=4 B R 772=11 R P 107=17 Pat 632=39 Cr L J 796.

——Dangerous Drugs Act (II of 1930), S. 25 — Accused searched, away from town — Inspector taking only one witness with him—Irregularity, if bar to conviction.

The search of the accused was made on a metalled road and nowhere near a town, and so it was obviously impossible to obtain as witness any person from the immediate vicinity. The Excise Inspector, however, had taken a physician with him :

Held, that in the light of S. 103, Criminal P. C., he ought to have taken some other person in addition but an irregularity of this sort was no bar to the conviction if the Court were satisfied that the smuggled article was in fact found in the possession of the accused. (Thom and Collister JJ.) Emperor v. Bachcha,

A I R 1934 All 873=7 R A 507 (2)=57 All 256=153 I C 472 = 15 L R A Cr 110 = 21 A I Cr R 209 = 1934 Cr C 1082=1935 A L R 19=36 Cr L J 362.

——The fact that one of the panchas witnessing the search stated that he was of opinion that the bottles recovered from one of the huts did not smell of liquor and the accused was not there at the time when the search was going to be made would not mean that the search was vitiated by any of the irregularities which go to vitiate the conduct of the search under S. 103, Criminal P. C. (Broomfield and Divatia JJ.) Appa Rama Mali v. Emperor,

A I R 1934 Bom 16=35 Bom L R 1065 = 6 R B 229 =147 I C 1003=1934 Cr C 108=35 Cr L J 523.

——Persons who make a search illegally, render themselves liable to be sued for damages, but their illegal action does not affect the question whether the person whose property was illegally searched has committed an offence under the Opium Act. (Dunkley J.) Kyi Yar v. Emperor,

A I R 1934 Rang 83=148 I C 1045 (1) = 1934 Cr C 515.

——Search witnesses — Duty of Police — Witnesses not respectable inhabitants.

Though under S. 103, Criminal P. C., it is the duty of the prosecution to see that the search witnesses are respectable inhabitants of the locality, it cannot be laid down as an inflexible rule that in cases where the search witnesses do not satisfy the provisions of S. 103, Criminal P. C. the whole proceedings should be quashed. Each case must be decided upon its own facts and circumstances and, if there is the slightest apprehension that the accused might have been the victim of a piece of chicanery or sharp practice on the part of any member of the raiding party, a Court of Justice must give him the full benefit of it and set aside his conviction. It must, however, appear from the record that injustice has, very likely, been done to the accused by the non-compliance of the provisions of S. 103, Criminal P. C. (Agha Haidar J.) Daulat Ram v. Emperor,

A I R 1933 Lah 809=Ind Rul (1933) Lah 439 = 34 P L R 689=144 I C 290=1933 Cr C 1026 = 34 Cr L J 723.

——Discovery of articles — Whether can be proved— Illegal possession of articles — Conviction, if proper— Opium Act (1878), S. 9 (a) — Dangerous Drugs Act (II of 1930), S. 14 (a).

Where as a result of an irregular search, certain articles are found, the fact that the articles were found can nevertheless be proved and if the possession of the articles is found to be illegal, a conviction must follow.

Too much weight should not be given to technical points in the trial of a criminal case when those technicalities can in no way cause a failure of justice. (Baguley J.) Chwa Hum Htive v. Emperor,

A I R 1933 Rang 146=11 Rang 107=Ind Rul (1933) Rang 77=143 I C 824=1933 Cr C 736=34 Cr L J 652.

——Value of.

When a search is conducted irregularly it will merely go to the weight which the jury will attach to the finding of the property but will not make it inadmissible in evidence. (Panckridge and M. C. Ghose JJ.) Baldeo Bin v. Emperor,

A I R 1933 Cal 187 = Ind Rul (1933) Cal 310 = 142 I C 639=1933 Cr C 233=34 Cr L J 369 (2).

——Search by Police — Local panchas, if necessary— Irregularity—If can be cured under S. 537.

In a search under S. 103, Criminal P. C., the fact that the panchas were not local people is an irregularity which can be cured under S. 537. (Beaumont C. J. and Broomfield J.) Raghunath Lahanusa v. Emperor,

A I R 1932 Bom 610 = 34 Bom L R 901 = Ind Rul (1932) Bom 484 = 139 I C 281 = 1932 Cr C 868 = 33 Cr L J 733.

——Where a Police Officer, in view of the attitude of the men who had assembled on the scene did not serve upon them or upon any other person of the basti a notice under S. 103, Criminal P. C., asking them to witness the search but asked two other respectable persons who had come with him from another village to act as search witnesses :

Held, that the failure of the Police Officer in the circumstances to secure search witnesses from the locality was no more than an irregularity and did not by itself entitle the accused to resist the search. In S. 103, the emphasis is on 'respectable', not on 'locality'. (Macpherson and Dhavle JJ.) Gopi Mahto v. Emperor,

A I R 1932 Pat 66=10 Pat 821=13 P L T 62 = Ind Rul (1932) Pat 60 = 136 I C 60 = 1932 Cr C 99 = 33 Cr L J 233.

——A person convicted under S. 19 (f), Arms Act, cannot be acquitted simply because the search was not conducted in strict compliance with the provisions of S. 103, Criminal P. C. (Raza and Pullan JJ.) Emperor v. Mast Ram,

A I R 1931 Oudh 115=8 O W N 128=6 Luck 472= Ind Rul (1931) Oudh 201=131 I C 441=1931 Cr C 275 =16 A I Cr R 299=32 Cr L J 699.

——Bombay Abkari Act, S. 43.

The mere fact that the panchas are not present throughout a search under Bombay Abkari Act, Section 43

CRIMINAL P. C. (V of 1898), S. 103 — 10. Irregular search

(1) (a), and do not witness every detail of it is not sufficient in itself to vitiate the conviction, especially where the accused is himself present at the search, and it is open to the Court to find the fact of possession of an offending article proved, that on a consideration of all the evidence in the case it is satisfied that the fact has been proved beyond reasonable doubt : 4 Cr. L. J. 390 ; AIR 1919 Pat. 452, Dist.; A.I.R. 1914 Cal. 456 ; A. I. R. 1925 All. 434 and A. I. R. 1926 All. 188, Foll. (Mirza and Broomfield JJ.) Dinkar Nhanu v. Emperor,

A I R 1930 Bom 169=1930 Cr C 545=125 I C 713=54 Bom 471=32 Bom L R 344=31 Cr L J 927.

——Evidence unsatisfactory—Effect of.

Where the failure to comply with the provisions of S. 103 leave the evidence in an unsatisfactory condition, so that there is reasonable doubt as to whether the offending articles were really in the possession of the accused, the conviction ought not to be sustained. (Mirza and Broomfield JJ.) Dinkar Nhanu v. Emperor,

A I R 1930 Bom 169=1930 Cr C 545=54 Bom 471=I. R. 1930 Bom 377=32 Bom L R 344=125 I C 713=31 Cr L J 927.

——Search illegal—Property found in possession — Conviction good.

Although a search made in person's house may be illegal rendering the person who made the search liable to be sued for damages, still if some property is found, possession of which is an offence the person in unlawful possession is liable to be convicted : 4 L. B. R. 121, Ref.; A. I. R. 1925 Rang. 205, Diss. from. (Baguley J.) Maung San Myin v. Emperor,

A I R 1930 Rang 49 = 121 I C 715 = 7 Rang 771=1930 Cr C 241=31 Cr L J 303.

——U. P. Excise Act, S. 53—Formalities essential.

Where the officer making the search does not record the grounds of his belief that the house of the accused contained prohibited liquor, as required by S. 53, Excise Act, and does not conduct the search in presence of two or more respectable inhabitants of the locality, the search is irregular. Any officer authorized by law to make a search ought to exercise the very greatest caution in fulfilling the formalities required by law for making a search and providing every possible safeguard so as not to allow any handle for adverse criticism. (Sen J.) F'aqira v. Emperor,

A I R 1929 All 901 (2)=120 I C 204 = 1929 Cr C 493 =11 L R A Cr 18=13 A I Cr R 131=31 Cr L J 10.

——Respectable persons not available at the time — Search conducted with persons available — Evidence to support conviction ample — Conviction is not bad. (Kanhaiya Lal J.) Abdul Hafiz v. Emperor,

A I R 1926 All 188=92 I C 441 = 24 A L J 173 = 6 L R A Cr 203=27 Cr L J 265.

——S. 103 (1)—Non-compliance with provisions does not vitiate trial.

The omission to comply with the requirements of the law laid down in S. 103 (1) of the Cr. P. C., that the search must be witnessed by two respectable inhabitants of the locality would not ipso facto vitiate a trial and the conviction of the accused is not illegal, if the Court is upon the evidence produced before it, convinced of the possession of the accused over the incriminating articles in question. (Jwala Prasad J.) Debi Das v. Emperor,

AIR 1921 Pat 508=2 Pat L T 359.

——Respectable witnesses not available.

The failure to call respectable inhabitants of the locality to witness a search does not render it illegal, especially when a satisfactory explanation therefor is furnished. The object of the legislature in requiring the presence of witnesses is to guard against possible chicanery and unfair dealing. (Shadi Lal C. J.) Abdullah v. Emperor,

91 I C 249=1 Lah Cas 5=27 Cr L J 73 (Lah).

——Evidence got by illegal search.

The evidence got by illegal search is not to be discarded but may be considered. (Hayward J. C., and Fawcett A. J. C.) Kadir Mahomed v. Emperor,

A I R 1917 Sind 16=10 S L R 137=37 I C 33=18 Cr L J 49.

——Failure to call witnesses—Illegality of search.

Failure to call witnesses in strict accordance with the provisions of S. 103 does not make the search illegal. (Ayling and Napier JJ.) Satagopal Charlu v. Satrughna Behara,

23 M L J 445=17 I C 75=(1912) M W N 1111=13 Cr L J 763.

——Search—Police Officer—Explosives Act—Rules under.

Where a search was conducted, not under the Cr. P. Code, but under R. 32 of the Govt. rules under the Explosives Act, 1884, and at the search Police Officers of superior rank were present, including the Suprintendent of Police himself : Held, that the proceedings were legally conducted; unless it appears that proceedings wrongly held, have, in fact, occasioned a failure of justice, they ought not to be set aside. 21 W. R. 88 (Cr.) Ref. (Caspersz and Sharfuddin JJ.) Lalt Chandra v. Emperor,

39 Cal 119=15 I C 65=13 Cr L J 433.

—S. 104.

——S. 104, 517 — Order directing not to order a hundi and impounding it—Legality.

There is no provision of law under which an order directing a firm not to honour a hundi drawn on it, to detain the person presenting it and to report the matter to Police because the parties thereto are suspected to be guilty of some offence—A District Magistrate could not, under S. 104, impound any document which had been produced in a pending case before a Subordinate Magistrate. (Banerji J.) Bays Hardeo Das v. King-Emperor,

1 A L J 607=1 Cr L J 1060.

—S. 105.

See also Arms Act (1878), S. 25.

——Applicability — Warrant issued under S. 6, Bombay Act 4 of 1887—See Bombay Prevention of Gambling Act (4 of 1887), S. 4.

6 Cr L J 60 (Bom).

——Search warrant—Power of Magistrate to issue — See Criminal P. C., Ss. 96, 105, 165,

2 Ind Cas 436 (Cal).

——Search under — Magistrate directing it, must be 'Court' within meaning of S. 94 — Magistrate, when "Court"—See Arms Act (1878), S. 25,

12 C W N 973=8 C L J 75.

—S. 106.

See also (1) ibid, S. 18.
(2) Penal Code (1860), S. 143.

SYNOPSIS

1. Proceedings under Chap. VIII — (General).
2. Scope of the section.
3. Offence punishable under S. 143, Penal Code.
4. Offence of rioting under S. 147, Penal Code.
5. Offence punishable under S. 149, Penal Code.
6. "Assault."
7. "Offence involving a breach of the peace."
   (a) Interpretation of.
   (b) Express finding.

CRIMINAL P. C. (V of 1898), S. 106

(c) Offence under S. 153 (provocation to cause hurt).
(d) Offence under S. 294 (obscene acts.)
(e) Offence under S. 323 (voluntarily causing hurt).
(f) Offence under S. 342 (wrongful confinement).
(g) Offence under S. 379 (theft).
(h) Offence under S. 392 (robbery).
(i) Offence under S. 426 (mischief).
(j) Offence under S. 447 (criminal trespass).
(k) Offence under S. 452 (house-trespass).
(l) Offence under S. 504 (insult).
(m) Offence under S. 506 (criminal intimidation).
(n) Offence under S. 510 (misconduct in public).

8. "Is convicted of such offence."
9. Conviction in summary trial.
10. Courts empowered to act.
11. Second or Third Class Magistrate requiring accused to execute a bond under S. 106—Procedure—(See S. 349).
12. "Such Court is of opinion."
13. "At the time of passing sentence."
14. Notice.
15. Liability of surety.
16. "During such period."
17. Commencement of period for which security is required—See S. 120.
18. Effect of setting aside of conviction.
19. Power of appellate or revisional Court to order security.
(a) Appellate Court cannot take security.
(b) Appellate Court can take security.
20. Appeal.
21. Revision.

1. Proceedings under Chap. VIII—(General).

——Interference, when proper — Revision — High Court, when will interfere.

Proceedings under Chap. VIII, Cr. P. C., should be taken with care and caution only when the public interest compels. Where there is no reason to suppose that the Subordinate Magistrate is not a careful and responsible Magistrate and where he has seen the witnesses and has heard what they have to say, and he has come to the conclusion that the case against the suspected persons is unworthy of credit, and that the evidence should not be believed, the High Court will not interfere. (Davis J. C. and Dadiba C. Mehta A. J. C.) Emperor v. Ali Muhammad.

AIR 1936 Sind 243=9 R S 114=30 Sind L R 368=165 I C 950=38 Cr L J 117.

——Proceedings under Chap. VIII should be taken with care and caution only when the public interest compels. (Davis J. C. and Dadiba C. Mehta A. J. C.) Emperor v. Ali Mohammad.

AIR 1936 Sind 243=30 S L R 368=9 R S 114=165 I C 950=38 Cr L J 117.

——Chapter VIII of Criminal P. C., is not covered by S. 250 of the same Code. (Coldstream J.) Rohal v. Kaura.

AIR 1935 Lah 29.

——Evidence.

Inquiries under Chap. VIII are governed by the ordinary rules of evidence, and evidence which is not admissible under the Evidence Act cannot be admitted in proceedings under S. 110. (12 A L J 937, Foll.) (Banerji J.) Raj Narayan Pandey v. Emperor.

AIR 1927 All 394 = 101 I C 886 = 25 A L J 393=8 L R A Cr 53=7 A I Cr R 353=28 Cr L J 502.

——Proceedings under—Nature of.

Proceedings under Ch. VIII, Cr. P. Code are not in the form of a trial nor is the person who is proceeded against an accused person who has committed any offence. (C. C. Ghose and Cuming JJ.) Binode Behari Nath v. Emperor.

AIR 1924 Cal 392 = 81 I C 909 = 50 Cal 985=25 Cr L J 1085.

——Person ordered to give security for keeping the peace or to be of good behaviour are not persons accused of an offence. (Miller J.) In re Kora Ayyappa.

5 I C 809=7 M L T 104=11 Cr L J 251 (2).

2. Scope of the section.

——Proceedings under, are judicial and not administrative. (Agarwala J.) Ram Charan v. State.

AIR 1953 All 375=1952 All W R (HC) 5=1952 All L J 60=1952 All Cr C 5=1952 R D (HC) 23 = 1953 Cr L J 813.

——Bond to keep peace and also to be of good behaviour.

Under S. 106, a bond can only be for keeping the peace. Where a Magistrate calls upon the accused not only to keep peace but also to be of good behaviour, the order is erroneous in law. (Teja Singh C. J.) Bakhshish Singh v. The State.

AIR 1952 Pepsu 138=ILR (1952) Patiala 258=1952 Cr L J 1467.

3. Offence punishable under S. 143, Penal Code.

——Security order.

No order under S. 106 can be passed upon conviction of an offence under S. 143 or S. 427, I. P. Code. (Ashworth J.) Naubat v. Emperor.

AIR 1927 All 136 = 99 I C 348 = 8 L R A Cr 11=7 A I Cr R 130=28 Cr L J 140.

——Ss. 106 and 439 — Findings as to breach of peace necessary.

When the findings of the lower Courts do not sufficiently and clearly show that the acts of which the accused were convicted under S. 143, I. P. C., necessarily involved a breach of the peace or any evident intention of committing the same, the High Court in revision would set aside an order under S. 106, Criminal P. C. binding down the accused to keep the peace. (Greaves and Walmsley JJ.), Abdul Ali Chaudhury v. Emperor,

AIR 1916 Cal 883 (2)=43 Cal 671= 20 Cal W N 197 =23 C L J 108=34 I C 961=17 Cr L J 241.

——Where the petitioners have been convicted under S. 143, Penal Code, an order under S. 106, Criminal P. C. is not legal. (Rampini and Sharfuddin JJ.) Rajnarain Roy v. Bhagabat Chunder Nandi,

35 Cal 315 = 7 Cr L J 392.

——Ss. 379 and 143, Penal Code — A conviction under S. 143, or S. 379, Penal Code, is not of itself sufficient to sustain an order under S. 106, Criminal P. C. unless it is clearly found that there was force employed, or that there were armed men present so as to bring the case within the scope of S. 106, Criminal P. C. (Rampini and Sharfuddin JJ.) Chandra Bhusan Sen v. Emperor,

7 C L J 172=7 Cr L J 200.

——Ss. 106, 107 — Security to keep the peace on conviction under S. 143, I. P. C.—Procedure.

An offence under S. 143, I. P. C., is not necessarily one which would justify a Magistrate, on conviction of the accused, to pass an order under S. 106. But where a number of armed men were assembled with the intention of

CRIMINAL P. C. (V of 1898), S. 106 — 3. Offence punishable under S. 143, Penal Code

taking forcible possession which might lead to a breach of the peace, an order under S. 106, Criminal P. C. on a conviction under S. 143, I. P. C., may be made. Where the effect of an order under S. 106 would be to prevent a party entitled to possession from taking possession of the property, it is desirable that the opposite party shculd be bound down in a proceeding under S. 107, Criminal P. C. (Mitra and Holmwood JJ.) Bepin Behari Guha v. Pranakul Majumdar,

11 C W N 176=5 Cr L J 19.

——Conviction under Ss. 143, 379, I. P. C.—Sufficiency of, for order under S. 106.

A conviction under S. 143, or S. 379, Penal Code, is not of itself sufficient to sustain an order under S. 106, Criminal P. C., although such conviction, coupled with findings bringing the case within the scope of S. 106, may sustain an order under that section ; but, in such cases, those findings must be clear and explicit ; and, moreover, if the finding be that the accused was guilty of the offence of criminal intimidation, the conviction must also be of criminal intimidation in order to sustain an order under S. 106. (Banerjee and Handley JJ.) Kishore Sirkar v. King-Emperor,

8 C W N 517=1 Cr L J 447.

4. Offence of rioting under S. 147, Penal Code.

——Conviction under S. 149 and also under Ss. 147 and 323, Penal Code.

Where an accused is convicted by virtue of S. 149, Penal Code, an order for security under S. 106, Criminal P. C., against him is bad. But where the accused is also convicted under Ss. 147 and 323, Penal Code, both of which involve a breach of the peace, even though an order under S. 106, Criminal P. C., cannot be passed owing to the accused's conviction under S. 325 read with S. 149, Penal Code, yet such an order can properly be made owing to his conviction under Ss. 147 and 323. Section 106 as amended by Act XVIII of 1923, no doubt excludes S. 149 as well as some other sections of Chap. VIII of the Penal Code, from its operation but it not only does not exclude S. 147 but is applicable to "other offences involving a breach of the peace." (Ziaul Hasan J.) Manni Lall v. Emperor,

AIR 1938 Oudh 95=1938 O W N 218=10 R O 222=173 I C 386=39 Cr L J 341.

——Rioting.

Where the accused were convicted of rioting, held, that it was right to have them bound over for a period of one year. (Beasley and Cornish JJ.), Pedda Hampayya v. Emperor,

1929 M W N 583.

——Arms—Lathies.

"Lathies" are "arms" within S. 106. (Roe and Jwala Prasad JJ.) Sarjulal v. Emperor,

AIR 1916 Pat 390=35 I C 489=17 Cr L J 313.

——Land dispute — Persons convicted of rioting — Propriety of order binding them down— Indian Penal Code, S. 147.

On the complainant trying to take possession of land in the occupation of the accused, the latter in preventing the former and his party from doing so used more force than was necessary . The accused were not only convicted and sentenced for rioting but were also directed to execute bonds with sureties to keep the peace under S. 106, Criminal P. C. Held that the accused were rightly convicted of the offence of rioting. But they should not have been bound down under S. 106, Criminal P. C. because thereby they would be prevented from resisting any further attempt by the complainant to take possession of the land. (Rampini and Gupta JJ.) Nahar Khan v. Emperor,

11 C W N 840=6 Cr L J 40.

5. Offence punishable under S. 149, Penal Code.

——Penal Code (Act XLV of 1860), Ss. 325, 147, 149—Accused made constructively liable by calling in the aid of S. 149.

Where a person is made constructively liable for an offence by calling in the aid of the provisions of S. 149, I. P. C., it is not proper to take action against him under S. 106, Criminal P. C. Where the Sessions Judge has altered the conviction of the accused to one under S. 325 read with S. 149, I.P.C., an order under S. 106, Criminal P. C., should not be passed (Srivastava J.), Saun Pande v. Emperor,

AIR 1934 Oudh 279=7 R O 74=11 O W N 992=10 Luck 100=150 I C 945=35 Cr L J 1159.

——Penal Code, Ss. 326, 149—Charge under—No conviction under S. 147.

Where the accused were found guilty of rioting and of offences punishable under S. 326 read with S. 149, I. P. C but were only convicted of the latter offence and not also under S. 147 :

Held, that technically, an order passed against them under S. 106, Criminal P. C., would be illegal and should be set aside. (Addison J.) Ghasita Singh v. Emperor,

AIR 1932 Lah 489=Ind Rul (1932) Lah 455 (1)=138 I C 289 (2)=33 Cr L J 576 (1).

——Section of the I. P. Code read with S. 149 — Change in the Law.

The amendment to Section 106 by the Act XVIII of 1923 has made an order under S. 106 impossible where the only section under which the accused are convicted is a section of the Penal Code which is read with S. 149. The amendment is not very happily worded for it speaks of an offence punishable under S. 149. No offence is punishable under S. 149 alone ; there must be some substantive offence charged to be read with S. 149. Where the accused were convicted under Section 325 read with Section 149,

Held, that under Section 106 as it now stands, an order cannot be passed against them. (Adami and Bucknill JJ.) Chhedi Singh v. Emperor,

AIR 1925 Pat 117 = 85 I C 42 =3 Pat 870=6 P L T 330=26 Cr L J 426.

——Order under.

Order under S. 106, Criminal P. C., does not lie where accused is convicted under any section of I. P. Code read with S. 149. (Adami and Bucknill JJ.), Chhedi Singh v. King-Emperor,

AIR 1925 Pat 117=85 I C 42 =6 P L T 330 =3 Pat 370=26 Cr L J 426.

6. "Assault".

——S. 110 (e) — Attempt to commit rape, if involves breach of peace.

Section 106, Criminal P. C., makes it quite clear that an assault is an offence involving a breach of the peace, and an attempt to rape does involve an assault, force and violence upon the person against whom this offence is committed, and, therefore, involves a breach of the peace within the meaning of S. 110(e), Criminal P. C. (Horwill J.) In re Ganti Veera Reddi,

A I R 1938 Mad 615=47 M L W 640=1938 M W N 601=11 R M 177=176 I C 815=39 Cr L J 816.

——Section 106, Criminal P. C., makes it clear that an assault is an offence involving a breach of the peace. (Horwill J.) In re Ganti Veera Reddi,

A I R 1938 Mad 615 = 47 L W 640 = 1938 M W N 601=11 R M 177=176 I C 815=39 Cr L J 816.

CRIMINAL P. C. (V of 1898), S. 106—6. "Assault"

——Conviction for assault — Election campaign — Order legal.

If the Court binds a person convicted of an assault in view of his being a dangerous person, the order is legal under S. 106, Criminal P. C. It does not matter if the assault is made during election time. (Sulaiman J.) Jafar Husain v. Emperor,

AIR 1924 All 306=L R 4 All 259 (Cr)=46 All 105=25 Cr L J 906.

——Assault.

An offence under S. 325, Penal Code, involves the use of criminal force and is, in that sense an assault, but the word "assault" as used in S. 106 of the Criminal P. C., refers to offence of assault as defined in S. 351, Penal Code, and is made punishable by S. 352. An offence under S. 325 does not always involve the breach of the peace. (Lindsay J. C.) Dubri v. Emperor,

71 I C 691=24 Cr L J 227 (Oudh).

7. "Offence involving a breach of the peace".

(a) Interpretation of.
(b) Express finding.
(c) Offence under S. 153 (Provocation to cause hurt).
(d) Offence under S. 294 (Obscene acts).
(e) Offence under S. 323 (Voluntarily causing hurt).
(f) Offence under S. 342 (Wrongful confinement).
(g) Offence under S. 379 (Theft).
(h) Offence under S. 392 (Robbery).
(i) Offence under S. 426 (Mischief).
(j) Offence under S. 447 (Criminal trespass).
(k) Offence under S. 452 (House trespass).
(l) Offence under S. 504 (Insult).
(m) Offence under S. 506 (Criminal intimidation).
(n) Offence under S. 510 (Misconduct in public).

7. "Offence involving a breach of the peace".— (a) Interpretation of.

——Applicability and scope — "Other offences involving breach of peace", interpretation of.

The words "other offences involving a breach of the peace" in S. 106, Criminal P. C., refer to the actual definition of an offence in the substantive law, that is to say, the commission or intention to commit a breach of the peace must be one of the elements which would go to make up the offence. (Henderson and Khundkar JJ.) Ankulal Saha v. Sadhan Chandra,

A I R 1939 Cal 484=69 C L J 565=43 C W N 867=12 R C 177=I L R (1939) 2 Cal 261 = 183 I C 672=40 Cr L J 836.

——'Offences involving breach of the peace', meaning of.

The words "offences involving a breach of the peace" in S. 106, Criminal P. C., include not only offences of which a breach of the peace is a necessary ingredient and in which a breach of the peace has actually occurred but include also cases of offences in which an evident intention to commit a breach of the peace is expressly found. (Malik and Patterson JJ.) Abdul Gafur v. Mahammad Mirza,

A I R 1931 Cal 645 = 59 Cal 659=35 C W N 1150=Ind Rul (1932) Cal 67=134 I C 1187=33 Cr L J 82.

——Forming unlawful assembly to overawing people — 'Breach of peace'—Order under S. 106.

To form an unlawful assembly and by means of that unlawful assembly to overawe and intimidate other persons, preventing them from doing what they are legally entitled to do and compelling them to abandon their property which they are entitled to keep, does actually amount to a breach of the peace of a most serious nature

CRIMINAL P. C. (V of 1898), S. 106 — 7. "Offence involving a breach of the peace"— (a) Interpretation of

within the meaning of S. 106, Criminal P. C. (James J.) Lal Mohammad v. Emperor,

A I R 1931 Pat 337 (2)=Ind Rul (1931) Pat 219=12 P L T 556=131 I C 539=32 Cr L J 739.

——"Other offence".

The offences intended by "other offence" are those ejusdem generis with the offences against public tranquillity and of assault which are mentioned in the section. (Venkatasubba Rao J.) Kuppa Reddiar, In re,

A I R 1924 Mad 808 = 81 I C 920 = 47 Mad 846=20 M L W 481=47 M L J 232=25 Cr L J 1096.

——No breach of peace apart from the offence.

The section applies when the offence amounts to or constitutes a breach of the peace, the question to be answered in each case is, does the offence brought home to the individual necessarily include or imply a breach of the peace or does it constitute or amount to a breach of the peace. If it does, the section applies. Apart from the offence, there need not ensue a breach of the peace when breach of the peace is a component part or an ingredient of the offence. (Venkatasubba Rao J.) Kuppa Reddiar, In re,

A I R 1924 Mad 808=47 M L J 232=81 I C 920=47 Mad 846=20 M L W 481=25 Cr L J 1096.

——Breach of the peace implies some offence against the public: 8 O L J 318, Foll. (Wazir Hasan A. J. C.) Mahant Durga Bharathi v. Emperor,

A I R 1923 Oudh 37=72 I C 955=24 Cr L J 491.

——"Other offences" finding as to breach of peace.

The expression "Other offences involving a breach of the peace" would embrace offences ejusdem generis with the offences of assault and rioting which are specified in the section. It is not necessary that the lower Court should record a finding that a breach of the peace was involved in order to invest itself with the power to make an order under S. 206 (1). Where the Judge has recorded his opinion that it is necessary in a case to require the convicted persons to execute a bond for keeping the peace that is all that the section in terms demands. (Spencer J.) Ramaswami Thevan v. Crown,

A I R 1923 Mad 618=44 M L J 485=72 I C 615=17 M L W 499=1923 M W N 314=32 M L T 297=24 Cr L J 455.

——Applicability—No breach of peace.

Section 106, Criminal P. C., can only be applied when the person concerned has been convicted of an offence involving a breach of the peace i. e., the offence must be one of which a breach of the peace is in law a necessary ingredient. (AIR 1921 Lah 96, Ref.) It cannot be said that a breach of the peace is necessarily involved in the commission of the offence of wrongful confinement. (Broadway J.) Mahomed Afzal v. Emperor,

A I R 1924 Lah 311=71 I C 879=24 Cr L J 271.

——Offence involving a breach of the peace—Meaning of.

The words "offence.....peace" in S. 106 mean an offence in which breach of the peace is an ingredient and not merely an offence provoking or likely to lead to a breach of the peace. To justify an order under S. 106, the person must have been convicted of the offence of criminal intimidation. An order under S. 106 cannot be passed on a conviction for an offence under S. 143 or S. 297 of the Penal Code as those offences do not necessarily involve the use of force. (Martineau J.) Abdulla v. Emperor,

A I R 1921 Lah 96= 2 Lah 279 = 63 I C 869=22 Cr L J 709.

——Other offences involving a breach of the peace.

Per Heaton J.—The words "other offences involving a breach of the peace" cover two classes of cases; the first where there has actually been a breach of the peace, the

CRIMINAL P. C. (V of 1898), S. 106—7. "Offence involving a breach of the peace"—(a) Interpretation of other class where the definition of the offence involves a breach of the peace.

Per Pratt J.—The phrase includes offences which are offences because a breach of the peace has occurred or because a breach of the peace is likely to occur. (Heaton and Pratt JJ.) Syed Yacoob v. Emperor,

A I R 1919 Bom 150 = 43 Bom 554 = 21 Bom L R 270=51 I C 783=20 Cr L J 543.

——Breach of peace—Meaning of.

An order under S. 106 is not illegal even though there was technically no breach of the public peace by the accused. A person who enters another's house and cuts off his ear with the ear-ring and deprives him of his property, commits a breach of the peace in the wider sense of the expression. (Oldfield J.) In re, Savarajulu Naidu,

A I R 1919 Mad 770=47 I C 445=19 Cr L J 929.

——"Offence involving a breach of the peace"—Meaning and scope of.

The words "offence involving a breach of the peace" in S. 106, Criminal P. C., should be construed liberally and as referring not only to a necessary breach of the peace but also to a probable breach. (Knox J.) Emperor v. Manik Rai,

33 All 771=8 A L J 925= 11 I C 589=12 Cr L J 405.

——"Offence involving breach of peace"—Conviction under S. 448, Penal Code—Order under S. 106 if can be passed.

The words "offence involving breach of peace," in S. 106, mean an offence into which breach of peace necessarily enters as a constituting element. An offence punishable under S. 448, Penal Code, is not such offence. Where therefore a person is convicted of an offence under S. 448 (though the facts found show that in committing the offence the accused did acts involving breach of peace), an order under S. 106 cannot be passed. (Abdul Rahim J.) In re, Panttanbi Moideen,

4 M L T 468=19 M L J 66=9 Cr L J 88.

7. "Offence involving a breach of the peace".—(b) Express finding.

——Procedure—Offence not coming under S. 106—Duty of Magistrate to record finding on facts making the section applicable.

When a person is convicted of offences which do not in themselves, and apart from any other incidents, come within the terms of S. 106, Criminal P. C., it is incumbent upon a Magistrate to record a clear finding with respect to the facts which, in his opinion, make the section applicable to the case. (Milne J. C. and Mehta A. J. C.) Haroon v. Emperor,

A I R 1932 Sind 87=26 Sind LR 18=Ind Rul (1932) Sind 98=139 I C 130=33 Cr L J 713.

——Conviction for offence under S. 479, Penal Code—'Offence involving breach of peace', meaning of.

An order under S. 106, Criminal P. C., can be passed against a person convicted of an offence which does not necessarily involve a breach of the peace, if there is an express finding by the Court that the offence did, in fact, involve a breach of the peace. (Jack J.) Rafatulla Pramanik v. Rajek Sardar,

A I R 1930 Cal 646=34 C W N 988=Ind Rul (1931) Cal 521=132 I C 96=32 Cr L J 828 (1).

——In order to support an order under S. 106, the Court must, as a condition precedent, show some grounds for requiring the security. The fact that the accused have been convicted of an offence involving a breach of the peace is not alone sufficient to pass an order under S. 106. (Foster J.) Jai Singh v. King-Emperor,

A I R 1927 Pat 37=97 I C 424=7 A I Cr R 136=27 Cr L J 1112.

CRIMINAL P. C. (V of 1898), S. 106—7. "Offence involving a breach of the peace"—(b) Express finding

——In the absence of a finding that there is a likelihood of a breach of the peace, an order under S. 106 cannot be passed. (Kinkhede A. J. C.) Rajaram v. Govinda,

A I R 1925 Nag 36=81 I C 888=25 Cr L J 1064.

——No finding as to breach of peace.

Where there was no express finding that there was an apprehension of a breach of the peace and the accused were convicted of an offence of assault but Magistrate had also expressed an opinion to the effect that the accused persons appeared to be very troublesome:

Held, that there was no legal flaw in the judgment and order under S. 106 was justified. (Sulaiman J.) Jafar Husain v. Emperor,

A I R 1924 All 306=81 I C 442=46 All 105=4 L R A Cr 259=25 Cr L J 906.

——S. 106 (3)—Finding as to breach of peace is necessary.

The appellate Court is wrong in directing accused to enter into a bond under S. 106, Criminal P. C., when there is no finding that any breach of peace occurred: 29 Mad. 190; 37 Mad. 153, Ref. (Kumaraswami Sastri J.) Thirumala Reddi In re,

A I R 1923 Mad 133=30 M L T 348=76 I C 966=25 Cr L J 294.

——Finding as to breach of peace—In futuro.

To justify an order for security under S. 106 there must be an express finding to the effect that the act involved a breach of the peace or an evident intention of committing the same or the evidence must be so clear as to satisfy the Court (without an express finding) that such was the case. The word 'involve' connotes the inclusion not only of a necessary but also of a probable future circumstance, antecedent condition or consequence: 26 Cal. 576; 33 All. 771, Foll. (Baker Offg. J. C.) Nanha v. Kanhayalal,

A I R 1924 Nag 118=75 I C 983=25 Cr L J 71.

——Finding as to breach not necessary.

The expression "other offences involving a breach of the peace" would embrace offences ejusdem generis with the offences of assault and rioting which are specified in the section. It is not necessary that the lower Court should record a finding that a breach of the peace was involved in order to invest itself with power to make an order under S. 106 (1). Where the Judge has recorded his opinion that it is necessary in a case to require the convicted persons to execute a bond for keeping the peace that is all that the section in terms demands. (Spencer J.) Ramaswami v. Emperor,

A I R 1923 Mad 618 = 44 M L J 485 = 17 M L W 499=(1923) M W N 314=32 M L T (H C) 297=72 I C 615=24 Cr L J 455.

——Intention to commit a breach of the peace.

Before an accused can be called upon to give security under S. 106 of the Code, it must be proved that there was an intention on his part to commit a breach of the peace, at the time of committing the offence, of which he has been convicted. (Evans J.) Maulvi Maqbul Ahmad v. King-Emperor,

9 O C 381=5 Cr L J 25.

7. "Offence involving a breach of the peace".—(c) Offence under S. 153 (Provocation to cause hurt).

——Order under the section on conviction under S. 163, I. P. C. is not warranted. (Dillon J.) Emperor v. Husain Bakhsh,

29 A 569 = 1907 A W N 171 = 6 Cr L J 14.

7. "Offence involving a breach of the peace."—(d) Offence under S. 294 (obscene acts).

——Expression "offences involving breach of peace," meaning of — Conviction of accused under S. 294, Penal Code—Order under S. 106 when can be made.

CRIMINAL P. C. (V of 1898), S. 106 — 7. "Offence involving a breach of the peace"—(d) Offence under S. 294 (obscene acts)

The expression "offences involving a breach of the peace" in S. 106, Cr. P. C., means offences in which the commission of a breach of the peace is a necessary ingredient, or offence, the commission of which has actually led to a breach of the peace (irrespective of the party by which that breach is committed). It is impossible to construe the word 'involve' as equivalent to the words 'likely to lead to.' The mere use of abusive language in a public place is not of itself a breach of the peace, though, of course, it is likely to lead to one. It is not one of the offences affecting the public tranquillity mentioned in S. 106. The words "breach of the public peace" have not only in popular usage but in law, the significance of a disturbance of the peace by something more than mere abusive or obscene words, that is to say, by resort, if not to actual violence, to threats of it. In other words, the word 'peace' is used as a synonym for security rather than for tranquillity. Where, therefore, an accused person is convicted of an offence under S. 294, I. P. C., an order under S. 106 cannot be made unless there is a finding that active criminal intimidation or assault, etc., have actually occurred in consequence of the obscene abuse. (Mosely J.) King v. Maung Kyi Nyo,

A I R 1940 Rang 50 = 1940 Rang L R 256 = 12 R Rang 320=187 I C 149=41 Cr L J 421.

——Using abusive language and being disorderly at railway station.

Using abusive language and being generally disorderly at a railway station amounts to a breach of the peace. (Allsop J.) Raja Ram v. Emperor,

A I R 1936 All 140 = 8 R A 709 = 1936 A L J 82 = 1936 A W R 195 (1)=160 I C 1088=37 Cr L J 385.

——Uttering obscene abuse in public place — Breach of the peace — (Penal Code (1860), S. 294) — A conviction under S. 294, Penal Code, for uttering obscene abuse in a public place may amount to a conviction for an offence involving a breach of the peace within the meaning of S. 106, Criminal Procedure Code. (Irwin Esqr.) King-Emperor v. Mi Kun Ya,

U B R 1904, 1st Qr Penal Code 4=1 Cr L J 555.

——Offence involving breach of peace—An offence under S. 294 does not necessarily involve a breach of the peace for the purposes of S. 106 of the Criminal Procedure Code. (Birks J.) King-Emperor v. Ma Hla Bon,

2 L B R 125.

7. "Offence involving a breach of the peace."

(e) Offence under S. 323 (voluntarily causing hurt.)

——Penal Code (Act XLV of 1860), S. 323 — Accused convicted of causing hurt.

An accused convicted of causing hurt under S. 323, I. P. C., can be ordered to find security under S. 106, Cr. P. C. The words "assault or other offences involving a breach of the peace" clearly include the offence of causing hurt under S. 323, I. P. C., and so an accused convicted under that section can be ordered to find security to keep the peace under S. 106, Cr. P. C. (Raza J.) Surajpal v. Kamta,

A I R 1934 Oudh 425 = 9 Luck 272 = 6 R O 197 = 10 O W N 1228=146 I C 918 (1)=35 Cr L J 284 (1).

——If a person is convicted under S. 323, I. P. C. which necessarily is an offence involving breach of peace, no further finding is necessary for an order under S. 106, Cr. P. C. (Jackson J.) Kunhikannan v. Emperor,

1934 M W N 562.

——Section 106 may be applied when the conviction is under S. 323, Penal Code, as hurt involves a breach of the peace. (Jackson J.) Irulappa Asari v. Emperor,

1934 M W N 248.

CRIMINAL P. C. (V of 1898), S. 106 — 7. "Offence involving a breach of the peace"—(e) Offence under S. 323 (voluntarily causing hurt)

——Offences of assault and causing hurt — 'Assault or other offence involving breach of the peace', interpretation of—Penal Code, S. 323.

The offences of assault and of causing hurt necessarily involve a breach of the peace within the meaning of S. 106, Criminal P. C. Consequently, if a Magistrate finds that an offence of causing simple hurt has been committed it is not necessary for him to come to a separate finding that a breach of the peace was involved.

The Court is not, however, bound to take security from a person convicted of an offence which involves a breach of the peace. The Court must be of opinion that it is necessary to require such person to execute a bond for keeping the peace. Although the law does not provide that the Court shall record its reasons for forming that opinion, yet it is desirable for the Court to do so in order that an Appellate Court may be in possession of the reasons if they are not apparent on the face of the record.

The words "assault or other offence involving a breach of the peace" in S. 106, Criminal P. C., mean that an assault involves a breach of the peace. (Kendall and Iqbal Ahmad JJ.) Nazir-ud-Din v. Emperor,

A I R 1933 All 609=6 R A 21=(1933) A L J 1345=55 All 850=144 I C 954 (2)=34 Cr L J 859.

——Order for security for keeping the peace—Penal Code, S. 324 — Formal finding that conviction involved breach of peace.

Where the accused were convicted under S. 324, Penal Code, and fined and were ordered to furnish security bonds under S. 106, Criminal P. C., and it was contended in revision that the absence of an inquiry and a judicial finding that the offence involved a breach of the peace, vitiated the order :

Held, that inasmuch as the accused committed an offence under S. 324 which involved a breach of the peace, it was immaterial whether the Magistrate gave a formal finding to this effect or not. (Harrison J.) Hayat Khan v. Emperor,

A I R 1932 Lah 435 = 13 Lah 336 = Ind Rul (1932) Lah 564=33 P L R 588=139 I C 127 (1) = 33 Cr L J 746 (1).

——Grounds—Offence involving breach of the peace.

In all ordinary cases of conviction under S. 323, Penal Code, there is a conviction for an offence involving a breach of the peace, and the desirability of taking security must depend upon how far the circumstances indicate that if such a breach of the peace is likely to recur. (A. I. R. 1927 All. 157 and A. I. R. 1926 All. 144, Expl.) (Boys J.) Mewa Lal v. Emperor,

A I R 1929 All 349=116 I C 789=51 All 540 = 1929 A L J 340 = 10 L R A Cr 57 = 11 A I Cr R 402 = 30 Cr L J 686.

——"Other offences", etc. S. 323, Penal Code.

The words "assault or other offences involving a breach of the peace" clearly include the offences of causing hurt under S. 323, Penal Code, and a person convicted under that section can be ordered to find security for keeping the peace under S. 106 : A I R 1921 Oudh 140, Diss. (Stuart C. J. and Raza J.) King-Emperor v. Ramanuj,

A I R 1927 Oudh 101= 3 O W N Sup 311 = 99 I C 352=28 Cr L J 144.

——Finding as to breach of the peace.

Where a person has been convicted under S. 323, an order under S. 106 can only be passed when there is a finding that in causing the simple hurt a breach of the peace was involved. (Banerji J.) Atma Ram v. Emperor,

A I R 1927 All 157 = 99 I C 120 = 49 All 131 = 8 L R A Cr 9=7 A I Cr R 127=28 Cr L J 88.

CRIMINAL P. C. (V of 1898), S. 106 — 7. "Offence involving a breach of the peace"—(e) Offence under S. 323 (voluntarily causing hurt)

——Breach of peace — Order of binding over is justified only if in the assault or hurt, breach of peace is involved.

Under S. 106 an order binding over an accused person can only be passed when in a case of causing simple hurt or assault a breach of the peace is involved. No hard and fast rules can be laid down; but in the absence of a finding that the assault which took place involved breach of the peace or public tranquillity, the Magistrate cannot merely on the ground that the parties were on bad terms bind the accused down. No one goes to assault his personal friends, so that the mere fact of the assault necessarily involves the finding directly or indirectly that the parties are on bad terms : A. I. R. 1923 Mad. 618, Dist. (Banerji J.) Muhammed Rahim v. Emperor,

A I R 1926 All 144=89 I C 1025 = 23 A L J 1053= 26 Cr L J 1457.

——Conviction under S. 323, Penal Code — Attacking in public place is such offence.

Where a person has been convicted of an offence under S. 323, Penal Code for striking a person with a lathi and kicking and cuffing another at a public place it is open to the Court to require the accused to furnish security under S. 106, Criminal P. C. : 9 O. C. 318 ; AIR 1919 Bom 150; 33 A. 771, Ref. (Dalal and Simpson A. J. Cs.) Emperor v. Sheo Ram,

A I R 1924 Oudh 233=9 O & A L R 191 = 72 I C 79 (2)=24 Cr L J 319 (2).

——Section 323, Penal Code is such offence—Person convicted under S. 323, Penal Code—If can be bound over.

A person convicted under S. 323 of the Penal Code, may be bound over to keep the peace under S. 106 of the Criminal P. C. (Lindsay J.) Chhaju v. Emperor,

A I R 1921 All 35 = 19 A L J 856 = 63 I C 460 = 3 U P L R (A) 173=22 Cr L J 668.

——Conviction under S. 324, Penal Code — Bond under S. 106—See Reformatory Schools Act (1897), S. 31.

2 Cr L J 720 (L B).

7. "Offence involving a breach of the peace".—

(f) Offence under S. 342 (wrongful confinement).

——Wrongful confinement.

Wrongful confinement does not per se import breach of the peace but if the offenders using violence seize another and tie his hands, it clearly involves breach of the peace and would come under S. 106. (Venkatasubba Rao J.) Kuppa Reddiar, In re,

A I R 1924 Mad 808=47 M L J 232=81 I C 920=47 Mad 846=20 M L W 481=25 Cr L J 1096.

——Wrongful confinement is not such offence.

Section 106 of the Criminal P. C. can only be applied when the person concerned has been convicted of an offence involving a breach of the peace. The offence must be one of which a breach of the peace is in law a necessary ingredient. It cannot be said that a breach of the peace is necessarily involved in the commission of the offence of wrongful confinement. (Broadway J.) Mahommad Afzal v. Emperor,

A I R 1924 Lah 311=71 I C 879=24 Cr L J 271.

7. "Offence involving a breach of the peace".—

(g) Offence under S. 379 (theft).

——Express finding by Court.

Unless the offence is one which necessarily involves a breach of the peace, there must be an express finding by the Court that the offence committed did in fact involve a breach of the peace for proceeding under S. 106. Where the conviction was one under S. 379, Penal Code and there was an express finding that the offence involved a breach of the peace :

CRIMINAL P. C. (V of 1898), S. 106 — 7. "Offence involving a breach of the peace"—(g) Offence under S. 379 (theft)

Held, that the order under S. 106 was valid in law. (Jack J.) Rafatulla Pramanic v. Rajek Sardar,

A I R 1930 Cal 646=I R 1931 Cal 528=132 I C 96= 34 C W N 988=1930 Cr C 1068=32 Cr L J 828 (1).

7. "Offence involving a breach of the peace".—

(h) Offence under S. 392 (Robbery).

——S. 106 (1)—Offence under S. 392, Penal Code is not such offence.

An offence under Ss. 392 and 75, Penal Code, does not involve a breach of the peace. An order passed under S. 106, Criminal P. C., directing certain accused who were convicted of an offence under that section to give security for keeping the peace is illegal. (Spencer J.) In re, Muthurakka Thevan,

A I R 1916 Mad 829=18 M L T 121 = 2 L W 631= 30 I C 435=16 Cr L J 611.

7. "Offence involving a breach of the peace".—

(i) Offence under S. 426 (Mischief).

——Order under, in respect of offence under S. 426, Penal Code—Legality.

Offence under S. 426, Penal Code, does not involve a breach of the peace and the order under S. 106, Criminal P. C. cannot be sustained. (Lakshmana Rao J.) In re, Subba Rao,

A I R 1940 Mad 55 = 50 M L W 511 (1) = 1939 M W N 1012=(1939) 2 M L J 750 = 12 R M 593=185 I C 753=41 Cr L J 235.

——Security, if can be taken from person convicted under S. 426, Penal Code.

Security under S. 106, Criminal P. C., cannot legally be taken from a person who has been convicted under S. 426, Penal Code, as the offence of mischief does not involve breach of the peace. (Ziaul Hasan J.) Ramrup v. Emperor,

A I R 1939 Oudh 38 = 1938 A W R 126 = 1938 O W N 1127=11 R O 121=178 I C 665=40 Cr L J 138.

7. "Offence involving a breach of the peace."

(j) Offence under S. 447 (Criminal trespass).

——Accused convicted under S. 447, Penal Code — No finding that there actually was breach of peace.

The words 'involving a breach of the peace' in S. 106, Cr. P. C., require that a breach of the peace should be an ingredient of the offence proved, and before the section can be put in force, there must be a finding that a breach of the peace has occurred.

Where, therefore, an accused is convicted of an offence under S. 447, Penal Code, but there is no finding that there actually was a breach of peace, the accused cannot be bound over under S. 106, Criminal P. C. (Yorke J.) Bans Gopal v. Emperor,

AIR 1939 Oudh 45=11 R O 156=1938 O W N 1361 = 1939 A W R 11 = 1939 O L R 19 = 14 Luck 360= 179 I C 269=40 Cr L J 183.

7. "Offence involving a breach of the peace."

(k) Offence under S. 452 (House-trespass).

——Conviction under S. 452, Penal Code — Order under S. 106, if should follow.

An order under S. 106, Cr. P. C., does not follow a conviction under S. 452, I. P. C., unless the facts of a particular case justify such order. (Bartley and Henderson JJ.) Jung Bahadur v. Mahadeo Shaw,

A I R 1939 Cal 320 = 12 R C 112 = 182 I C 850=40 Cr L J 721.

——S. 452, I. P. Code.

The offence under S. 452 is not one involving breach of the peace and security cannot be demanded for keeping the peace under S. 106, Cr. P. C. AIR 1929 Lah 96, Rel. on. (Martineau J.) Santosh Singh v. Emperor,

AIR 1926 Lah 675=94 I C 139=27 Cr L J 571.

CRIMINAL P. C. (V of 1898), S. 106—7. "Offence involving a breach of the peace".—(k) Offence under S. 452 (House-trespass)

——Trespassing in man's house for the purpose of causing him injury is such an offence as to involve breach of the peace within S. 106, Cr. P. Code and when conviction is made under S. 452, I. P. C. an order under S. 106, Cr. P. Code, can be properly passed against the accused : AIR 1920 All 164, Foll. (Martineau J.) Dullah v. Emperor,

AIR 1925 Lah 621=89 I C 1030=26 Cr L J 1462.

——Order proper where intention to commit breach is clear.

Upon a conviction for criminal trespass when there is an intention to commit breach of peace, an order under S. 106 may lawfully be passed : 20 W. R. Cr. 37, Foll. (Piggott J.) Dharamraj v. Emperor,

L R 1 A (Cr) 143.

——Criminal trespass is such offence.

When a person is convicted of an offence like criminal trespass, a necessary ingredient of which is a breach of the peace, an order under S. 106, Cr. P. Code may lawfully be passed by the Magistrate. (Piggott J.) Dharamraj v. Emperor,

A I R 1920 All 164 = 42 All 345 = 2 U P L R (All) 64 = 18 A L J 300 = 55 I C 304 = 21 Cr L J 288.

——Criminal trespass on penatchut is house-trespass involving breach of peace.

Criminal trespass on a penatchut (outer verandah of a Burmese house where shoes are taken off) under the circumstances mentioned in S. 441, I. P. C., with the object of causing hurt to a person in the house is house trespass involving breach of the peace under S. 106, Cr. P. C. (Twomey J.) Sit Hon. v. Emperor,

A I R 1917 L B 76=9 Bur L T 204=8 L B R 463 = 37 I C 145=18 Cr L J 81.

7. "Offence involving a breach of the peace."
(l) Offence under S. 504 (Insult).

——Insult with intent to provoke a breach of peace cannot be an offence involving a breach of the peace. (Burn J.) Gurunatha Mudaliar v. Thiruvengada Mudaliar,

1935 M W N 823.

——Conviction under S. 504, Penal Code, whether ground for ordering security — 'Offence involving breach of the peace,' meaning of.

An offence under S. 504, I. P. C., cannot be said to be one "involving a breach of the peace," and if a conviction takes place under that section and no other section an order under S. 106, Cr. P. C., cannot properly be made.

The words "involving a breach of the peace" in the section require that a breach of the peace should be an ingredient of the offence proved, and before the section can be put in force, there must be a finding that a breach of the peace has occurred. (Raza and Smith JJ.) Sadho Ram v. Emperor,

AIR 1932 Oudh 33=8 O W N 1286=Ind Rul (1932) Oudh 51=7 Luck 573=135 I C 691=33 Cr L J 193.

——Interpretation — "Offences involving breach of the peace."

The expression "Offences involving a breach of the peace" in S. 106, Cr. P. Code means offences in which a breach of the peace is an ingredient and not offences provoking or likely to lead to a breach of the peace.

Held, that S. 504, I. P. Code does not necessarily involve a breach of the peace and that an order under S. 106, Criminal P. C. cannot follow a conviction under S. 504, Penal Code. (Cuming J.) Asoke Prasanna Bal v. Emperor,

A I R 1930 Cal 802 = 129 I C 413=1930 Cr C 1097= 34 C W N 651=32 Cr L J 359.

CRIMINAL P. C. (V of 1898), S. 106—7. "Offence involving a breach of the peace"— (l) Offence under S. 504 (Insult)

——Offence under S. 504, Penal Code.

A breach of the peace or its probability is an ingredient of the offence under S. 504, Penal Code. (Heaton and Pratt JJ.) Syed Yacoob v. Emperor,

A I R 1919 Bom 150=20 Cr L J 543.

7. "Offence involving a breach of the peace."
(m) Offence under S. 506 (Criminal intimidation).

——Security to keep peace — In what cases may be demanded.

Section 106 does not apply to a person not convicted of riot, assault, or other offence involving a breach of the peace, or of abetting the same or of assembling armed men, or taking other unlawful measures with evident intention of committing the same, or committing criminal intimidation. The latter offence is defined by S. 503 of the Penal Code and it is made punishable by S. 506 with rigorous imprisonment for two years or fine or both.

Although intimidation is one of the elements of an unlawful assembly, the criminal intimidation specified in S. 106 is the offence specifically defined by S. 503, the sentence provided by S. 506 being more severe than that provided by S. 143, and S. 106 cannot be applied to a person convicted under S. 143, merely because intimidation by show of criminal force is in the fourth and fifth parts of the definition in S. 141, an element of the offence punishable under S. 143. (Arthur Reid C. J.) Abdulla Khan v. Crown,

126 P L R 1910=8 Ind Cas 551=11 Cr L J 680.

7. "Offence involving a breach of the peace".—
(n) Offence under S. 510 (Misconduct in public).

——Conviction under S. 510, Penal Code—Security under S. 106.

Offence under S. 510 of the Penal Code is not an offence involving a breach of the peace. The order for security under S. 106, Criminal P. C., in such a case is, therefore, unsustainable. (Lakshmana Rao J.) In re V. Mekala Venkatappa,

A I R 1940 Mad 755 = (1940) M W N 531 (1) = 52 M L W 66 (2)=191 I C 240=42 Cr L J 16.

8. "Is convicted of such offence".

——Accused convicted under S. 75, Madras Police Act for disorderly behaviour on finding fellow workers refusing to join strike — No antecedent crime involving breach of peace—Bond under S. 106 should not be taken.

Bonds under S. 106 should not be taken from accused convicted under S. 75, Madras Police Act, for being disorderly in a public place, and none of whom had any antecedents of crime involving a breach of the peace and all of whom had acted in sudden heat of passion on finding their fellow workers refusing to join the strike and persisting in going on working. (Panchapakesa Ayyar J.) A. Govindaswamy v. The Crown,

A I R 1950 Mad 31 = 62 M L W 612=1949 M W N 572=1949-2 M L J 297=51 Cr L J 253.

——"Or other offence involving a breach of the peace"— Conviction under S. 75, Madras City Police Act — Convicted person if can also be bound down under this section —See Madras City Police Act (III of 1888), S. 75.

AIR 1949 Mad 499=50 Cr L J 729.

——Conviction under S. 75, Madras City Police Act (III of 1888)—Order under S. 106.

Where the conviction is under S. 75, Madras City Police Act, the order under S. 106, Criminal P. C., is not called for. (Lakshmana Rao J.) In re Sivakalathi Gramany,

A I R 1941 Mad 488=1941 M W N 221 (2)=14 R M 324=196 I C 575=43 Cr L J 40.

——An order under S. 106 is to be based upon actual facts proved or admitted in the case. Past conduct of person to

CRIMINAL P. C. (V of 1898), S. 106—8. "Is convicted of such offence"

be bound over is not relevant. (King J.) Palanippa Goundan v. Emperor,

1936 M W N 237.

——Acquittal.

It is not correct to take into account the fact that an accused person has been tried for an offence when he has been acquitted of the charge. The acquittal clears the conduct of the person and he cannot be judicially considered guilty. (Mir Ahmad A. J. C.) Tor Gul v. Emperor,

A I R 1935 Pesh 158=8 R Pesh 77=159 I C 97.

9. Conviction in summary trial.

——Imprisonment in default of furnishing security, not a part of substantive sentence—Appeal.

There is nothing in the law which prohibits the making of an order under S. 106, after a conviction under S. 323, Penal Code, on a summary trial. The imprisonment to be undergone in default of furnishing security is not a part of a substantive sentence. The sentence not being in itself appealable does not become so, because the person convicted has been ordered to find security to keep the peace. (Mr. Wells) Meghu v. King-Emperor,

7 O C 338=1 Cr L J 1054.

10. Courts empowered to act.

——Order under this section should be passed by the same Magistrate who tried the accused for the principal offence and not by another Magistrate. (Daniels J.) Dukhi v. King-Emperor,

A I R 1924 All 141=74 I C 448=24 Cr L J 784.

——Appellate Court, order by District Magistrate.

An order passed by a District Magistrate under S. 106 when not trying the case as Court of appeal is without jurisdiction. (Knox J.) Doobar Tewari v. Emperor,

A I R 1918 All 216=16 A L J 536 = 46 I C 412=19 Cr L J 732.

——S. 106 (1)—Jurisdiction—Sub-Divisional Magistrate—Binding over for more than 6 months.

A Second Class Magistrate who is also a Sub-Divisional Magistrate has authority to pass an order under S. 106 of the Criminal P. C. (Piggott J.) Rajah Singh v. Emperor,

A I R 1915 All 15=37 All 230=13 A L J 268=28 I C 734=16 Cr L J 350.

——Action under by Bench of Honorary Presidency Magistrates—See Criminal P. C., S. 18.

2 Cr L J 770 (Bom).

11. Second or third class Magistrate requiring accused to execute a bond under S. 106 —Procedure—See S. 349.

12. "Such Court is of opinion."

——Duty of Magistrate—Superior Magistrate requesting Subordinate Court advisability of taking action under S. 106, in case pending before latter Court—Such request influencing Magistrate — Order passed without giving reason — Both order and conviction on main part of case held could not stand.

When the Magistrate is influenced with respect to one part of his order, it cannot be said that he is not equally influenced in convicting the accused on the main part of the case. (Agarwala J.) Ram Charan v. State,

A I R 1953 All 375 = 1952 All W R (HC) 5 = 1952 All L J 60=1952 All Cr C 5=1952 R D (HC) 23=1953 Cr L J 813.

——Order under—No reasons given—Validity of order.

An order of a Magistrate calling upon the accused to furnish security is erroneous in law if the Magistrate gives no reasons in support of his action. (Teja Singh C. J.) Bakhshish Singh v. The State,

A I R 1952 Pepsu 138 = I L R (1952) Patiala 258 = 1952 Cr L J 1467.

CRIMINAL P. C. (V of 1898), S. 106 — 12. "Such Court is of opinion"

——Order under S. 106, when undesirable — Duty of Magistrate—Solitary instance of disorderliness.

It is generally undesirable, where a person is charged with some petty offence, to tack on to some small sentence of fine an order under S. 106, which, in most cases, in view of the poverty of the accused persons, would necessitate their remaining in jail for a long period which would very much exceed the punishment legally permissible for the offence of which the accused are charged. An order under S. 106 is, of course, legally permissible, but should be used very sparingly in such cases.

Before passing an order under S. 106, the Magistrate should be satisfied that if he does not call upon the accused to furnish a bond for keeping the peace, there is a likelihood that there will be breaches of the peace in future. When there is only a solitary instance of the accused being drunk and disorderly and there is no evidence to show that the accused is likely to do something similar in the future, an order under S. 106 is not justified. (Horwill J.) In re Arumugha Thevar,

A I R 1943 Mad 169 = 55 M L W 746 = (1942) 2 M L J 613 = 1942 M W N 760 (2) = 15 R M 838=205 I C 56=44 Cr L J 321.

——Legal evidence only should be considered.

In deciding whether an order under S. 106, Cr. P. C., should be passed or not, the Magistrate must consider only legal evidence. He should not act on statements made by the prosecution from the bar. (Horwill J) In re Arumugha Thevar,

A I R 1943 Mad 169=1942-2 M L J 613=55 M L W 746=1942 M W N 760 (2)=15 R M 838=205 I C 56 = 44 Cr L J 321.

——Order under—Reasons for.

The trial Magistrate need not give reasons for his opinion while passing an order under S. 106, Cr. P. C. (Horwill J.) Subbiah Thevan v. Emperor,

A I R 1942 Mad 501 (1)=1942 M W N 304=55 L W 231 (2) = (1942) 1 M L J 490=15 R M 86=200 I C 352 =43 Cr L J 674 (1).

——Section 106 should be very sparingly invoked where the offence committed is a petty one such as an offence under S. 3 (12), Madras Towns Nuisance Act. (Horwill J.) In re Balian,

A I R 1938 Mad 795 = 1938 M W N 588 = (1938) 2 M L J 152=48 L W 138=11 R M 526=179 I C 169 = 40 Cr L J 165.

——Security for keeping the peace — Possession — Compromise of dispute as to possession — Cancellation of order.

Security to keep the peace taken from one of the parties should be cancelled when under a compromise between the parties, one of them is allowed to be in peaceable possession. (Spencer J.) In re Ranga Gounden,

A I R 1916 Mad 1035=30 I C 748=16 Cr L J 700.

——Ss. 106, 120 (1), 123 (2) (3)—Sentence of transportation—Security to keep peace after release to be furnished within one month of date of sentence—Legality.

The accused was sentenced to seven years' transportation under S. 326, Penal Code, and was further ordered under S. 106, Criminal P. C., to furnish security to keep peace for two years after his release, within a month of the date of the sentence. On failure of the accused to give security the Magistrate submitted the proceedings to the Sessions Judge for orders under S. 123 (3), Criminal P. C. The Sessions Judge without hearing the accused ordered that he should suffer imprisonment in default of furnishing security demanded by the Magistrate.

CRIMINAL P. C. (V of 1898), S. 106 — 12. "Such Court is of opinion"

Held, that the order of the Magistrate that the security should be furnished within a month from the date of sentence was illegal. The case fell under S. 120 (1) and not under S. 120 (2). The Sessions Judge ought to have given the accused an opportunity of being heard either personally or by pleader; and that the order of the Sessions Judge was uncalled for, when a sentence of transportation for a long term of seven years was passed for the offence committed.

Held, also (Irwin J., dissenting), that the Sessions Judge had jurisdiction under S. 123 (3) to deal with the case submitted to him even before the expiration of the sentence of transportation, and that the Magistrate should submit the proceedings in such cases for the order of the Sessions Judge as soon as possible after passing the sentence. (Fox C. J., Irwin and Hartnoll JJ.) Kyaw Wa v. King Emperor,

5 L B R 34=2 Ind Cas 531=10 Cr L J 69 (FB).

——Scope—Ijardar of market—His right to prevent sale of certain goods in his market — Ijardar exceeding his legal right and committing offence—Binding him to keep peace if permissible.

The owner of a land in this country can establish a market on any part of his land whenever he desires to do so. He has the right to regulate the sales and conduct of the stall keepers and itinerant stall keepers who are mere licensees are under his control entirely. The only limitations which are imposed by law on this right of his are that he cannot in the exercise of it exceed his right and commit an offence and cannot further by his conduct disturb the public tranquillity. This right his ijardar also has. Therefore where an ijaradar in order to prevent the sale of foreign goods in his market used force on itinerant stall holders and caused hurt to them it was held that the ijaradar, though he was liable to be punished for having exceeded his legal rights, could not be bound down to keep the peace as that would result in completely banning him from exercising his legal rights. (Mitra and Fletcher JJ.) Nanda Kumar Sircar v. Emperor,

11 C W N 1128=6 Cr L J 321.

13. "At the time of passing sentence."

——Execution of bond to be ordered at the time of conviction.

An order under S. 106 must be passed at the time of conviction and passing of sentence. If it is passed at a subsequent stage it would be without jurisdiction. In case the Magistrate having arrived at a decision starts proceedings only subsequently, the only procedure open to him is under S. 107, Cr. P. C. (Sulaiman, J.) Ram Adain v. Emperor,

A I R 1924 All 230 = 21 A L J 839 = L R 4 A 240 (Cr)=9 O & A L R 1085 = 81 I C 613=25 Cr L J 965.

—— Ss. 106 and 123 (5) — Conviction and sentence.

There must be a conviction and a sentence before the provisions of S. 106, Criminal P. C., become applicable. Imprisonment for failure to furnish security must be simple in view of S. 106 read with S. 123 (5). The sureties are jointly and severally liable for the amount in which their principal is bound down. (Birks, J.) King-Emperor v. Nga Shwe Tun,

2 L B R 53.

14. Notice.

——Order under—Notice to accused, if essential.

Section 106, Cr. P. C., permits of the passing of an order under that section at the time of passing sentences. It is not, therefore, necessary that either the trial Court or the Appellate Court should call upon the accused to show cause why he should not be bound over. (Horwill, J.) In re Yakub Sahib Yejaman,

A I R 1943 Mad 406=16 R M 118 = (1943) 1 M L J 264=1943 M W N 179=207 I C 195=44 Cr L J 639.

——Appellate Court passing order without special notice to parties.

It is not an incorrect procedure contrary to general principles of justice for the Appellate Court to pass an order under S. 106, Cr. P. C., without special notice to the parties. (Macpherson, J.) Dewan Singh v. Emperor,

A I R 1936 Pat 36=16 P L T 793=2 B R 66=8 R P 262=159 I C 246=37 Cr L J 63.

——To adopt proceedings under S. 106 without notice to parties is an incorrect procedure on general principles of justice. (Foster, J.) Jai Singh v. King-Emperor,

A I R 1927 Pat 37=97 I C 424 = 7 A I Cr R 136=27 Cr L J 1112.

15. Liability of surety.

See also S. 514.

——Ss. 106, 118—Surety's liability under Criminal P. C., if different from that of surety under Civil P. C.—S. 118 is restrictive of S. 106 — Liability of surety and principal is joint and several.

Where a person is ordered to execute a bond with sureties for keeping peace, the fact that the real object of the Crown is to have the peace kept and not to obtain money, does not necessarily lead to the conclusion that the liabilities of the sureties under the Cr. P. C., are different from those of sureties under the civil law.

Section 118, Cr. P. C., is, as regards these provisions, really restrictive of S. 106. In other words, although the maximum is fixed by S. 106, the circumstances of the case may be such as to make it unnecessary to take as great a bond as would be permissible under S. 106. Taking it for granted that the object of taking sureties is not to recover the amount of the principal bond but rather to ensure, as far as possible, that the peace shall be kept, this result can be obtained even if one holds that nothing further can be taken from the sureties than the amount of the principal's bond.

To hold the view that the principal is liable to pay the amount of the bond and that each surety is in addition to that liable to pay the amount which he agreed to pay as surety, would amount to this, that the principal and each surety executed an independent bond and there is no joint liability. In Form No. XI of Sch. V, Cr. P. C., however, there is one bond by the principal followed after his signature by the undertaking of the sureties binding themselves jointly and severally. If, therefore, the sureties bind themselves jointly and severally, it cannot be held that each of them can be called upon to pay the whole amount of the bond. In the Code, the expression always is "a bond with sureties". and therefore, the liability of a surety under the Cr. P. C., cannot be differentiated from that of a surety under the civil law. Where, therefore, persons execute bonds for keeping peace together with sureties, upon the failure to keep peace the principals can be called upon to pay the amount under the bond and any one of the sureties can also be called upon to pay the same amount but if any one is called upon to pay the whole amount under the bond, any other on that bond, be he principal or surety, cannot be ordered to pay anything more. (Hamilton, J.) Abdul Sattar v. Emperor,

A I R 1938 Oudh 195=1938 O W N 676=11 R O 7=176 I C 948=39 Cr L J 831.

——Surety bond — Principal committing breach of peace —Surety if liable to pay even if payment is made by principal. 26 P R 1894 Cr; 30 P R 1890 Cr: A I R 1925

CRIMINAL P. C. (V of 1898), S. 106—15. Liability of surety

Lah 228 : 26 Cr L J 322 : 84 I C 546 ; A I R 1924 Lah 262 : 25 Cr L J 1131 : 81 I C 955 and 11 I C 588 : 12 Cr L J 404, OVERRULED.

Where a surety bond is executed in accordance with the provisions of S. 106, Cr. P. C., the surety is liable to pay the amount specified in the bond on breach of peace by the principal even if payment has been made by the principal of the amount due on his own bond. An order requiring the surety to pay the amount in addition to any amount which might be recovered from the principal is in accordance with law. The power to require sureties has been given with some object other than that of ensuring the recovery of the amount of the bond; in other words, an additional security for the principal's keeping the peace, not a surety for his paying forfeit is demandable. 26 P R 1894 Cr; 30 P R 1890 Cr; A I R 1925 Lah 228 : 26 Cr L J 322 : 84 I C 546; A I R 1924 Lah 262 : 25 Cr L J 1131 : 81 I C 955 and 11 I C 588 : 12 Cr L J 404, Overruled. (Young, C. J. and Monroe, J.) Sardar Khan v. Emperor,

A I R 1937 Lah 133 = 17 Lah 523=38 P L R 951 = 9 R L 538=167 I C 746=38 Cr L J 420.

——Surety—Liability of.

A surety under S. 106 of the Cr. P. Code cannot be made liable for an amount larger than the one for which the principal has executed bond. (Hartnoll, J.) Emperor v. C. E. Ellis,

5 Bur L T 101=15 I C 482=13 Cr L J 482.

16. "During such period."

——Accused found drunk and disorderly—Bond for keeping peace for two years.

Where an accused is found drunk and disorderly, an order under S. 106, requiring him to furnish a bond for keeping the peace for a period of two years is out of all proportion to the gravity of the offence committed. (Horwill, J.) In re Arumugha Thevar,

AIR 1943 Mad 169=(1942) 2 M L J 613=55 M L W 746=1942 M W N 760 (2)=15 R M 838=205 I C 56 = 44 Cr L J 321.

17. Commencement of period for which security is required.

—See S. 120.

18. Effect of setting aside of conviction.

——Order under, when can be passed — Conviction under S. 323, Penal Code, set aside and one under S. 342, Penal Code, maintained.

One has to see not whether on the facts, the persons against whom an order under S. 106, Cr. P. C., is passed did commit a breach of the peace but whether they were convicted of an offence which necessarily involves breach of the peace. If the offence is one in which a breach of the peace may have been committed in the circumstances of the case but which, in other circumstances, does not necessarily involve a breach of the peace, an order under S. 106 of the Cr. P. C., cannot be passed. Where the Judge has set aside the conviction under S. 323, I. P. C., leaving only the conviction under S. 342, I. P. C., an order under S. 106, Cr. P. C., cannot be passed. (Hamilton J.) Akhtar Husain v. Emperor,

AIR 1940 Oudh 323 = 1940 O W N 423=12 R O 417 =1940 A W R 218=187 I C 808=41 Cr L J 505.

——Use of evidence recorded in joint trial for convicting accused of offence separately charged and demanding security.

An accused who is charged separately for voluntarily causing hurt with a sharp weapon could not be convicted and ordered to furnish security under S. 106, Cr. P. Code, upon the evidence produced in the joint trial of accused and 7 others of rioting and extortion which resulted in an acquittal. (Atkinson J.) Sahju Koeri v. Mallar Koeri,

AIR 1917 Pat 500=42 I C 603=2 P L W 78=18 Cr L J 987.

19. Power of appellate or revisional Court to order security.

(a) Appellate Court cannot take security.

(b) Appellate Court can take security.

19. Power of appellate or revisional Court to order security.—(a) Appellate Court cannot take security.

——S. 106 (1 and 3)—Appellate Court cannot order security—Where Lower Court cannot do so.

Held following 35 C. 434 that the appellate Court cannot exercise the power given by S. 106 (3), Cr. P. Code, where the conviction has not been by a Court specified in sub-s. 1. (Newbould and Suhrawardy JJ.) Eusafali Ahmed Khairaj v. Emperor,

AIR 1924 Cal 540=72 I C 68=24 Cr L J 308.

——S. 106 (3)—Appellate Court cannot order security if Lower Court cannot.

An order under the section by an appellate Court in appeal from an order of a second class magistrate is illegal and ultra vires. (Harrison J.) Karam Singh v. Emperor,

AIR 1923 Lah 91=67 I C 729=23 Cr L J 457.

——S. 106 (2)—Direction that particular person should be surety is bad.

A District Magistrate has no jurisdiction in affirming a conviction for a riot to order the accused to give security for good behaviour nor has he jurisdiction to order that a particular individual should be surety. (Richards C. J.) Mahabir v. Emperor,

A1R 1918 All 95=16 A L J 280=44 I C 967=19 Cr L J 439.

——Appellate Court cannot demand security where Lower Court cannot.

An appellate Court is not competent to require security while hearing an appeal from a conviction by a second or third class Magistrate. (Shadi Lal J.) Lal Khan v. Emperor,

AIR 1918 Lah 370=44 I C 352=5 P R 1918 Cr=135 P L R 1918=19 Cr L J 336.

——S. 106 (3)—Appellate Court cannot order security where Lower Court cannot.

An appellate Court cannot exercise the powers given by S. 106 (3) of the Cr. P. Code where the conviction has not been by a Court specified in sub-s. (1) of the section. 35 C. 434, Ref. (Chitty and Smither JJ.) Karim Buksh v. Emperor,

AIR 1918 Cal 517 (1)=43 I C 796=19 Cr L J 220.

——S. 106 (3) — Appeal — Sentences ordered—Some accused ordered to furnish security—Legality.

Where a Sub-Divisional Magistrate, while confirming the sentence of the lower Court ordered some of the accused to furnish security under S. 106 (3), Criminal P. C., held that the order of the Sub-Divisional Magistrate was opposed to the decisions of the Madras High Court. (Sankaran Nair J.) Emperor v. Thoddamatha,

8 M L T 291=8 Ind Cas 392=11 Cr L J 640.

——Conviction by second class Magistrate—Sub-Divisional Magistrate in appeal directing execution of bonds—Legality.

The order of the Deputy Magistrate in appeal, directing the execution of a bond under S. 106, Criminal P. C., is illegal, where the convicting Court was a second class Magistrate and, therefore, not a Magistrate who could make an order under that section. (Ralph Benson and Abdur Rahim JJ.) In re Latchumana Thalavan,

7 M L T 104=5 Ind Cas 807=11 Cr L J 251.

——Power of appellate Court to order security.

An order by an appellate Magistrate for the taking of

CRIMINAL P. C. (V of 1898), S. 106—19. Power of appellate or revisional Court to order security — (a) Appellate Court cannot take security

security to keep the peace is illegal. 4 Cr. L. J. 498, Foll. (Miller J.) Gnanamuthu Udayan v. Emperor,

6 M L T 238=3 Ind Cas 434=10 Cr L J 289.

——S. 106 (1) and (3)—Competency of Court of appeal to require security, when the conviction was by Second Class Magistrate.

Where a conviction was by a Magistrate of the second class, it is not competent to the District Magistrate on appeal to exercise the power given by S. 106 (3) and demand security bond to keep peace from accused. So much of his order as directed the accused to execute bonds to keep the peace for three years set aside. (Rattigan J.) Gopal Singh v. King-Emperor,

21 P R 1908 Cr=9 Cr L J 84.

——Powers of appellate Court.

An appellate Court cannot exercise the power given by S. 106 (3) when the accused has not been convicted by a Court such as is referred to in S. 106 (1). (Rampini and Sharfuddin JJ.) Emperor v. Momin Malita,

35 C 434 = 7 C L J 602 = 12 C W N 752=4 M L T 340=8 Cr L J 9.

——Jurisdiction of appellate Court to order to furnish security for keeping peace when first Court had no power to pass such order.

The applicant was convicted and sentenced by an Honorary Magistrate of the second class and his appeal was dismissed by the District Magistrate who, however, made an order, in appeal, requiring him to furnish security for keeping peace. The jurisdiction of a Court of appeal is limited to the jurisdiction conferred on the Court of first instance. A Honorary Magistrate of second class cannot pass an order requiring the accused convicted and sentenced by him to furnish security and therefore the District Magistrate in appeal cannot also pass such an order. (Mr. Greeven) Baij Nath v. King-Emperor,

10 O C 287=6 Cr L J 302.

[Overruled in 16 O C 281=21 I C 384=14 Cr L J 592.]

——Power of the appellate Court to demand security where trial Magistrate had none.

Where the Magistrate, convicting the accused, was incompetent to order the furnishing of security, under S. 106 for keeping the peace, the appellate Court cannot on appeal pass an order to that effect. (Chatterji J.) Radha Singh v. King-Emperor,

6 P R 1907 Cr=23 P W R 1907 Cr=6 Cr L J 276.

——Powers of appellate Court.

An appellate Court cannot make an order under S. 106, unless the conviction, on which the order is based, was by a Court of the description specified in the first paragraph of the section. (Subrahmania Iyer and Benson JJ.) Paramasiva Pillay v. Emperor,

1 M L T 403=30 M 48=5 Cr L J 88.

——S. 106, cl. (3) — Power of appellate Court to order security.

An appellate Court cannot pass an order under S. 106 (3) to furnish security to keep the peace, unless the convicted person has been convicted by one of the Courts specified in cl. (1) of the section, i. e., by a Court not inferior to that of a first-class Magistrate. Obiter dicta. It may, however, be doubted whether the legislature intended that the power of the appellate Court and of the High Court, when exercising its power of revision, should be confined to such narrow limits. (Benson and Wallis JJ.) In re Doraisami Naidu,

1 M L T 343=30 M 182=4 Cr L J 498.

——Power of appellate Court to bind over accused to keep peace.

The power given to an appellate Court to order that the accused be bound over, under S. 106 of the Code, to keep

CRIMINAL P. C. (V of 1898), S. 106—19. Power of appellate or revisional Court to order security— (a) Appellate Court cannot take security

the peace is not an unlimited power to make such an order in any circumstances, but is to be taken as giving the appellate Court power to do only that which the lower Court could and should have done, and, therefore, such power is to be confined to cases where the conviction has been by a Court named in the section and in circumstances required by the section.

The words involving a breach of the peace in the section, require that a breach of the peace should be an ingredient of the offence proved and, before the section can be put in force, there must be a finding that a breach of the peace has occurred. (Boddam and Moore JJ.) Muthia Chetty v. Emperor,

29 M 190 = 3 Cr L J 461.

[Overruled in AIR 1914 Mad 562 = 14 Cr L J 574].

19. Power of appellate or revisional Court to order Security—(b) Appellate Court can take security.

Sub-section (1) of S. 106 does not control or limit the powers conferred on an appellate Court or revisional Court by sub-s. (3) of the same section, and, therefore, it has power to require bonds under S. 106, even although the actual order is not made at the time of passing sentence, or rather confirming the sentence that has been already passed by the Magistrate. 33 Bom. 33, Rel. on. There is nothing in sub-s. (3), S. 106 to limit the time when the order can be made by the appellate Court. (Fawcett and Mirza JJ.) Hussain Ghulam Nabi v. Emperor,

AIR 1928 Bom 134 = 30 Bom L R 373 = 10 A I Cr R 211=109 I C 230=29 Cr L J 502.

——The Court of appeal has powers to pass an order under S. 106, even where the trial Court had no such powers. AIR 1917 Pat 701, Foll. (Foster J.) Jai Singh v. King-Emperor.

AIR 1927 Pat 37 = 97 I C 424 = 7 A I Cr R 136 = 27 Cr L J 1112.

——Appellate Court — Though trial Court not competent to demand security appellate Court can demand.

The power conferred on an appellate Court by clause 3 of S. 106, Criminal P. C. is not limited by the fact that the Court whose decision is under appeal has no power to direct security to be taken. (Prideaux A. J. C.) Hasan Beg v. Emperor,

AIR 1924 Nag 49 = 19 N L R 154 = 81 I C 145 = 25 Cr L J 657.

——S. 106 (3) — Appellate Court can make an order for security.

Appellate Court can under S. 106 (3) make an order for security, though the trial Court had no such power under S. 106 (1). (Banerji J.) Tilak Rai v. Emperor,

AIR 1921 All 217 = 43 All 372 = 19 A L J 123 =60 I C 998 = L R 2 A (Cr) 12=22 Cr L J 310.

——S. 106 (3) — Appellate Court can demand security though Lower Court cannot.

Though a case is tried by a second class or third class Magistrate, the Court of appeal or revision can demand security under S. 106. (Daniels A. J. C.) Lachhmi Narayan v. Emperor,

AIR 1920 Oudh 226 (1) = 60 I C 676 =23 O C 380= 22 Cr L J 276.

——Appellate Court can order security though Lower Court cannot.

An accused can be bound down under S. 106 by an Appellate Court affirming the conviction and sentence awarded by the lower Court, in spite of the latter Court not being competent to so bind down : 33 B 33 ; 33 A 48 ; A I R 1914 Mad 562 (F B), App.; 35 C 434, diss. (Mullick J.) Buchan Singh v. Emperor,

AIR 1917 Pat 701 = 1917 Pat 57 = 2 Pat L J 21 = 3 Pat L W 250 = 37 I C 470 = 18 Cr L J 118.

CRIMINAL P. C. (V of 1898), S. 106 — 19. Power of appellate or revisional Court to order security — (b) Appellate Court can take security

——Appellate Court can demand security though Lower Court cannot.

An appellate Court in an appeal from a conviction by a second class Magistrate can direct the accused to execute bond for keeping the peace. (Sadasiva Aiyer J.) In re Gunda Ganji Reddy,

AIR 1914 Mad 269 = 22 I C 768 = 15 Cr L J 192.

——S. 106 (3)—Appellate Court—Conviction under S. 147, I. P. C.—Power to require security.

In a case under S. 147, I. P. C. an Appellate Court is expressly empowered to pass an order under S. 106 (3), Cr. P. C., requiring security to keep the peace from the appellants. The making of such an order does not amount to enhancing the sentences. (Mittra A. J. C.) Maharaj Singh v. Emperor,

AIR 1918 Nag 64 = 53 I C 488 = 20 Cr L J 760.

——S. 106 (3)—Appellate Court can order security though lower Court cannot—10 O C 287 : 6 Cr L J 302, Overruled.

Under S. 106 (3), Cr. P. Code, the Appellate Court may pass an order directing execution of a bond for keeping the peace though the Original Court had no power to require such bond : 10 O C 287 : 6 Cr L J 302, OVERRULED. (Lindsay J. C. and Sabonadiere A. J. C.) Bharat Singh v. Emperor,

16 O C 281 = 21 I C 384 = 14 Cr L J 592.

——S. 106 (1) and (3)—Appellate Court can order security though Lower Court could not have done so: 29 Mad 190: 3 Cr L J 461, Overruled.

An appellate Court can order the execution of a bond to keep peace by a person who has been convicted of any offence mentioned in S. 106 (1) by a Second or Third Class Magistrate. The words "under this section" in S. 106 (3) have reference to the powers given by the section and not to the Court by which these powers are first exercised : 29 Mad 190 : 3 Cr L J 461, OVERRULED. (White C. J., Sankaran Nair and Tyabji JJ.) In re Solai Gounden.

AIR 1914 Mad 562 = 37 Mad 153 =14 M L T 235= (1913) M W N 769 = 25 M L J 403 = 21 I C 174 = 14 Cr L J 574 (FB).

——S. 106, cl. 3—Order by appellate Court.

An order for security may be made in appeal whether the original Court had jurisdiction to pass such an order or not. (Tudball and Chamier JJ.) Dharam Das v. King-Emperor,

7 A L J 910=7 I C 412=33 A 48=11 Cr L J 480.

——S. 106 (3) —Powers of Revisional or Appellate Court.

An order for security may be made in appeal under S. 106 (3) whether the original Court had jurisdiction to pass such an order or not. The word "also" makes it clear that the order may be independently made by an appellate Court, or by a Court in revision, as well as by the original Courts specified in the first clause. The powers of the appellate or revisional authority are not controlled by those of the original Court. (Basil Scott C. J. and Knight J.) Emperor v. Bhansing Dhumalsing,

10 Bom L R 759=33 B 33=1 I C 454=8 Cr L J 267.

——S. 106 (3), Criminal P. C., confers powers on appellate Courts (Sessions Judges, District Magistrates and other Magistrates hearing appeals) on appeals by the accused to pass an order demanding security to keep the peace. (Chatterji J.) Miran Baksh v. King-Emperor,

21 P R 1905 Cr = 34 P L R 1905 = 2 Cr L J 190.

20. Appeal.

——An order to furnish security under S. 106 should not be passed with non-appealable sentence. (Mosley J.) Emperor v. Nga Tun Lu,

A I R 1935 Rang 363=13 Rang 287=8 R Rang 239 =158 I C 1115=36 Cr L J 1510.

CRIMINAL P. C. (V of 1898), S. 106—20. Appeal

——Security for good behaviour—Rejection of sureties — Grounds for — Right of appeal.

The rejected sureties in a case of security for keeping the peace or for good behaviour have no locus standi to challenge the order.

Close neighbourhood is not necessary for suretyship. But inability to control is a good ground. The nature of security required is personal and not of property. (Ashworth A. J. C.) Emperor v. Mahammad Baksh,

A I R 1924 Oudh 80 = 81 I C 316 = 26 O C 284=25 Cr L J 796.

——Ss. 106, 349—Conviction by third class Magistrate — Accused bound down under S. 106, on recommendation of Magistrate—Appeal against—Maintainability—Conviction.

It may be that the recommendation of a third class Magistrate to bind down the accused whom he has convicted of an offence is one without jurisdiction. If that is so, the result will be that while the conviction is good the recommendation of the third class Magistrate as well as the action of the first class Magistrate binding down the accused under S. 106, will be without jurisdiction. Consequently there can be no defect in the appeal preferred against the conviction and the joint Magistrate before whom the appeal was filed has jurisdiction to hear the appeal and acquit the accused. (Stephen and Carnduff JJ.) Lukhan Dosadh v. Bachi Singh,

5 Ind Cas 576=11 Cr L J 170.

21. Revision.

——Where the Magistrate has exercised his discretion in the matter and passed an order under S. 106, the High Court will not interfere in revision. (Das J.) Ramlakhan Mahto v. King-Emperor,

A I R 1921 Pat 472 (2).

— S. 107.

SYNOPSIS.

1. Abettor and instigator.
2. Addition of parties.
3. Appeal.
4. Applicability and scope.
   See also—Note 10. Dispute about land.
5. Arrest and detention — Sub-sections (3) and (4).
6. Bail.
   See also Criminal P. C., Ss. 117, 496.
7. Both parties dangerous.
8. Consent to give security.
9. Costs.
   See Note—21. Nature of proceeding.
10. Dispute about land.
    See also Criminal P. C., S. 145.
11. Dispute about land — Concurrent proceedings under Ss. 107 and 145.
    See also Criminal P. C., S. 145.
12. Evidence.
    See also Note 20. Likely to commit breach of peace or disturb public tranquillity
13. Forfeiture of bond.
    See also Criminal P. C., Ss. 121 and 514.
14. Fresh proceedings.
    See also Criminal P. C., S. 403.
15. "Is informed."
    See also Note 28. Satisfaction of Magistrate.
16. Joint inquiry.
    See also Criminal P. C., S. 117.
17. Jurisdiction.
18. Lawful and wrongful acts—Lawful acts, illustrations of.

CRIMINAL P. C. (V of 1898), S. 107

19. Lawful and wrongful acts—Wrongful acts, illustrations of.
20. Likely to commit breach of peace or disturb public tranquillity.
21. Nature of proceedings.
22. Notice of proceedings.
See also Criminal P. C. S. 112.
23. Past acts.
24. Power and duty of Court.
25. Power to call for report from police and subordinate Magistrate.
See ibid, S. 107, Note 24. Power and duty of Court.
26. Procedure.
27. Revision.
28. Satisfaction of Magistrate.
29. Security—Considerations.
See also Criminal P. C., S. 122.
30. Suit for damages or claim under S. 250, Criminal P. C., in respect of information.
See (1) Note 21. Nature of proceeding and (2) Criminal P. C., Ss. 117 and 250.
31. Transfer of proceedings.

1. Abettor and instigator.

——Faction leaders.

Although in the ordinary way the person who can be bound over under S. 107 is the individual from whom there is an actual apprehension of a breach of the peace, none the less, other persons who are behind the actual breakers of the peace as abettors or instigators, for example leaders or controllers of a faction are persons in whose cases orders under S. 107 may properly be made on the view that they are persons who are likely to do a wrongful act that may probably occasion a breach of the peace. (Yorke J.) Emperor v. Dubey Ram Shanker,

A I R 1947 All 392 = 1947 A L J 74 = I L R (1947) All 476=1947 A W R H C 98=1947 O A H C B 55.

——Security proceedings—Likelihood of breach of peace—Evidence of specific conduct—Raising shouts and exciting people.

In order to support an order binding down a person, there must be evidence of specific conduct on the part of the accused from which a reasonable immediate inference could be drawn that the accused was likely to commit a breach of the peace. The mere ipse dixits of witnesses are not enough.

The mere fact that a person by raising certain shouts was causing mental excitement to a crowd is not sufficient to justify action against him under S. 107, Criminal P. C. (Tek Chand J.) Suraj Parkash v. Emperor,

A I R 1931 Lah 184 = Ind Rul (1931) Lah 445=131 I C 205=32 Cr L J 693.

——Applicability of.

The section applies to a person who asserts a claim by keeping himself in the background and preparing to enforce the claim through a servant who is continuously armed. (Roe and Jwala Prasad JJ.) Bala Lal Mahton v. Emperor,

A I R 1916 Pat 52=1 P L J 361 = 2 P L W 386=38 I C 758=18 Cr L J 374.

——Essentials — Security if can be taken from a person inducing others to commit breach of peace.

Security for keeping the peace cannot be taken from a person who is not likely to commit breach thereof himself but is likely to induce others to commit breach of the peace. (Johnstone J.) Devat Singh v. Emperor,

11 P W R (1912) Cr=4 P R 1912 (Cr)=13 I C 782=125 P L R 1912=13 Cr L J 126.

CRIMINAL P. C. (V of 1898), S. 107

2. Addition of parties.

——When a proceeding under S. 107, Cr. P. C., pending before a Sub-Divisional Magistrate is transferred to the First Class Magistrate, it is open to him to include in the proceeding, names of persons who were not included by the Magistrate who had initiated the proceeding. (Malik and Rembry JJ.) Golam Rahman Khan v. Kalipada Mana,

AIR 1932 Cal 864=36 C W N 796=Ind Rul (1932) Cal 663=59 C 1484=139 I C 850=33 Cr L J 858.

3. Appeal.

——Ss. 107, 423 (1), (c), (d) — Appeal against order to give security—De novo trial, if can be ordered by Appellate Court—Powers of Appellate Court.

When an appeal is preferred from an order other than an order of acquittal or conviction, the Appellate Court has no jurisdiction to order a de novo trial. It can only alter or reverse the order under S. 423 (1) (c) and under S. 423 (1) (d), Cr. P. C., any consequential order that might be just and proper may be passed. (Burn J.) In re Narappa Reddy,

AIR 1934 Mad 202 (1)=1933 M W N 241=6 R M 48=145 I C 306=34 Cr L J 947.

——Ss. 107, 423 (1) (d), 426 (1) — Power of Appellate Court to suspend execution of order regarding security—'Convicted person', meaning of.

Where certain persons were bound over under S. 107, Cr. P. C., to keep the peace and were ordered to find security, and they appealed to the Sessions Court which set aside the order :

Held, (i) that the words 'convicted person' in S. 426 (1) would apply to a person against whom an order under S. 107 has been made and that consequently the Court had power to suspend the order relating to the furnishing of security ;

(ii) that even supposing S. 426 (1) did not apply, S. 423 (1) (d) would cover the order originally made suspending the execution of the order relating to security. (Young J.) Katwaroo Rai v. Emperor,

AIR 1932 All 630=1932 A L J 624=Ind Rul (1932) All 523=54 A 861=139 I C 141=33 Cr L J 731 (2).

——Retrial.

In the case of an appeal under S. 406 from the order under S. 107 the appeal is not one from conviction and therefore apart from the provisions of S. 423, appellate Court can order re-trial. (Walsh and Dalal JJ.) Bhagwat Singh v. Emperor,

AIR 1926 All 403=48 All 501=24 A L J 566=7 L R A Cr 121=96 I C 497=27 Cr L J 945.

——A bund under S. 107 is not given to any particular person but to the Court and no private party is entitled to appeal against an order refusing to forfeit it though it is open to the Magistrate to take action in revision. (Daniels A. J. C.) Sarju v. Thakurain Jai Rajkumar,

AIR 1925 Oudh 51=77 I C 733=25 Cr L J 445.

——Security for keeping peace.

Order under S. 107 directing security for good behaviour to be given can be appealed from under S. 406. But no appeal will lie in proceedings instituted under S. 107 read with S. 118 for keeping the peace. (Prideaux A. J. C.) Sham Rao v. Emperor,

AIR 1924 Nag 60=75 I C 979=19 N L R 160=25 Cr L J 67.

——Ss. 107, 406 and 438 — Appeal from orders to keep the peace.

Orders requiring security for good behaviour under S. 406 are appealable, but there is no appeal in case of orders to keep the peace. The District Magistrate might, however, if he considered the case a proper one, make a

CRIMINAL P. C. (V of 1898), S. 107 — 3. Appeal

reference to the High Court under S. 438. (Pargiter and Woodroffe JJ.) Barpa Chandra Dey v. Janmejoy Dutt,
32 C 948=9 C W N 860=2 Cr L J 550.

——Security for keeping peace—Appeal — See Criminal P. C., S. 118,
2 Cr L J 329 (All).

4. Applicability and scope.

See also — Note 10. Dispute about land.

——Section 107, Cr. P. C., does not contemplate the actual commission of an offence but merely the likelihood of breach of the peace. (Vivian Bose J.) Emperor v. Gajanand Manbodh,
A I R 1943 Nag 88=1942 N L J 529=I L R (1943) Nag 609=15 R N 140=203 I C 493=44 Cr L J 82.

——Magistrates have power to proceed under S. 107, Cr. P. C., in preference to S. 145, Cr. P. C., if they think it desirable. (Horwill J.) Krishnaswami Goundan v. Chinnaswami alias Karuppa Goundan,
1941 M W N 960.

——Habitual and unjustifiable use of S. 144, Criminal P. C., as a substitute for Ss. 107 and 145 of the Code is depricated. (Davis J. C. and Weston J.) Viru Kamu v. Dewandas Jhaman Das,
A I R 1940 Sind 158=13 R S 110=I L R (1940) Kar 508=190 I C 618=41 Cr L J 952.

——Though a Magistrate's powers under S. 144, Criminal P. C., are very wide, the Court must depricate the habitual and unjustifiable use of S. 144 as a substitute for Ss. 107 and 145 of the Code. (Rowland J.) Domon Gope v. Het Narayan,
A I R 1940 Pat 382=7 B R 54=13 R P 226=190 I C 425=41 Cr L J 907.

——Intention of.

The intention of S. 107, Cr. P. C., in demanding security in case of apprehended violence by accused is preventive and not penal. (Rowland J.) Mahabir Gope v. Samrathi Singh,
A I R 1940 Pat 252=21 P L T 652=6 B R 837=13 R P 124=189 I C 457=41 Cr L J 746.

——The proceedings under S. 107 Criminal P. C., are proceedings for the preservation of the peace and not for the preservation of morals. (Davis J. C.) Om Radhe v. Emperor,
A I R 1939 Sind 238 (240)=12 R S 55=I L R (1940) Kar 113=183 I C 460=40 Cr L J 803.

——Ss. 107, 145—Delivery of possession by Civil Court—Magistrate, when should proceed under either section.

A Magistrate, in spite of delivery of possession by the Civil Court, has jurisdiction to start a case under S. 145, Cr. P. C. No hard and fast rule, however, can be laid down. Magistrate has discretion when there is an apprehension of a breach of the peace to choose either S. 145 or S. 107. It must be left to his discretion which particular section he chooses. Generally speaking, if the dispute arises immediately after the delivery of possession by the Civil Court and is between the parties to that delivery of possession, the more appropriate step will be to bind down under S. 107, Cr. P. C., the party who has been dispossessed by the Court. But if the delivery of possession is an old one or the dispute is between a man who has been given possession and a man who was not dispossessed by the Court, a proceeding under S. 145, Cr. P. C., will be more suitable. (Mohamad Noor J.) Rajendra v. Chintamani,
A I R 1939 Pat 151=19 P L T 632=5 B R 385=11 R P 493=20 P L T 333=4 Cut L T 69=180 I C 322=40 Cr L J 339.

——Object of, is prevention and not punishment of offences.

CRIMINAL P. C. (V of 1898), S. 107 — 4. Applicability and scope

The Magistrate has, under the law, to satisfy himself that a person is likely to commit a breach of the peace or disturb the public tranquillity as mentioned in S. 107, Cr. P. C., before taking action.

The object of the provisions contained in S. 107, is prevention and not punishment of offences; it is intended not to punish persons for anything that they have done in the past, but to prevent them from doing in future something that might occasion a breach of the peace. (Guha and Lethbridge JJ.) Sukhlal Karnani v. Emperor,
AIR 1938 Cal 583=66 C L J 564=11 R C 319=178 I C 52=39 Cr L J 992.

——In proceedings under S. 107, all that the Magistrate has to determine is whether there is a likelihood of a breach of the peace and it is enough for his purposes to find that both parties claim a right to possession and are ready to fight about it. An elaborate enquiry about ownership and title is entirely out of place. (Bose J.) Sona Bahuji v. Rao Sobhag Singh,
(1937) 167 I C 848=19 N L J 264=9 R N 226=38 Cr L J 467.

——Section 144, Criminal P. C., is not substituted for S. 107 or S. 145. But where S. 107 or S. 145 will meet the requirements of the case, S. 144 is not an appropriate remedy. (Rowland J.) Jagruba Kumari v. Chotey Narain Singh,
159 I C 455=2 B R 83=8 R P 279=37 Cr L J 95.

——Applicability—Object is not to bring pressure on the party.

Section 107 only applies to cases in which the right to property has not been adjudicated upon. It should never be used to bring pressure upon a party to give up his rights over a property. (Gokul Prasad J.) Ghauri Shankar v. Emperor,
L R 2 A (Cr) 19.

——Essentials—Dispute as to civil rights — Propriety of binding down one party only.

Where there was absolutely no evidence as to imminence of a breach of the peace, the only disputes between two parties were as to their civil rights in respect of the management and control of a temple, it is undesirable that one party should be bound down so as to give an advantage to the other side. To support a proceeding under S. 107, it must be shown that there were definite facts from which an inference could be warranted that the persons charged would disturb the public tranquillity unless preventive measures under S. 107, were adopted. Further, the evidence must show that the persons sought to be bound, were individually and not merely collectively connected with these facts : 8 C W N 180; 9 All 452 and 9 I C 1026, Foll. (Jwala Prasad and Thornhill JJ.) Ghasi Ram v. Emperor,
A I R 1919 Pat 22=(1919) Pat H C C 98=49 I C 642=20 Cr L J 194.

——Essentials—Bad feeling.

The condition precedent to taking security under S. 107, is that the Magistrate should be informed that some person is likely to commit breach of the peace or disturb the public tranquillity or do some wrongful act that may probably occasion breach of the peace or disturb the public tranquillity. Mere bad feeling between two sections of a population is not enough. (Johnstone J.) Sher Khan v. Emperor,
126 P L R 1911=43 P W R 1911 (Cr)=9 I C 1026=12 Cr L J 186.

——Ss. 107 and 144—Applicability—Dispute as to hats.

The proper way of preventing a breach of the peace when a dispute as to holding of hats arises is to proceed under S. 107, Criminal P. C., and not under S. 144.

CRIMINAL P. C. (V of 1898), S. 107—4. Applicability and scope

(Mitra and Holmwood JJ.) Bidhu Ranjan Mazumdar v. Ramesh Chandra Rai,

11 C W N 223=5 Cr L J 43.

——Ss. 144 and 107—Dispute as to holding rival hats—Applicability—See Criminal P. C. (1898), S. 144.

11 C W N 79=4 Cr L J 433.

——Ss. 107, 110—Order under S. 107—When passed.

When the evidence shows that there is an apprehension of any one using violence towards a particular person or particular persons, he ought to be bound over to keep peace as provided by S. 107 and ought not to be proceeded against under S. 110, Criminal P. C. (Aikman J.) Emperor v. Kallu,

27 All 92=1 A L J 495=A W N 1904, 195=1 Cr L J 710.

——Order under — Apprehension of breach of the peace necessary.

A Magistrate is only entitled to bind over a person who, he is informed, is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act which may probably occasion a breach of the peace or disturb the public tranquillity and not otherwise. (Blair J.) Narindra Bahadur Pal v. Emperor,

1 A L J 418=1 Cr L J 696.

5. Arrest and detention—Sub-sections (3) and (4).

——Ss. 107, 114—Danger of breach of peace—Magistrate present on spot empowered to proceed under S. 107 — Magistrate has no power to order arrest first and then proceed under S. 107 — Proper course for him is to serve order under S. 107 read with S. 112 and then if necessary to order arrest under S. 114.

A Magistrate has no power to order arrest with a view to his taking action under S. 107, Criminal P. C., unless the case falls under S. 107 (3), that is to say the Magistrate is not authorised to initiate proceedings under that section.

Hence where there is an apprehension of a danger of breach of peace and the Magistrate present on the spot is empowered to proceed under S. 107, it is irregular for the Magistrate to arrest some persons on the spot and then start proceedings under S. 107. The proper course in such case is to formulate then and there an order under S. 107 read with S. 112 and serve it on the persons concerned and then it would be open for the Magistrate to order their arrest under S. 114. (Agarwalla J.) Babu Ram v. Rex,

A I R 1949 All 21 = 1948 A W R (H C) 214 = 1948 A L J 484=50 Cr L J 78.

——Can be refused only in certain cases under Cls. 3 and 4.

Where the proceedings have been instituted against a person under S. 107, it is only in the special circumstances referred to in sub-ss. (3) and (4) of that section that the law empowers a Magistrate to detain a person in custody until the completion of the enquiry. The sub-section can only be put into operation when a Magistrate, who has no powers to proceed under sub-s. (1) of S. 107 is led to believe that a person is likely to commit a breach of the peace or to disturb the public tranquillity or to do any wrongful act which might possibly occasion a breach of the peace or disturbance and cannot, by any other means, prevent the possibility of such an occurrence, that he with his limited powers can arrest a person and send him then to another Magistrate who has got adequate powers for dealing with the case : 32 Cal. 80 and 31 Mad. 315, Ref. (Bucknill J.) Wahari Mander v. Emperor,

A I R 1923 Pat 527=74 I C 857=2 Pat L R Cr 77=5 P L T 109=24 Cr L J 825.

——Ss. 107 (4) and 496—Bail—Right to be released.

Section 107, cl. (4) allowing a Magistrate to detain, in his discretion any person brought before him in custody

CRIMINAL P. C. (V of 1898), S. 107—5. Arrest and detention—Sub-ss. (3) and (4)

until the completion of inquiry, is not subject to or controlled by S. 496. The latter section does not give an absolute right to bail to any person who is not charged with a nonbailable offence and should be read along with other provisions of the Code giving a special right of detention to a Court : 31 Mad. 315, Ref., 32 Cal. 80, Dist. (Miller and Sundara Iyer JJ.) Narainswamy Naicken v. Emperor,

36 Mad 474=22 M L J 357=(1912) M W N 169=11 M L T 253=15 I C 79=13 Cr L J 447.

——Order of District Magistrate under S. 107 (4) detaining person not sent to him under S. 107 (3)—See Criminal P. C. Ss. 36, 107, 114.

7 Cr L J 360 (Mad) (FB).

——Proceedings under S. 107—Arrest of person proceeded against—Remand to custody till completion of enquiry.

Having regard to the terms of S. 115 and to the fact that the petitioners against whom proceedings under S. 107 were started had already appeared and been admitted to bail, it is doubtful whether the proviso to S. 114 applies to such a case. But conceding that the Magistrate had power to rearrest the petitioners, still he was not authorised to send the petitioners to hajat. Only in the special circumstances referred to in cls. (3) and (4) of S. 107, does the law empower a Magistrate to detain a person against whom proceedings have been instituted under S. 107, in custody until the completion of the enquiry. (Pratt and Handley JJ.) Raghunadan Pershad v. Emperor,

32 Cal 80=8 C W N 779=1 Cr L J 775.

6. Bail.

See also Criminal P. C., Ss. 117, 496.

——Ss. 107, 496—Security proceedings—Accused's right to bail.

In the case of proceedings under S. 107, Criminal P. C., the accused is entitled as of right to bail. If the District Magistrate considers that immediate measures are necessary for the prevention of a breach of the peace during the pendency of the enquiry, he can direct the applicant to execute a bond with or without sureties, for keeping the peace until the completion of the inquiry. If the applicant refuses to execute a bond or fails to furnish security as directed, then he could be kept in custody until the completion of the inquiry. (Ba U J.) Maung Saw Hlaing v. Emperor.

AIR 1933 Rang 165=6 R Rang 70 = 146 I C 23=34 Cr L J 1195.

——Bail — Warrant of arrest issued under S. 114 — Bail —Right of accused.

A Magistrate cannot refuse bail to a person arrested under S. 114, against whom proceedings are taken under S. 107 of the same Code : 31 Mad 315, foll.; 36 Mad 474, dist. (Pratt J. C.) Faiz Muhammad v. Emperor.

AIR 1916 Sind 93 (2) = 32 I C 669 = 9 S L R 158= 17 Cr L J 77.

——Proceedings under, contemplated — Person, if can be asked to furnish bail.

Person against whom proceedings under S. 107 are contemplated but not actually started, should not be called upon to furnish bail. At most he can be asked to furnish recognizance, but only when there is likelihood of his absenting himself from Court. (Holmwood J.) Mewalal v. Emperor.

11 C W N 415=5 Cr L J 194.

7. Both parties dangerous.

——Joint proceeding under S. 107 against opposing parties to dispute.

The two opposing parties in a dispute cannot be proceeded against under S. 107, Criminal P. C., and bound

CRIMINAL P. C. (V of 1898), S. 107 — 7. Both parties dangerous

over to keep the peace, in one proceeding. Such a procedure must, almost inevitably result in prejudice, since the persons proceeded against and, as it were, in the position of accused persons, are put into the witness-box and cross-examined. It is an elementary principle that in criminal cases, the accused person shall not be cross-examined. (Meredith J.) Sajan Sahu v. Emperor.

AIR 1943 Pat 417=16 R P 245=10 B R 391 = 9 Cut L T 16=211 I C 536=45 Cr L J 406.

——Dispute over civil rights — Village feeling running high.

Where village feeling is running high over a disputed question of civil right, both the parties in the village should be bound down if they are prepared to assert that they have right on their side, until the disputed question of right has been finally settled one way or the other. (Beckett J.) Bhoru v. Emperor.

AIR 1943 Lah 99=45 P L R 64 = 15 R L 329=206 I C 355=44 Cr L J 506.

——Where the difficulty is to say which of the parties to the dispute is the party who is creating a disturbance, the proper procedure is under S. 107 and not under S. 144. (Rowland J.) Hansraj Prasad Singh v. Abdul Jabbar.

AIR 1935 Pat 461 = 1 B R 812 = 8 R P 161 (2)=16 P L T 624=157 I C 760=36 Cr L J 1268.

——Both parties putting forward a right.

Where there is a right put forward by both the parties, and where the right is in dispute, it is not fair to bind down only one of the parties. If the Magistrate thinks that in the interests of public peace he should resort to the provisions of S. 107, the proceedings should be drawn up against both parties so as not to give unfair advantage to one as against the others. (Sen J.) Musaheb Saudagar v. Nidhi Ram Datt.

AIR 1927 Pat 314 = 102 I C 781 = 8 P L T 645 = 8 A I Cr R 248=28 Cr L J 605.

——Procedure.

Two opposing parties in a dispute cannot be proceeded against under S. 107 in one proceeding. (Das J.) Kishore Ahir v. Emperor.

AIR 1926 Pat 32=88 I C 864=6 P L T 768 = 26 Cr L J 1248.

——Procedure—Both sides dangerous—Personal security.

Where a dispute between two parties may end in a riot and both parties are dangerous, both the parties must be bound over and if they are landed proprietors, their personal security is sufficient. (Stuart J.) Bindraban v. Emperor.

3 U P L R 185=63 I C 829=22 Cr L J 701 (All).

8. Consent to give security.

——It depends upon the facts and circumstances of each case as to whether a consent to give security amounts to a plea of guilty. Where an accused called upon to give security for keeping the peace says in terms that no prosecution evidence may be recorded and is willing to give security, it is sufficient proof that it is necessary for keeping the peace that he should execute the bond. (Thomas J.) Dukhi v. Emperor.

AIR 1937 Oudh 289=1937 O W N 133=9 R O 341=166 I C 850=38 Cr L J 302.

——Ss. 107, 242 — Mere willingness to execute security bond — Whether sufficient to act as plea of guilty under S. 242.

A mere consent to execute a bond can amount to a plea of guilty only if the plea is explicit, detailed and capable of no other interpretation. The attention of the accused should be directed to each of the facts mentioned in the notice and he should confirm them separately.

CRIMINAL P. C. (V of 1898), S. 107 — 8. Consent to give security

The mere fact that the accused shows his willingness or preparedness to execute a bond is not, therefore, enough to act as a plea of guilty under S. 242, Cr. P. C. (Middleton J. C. and Mir Ahmad A. J. C.) Sadhu Singh v. Emperor.

AIR 1935 Pesh 116=8 R Pesh 33 = 157 I C 755=36 Cr L J 1212.

——Under S. 107, a Court is entitled to act upon a solemn and free consent amounting to a plea of guilty given before it by the person summoned. In such cases the person summoned might waive the formal production of evidence: A I R 1924 All 269, Appr. (Walsh and Banerji JJ.) Emperor v. Kishan Narain.

AIR 1928 All 270=112 I C 774=50 All 599 = 9 L R A Cr 39=9 A I Cr R 291=26 A L J 312=30 Cr L J 6.

——When an accused, called upon to give security for keeping the peace, says in terms that no prosecution evidence may be recorded and he is willing to give security, it is sufficient proof that it is necessary for keeping the peace that he should execute a bond. No further enquiry need be made by the Magistrate: A I R 1924 All 269, Foll.; AIR 1919 All 19, Diss.; 30 Mad 330, Dist.; 35 Cal 674 and AIR 1917 Lah 304, Diss. from. (Dalal J.) Nasir Ahmad v. Emperor.

AIR 1927 All 579=102 I C 897 = 8 A I Cr R 18 = 8 L R A Cr 94=25 A L J 819=28 Cr L J 609.

——Consent of accused.

Certain persons were called upon to furnish security. They appeared and expressed their willingness to be bound over. The trial Court therefore took no evidence and passed an order against them.

Held, that the consent of accused amounted to a plea of guilty and the order was right. A I R 1920 All 29, Not Foll.; A I R 1914 All 546 and AIR 1919 All 19, Dist.; 34 Cal. 674, Dissented. (Walsh J.) Gharib v. Emperor

AIR 1924 All 269=81 I C 238=46 All 109=21 A L J 881=5 L R A Cr 21=25 Cr L J 750.

——Insufficient.

Consent to furnish security is no ground to order security. In the absence of evidence indicating apprehension of breach of the peace or of some act likely to cause breach of the peace on the part of the person concerned order passed is illegal. (Broadway J.) Joti Malik v. Emperor

AIR 1925 Lah 135=81 I C 198=25 Cr L J 710.

——Consent of accused is not a good ground.

The mere statement of a person that he is willing to give security is not sufficient ground for taking security from him for keeping the peace. AIR 1915 Lah 82 and AIR 1917 Lah 304, foll. (Chevis J.) Karam v. Emperor

65 I C 639 (2)=23 Cr L J 175 (2) (Lah).

——Consent of accused—Recording evidence before orders is necessary if there is no unqualified plea of guilt.

Recording of evidence is necessary in proceedings under S. 107 before an order is passed, if there is no unqualified plea of guilt. A statement of a person that he is not a quarrelsome person but is willing to give security would not justify an order requiring him to furnish security. (Mittra A. J. C.) Prabhudas v. Emperor

AIR 1920 Nag 145=57 I C 672=21 Cr L J 656.

——Consent of accused — Security to keep peace — Evidence.

There must be evidence on the record that the person from whom security is demanded is likely to commit a breach of the peace. The mere consent of the person to be bound down is not sufficient; the fact of a likelihood of a breach of the peace must be established by the indepen-

CRIMINAL P. C. (V of 1898), S. 107—8. Consent to give security

dent testimony on oath. (Walsh J.) Jagdatt Tewari v. Emperor

AIR 1920 All 29=2 U P L R (H C) 38 = 54 I C 784 =21 Cr L J 176.

——Consent of accused — Consent of the party to be bound down does not debar him from applying in revision.

The accused were served with a notice to show cause why they should not be ordered to give security to keep the peace. The accused appeared and replied that they were prepared to furnish security as demanded. There was no enquiry as to whether these persons were likely to commit a breach of peace. Held that an order binding down the accused was illegal and that their readiness to furnish security did not prevent them, from moving the High Court in revision. 35 C. 674 and 12 A. L. J. 1262 foll. (Ryves J.) Chandar Chekra v. Emperor

AIR 1919 All 19=L R 1 A (Cr) 79=54 I C 411 = 21 Cr L J 59.

——Consent of accused—Breach of the peace—Security—Order by consent.

The accused were called upon under S. 112 of the Criminal P. C., to show cause why they should not furnish security to keep the peace under S. 107 of the Criminal P. C., for having formed an unlawful assembly which passed a mosque with loud music and which tended to cause breach of the peace by repeating this procedure. The accused denied these allegations but expressed their willingness to execute bonds to keep the peace. Held, that an order directing them to give security was illegal inasmuch as the accused denied every allegation on the basis of which they were considered liable to furnish security and no evidence was taken to prove these allegations. 35 C. 674 ; 30 M. 330 ; 37 A. C. 30, foll. (Stanyon J. C.) Emperor v. Rai Singh

AIR 1918 Nag 140=48 I C 985=20 Cr L J 105.

——Consent of accused—Security to keep peace—Proof.

The mere fact that an accused person is willing to give security to keep the peace is not the kind of proof required by S. 118 Criminal P. C., as a condition precedent to the taking of the security. (Johnstone C. J.) Prem Singh v. Emperor

AIR 1917 Lah 304= 27 P R Cr 1917=41 I C 671=36 P W R Cr 1917=18 Cr L J 847.

——Consent of accused — Accused's willingness not a sufficient ground for an order under.

The accused's own statement before Magistrate of his willingness to furnish security does not justify an order against him under S. 107. (Shah Din J.) Emperor v. Sheodan

AIR 1915 Lah 82 =24 P R Cr 1915 = 44 P W R Cr 1915=31 I C 384=16 Cr L J 784.

——Absence of evidence — Party consenting to be bound down.

A proceeding under S. 107 is a precautionary measure and not a trial for an offence and in such a proceeding no one should be bound down unless it is shown that he is about to commit a breach of the peace. In the absence of such evidence, the fact that the person agrees to be bound down is not sufficient. (Rampini and Sharfuddin JJ.) Ram Chandra Haldar v. Emperor

35 Cal 674=8 C L J 68=8 Cr L J 128.

——Effect of irregularities in proceedings where the Magistrate treating the statement of the Vakil as an admission of an intention on the part of the accused to commit a breach of the peace, passed an order that they should furnish security. Held that the order should be set aside because in such proceedings, no final action should be taken and no order having the effect of a conviction as against the accused should be passed, without

CRIMINAL P. C. (V of 1898), S. 107— 8. Consent to give security

formal evidence being recorded. (Subrahmanya Aiyar J.) In re Venkatasami

17 M L J 407=30 Mad 330= 2 M L T 329=6 Cr L J 278.

9. Costs.

See Note 21, Nature of proceeding.

10. Dispute about land.

See also Criminal P. C., S. 145.

——Ss. 107, 144 and 145 — Proceedings under S. 107 — Imminent danger of breach of the peace— Magistrate can further take proceedings under S. 145— Enquiry held by Magistrate held not one made with a view to take action under S. 144—Necessity of following procedure laid down by law, pointed out—Taking recourse to other methods not authorised held highly objectionable and unjustified— Writ of certiorari issued and orders quashed — (Constitution of India, Art. 226). (Wanchoo C. J. and Dave J.) Bhanwar Singh v. S. D. M. Khetri

AIR 1953 Raj 202= ILR (1953) 3 Raj 189 = 1953 Cr L J 1843.

——Ss. 107, 145—Scope.

Where there is a dispute likely to cause a breach of the peace concerning land, the proper procedure is to apply the provisions of S. 145 but in the circumstances of the case, held the Magistrate was not in error in taking action under S. 107. (Jamuar and Banerji JJ.) Harsi Mandal v. State

AIR 1953 Pat 277=1953 Cr L J 1456.

——Ss. 107, 145—Application under S. 107 — Power to proceed under S. 145.

Clause 10 of S. 145 expressly reserves the power of a Magistrate to proceed under S. 107 notwithstanding the provisions of S. 145. Where, therefore, no application under S. 145 has been presented and the only application presented is under S. 107, the Magistrate must decide the case having regard to the provisions of S. 107. It is open to him to initiate proceedings under S. 145 of his own accord if he is satisfied from the police report or other information that the dispute likely to cause breach of peace exists concerning any land. But so long as he does not proceed under S. 145, he must decide the application made to him under S. 107. (Agarwala J.) Malkhan v. State,

A I R 1953 All 259 = 1952 All W R (H C) 1 = 1951 R D (H C) 343=1952 All Cr R 1=1953 Cr L J 628.

——Ss. 107, 145—Distinction.

The vital difference between Ss. 107 and 145 is that under S. 107 commission of the breach of peace is alleged to arise from the side of the person against whom an application is made and, therefore, the Magistrate must be satisfied that the person accused was likely to commit a breach of peace or to do any wrongful act that may occasion a breach of peace ; while under S. 145 what is necessary to be established is that there is a dispute which is likely to cause a breach of peace. The breach of peace may be occasioned by any party to the dispute. Where it is not clear that the opposite party in an application under S. 107 is likely to commit a breach of peace, but the Magistrate is satisfied that there is a dispute concerning land which is likely to cause a breach of peace, the breach of peace being committed either by the applicant or by opposite party, there is a case for proceedings under S. 145. (Agarwala J.) Malkhan v. State,

A I R 1953 All 259 = 1952 All W R (H C) 1 = 1951 R D (H C) 343=1952 All Cr R 1=1953 Cr L J 628.

——Ss. 107 and 145—Proceedings under, when should be taken — Duty of Magistrate — Question of possession already decided by Civil Court — Proper proceedings are under S. 107 and not S. 145.

CRIMINAL P. C. (V of 1898), S. 107 — 10. Dispute about land

Whenever a dispute likely to result in a breach of the peace is brought to the notice of the Magistrate he may proceed under S. 107 or S. 145 ; but it is the Magistrate who has to make the choice, and not the Police Officer or the private party petitioner. In fact, the Magistrate can proceed under a section other than the one noted in the report or the petition which is only to apprise him of the facts and is not meant to dictate the law. At the same time, the Magistrate cannot choose one or other section arbitrarily, but should follow judicial principles. If prima facie, it appears that there is a genuine dispute in regard to possession, and prima facie claims of both the parties need investigation, then at all events S. 145 should be applied. If, on the other hand, the question of possession has either been decided by competent Courts, or the contentions of the parties are such that no reasonable man would be in doubt as to which party is in possession, then it is a case for action under S. 107, against the party that prima facie seems to be indulging in a pretence. It is obvious that, unless it appears in course of the proceeding that the claim of this party is something more than a bare pretence, S. 145, Criminal P. C. should not be brought in. For really, there is no dispute about possession that require the Magistrate's decision. (Krishnan J. C.) Indra Bahadur Singh v. State of U. P.,

A I R 1952 Vind Pra 67=1952 Cr L J 1514.

——Application under Ss. 107 and 145 — Proceedings under S. 107 started—Conversion of proceedings by successor without fresh complaint—Legality—See Criminal P. C. (1898), S. 145.

1951 R L W 14.

——Ss. 107, 133 and 145—Applicability — Dispute as to possession of land.

In a case of dispute as to possession of land, especially when bona fide, proceedings under S. 107 of the Code though not without jurisdiction should not be lightly resorted to.

Proceedings under S. 145 are appropriate in these cases. Where, however, the dispute is in respect of obstruction of the rights of the public in a land used by them, action should be taken under S. 133. (Sarjoo Prasad J.) Suraj Narain Rai v. The State,

A I R 1950 Pat 502=1950 A W R Sup 103.

——Dispute concerning land—Proceedings converted into one under S. 107—Inquiry into title.

In a case where there is dispute concerning land, it is proper to take action against both sides if S. 107 is to be resorted to, because binding over one party puts the other at an advantage. But it cannot be said that the Court should not investigate the title and the facts of possession of the parties. Such an enquiry into title may be out of place in S. 145 proceedings but it falls legitimately within the purview of criminal Court acting under S. 107 because the Court has to find out who is the aggressor and who has the right on his side : A. I. R. 1923 Nag. 54, Disting. (Hidayatullah J.) Shamrao v. Emperor,

A I R 1948 Nag 76=1947 N L J 360 = 1947 A W R Sup 106=I L R (1947) Nag 706=1947 O A Sup 106= 49 Cr L J 61.

——Ss. 107, 145 — Dispute relating to immovable property likely to cause breach of peace—Proper procedure.

If the Sub-Divisional Magistrate comes to the conclusion that the dispute in respect of the possession of immovable property between two parties is likely to cause breach of peace in the future the proper procedure to be adopted is that described in S. 145, Criminal P. C. (Agarwala J.) Deoballam Singh v. Gorakhnath Singh,

A I R 1947 Pat 235=27 Pat L Tim 231 = 48 Cr L J 703.

CRIMINAL P. C. (V of 1898), S. 107 — 10. Dispute about land

——Ss. 107 and 145—Distinction between.

Section 145, Criminal P. C. does not override the provision of S. 107. When exclusive possession of party for a long time is established, the Magistrate is justified in acting under S. 107. Sub-section (10) of S. 145 clearly mentions that nothing in S. 145 shall be deemed to be in derogation of the powers of the Magistrate to proceed under S. 107. (Varma C. J. and Bapna J.) Rasid-Ud-din v. State,

1947 J L R 240.

——Ss. 107, 144, 145 — Imminent danger of breach of peace arising out of dispute concerning land or water—Magistrate can take steps under S. 144 or even under S. 107 — If Magistrate subsequently finds that there is bona fide dispute in respect of land or water Magistrate can, in supersession of previous order, take proceedings under S. 145.

If the heading of Chapter XI is taken into account, it will be seen what the intention of the Legislature was in framing this Chapter. The intention was to arm Magistrates with such power and authority as to enable them to take immediate steps to prevent an imminent breach of the peace. This intention is made clearer by the wording of S. 144. It is of wide and general application. If, therefore, there is an imminent danger of the breach of the peace arising out of a dispute concerning any land or water or the boundaries thereof, a Magistrate of competent jurisdiction has power and authority to take immediate steps and issue necessary order under S. 144. If he thinks that an order under S. 107 will be more effective than the one under S. 144, he has jurisdiction to resort to that section, provided he is one of the Magistrates duly empowered thereunder. Section 107 is also, like S. 144, of wide and general application in that it is designed to meet urgent cases of the apprehended danger of the breach of the peace. If, after passing an order either under S. 144 or 107 or in the course of the proceedings taken under either of those two sections, the Magistrate finds that the dispute between the parties is in respect of any land or water or the boundaries thereof and that it is really a bona fide one and not a mere pretence as to possession, the Magistrate can open proceedings under S. 145 in supersession of order, if already passed, either under S. 144 or 107 and take such appropriate steps as are indicated therein. Where the police report showed that A was in possession of a hotel since 1942 and, that it was B who was interfering with A's possession thereof and both parties had a large following each :

Held, that there was undoubtedly a likelihood of an imminent breach of the peace. The Magistrate was consequently fully justified in taking proceedings under S. 144 : A I R 1922 Pat 435 and 39 Cal. 150, Rel. on. (Ba U J.) P. K. Madavan v. The King

1946 Rang L R 115.

——Operation of S. 107 usually restricted to persons not in possession.

The fact that a dispute likely to cause a breach of the peace concerns land does not by itself deprive a Magistrate of jurisdiction under S. 107. Such disputes can be dealt with under this section on information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. It is, however, essential, for the section to apply, that the acts committed or likely to be committed should be wrongful. Acts committed in the lawful exercise of the right of private defence cannot support proceedings under this section, and it is, therefore, to the party who is not in possession of the disputed

CRIMINAL P. C. (V of 1898), S. 107 — 10. Dispute about land

property that the operation of this section is usually restricted. (Dhavle J.) Madho Singh v. Emperor,

A I R 1942 Pat 331 = 23 P L T 243 = 8 B R 670 = 14 R P 658=200 I C 316=43 Cr L J 637.

——Ss. 107, 144, 145—Ordinarily, unless the facts are on the face of them quite clear, a proceeding should be drawn up under S. 145 for the purpose of investigating the question of actual possession of land. Before proceedings under S. 107 could be properly instituted against one party, it is necessary to ascertain which of the parties to the dispute was in possession of the land, which can more conveniently be done by proceedings under S. 145. Having regard to the peculiar jurisdiction conferred by S. 144, no inference of possession can be drawn from an order passed under it. It is a summary order and is in the nature of a temporary injunction intended for emergencies and should not be utilized in subsequent proceedings as substantive evidence of possession of a successful party. Even a definite order under S. 145 must be ignored when evidence regarding possession is being considered. It is not under S. 144 but under S. 145 that the question of disputed possession is decided once for all so far as the Magistrate is concerned.

Hence, an order under S. 144 regarding possession should not be made the basis of proceedings under S. 107. If after an order under S. 144, action under S. 107 is deemed necessary, the proper procedure is to decide the question of possession by proceeding under S. 145 and then to take action under S. 107 accordingly. (Dhavle J.) Madho Singh v. Emperor

A I R 1942 Pat 331=23 P L T 243=8 B R 670 = 14 R P 658=200 I C 316=43 Cr L J 637.

——Principle that Crown must show likelihood of danger to peace.

The principle that to support an order for security, it is incumbent on the Crown to show not only that there was a likelihood of a breach of the peace at some past time, but that this likelihood continued to the present date, has no application to cases where claims are to immovable property and there is no indication that the party of the accused are likely to abandon their claims or to give up the intention of using violence in support of them. (Rowland J.) Mahabir Gope v. Samarthi Singh

A I R 1940 Pat 252=21 P L T 652 = 6 B R 837=13 R P 124=189 I C 457=41 Cr L J 746.

——Ss. 107, 145—Complaint under Ss. 107/145—Court's omission to draw up original order under S. 145 (1) and affix its copy under S. 145 (3), if vitiates all proceedings.

In a case under Ss. 107/145, Cr. P. C., the Magistrate's omission to draw up the necessary original order under S. 145 (1), Cr. P. C., and affix its copy at the spot under S. 145 (3), vitiates all the proceedings and the final order passed in such a case can be set aside. (Addison J.) Chanan Singh v. Emperor

A I R 1938 Lah 345=40 P L R 20=11 R L 165=176 I C 124=39 Cr L J 702.

——Ss. 107, 145 — In the proceedings under S. 145, Cr. P. C., where one party alleges to be in joint possession with the opposite party, proceedings under S. 107 may be taken. (Nanavutty J.) Shanti Prasad v. Emperor

1937 O W N 214.

——Ss. 107 and 145 — Dispute regarding the right of entry in Church — Order under S. 107 to keep the peace and hand over the keys to the Court till the decision of the question.

There was a dispute regarding the right of entry in a Church between the Priest-in-charge of the Church and certain members of the congregation. The latter had been called on to show cause why they should not be bound over under S. 107, Cr. P. C., to keep the peace. The keys of the Church were in possession of the members of the congregation who had been called on to show cause. The Magistrate passed an order to the effect that the parties would prepare a list of the movables in the chapel and hand over the keys :

Held, that the Court might take possession of the property in dispute under S. 145, Cr. P. C., but it was not entitled to do so under S. 107 of the Code. The production of the keys before the Court would in no way enable it to come to a competent decision whether the members of the congregation were to be bound over to keep the peace or not. If it was found that they were to be bound over, the Church authorities were then entitled to proceed to break open the lock of the door which had been shut against them without any hindrance from the opposite party. (Grille J. C.) Emperor v. Arakswami

A I R 1934 Nag 142=6 R N 228=30 Nag L R 298=149 I C 429=35 Cr L J 991.

——Ss. 107, 145—Proceedings against one party alone — Proceedings under S. 107—Contents.

Where there is a dispute relating to possession of immovable property, the normal procedure is to institute proceedings under S. 145 and to decide the dispute as to possession once for all so far as the Criminal Court is concerned. But it is also optional to a Magistrate in special cases to proceed under S. 107 against both parties and to bind down the party who is proved not to be in possession. It is not proper to proceed against one of the parties alone under S. 107 and bind him over without determining the question of possession.

A proceeding under S. 107 should contain definite particulars and not mere vague recitals borrowed from the words of the section. (Rowland J.) Raghunath Puri v. Prem Narain Puri

A I R 1921 Pat 347=12 P L T 535 = Ind Rul (1931) Pat 321=133 I C 161=32 Cr L J 1014.

——Where there is a dispute regarding possession of immovable property and there is imminent danger of breach of peace before a Magistrate proceeds against a party under S. 107, it is advisable in order to ascertain the fact of possession that the proceedings under S. 145 may conveniently be taken. (James J.) Saddique v. Sheikh Mohid.

A I R 1930 Pat 556=129 I C 85 = 1930 Cr C 1100 = 32 Cr L J 208.

——S. 145, Cr. P. Code—Option of Magistrate.

If the Magistrate is satisfied at any time that there is an apprehension of a breach of the peace arising out of a dispute with regard to certain land, the proper course for him would be to institute a proceeding under S. 145, or to proceed against both the parties under S. 107. (Fazl Ali J.) Amanat Ali v. Emperor

A I R 1929 Pat 67=115 I C 545=10 P L T 639 = 12 A I Cr R 451=30 Cr L J 492.

——Breach of peace.

The Magistrate under S. 145 is to decide the question of possession and not that of title which is to be decided by a Civil Court, and if it is probable that the parties to a land dispute will break the King's peace before the decision of the Civil Court can be given, that danger can be guarded against by an order under S. 107 in an appropriate case. (Marten and Coyajee JJ.) Mallappa, In re

A I R 1926 Bom 313=95 I C 62=28 Bom L R 488 = 27 Cr L J 734.

——Right to worship.

The right to perform the puja of an idol or to have a share of the offerings made to the idol cannot be said to be a right of user of any land as provided in S. 145. If

CRIMINAL P. C. (V of 1898), S. 107 — 10. Dispute about land

there is such a dispute between the parties which the Magistrate considers may lead to any breach of the peace he may take such steps as he considers necessary under S. 107. (Walmsley and B. B. Ghose JJ.) Surendra Nath Banerjee v. Shoshi Bhusan Sarkar

AIR 1926 Cal 437=52 Cal 959=42 C L J 127=92 I C 223=27 Cr L J 239.

——Ss. 107 and 145—Dispute about land—Scope.

A dispute about land which would justify proceedings under S. 145 does not bar proceedings under S. 107, but if the complainant is out of possession of the land in dispute and there is no danger of a breach of the peace unless he attempts to resume possession, he should be referred to his remedies under S. 145 or in the Civil Courts, and the fact that his attempting to resume possession may cause a breach of the peace and that his dispossession was prima facie illegal are not sufficient grounds for binding over the opposite party to keep the peace. (Prideaux A J. C.) Dhuma v. Emperor

A I R 1923 Nag 54=68 I C 407=23 Cr L J 567.

——Ss. 107, 144, 145—Possession given by Civil Court — Criminal Court cannot re-open question.

The Criminal Court is bound to maintain the auction purchaser in possession of the property purchased by him after the passing of a decree by a Civil Court and the service of the writ of the delivery of possession. The Criminal Court cannot re-open the question of possession and investigate it under Ss. 107, 144 and 145 of the Cr. P. Code or in an inquiry of an offence under the Penal Code. The Magistrate has power under S. 145, Cr. P. Code to investigate into the actual service of the writ of delivery of possession. But as soon it is proved that the dakhaldhahani has been effected, it is his duty to maintain the possession of the auction purchaser. (Jwala Prasad and Coutts JJ.) Ram Krishna Singh v. Emperor

A I R 1922 Pat 197 (2)=3 Pat L T 335 = 66 I C 817 =23 Cr L J 321.

——Ss. 107 and 145— Dispute about land — Appropriate procedure.

When a magistrate has reason to think that an individual is likely to commit a breach of the peace, he has jurisdiction, even though the case for the apprehended breach of the peace may relate to a dispute about land, to put into operation S. 107, Criminal P. C. Where there is a dispute about land and where there is some bona fide claim on the part of both the parties, the appropriate and proper section is S. 145, Criminal P. C., A I R 1918 Pat 500 Dist. (Bucknill J.) Abdus Sayed Khan v. Emperor,

65 I C 555 = 23 Cr L J 123 (Pat).

——In a dispute regarding property the aid of S. 144 is invoked when there is danger to breach of the peace and of S. 145 when the danger to the peace is to be averted at once. (Jwala Prasad J.) Ratan Chand Sahu v. Mohan Lal Sahu,

AIR 1922 Pat 228.

——Ss. 107 and 145—Dispute about land.

S. 107 applies to a case of undisputed possession; where the possession is in dispute proceedings under S. 145 should be instituted. (Jwala Prasad J.) Kali Prasad v. Dhodba,

62 I C 590 = 22 Cr L J 574 (Pat).

——Ss. 107 and 145 — Dispute as to possession of fishery —Proceeding under S. 107—Refusal to change into S. 145.

Where a dispute likely to lead to a breach of the peace was over the possession of a fishery, and the Magistrate drew up a proceeding under S. 107 of the Criminal P. C., held, the Magistrate had jurisdiction to proceed under S. 107 of the Criminal P. C. and he having exercised his discretion it was not open to the High Court to interfere

CRIMINAL P. C. (V of 1898), S. 107 — 10. Dispute about land

in revision: 39 Cal 150, Ref. (Walmsley and Greaves JJ.) Amulya Charan Sircar v. Amrita Lal Mukerji,

AIR 1920 Cal 841 = 24 C W N 1075 = 60 I C 336= 22 Cr L J 224.

——Ss. 107 and 145—Discretion of Magistrate — Breach of peace apprehended — Civil suit pending.

Where a civil suit is pending for the determination of the rights of the parties in certain property it is not proper to start proceedings under S. 145 of the Code. Proceedings under S. 107 are more appropriate. (N. R. Chatterjea and Cuming JJ.) Ali Mohammad v. Fakiruddi Munshi,

AIR 1920 Cal 708=24 C W N 1039= 32 C L J 255= 59 I C 643 = 22 Cr L J 131.

——Ss. 107 and 144 — Dispute about land — Possession of auction purchaser.

Criminal Courts can proceed under Ss. 107 and 144 to retain the possession of the auction purchaser of a holding in execution of a decree. The aggrieved party can sue for possession in Civil Court. (Jwala Prasad J.) Sukan Singh v. Prayag Singh,

AIR 1920 Pat 210 = 1 Pat L T 81=2 U P L R (Pat) 35=57 I C 95 = 1920 P H C C 124 = 21 Cr L J 575.

——Ss. 107 and 145—Nature of proceedings—To recover immoveable property.

Proceedings under S. 107 of the Criminal P. C. are only intended for the security of the public peace, not for the purpose of enabling one of the two contending parties to help themselves in recovering possession of immoveable property after having their adversaries' hands tied down by an order under that section. Where the dispute relates to the possession of immoveable property, the proper course is to institute proceedings under S. 145 and not under S. 107 : 3 C W N 463, foll. (Shadi Lal J.) Jalal v. Emperor.

AIR 1918 Lah 344 = 144 P L R 1917 = 44 I C 974= 19 Cr L J 446.

——Essentials —Lessee of property attached under S. 146 —Right to possession.

A lessee of property attached under S. 146 is entitled to protection in his possession of the land let to him. But the letting is no bar to proceedings against the lessee under S. 107, if the Magistrate is satisfied that such action is necessary in the interests of the public peace. (Atkinson J.) Jai Rai v. Emperor,

AIR 1917 Pat 223 = 42 I C 735 = 18 Cr L J 1007.

——Ss. 107 and 145 — Jurisdiction — Proceeding under S. 145—Order to furnish security—Legality.

There was a dispute about the possession of the house between two sets of persons and on proceedings instituted under S. 145 the Magistrate decided in favour of one set, but apprehending a disturbance on the part of the other, ordered them to furnish security.

Held, that the order about security is illegal. The Magistrate cannot make an order under one section in proceedings taken under another section. (Walsh J.) Sri Deo v. Emperor,

AIR 1916 All 237 = 14 A L J 794 = 36 I C 495 =17 Cr L J 527.

——Ss. 107 and 145—Dispute as to land—Breach of peace —Immoveable property.

The power of a Magistrate to take action under S. 107 is not ousted by the mere fact that the dispute out of which a breach of the peace is likely to arise relates to immoveable property. (Ayling J.) Suppa Thevan v. Ramaswamy Aiyar,

AIR 1916 Mad 621 = 27 I C 835 = 16 Cr L J 211.

——Ss. 107 and 145 — Dispute about land — Profits of market dues.

CRIMINAL P. C. (V of 1898), S. 107 — 10. Dispute about land

A dispute relating to chaudhrana dues which is a purely voluntary payment to the chaudhry (or agent) by market dealers for regulating market business is not a dispute relating to the profits of a market within S. 145 and S. 107 and S. 145 does not apply to the case. (Ryves J.) Ram Lochan v. Emperor,

AIR 1914 All 62 = 36 All 143 = 12 A L J 162 = 22 I C 171 = 15 Cr L J 27.

——Ss. 107 and 145—Dispute about land — Order under both sections.

There is nothing either in S. 107 or S. 145 of the Criminal P. C. to preclude a Magistrate from proceeding under the latter section though orders were passed under the former. (Karamat Husain J.) Faiyaz Ali v. Ewaz Ali,

9 A L J 693 = 15 I C 982 = 13 Cr L J 566.

——Ss. 107 and 145—Dispute as to land.

The fact that there was a dispute as regards the land does not oust the Magistrate's jurisdiction under S. 107. After proceeding under S. 107 whether to act under S. 145 will depend upon the circumstances. The competence of Magistrates to act under S. 107 against persons out of possession must depend upon whether as against those persons the conditions specified in the section have been established. (Jenkins C. J. Woodroffe, Mookerjee, Carnduff and D. Chatterjee JJ.) Emperor v. Abbas.

39 Cal 150 = 16 C W N 83 = 14 C L J 429 = 12 I C 833 = 12 Cr L J 569 (FB).

——Ss. 107, 145 — Likelihood of breach of peace—Proceedings under S. 107—Legality.

It is open to a Magistrate to initiate proceedings under S. 107 even though there may be a dispute as to possession of land as is referred to in S. 145. The word "shall" in S. 145, Criminal P. C., is not mandatory. In matters of procedure, the word is generally construed as directory. As the High Court has no power to revise orders under S. 145, Criminal P. C., a fortiori, it has no power to direct a Magistrate to initiate proceedings under that section. (Pratt and Hayward J. Cs.) Imperator v. Lakhano wd. Murid,

2 S L R 18 Cr=10 Cr L J 231.

——Ss. 107 and 145—Bar of proceedings.

The fact that there is a dispute about land, which might be made the subject of proceedings under S. 145, Criminal P. C., is no bar to proceedings under S. 107, thereof. (Skinner A. J. C.) Hira Singh v. Mohan Singh,

5 N L R 94=3 Ind Cas 64=10 Cr L J 221.

——Ss. 107, 145—One party already in possession—Other party aggressor—Action under Chapter 8.

Per Pratt A. J. C. — Though there may be a dispute about possession and an apprehension of imminent breach of the peace if the Magistrate finds one party already in possession and the other party committing an act of aggression, he may take action against the aggressor under Chapter 8 of the Code instead of proceeding under this section. (Lucas, Cruch and Pratt J. Cs.) Balmukand Jaganath v. Emperor,

1 S L R 50 Cr=8 Cr L J 170.

——Ss. 107 and 145—Bona fide dispute as to the right of possession.

When there is a bona fide dispute as to the right to the possession of land between two parties, it would be improper to bind down only the party in possession under S. 107, in such a case it would be better to bind down both the parties under S. 107, or to institute a proceeding under S. 145, and to declare the party found in actual possession entitled to retain possession until the decision of the civil Court in the suit instituted. (Rampini and Sharfuddin JJ.) Baisnab Das Babaji v. Emperor,

12 C W N 606=7 Cr L J 403.

——Ss. 107 and 145—Dispute concerning Jalkar Procedure.

A dispute likely to cause a breach of proceedings in

CRIMINAL P. C. (V of 1898), S. 107 — 10. Dispute about land

the case of a bona fide dispute relating to a fishery right which is likely to cause a breach of peace should be instituted under S. 145 and not under S. 107. The words in S. 145 are mandatory while those in S. 107 are discretionary. (Mitra and Fletcher JJ.) Balajit Singh v. Bhoju Ghosh,

35 C 117=6 C L J 697=12 C W N 487=6 Cr L J 398.

——Proceedings under—Legality—Dispute between landlord and tenants with regard to possession of land—Proceedings under S. 145—Land attached and temporarily settled with third party — Dropping of proceedings under S. 145 as being defective — Land continuing in possession of third party and recorded as such in settlement papers —Tenants interfering with possession of third party and were bound down under S. 107.

Held, that proceedings under S. 107 taken under such circumstances were based on a misunderstanding of the real position of the parties and, therefore, could not be maintained. (Brett and Gupta JJ.) Maigh Lal Singh v. Ambica Jha,

5 C L J 447=5 Cr L J 344.

——Ss. 107, 112—Dispute regarding property—Order requiring security from one party not in possession if proper.

During the pendency of Land Registration proceedings a Magistrate instituted proceedings under S. 107 of the Code, against one of the disputing parties. It was contended on their behalf that there being a bona fide dispute between the parties as to title and possession, the proceeding under S. 107 of the Code, taken against one party alone to the exclusion of the other would prejudice the former in the Land Registration proceedings. Held— that such a consideration was foreign to the matter under enquiry in the proceeding under S. 107 of Code. Held, further, that the question whether the one party or the other were in peaceful possession would have to be decided in the proceeding, but no objection could, on that account, be taken to the initiation of proceeding under S. 107 of the Code, against one or the other party, if on the facts presented before the Magistrate at the time of its initiation it appeared that such party were out of possession and were seeking to obtain possession by unlawful means which were likely to cause a breach of the peace.

A condition that the persons proceeded against should undertake that no attempt would be made by them or their agents to realise rent by force and nothing would be done to induce a breach of the peace, could not be imposed under S. 112 of the Code, and should be struck out of the bail-bond. (Brett and Stephen JJ.) Bibee Kulsum v. Omatul Mehdi,

11 C W N 121=4 Cr L J 456.

——Ss. 107 and 145—Attempt to eject by force a person in possession of immovable property — Proceedings under S. 145—Where certain persons wrongfully and without any bona fide claim to possession, sought to eject another by force from the possession of certain land, and a breach of the peace was imminent, held that a Magistrate might legally take action against the aggressors under S. 107 of the Code of Criminal Procedure and it was not necessary, on the finding that their claim was not bona fide, to take proceedings under S. 145 of the Code. (Richards J.) Emperor v. Ram Baran Singh,

28 A 406=A W N 1906, 61=3 Cr L J 323.

——Ss. 107, 144 and 145—Dispute relating to land likely to cause breach of peace—Discretion of Magistrate to proceed either under S. 107, or Ss. 144, 145 of the Code.

The mere fact of the dispute likely to cause a breach of the peace being one relating to possession of lands will not

CRIMINAL P. C. (V of 1898), S. 107 — 10. Dispute about land

preclude the Magistrate from proceeding under S. 107 and in such cases, the Magistrate is not bound to act only under Ss. 144, 145, but has a discretion to proceed either under those sections or under S. 107. (Rampini and Mookerji JJ.) Sheoraj Roy v. Chatter Roy,

32 C 966=10 C W N 288=2 Cr L J 769.

——Ss. 107 and 145—Dispute as to orchard — One party claiming exclusive possession while the other claiming joint possession—Proper procedure is under S. 145 and not S. 107—See Criminal P. C., S. 145.

2 Cr L J 658 (Cal).

——Ss. 107, 145—Procedure.

Ordinarily where there is a dispute with regard to the possession of certain land, and there is a likelihood of a breach of the peace, the more appropriate procedure is that provided by Ch. XII, Criminal P. C., which deals with disputes as to immoveable property. But jurisdiction to proceed under S. 107 is not ousted by the fact that during the enquiry it appears that the dispute is regarding the possession of land. Thus where the complainant alleged that the accused has threatened to use violence to him, if he should go upon the land of which he was in possession, the Magistrate would be justified in instituting proceedings under S. 107. (Henderson and Geidt JJ.) Jafar Mandal v. Jaribullah Saha,

9 C W N 551=2 Cr L J 272.

11. Dispute about land—Concurrent proceedings under Ss. 107 and 145.

—See also Criminal P. C., S. 145.

——Ss. 107 and 145—Concurrent proceedings under.

Simultaneous or concurrent proceedings under Ss. 107 and 145 are most inadvisable and inexpedient though not illegal. (Krishnan J. C.) Mathura Prasad Nand Ram v. State of Vindhya Pradesh.

AIR 1953 Vind Pra 14=1953 All W R (Sup) 30=1953 Cr L J 975.

——Ss. 107 and 145—Composite proceedings are illegal.

Composite proceedings under S. 107 as well as S. 145 are illegal. If the Magistrate is satisfied that both the proceedings are necessary, it is his duty to start separate proceedings. The foundation of proceedings under S. 145 is a preliminary order under sub-s. (1). The foundation for proceedings under S. 107 is an order under S. 112. It is necessary that the proceedings under the two sections should be entirely separate, because if there is only one proceeding, there is every likelihood of confusion being made by the Magistrate. (Nature of both proceedings indicated). (Sharma J.) Berisal Singh v. Matadin,

AIR 1953 Raj 119=1952 Raj L W 265=ILR (1952) 2 Raj 862=1953 Cr L J 846.

——Ss. 107 and 145—Combination of proceedings under—Legality—Proper procedure.

The procedure in case of disputes relating to immovable property under S. 145 is quite different from the procedure in security proceedings under S. 107. Both the proceedings should not, therefore, be combined and if the Magistrate considers it necessary to proceed both under S. 107 as well as S. 145 he should start separate proceedings according to law.

Hence, where a Magistrate after registering a case under Ss. 107 and 145, Criminal P. C., issues a notice to the opposite parties to show cause why they should not furnish securities for keeping peace and after recording the evidence of the parties passes a composite order under Ss. 107 and 145 of the Code the entire proceedings are illegal and without jurisdiction and the order must be set aside. (Sharma J.) Bairon Bux v. Rajmal,

AIR 1952 Raj 100=1952 Raj L W 10=1952 Cr L J 1031.

CRIMINAL P. C. (V of 1898), S. 107 — 11. Dispute about land—Concurrent proceedings under Ss. 107 and 145

——Ss. 107, 145 — Simultaneous proceedings under both sections.

Although a Magistrate has jurisdiction to proceed upon the same material under S. 107 as well as under S. 145, it is not desirable that the proceedings under both the sections should be taken at the same time. (Mehta J.) Nathu v. State,

1951 R L W 176.

——Ss. 107 and 144 — Concurrent proceedings—Possession of auction purchaser.

Criminal Courts can proceed under Ss. 107 and 144 to retain the possession of the auction purchaser of a holding in execution of a decree. The aggrieved party can sue for possession in Civil Court. (Jwala Prasad J.) Sukan Singh v. Prayag Singh,

A I R 1920 Pat 210=1 Pat L T 81=2 U P L R (Pat) 35=1920 P H C C 124=57 I C 95=21 Cr L J 575.

——Ss. 107, 144 and 145—Concurrent proceedings—Propriety of — Dispute as to possession — Proceedings under S. 107 and also under S. 144 or S. 145 should not be going on at the same time.

Where on the application of petitioners for assistance of the Magistrate in the matter of possession of land, an injunction was issued under S. 144 of the Criminal P. C., and proceedings were taken against the petitioners under S. 107 Held, that the procedure was bad, as in effect it debarred the petitioners from giving evidence of possession. If on the expiry of the injunction under S. 144 there was any apprehension of a breach of the peace, the more appropriate procedure would be to take proceedings under S. 145 of the Criminal P. C., rather than under S. 107. (Chitty and Smither JJ.) Abinash Chandra Mandal v. Lokenath Gani,

A I R 1919 Cal 465=44 I C 591=19 Cr L J 367.

——Ss. 107 and 145 — Concurrent proceedings — Order under the former section does not take away jurisdiction under the latter.

There may be concurrent proceedings under both the above sections between the parties; and the passing of an order under S. 107 does not deprive the Magistrate of jurisdiction under S. 145. (Chitty and Walmsley JJ.) Nasiruddin v. Gofuruddin Mahomed,

A I R 1917 Cal 226=21 C W N 160=37 I C 481=18 Cr L J 129.

——Ss. 107 and 145—Concurrent proceedings—Combination of proceedings under Ss. 107 and 145—Notice under S. 107.

It is very undesirable to combine proceedings under S. 107 with those under S. 145 and to act against both opposing parties under S. 107. Before issuing process under S. 107, the Magistrate must have information of a clear and definite kind disclosing tangible facts and details so that it may afford notice to the person of what he is to come prepared to meet. (Fawcett A. C. J. and Crouch A. J. C.) Farid v. Piru,

A I R 1914 Sind 8 = 8 S L R 207 = 27 I C 907=16 Cr L J 235.

——Ss. 107 and 145—Concurrent proceedings.

The passing of an order under S. 145 does not debar the Magistrate from directing parties to give security under S. 107 on the same facts, the only difference being that it is at the option of the Magistrate to proceed under S. 107, while he is bound, if moved for the purpose, to take action under S. 145. (Sundara Aiyar and Phillips JJ.) Muthia Moopan, In re,

36 Mad 315=21 I C 159=14 Cr L J 559.

——Ss. 107 and 145—Concurrent proceedings.

The fact that a party has been bound down to keep the peace under S. 107 does not debar the Magistrate from

CRIMINAL P. C. (V of 1898), S. 107 — 11. Dispute about land— Concurrent proceedings under Ss. 107 and 145

acting under S. 145 when so required. (Holmwood and Sharfuddin JJ.) Baisnath Charan Manjhi v. Gati Nath Munshi,

39 Cal 469=16 C W N 384 = 13 I C 830=13 Cr L J 142.

12. Evidence

See also Note 20. Likely to commit breach of peace or disturb public tranquillity.

——Apprehension of breach of peace.

The preliminary order or notice indicated that according to the Magistrate, the applicants were feared to commit breach of peace at the time of approaching Moharram and Deshra holidays simply because they had filed an application to the police that the feelings of the Muslims were injured by the passing of the procession in celebration of the Mahatma Gandhi Jayanti alongside the mosque. The Sub-Inspector of Police in his evidence stated that the statements in the application were found to be incorrect and, therefore, he concluded that the applicants might commit breach of peace at the time of the Moharram and Deshra holidays which were about a week ahead :

Held, that there was absolutely nothing as required by law on which such an apprehension could be justified. The very proceedings were, therefore, unjustified and much more so the order. (Sathey J. C.) Abdul Naim Khan v. State,

A I R 1952 Bhopal 45=1952 Cr L J 1758.

——Evidence to specific charge subject of separate trial.

There is no illegality in admitting evidence in the security proceedings of a specific charge which is the subject of a current but separate trial. If the same evidence is relevant to both proceedings, there is no reason why the same evidence should not be used in both those proceedings. (Horwill J.) Ranga Swami Nayudu In re,

AIR 1943 Mad 394=16 R M 246=(1943) 1 M L J 246 =1943 M W N 149 = 56 L W 217 = 208 I C 227 = 44 Cr L J 756.

——Reports of witnesses regarding past conduct of accused and his disposition to use violence—Admissibility.

Court can admit under S. 157, Evidence Act, as evidence of the past conduct of accused and their disposition to use violence, sanehas or reports made by several of the prosecution witnesses on various dates in the absence of the accused, to corroborate what the witnesses have testified though these sanehas are not substantive evidence of the matters mentioned in them. (Rowland J.) Mahabir Gope v. Samrathi Singh,

A I R 1940 Pat 252=21 P L T 652=6 B R 837 = 13 R P 124 = 189 I C 457=41 Cr L J 746.

——Breach of peace, pending investigation.

In a criminal case, if the accused persons, seeing proceedings under S. 107 against them pending, attempt to commit a breach of the peace, such evidence would be the best evidence to prove their intention to commit a breach of the peace. (Dalal J.) Emperor v. Jewan Singh,

A I R 1930 All 408 = 52 All 593=I R 1930 All 562= 124 I C 706 = 1930 A L J 866=1930 Cr C 565 = 41 Cr L J 710.

——Method of recording.

It is not necessary for the deposition to be read over to the witness in the presence of the accused in the case of an inquiry under S. 107. (Newbould and B. B. Ghose JJ.) Legal Remembrancer v. Jafar Raki,

A I R 1925 Cal 940=89 I C 976 = 52 Cal 668=26 Cr L J 1456.

——Proceedings under S. 107 cannot be based upon hearsay evidence. (Mittra A. J. C.) Mohan v. Emperor,

A I R 1920 Nag 203=56 I C 864=21 Cr L J 560.

CRIMINAL P. C. (V of 1898), S. 107 — 12. Evidence

——Ss. 107, 355 and 360—Modes of recording evidence.

A case under S. 107 of the Criminal P. C., is triable as a summons case and the deposition to be received in a summons case is that provided by S. 355 of the Criminal P. C. S. 360 of the Criminal P. C., lays down a certain procedure and that is the reading over of the deposition to the witnesses when the deposition is recorded under S. 355 of the Criminal P. C. (Jwala Prasad J.) Ramdhari Singh v. Emperor,

A I R 1918 Pat 448=4 Pat L W 44=(1918) Pat 13= 43 I C 585=19 Cr L J 169.

——Ss. 107 and 110—In security proceedings, the Court is entitled to take into consideration threats uttered on different occasions as well as the previous relation of the parties and the antecedent and existent circumstances; mere bombast does not render the person using it liable to be dealt with under the section. (Abdur Rahim and Ayling JJ.) In re Chinnathambi Rowthan,

9 M L T 271=(1911) 1 M W N 235=9 I C 594 = 12 Cr L J 104.

——Evidence to be recorded before passing order—Party agreeing to be bound down—Order without jurisdiction.

No person can be bound down under S. 107 of the Criminal P. C., without any evidence being recorded that he is about to commit a breach of the peace, even though he may agree to be bound down. (Rampini and Sharfuddin JJ.) Ram Chandra Haldar v. Emperor,

35 C 674=8 C L J 68=8 Cr L J 128.

13. Forfeiture of bond.

See also Criminal P. C., Ss. 121 and 514.

——Ss. 107 and 121 — Person bound committing offence.

There is no provision in the Code under which a person who has been bound down for keeping the peace under S. 107 and has furnished security can be sent to jail for the unexpired portion of the bond, if he had committed or attempted to commit or abetted any offence. In such a case all that can be done is that the bond shall be forfeited but he cannot be sent to jail for the unexpired period of the bond. (Sharma, J.) Ratanlal v. The State,

1953 R L W 444.

——Person executed bond under S. 107—Commission by him of offence under S. 396, Penal Code, involves breach of peace entailing forfeiture of bond.

In the case of the commission of an offence under S. 396, I. P. C., by a person who had executed a bond under S 107, Cr. P. C., so as to entail a forfeiture of the bond especially when firearms are used and death is caused, the forfeiture of the whole amount of the security is justified. (Almond J. C.) Sher Mohammad v. Emperor,

A I R 1941 Pesh 63 = 14 R Pesh 19=195 I C 588 = 42 Cr L J 754.

——Principal and surety executing bond for keeping peace—Surety, when liable.

Where the accused and his surety have executed bonds for keeping the peace, in the first place, it is the principal bond which is to be forfeited; it is only if that cannot be realized, the surety is liable to pay. The same principle would apply to a fractional sum out of the bond. (Skemp, J.) Chanda Singh v. Emperor,

A I R 1940 Lah 32 = 12 R L 426 = 186 I C 642=41 Cr L J 359.

——Person required not to commit breach of peace by killing cow in village, bound down — Cow killed outside village but within sight of non-Muhammadans of village —Action deliberate.

The proprietors of the village were mostly Sikhs. There were some Muhammadan inhabitants. There had been a great deal of tension between the Sikhs and Muhammadans on the question of cow sacrifice on the

CRIMINAL P. C. (V of 1898), S. 107 — 13. Forfeiture of bond

occasion of Id-ul-Zuha. The leader of the Muhammadans in this village was bound down under S. 107, Cr. P. C., by the order of Magistrate First Class. He executed a bond in the sum of Rs. 2,000 binding himself not to commit a breach of the peace or to do any act that may probably occasion a breach of the peace for a period of one year. The District Magistrate also passed an order under the rule framed under S. 43, Punjab Laws Act, prohibiting cow sacrifice on the occasion of Id-ul-Zuha. After the Id prayers had been recited, the leader who was bound down sacrificed a cow at a distance of about 100 yards from the abadi in the area of an adjoining village in an open place under a pipal tree. The place where the cow was sacrificed was visible from the abadi of the Sikh village and was near a public thoroughfare. Within a few hundred yards of the place where the cow was sacrificed, was an approved slaughter house. The Muhammadans maintained that sacrificing cows at the time of Id-ul-Zuha was a religious right of the Muhammadans and that by sacrificing the cow in the area of another village, they had not done any wrongful act :

Held, that the Muhammadans by killing a cow at such a place and within sight of the non-Muslim inhabitants were doing an act with the deliberate intention of wounding the religious feelings of the non-Muslim inhabitants of the village. In these circumstances their leader was certainly doing a wrongful act within the purview of S. 298, I. P. C., and was thus provoking a breach of the peace and, therefore, his security bond under S. 107, Cr. P. C., could be forfeited. (Abdul Rashid, J.) Ibrahim v. Emperor,

A I R 1937 Lah 717 = 39 P L R 179=10 R L 256= 171 I C 950=39 Cr L J 23.

——Ss. 107 and 514—Proceedings under S. 514 instituted within one year but completion delayed beyond one year—Legality not affected.

If proceedings under S. 514 for breach of conditions of a bond to keep peace under S. 107 of the Code are instituted within one year from date of the bond, the fact that they were not completed within that period, will not affect the legality of the proceedings. (Lindsay, J.) Uma Dutt v. Emperor,

A I R 1922 All 503 = 68 I C 847 = 44 All 657 = 20 A L J 693=23 Cr L J 623.

——Forfeiture — Bond for keeping the peace—Person bound over—Civil suit.

Persons bound over under S. 107 of the Cr. P. Code are not prevented from seeking to enforce their rights in the Civil Court and no order of forfeiture can be passed for their instituting the suit. (Wilberforce, J.) Sital v. Emperor,

AIR 1920 Lah 440=1 Lah 310=57 I C 942=6 P L R 1921=21 Cr L J 702.

——Forfeiture—Cr. P. Code, Sch. V, Form 10—Bond to keep peace — Offence not involving breach of peace—Forfeiture.

A bond to keep the peace cannot be forfeited except on proof of the commission of an offence involving a breach of the peace. Forfeiture is limited to cases in which a breach of the peace is the 'probable' and not merely the 'possible' result of the act of the person bound over. Where the offence was committed prior to date of bond it could not be forfeited by reason of the commission of the offence. (Rattigan, J.) Ahmad Gul v. Emperor,

A I R 1914 Lah 393 = 22 P R 1914 Cr = 262 P L R 1914=47 P W R 1914 Cr = 25 I C 517=15 Cr L J 605.

——Ss. 107, 514—Liability of surety — See ibid, S. 514.

10 Cr L J 89 (Cal).

——Ss. 107, 514 and Sch. V, Form X—Bond to keep the peace—Forfeiture.

CRIMINAL P. C. (V of 1898), S. 107—13. Forfeiture of bond

Where a person bound over to keep the peace or not to do any act which would cause a breach of the peace, commits an offence of abduction within the period covered by his bond, the bond is not liable to forfeiture, because the possibility of the breach of the peace by injured husband is too remote to be held a 'probable' consequence of abduction. (Reid, J.) Muhammad v. Emperor,

7 P R 1906 Cr=139 P L R 1906=4 Cr L J 278.

——Order for forfeiture passed long after convicting person under recognisance — Legality of.

Where a Magistrate abstains, when convicting a person under a recognisance to keep the peace, from making any order for the forfeiture of the bond furnished by him, he must be taken to have decided not to proceed on him for that particular instance of breach of the peace.

It is not open to a Magistrate to reconsider and add to his order. He cannot, therefore, proceed piecemeal by passing a sentence at one time and subsequently passing an order for forfeiture of bond. (William Clark, J.) Gul Khan v. Emperor,

26 P R 1904 Cr=1 Cr L J 1100.

——Bond under—Forfeiture of—No limitation for taking action—See Criminal Procedure Code (Act V of 1898), S. 107.

1 Cr L J 564 (All).

14. Fresh proceedings.

See also Criminal P. C., S. 403.

——Proceedings under — Nature of — Applicability of S. 403 to such proceedings — Accused imprisoned for failure to furnish security—Subsequent trial for same acts for which security proceedings were started is not barred —See ibid, S. 403.

A I R 1952 Trav-Co 556=1953 Cr L J 49.

——Complaint against several persons — No action found necessary against some by Magistrate — Successor cannot revive proceedings against them in absence of fresh material. (Chandiramani J.) Ajodhiya Prasad v. Sitaram,

A I R 1949 All 350=50 Cr L J 566.

——Applicability of S. 403.

S. 403, which embodies the principle of autrefois acquit, does not apply to proceedings for under S. 107 or S. 110, as there is no conviction of any offence : A. I. R. 1929 Lah. 28 (1) : 30 Cr. L. J. 491 (1). Overruled. (Blacker and Ramlall JJ.) Subeg Singh v. Emperor,

AIR 1942 Lah 84=44 P L R 71=14 R L 431=I L R (1943) Lah 365=199 I C 532=43 Cr L J 564.

——No proceedings against a person can be instituted upon facts, which formed subject of enquiry in previous proceedings brought against him and in which he had already been discharged. (Burn J.) G. Satwaji Rao v. Emperor,

1933 M W N 915.

——To make the events that have been the subject of judicial pronouncement the ground of fresh proceedings under S. 107 is opposed to the settled principles of law. AIR 1918 Mad 555, Foll.; 17 C. W. N. 238, Rel. on. (Ramesam J.) Rangaswami v. Emperor,

A I R 1929 Mad 842=118 I C 504=2 M Cr C 287= 1929 Cr C 610=30 Cr L J 931.

——Fresh proceedings—Discharge—Another case.

After the notices were cancelled and the accused were discharged, the complainant filed a fresh complaint upon which the Deputy Magistrate recorded the statement of the complainant and then passed orders for process to issue to the accused.

Held, A Court which has passed an order of discharge cannot re-open the same case but there is no bar to a second case being instituted; the order of discharge does

CRIMINAL P. C. (V of 1898), S. 107 — 14. Fresh proceedings

not stand in the way of such proceedings being taken. There is no acquittal but merely a discharge in such a case which does not prevent another case being instituted. (Lindsay J.) Jasua v. Emperor,

AIR 1923 All 332=21 A L J 215=71 I C 696=L R 4 A Cr 67 (2)=24 Cr L J 223.

——Fresh proceedings—Proceedings under—Facts forming subject of previous enquiry resulting in discharge not a ground for fresh inquiry.

The same facts which led to previous proceedings cannot form the subject of repeated proceedings either under the Penal Code or under the Cr. P. C. (Abdur Rahim and Napier JJ.) Nagi Reddy Konda Reddy In re,

A I R 1918 Mad 555=41 Mad 244=41 I C 990=18 Cr L J 878.

——Ss. 107, 119 and 437—Person proceeded against under S. 107, discharged under S. 119 — Further inquiry under S. 437, if can be ordered—See Cr. P. C. S. 437.

2 Cr L J 697 (Lah).

15. "Is informed".

See also Note 28. Satisfaction of Magistrate.

——It is doubtful how far an order under S. 112, Cr. P. C., can properly exceed the information given under S. 107. (Davis J. C. and Weston J.) Mt. Jasoda Lekhraj v. Emperor,

A I R 1939 Sind 167=12 R S 31=I L R (1939) Kar 662=182 I C 698=40 Cr L J 703.

——Ss. 107 and 112 — Vague information — Allegations not specific—Effect.

Where the allegations against the petitioners are too vague and do not give the necessary details which are required to inform the petitioners of the accusation that they have to meet, the Magistrate should not call upon the petitioners to show cause why they should not be bound down to keep peace. In re Jaiprakash Lal, 6 All. 26 and Nagi Reddi Kondu Reddy v. The King-Emperor, AIR 1918 Mad 555, Referred. (Ross J.) Nand Kishore Nath v. Emperor,

A I R 1922 Pat 209=5 Pat L T 353=2 Pat L R Cr 159=77 I C 417=25 Cr L J 369.

——Vague information.

The mere fact, that a dispute exists between two rival Zemindars would not justify proceedings being taken against all their officers and servants unless there are materials to show that they are likely to commit any breach of the peace. Information of the kind mentioned in Section 107 must be of a clear and definite kind directly affecting the person against whom process is issued, and it should disclose tangible facts and details; so that it may afford notice to such person, of what he is to 'come prepared to meet'. It may be that some of the persons mentioned in the Police report are likely to commit a breach of the peace, while others are not likely to do so, but all of them must not be lumped up together because they are all interested in the dispute. In one sense all the members of a Zemindar's family are interested in a dispute relating to a property comprised in the Zemindary but that, by itself, would be no ground for taking proceedings against them all. 6 All. 26, Foll. (Chatterjee and Cuming JJ.) Ainuddin v. Emperor,

AIR 1922 Cal 97=71 I C 694=24 Cr L J 230.

——Applicability — Initiation of proceedings — Guiding principles.

S. 107 is essentially one to be directed against individuals who personally are likely to act in a wrongful manner which may probably occasion or who are themselves likely to commit, a breach of the peace or a disturbance of public tranquillity. A vague statement not containing a direct allegation against the individuals proceeded against cannot form the basis of a proceeding under S. 107.

CRIMINAL P. C. (V of 1898), S. 107 — 15. "Is informed"

A Magistrate cannot keep a proceeding under S. 107 pending on the ground that such pendency tends to preserve peace. (Bucknil J.) Grant v. Emperor,

A I R 1921 Pat 440=2 Pat L T 669=64 I C 137=22 Cr L J 745.

——Vague information.

An order based upon vague evidence dealing in generalities and not specifying any of the petitioners as having any particular cause for hostilities is not justifiable. (Broadway J.) Nitia Nand v. Crown,

AIR 1921 Lah 183=3 Lah L J 480.

——Evidence—Extra-judicial knowledge—Information—Necessity for, before initiation of proceedings — Issue of procession Magistrate's own knowledge.

Before the initiation of proceedings under S. 107, Cr. P. C., information must be given against a person from whom security is to be demanded. And it is illegal for the Magistrate to issue notice to the petitioner merely because he considered from his own statement that he was a quarrelsome person. (Scott-Smith J.) Abdul Karim v. Emperor,

A I R 1920 Lah 100=103 P L R 1920=56 I C 671=21 Cr L J 511.

——Ss. 107 and 112—Essentials — Information received by Magistrate—Sufficiency of notice.

A Magistrate of the first class upon mere information to the effect that a person is likely to disturb the public tranquillity without any information being given of that person's intent to do any wrongful act may issue a notice in writing to such person giving the substance of the information received without specifying any definite acts which that person intends to commit. (Knox J.) Jaguji Rai v. Emperor,

A I R 1918 All 93=16 A L J 567=47 I C 72=19 Cr L J 876.

——Evidence — Extra-judicial knowledge — Breach of peace—Order under—Information not on record.

A Magistrate dealing with the proceedings under S. 107 and possessing knowledge of certain facts obtained from sources outside the record should not base his judgment upon those facts, but he should base it on evidence relevant to the case. The law requires that an order under the said section must be passed after finding that the persons from whom the security is demanded are likely to commit a breach of peace or to do any wrongful act threatening a breach of peace or public tranquillity. (Walsh J.) Mathura Sahu v. Emperor,

A I R 1917 All 421=14 A L J 769=36 I C 164=17 Cr L J 484.

——Essentials—Extra-judicial knowledge.

The final decision in a case should be based simply and entirely on the evidence legally brought on record and not on any personal outside knowledge of the Magistrate, and to justify an order under S. 107, the Magistrate should find that the person proceeded against, is likely to commit a breach of peace or disturb the public tranquillity. (Piggott J.) Brijnandan v. Emperor,

A I R 1914 All 268=37 All 33=12 A L J 1246=26 I C 638=16 Cr L J 46.

16. Joint inquiry.

See also Criminal P. C., S. 117.

——Cases of individual persons not separately considered.

In a proceeding under S. 107, Cr. P. C., where the cases of individual persons have not been separately considered and the evidence against each person has not been summarised, the order under S. 107 cannot be sustained and must be set aside. (Meredith J.) Sajan Sahu v. Emperor,

A I R 1943 Pat 417=10 B R 391=16 R P 245=9 Cut L T 16=211 I C 536=45 Cr L J 406.

CRIMINAL P. C. (V of 1898), S. 107 — 16. Joint inquiry

——Possession of land claimed by rival parties — Parties must be tried separately.

Ordinarily, a man is entitled to be tried separately, and it is only when he and other persons have combined to commit an offence or to produce a situation for which they may be held liable at law that he and the other persons so concerned can be tried together. Where either the petitioner or their rivals are in possession of the land, what the Court has to determine under S. 107 is which of them is the aggressor and may, therefore, reasonably be called on to furnish security to keep the peace. The petitioners must be tried separately and not along with those persons who dispute their right to the land. (Shearer J.) Khetramohan Das v. Emperor,

A I R 1943 Pat 376=16 R P 248=9 Cut L T 15=10 B R 336=211 I C 103 (1)=45 Cr L J 308.

——Individual finding.

Where in a case under S. 107 several persons are bound over to keep the peace, there must be individual finding showing how each person against whom order is made deserves to be so treated. The mere fact that the persons were followers of one party or other will not justify making an order in lump against the whole body of men. (Mukerji J.) Dhanoo v. Emperor,

AIR 1930 Cal 294=I R 1930 Cal 631=125 I C 855=1930 Cr C 382=34 C W N 144=31 Cr L J 944.

——Court should not treat the case of all the opposite parties in a lump but should find out the persons who could definitely be said to have contemplated a breach of the peace. (Dalal J.) Emperor v. Jiwan Singh,

AIR 1930 All 408=52 A 593=I R 1930 A 562 = 124 I C 706 = 1930 A L J 866 = 1930 Cr C 565=31 Cr L J 710.

——Common object.

Accused formed one gang with one purpose, namely, that of harassing P. W. 1, and the act of each accused was directed towards this common end.

Held, that joint trial of all accused is not illegal. A I R 1925 Mad 189 and A I R 1923 All. 35, Dist. (Wallace J.) Taranagowd v. Emperor,

AIR 1927 Mad 542=106 I C 589 = 1927 M W N 185 =29 Cr L J 77.

——Members of a gang—Otherwise individual finding.

There is no direct prohibition against trying a number of persons under S. 107 jointly. But unless it is apparent that the various persons against whom proceedings are taken form a gang, it is highly unfair and unjust that they should be proceeded against jointly. The effect of such a proceeding is that it is unnecessarily protracted and the parties thereby prejudiced. Furthermore if by any chance such a proceeding is conducted jointly, it is essential that the case of each accused should be considered separately and individually. 20 A. 881, Foll. When an objection as to the impropriety of the joint proceeding was taken in the first Court and when the evidence has not been taken separately against each accused but has been lumped together and when it is impossible to discover from the judgments of the trial and appellate Courts how much of the evidence was believed and how much rejected :

Held, that the accused has been gravely prejudiced by the proceeding taken against him in conjunction with other accused persons. (Sulaiman J.) Mahomed Ismail v. The Crown,

AIR 1924 All 195=81 I C 600=21 A L J 841=4 L R A Cr 241=25 Cr L J 952.

——Joint trial.

A joint trial of two persons, not being contending parties, is legal. S. 117 (4) and not S. 235, Criminal P. C.

CRIMINAL P. C. (V of 1898), S. 107 — 16. Joint inquiry

applies to the case. (Stuart J.) Ganga Prasad v. Emperor,

AIR 1923 All 476=76 I C 568=25 Cr L J 200.

——Joint trial—Charge against body of persons.

There must be definite evidence in case of each and every man charged under S. 107 that there is a danger of breach of peace by him. (Walsh J.) Sambhu Nath v. Emperor,

AIR 1916 All 100=38 All 468=14 A L J 656=35 I C 832=17 Cr L J 400.

——Ss. 107 and 117—Joint trial of two hostile functions is bad. (Tudball J.) Har Dutt Panda v. Emperor,

AIR 1916 All 338=14 A L J 268=33 I C 645=17 Cr L J 165.

——Ss. 107, 118—Order binding down without separate finding in regard to individual member of party—Where, in a proceeding under S. 107, against a party consisting of a number of persons, the Magistrate binds down all of them without coming to a separate finding as regards each of them individually the order is bad. (Stephen and Holmwood JJ.) Ajodhya Prasad Singh v. Emperor,

35 C 929=12 C W N 992=8 Cr L J 207.

——Ss. 107 and 117—Joint enquiry against two opposite parties—Legality.

Two opposing parties to a proceeding under S. 107, cannot be proceeded against and bound over to keep the peace in one proceeding. (Brett and Gupta JJ.) Kamal Narain Chowdhry v. Emperor,

5 C L J 231=11 C W N 472=5 Cr L J 197.

——Ss. 107 and 117 (4) — Joint inquiry — Association—Persons acting as servants.

Where all the acts alleged against certain persons, against whom a joint inquiry under S. 107 was instituted, were found to have been done by them acting together as well as independently of each other, in obedience of and for the benefit of their common master. Held (Henderson J., dissentiente), that, they were associated together within the meaning of S. 117, sub-s. (4), so as to justify a joint inquiry. Held, further, that they could be proceeded under S. 107 notwithstanding that the acts imputed to them were committed by them, not as individual members, but as servants of another person. (Rampini J. on difference between Henderson and Geidt JJ.) Srikanta Nath Saha v. Emperor,

9 C W N 898=1 C L J 616=2 Cr L J 554.

——Ss. 107, 233, 235, 239, 537—Joint trial in proceedings under S. 107.

The main principles applicable to a criminal trial regarding joinder of charges, and the joint trial of accused persons may well be held to be applicable to inquiries under S. 107.

Where cases against men of the two contending parties were all tried together and some of the defendants on the one side were examined as witnesses against the other side in one and the several proceeding :

Held that the course was not warranted by law. The persons on two sides could not be said to have been concerned in the same transaction in any proper sense of the term, and that the inquiry was, therefore, most irregular. Section 537 was not intended to cure an irregularity of such a description. (Banerejee and Handley JJ.) Pran Krishna Saha v. Emperor,

8 C W N 180=1 Cr L J 58.

17. Jurisdiction.

——Solitary incident of beating at place by persons belonging to another district — Proceeding under S. 107 not justified.

One solitary incident of beating at a place cannot justify the institution of security proceedings at that place against persons who belong to and reside at a place in another district when there is no chance of their visting

CRIMINAL P. C. (V of 1898), S. 107—17. Jurisdiction

the former place in the ordinary course. (Teja Singh J.) Sri Ram v. Babu Ram,

AIR 1948 Lah 62=49 Cr L J 14.

——Where a person is bound down under S. 107, the proceedings under S. 514 can be taken only by the Magistrate binding down the accused. (Mir Ahmad J.) Abdul Rashid v. Emperor,

AIR 1943 Pesh 41=15 R Pesh 110=206 I C 330=44 Cr L J 478.

——Proceedings before Magistrate other than District Magistrate — At least temporary residence of person proceeded against within limits of Magistrate's jurisdiction must be established.

Under S. 107, when proceedings are sought to be started before a Magistrate other than a District Magistrate, the residence of the person informed against must be within the local limits of the Magistrate. When this is not proved then at least a temporary presence at the critical time must be established. In the absence of these, no order under S. 107 can be passed by the Magistrate. (Vivian Bose J.) Emperor v. Gajanand Manbodh,

AIR 1943 Nag 88 = 15 R N 140 = 1942 N L J 529= I L R (1943) Nag 609=203 I C 493=44 Cr L J 82.

——Sub-Divisional Magistrate cannot take proceedings under S. 107 against person residing outside his Sub-Division. (Gruer J.) Syed Ali Gulam Ali v. Emperor,

A I R 1938 Nag 448=11 R N 79 = I L R 1939) Nag 158=176 I C 784=39 Cr L J 810.

——Ss. 107 & 118 —Temporary presence within jurisdiction when proceedings taken— Accused alleged to have come temporarily within jurisdiction only to commit offence —District Magistrate and not Sub-Divisional Magistrate has jurisdiction.

Under S. 107 (2), Criminal P. C., it would be quite sufficient if the accused were temporarily present within the jurisdiction at the time the proceedings were taken. But sub-s. (2) of S. 107 is obviously intended to provide for cases where the accused although living outside the jurisdiction is alleged to have come temporarily within the jurisdiction in order to commit offences. In such cases, it is the District Magistrate alone who has jurisdiction and not the Sub-Divisional Magistrate. (Jack, J.) Hriday Nath Roy v. Emperor,

AIR 1937 Cal 520 =41 C W N 1091 = 10 R C 265= 66 C LJ 177=171 I C 335=38 Cr L J 1078.

——S. 107 (2)—Proceedings under—Whether can be taken against person outside jurisdiction of Sub-Divisional Magistrate.

Sub-Divisional Officer has no jurisdiction to initiate proceedings under S. 107 against a person residing outside his jurisdiction. (Varma J.) Mahangu Lal v. Emperor,

AIR 1935 Pat 131 (1)=1 B R 356 (1)=7 R P 498=16 P L T 347=154 I C 873 (2)=36 Cr L J 580.

——Ss. 107, 118—Proceedings under— Accused belonging to a different District—Trial by District Magistrate.

When the accused belong to a different district, the case should be tried by the District Magistrate. (Bhide J.) Partap Singh v. Emperor,

153 I C 27 (1)=35 P L R 341=7 R L 375.

——S. 107 (2) —Mere presence within limits of local jurisdiction.

A Magistrate can initiate proceedings against a person under S. 107, Criminal P.C., if he is within the local limits of the Magistrate's jurisdiction at the time when action is taken. The section does not make any reference to the residence of the person proceeded against. (Lakshmana Rao J.) Varadarajulu Naidu v. Emperor,

AIR 1934 Mad 255=6 R M 449 (1)=39 L W 215 =66 M L J 420 = 1934 M W N 404 = 148 I C 226 (1) = 35 Cr L J 626 (1).

CRIMINAL P. C. (V of 1898), S. 107—17. Jurisdiction

——S. 107 (2)—'Person within jurisdiction' meaning of.

For initiating proceedings against a person under S. 107, Criminal P. C., it is not necessary that that person should reside within the jurisdiction of the Magistrate; it is enough if he is within the local limits of the Magistrate's jurisdiction. But a person who resides outside the jurisdiction cannot be held to be a person within the jurisdiction merely because he is present in Court in obedience to a summons issued by the Magistrate under S. 112. (Niamatullah J.) Hamid Hasan v. Emperor,

AIR 1932 All 162 = 54 All 341= Ind Rul (1932) All 120=1932 A L J 211 = 136 1 C 72=33 Cr L J 230.

——Objection as to.

Where the place where the breach of the peace was apprehended was within the Magistrate's jurisdiction, but the accused resided outside it, and no question of jurisdiction was raised in the trial Court and the Magistrate passed order under S. 107 and no prejudice is caused to the accused.

Held, that the irregularity, if there was one, is cured by S. 531. (Daniels J.) Ram Deo Singh v. Emperor,

AIR 1926 All 767=49 All 228=25 A L J 44=7 L R A Cr 174=97 I C 652=27 Cr L J 1132.

——Jurisdiction.

It is only a Chief Presidency or a District Magistrate who can take these proceedings when either the person informed against (he having left the place) or the place where a breach of the peace or disturbance is apprehended is not within the local limits of the Magistrate's local jurisdiction. 5 N L R 94, Foll. (Prideaux, A. J. C.), Dhuma v. Emperor,

AIR 1923 Nag 54=68 I C 407=23 Cr L J 567.

——S. 107 (2)—Jurisdiction— Security for keeping peace —Person resident of a native state.

When proceedings are taken under S. 107 before the District Magistrate within whose jurisdiction the place where the breach of peace is apprehended is situate it is immaterial whether the person informed against was or was not within the district at the time the notice was issued and there is no error or irregularity in procedure. (Stuart J.) Sheobram Dube v. Emperor,

AIR 1922 All 337 (1)=20 A L J 523 = 67 I C 348= L R 3 A 96 (Cr)= 23 Cr L J 396.

——Jurisdiction — Ferry — New ghat opened — Dispute about possession.

A new ghat was opened for the ferry to ply by that change of course of the river. By the award of the arbitrators it was agreed to share equally the tolls. The Magistrate in proceeding under S. 107 held that the proceedings belonged to the second party only, who were originally entitled to them on the ground that only some of the landlords of the second party were party to arbitration proceedings—Held, the main objection to this order is that, so far as there is any dispute between the parties, it relates to the right of the second party to take passengers to and from Raotara, and so far as the Magistrate's order has the effect of declaring that the second party have this right, it is without jurisdiction. Raotara is admittedly in Madhipura sub-division, and the proper tribunal for the decision of any question as to the taking of passengers by ferry from and to Raotara is the Court of the Sub-divisional Magistrate of Madhipura. (Ross J.) Kalnand Singh v. Hirde Misser.

AIR 1922 Pat 219.

——Construction—'Is' and 'are' mean 'resides' and 'reside'.

The words 'is' and 'are' in S. 107 are synonymous with 'resides' and 'reside.' (Gokul Prasad J.), Ziaullah Khan v. Emperor.

L R 1 A (Cr) 168.

CRIMINAL P. C. (V of 1898), S. 107 — 17. Jurisdiction

——Jurisdiction—Temporary residence.

Temporary residence is sufficient to give a Magistrate jurisdiction to act under this section. (Gokul Prasad J.) Ziaullah Khan v. Emperor,

59 I C 413=L R 1 A Cr 168=22 Cr L J 109.

——Jurisdiction — Ordering a man to leave a village under threat of prosecution is illegal.

A Magistrate has no authority to order a man to leave any place under threats of being prosecuted as a bad character. (Lindsay J.) Ram Prasad v. Emperor,

L R 2 A (Cr) 165.

——S. 107 (2) — Delegation of inquiry — Breach of the peace—Accused living in Sudder division—Procedure.

Breach of the peace being apprehended in a sub-division, the District Magistrate was moved for the commencement of proceedings, under S. 107, Criminal P. C. as the accused was living in the Sudder division. The District-Magistrate instead of drawing up the proceedings, merely said that he sanctioned the proceedings and sent the case to the Sub-Divisional Magistrate. Held that though the District Magistrate did not express his intention strictly in accordance with law the irregularity in expression did not deprive the trying Magistrate of jurisdiction in the case and could not affect the merits of the trial in any way. (Chitty and Smither JJ.) Ohiduddin Choudhury v. Emperor,

AIR 1919 Cal 469=44 I C 122=19 Cr L J 266.

——Jurisdiction.

A Magistrate can deal with persons of general bad reputation and who are within his jurisdiction even though they might not be residents in his jurisdiction. (Walsh J.) Emperor v. Munna,

A I R 1917 All 441 = 39 All 139=14 A L J 1074=35 I C 822=17 Cr L J 390.

——Person informed against not residing within the local limits of the jurisdiction — District Magistrate if can direct him to take proceeding against him.

A subordinate Magistrate has no jurisdiction to draw up a proceeding under S. 107, against a person residing in another jurisdiction. Even the District Magistrate cannot direct him to do this. The proceeding must take place and be brought to a conclusion before the District Magistrate himself. (Holmwood and Ryves JJ.) Neerbeekar Chandra Mukerjee v. Emperor,

13 C W N 580=1 Ind Cas 78=9 Cr L J 148.

18. Lawful and wrongful acts — Lawful acts, illustrations of.

——Ss. 107, 151—Act must be wrongful.

Where one of the two parties was likely to cause a breach of the peace because the other party wanted to exhibit a certain film in his Cinema house proceedings under S. 107 read with S. 151, should be taken against the former alone in order to guard the latter in the enjoyment of his civil rights and not against both of them. (Kayani J.) Najam-ul-Hussain v. The Crown,

A I R 1950 Lah 132=Pak L R 1950 Lah 172 = Pak Cas 1950 Lah 410=51 Cr L J 1142.

——Dispute about common boundary — People of one village forcibly keeping out people of another village — Proceedings are misconceived.

When there is a dispute between the two villages regarding their common boundary, it cannot be said that the people of one village are not within their rights in forcibly keeping out the graziers of the other village and proceedings under S. 107 against them are misconceived. (Trivedi J. C.) Hothi Velaji Kalyanji v. Kanbi Akhai Karsan.

AIR 1950 Kutch 7=51 Cr L J 384.

CRIMINAL P. C. (V of 1898), S. 107—18. Lawful and wrongful acts—Lawful acts, illustrations of

——Object of section.

Action under S. 107 of the Code is not intended for binding over persons acting in exercise of their right to property or in pursuance of a bona fide claim of right but for persons who are desperate characters and habitually disturb the public peace or who disobey the orders of Civil or Criminal Courts and disturb the possession of others. (Sarjoo Prosad J.) Suraj Narain Rai v. The State,

A I R 1950 Pat 502=1950 A W R (Sup) 103.

——Right to manpan or respect—Nature of — Exclusive right to.

Right to manpan (right to respect) is not the kind of right which the law recognizes as being capable of possession by any individual. No individual can claim the right to its exclusive possession or use. The law will always enforce any right which can be legally claimed or possessed or made use of. Therefore, if it declines to enforce a claim to rights of this kind, it can only be because it does not recognize the right as a kind of right which can be legally possessed or made use of. Every person has a right to celebrate festivals and to obtain any respect which others voluntarily choose to give him. If the act complained of is not wrongful in itself it cannot become wrongful because somebody else's susceptibilities are likely to be hurt. If any person threatens to interfere by force or by resort to such means as the law considers illegal, then it is he who is in the wrong and it is he who should be bound over and not the person who is entitled to perform the act to which every one is entitled. (Vivian Bose J.) Govind Amrita v. Emperor,

A I R 1942 Nag 45 = 14 R N 226=1942 N L J 15 = I L R (1942) Nag 620=198 I C 409=43 Cr L J 357.

——Persons, if can be punished for wrongs done by others — Nature of acts in respect of which security is required — Persons holding responsible position in community and having influence over members, if sufficient to proceed against them, for acts done by members.

Before a person is called upon to show cause why he should not execute a bond, it must be established (a) that he is likely to commit a breach of the peace or disturb the public tranquillity or (b) to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. It is the individual who is contemplated in S. 107, Criminal P. C., and it is the individual act that must be brought home to him. The only case in which a person can be punished for the wrongs done by others is where he abets or instigates the offence. Failing that, no person in the world can be visited with any penalty for acts done by others on whom he has no control, and for whose conduct he cannot be held responsible. A person who is doing a lawful act cannot be called upon to execute a bond under S. 107, Criminal P. C., merely because some other person might commit the breach of the peace and offer voilence to the law-abiding citizens. Acts in respect of which security is required must not be acts, the repetition of which may be merely apprehended from past commission of similar acts, but acts from which a reasonable inference can be drawn that the accused are likely (not were likely) to commit a breach of the peace. The fact that the persons hold a respectable position in the community to which they belong and wield an enormous influence with its members is not enough to institute proceedings under S. 109 against those persons, for acts done by the members unless it is shown that they themselves are likely to commit a breach of the peace or disturb the public tranquillity or do any wrongful act which may probably

CRIMINAL P. C. (V of 1898), S. 107—18. Lawful and wrongful acts—Lawful acts, illustrations of

ocassion the breach of the peace. (Din Muhammad J.) Mohammad Abdul Qayum v. Emperor,

A I R 1939 Lah 363 = 41 P L R 318=12 R L 196 = I L R (1939) Lah 554=184 I C 279=40 Cr L J 901.

——Holding of hat on one's own land — Another previously established hat in close proximity held on same day.

A person will be acting within his rights in holding a hat on his own land even on the day on which the rival hat, in close proximity to it and previously established, is being held as long as he does not resort to any wrongful act leading to a breach of the peace. If the owner of one or both are committing wrongful acts, the best course is to bind down the wrong doer under S. 107, Criminal P. C. (Mohammad Noor J.) Saligram Singh v. Baijnath Singh,

A I R 1934 Pat 104 = 6 R P 712 = 14 P L T 740 = 150 I C 118=35 Cr L J 1057.

——Exercise of lawful rights — Person believing to be entitled to get possession of immovable property — Attempt to take peaceful possession — Collections from tenants without creating disturbance.

Where acts which amount to an exercise of lawful rights are done, they are not to be treated as wrongful acts necessitating proceedings under S. 107, Criminal P. C.

If a person believing to be entitled to get possession over immovable property attempts to take peaceful possession over it, and makes collections from tenants without creating any disturbance, then no action should be taken against him under S. 107, Criminal P. C , but if, in his endeavour to obtain possession, he makes a show of armed forces and threatens to force tenants to pay rent to him, then he is doing a thing which is not lawful and the Magistrate is fully competent to take action against him under S. 107, Criminal P. C.

The question as to whether or not preventive action is to be taken under S. 107 is to be decided on the facts of each case. (Rachhpal Singh J.) Nisar Hussain v. Emperor,

A I R 1934 Oudh 179=6 R O 462=11 O W N 501 = 9 Luck 651=148 I C 899=35 Cr L J 809.

——Person doing lawful act in lawful manner — Injury to susceptibilities of person of different faith.

Where a breach of peace is anticipated between two parties and one of them complains and the breach is anticipated to be committed by the other side, the only point to be seen is whether the act which brings about that breach of peace is wrongful in itself. The fact that a person does a lawful act in a lawful manner and by so doing he has injured the susceptibilities of a person of a different faith would not in itself be sufficient to warrant proceedings against him under S. 107, Criminal P. C. Proceedings under S. 107, Criminal P. C , are intended to be preventive and not punitive, the object being to prevent persons from doing something likely to occasion a breach of the peace or disturbance of public tranquillity in the immediate or near future. (Jai Lal J.) Babu Ram v. Emperor,

A I R 1932 Lah 101 = Ind Rul (1933) Lah 301 = 33 P L R 370=142 I C 796=34 Cr L J 478.

—— Order under S. 107, when proper.

For S. 107, Criminal P. C , to apply, it must be proved that a person is likely himself to commit a breach of the peace, or that a person is likely to do a wrongful act that may probably occasion breach of the peace. The mere fact that certain sahukars were threatening to get the zamindars imprisoned as they would not pay their debts is not sufficient for an order under S. 107.

CRIMINAL P. C. (V of 1898), S. 107—18. Lawful and wrongful acts—Lawful acts, illustrations of

[The High Court condemned the order of reference of the Sessions Judge which was for the most part irrelevant and in several portions uncalled for, objectionable and without jurisdiction, and ordered the irrelevant portions to be expunged.] (Addison J.) Ram Kishan v. Emperor,

A I R 1933 Lah 36 = Ind Rul (1932) Lah 684 = 33 P L R 935=140 I C 91=33 Cr L J 915.

——Religious susceptibilities.

The doing of a lawful act in a lawful manner, even if that injures the susceptibilities of persons of a different faith would not in itself be sufficient to warrant proceedings under S. 107. Certain Hindus participated in a Hindu funeral procession proceeding with music before a mosque in pursuance of an old custom. They also on another occasion were reciting Granthasaheb in their private houses quite adjoining a mosque. Proceedings were taken against them under S. 107 as it was likely to hurt the feelings of the Mahomedan community and would result in a breach of the peace.

Held, that the persons were within their rights in doing what they did and could not be proceeded against. (Fforde J.) Lal Chand v. Emperor

AIR 1929 Lah 138=120 I C 427=31 Cr L J 45.

——Provocation by unlawful acts of one party.

When all the previous judicial proceedings show that all the lawful acts of one party, who was merely advising his own men not to pay rent to the other party and not to allow him to trespass and remove paddy from the lands, have been provoked by the unlawful acts of the other party, there is no justification for taking proceedings against both the parties under S. 107 : A I R 1925 Mad 189, Ref. (Ramesam J.) Rangaswami v. Emperor

AIR 1929 Mad 842 = 118 I C 504 = 2 M Cr C 287= 1929 Cr C 610=30 Cr L J 931.

——Co-sharer—Lawful acts of.

When a co-sharer exercises his lawful rights in improving the joint property in spite of the objection of his co-sharers, he cannot be bound over under S. 107 on the ground that his action is likely to cause a breach of the peace : 19 Cal 253 (P C), Rel. on. (Harrison J.) Thakur Singh v. The Crown

AIR 1926 Lah 695=97 I C 358=8 Lah 98=27 P L R 599=7 A I Cr R 129=27 Cr L J 1094.

——Essentials—Uttering Amen aloud is not sufficient.

Before demanding security, the Court must be satisfied that there is apprehension of a breach of peace. It is not a sufficient cause to demand the security that the members of Ahl-i-hadis sect worship with other Mahomedans in the same mosque and utter the word Amen aloud. (Daniels A. J. C.) Abdur Rahman v. Emperor

8 O L J 282=62 I C 830=22 Cr L J 590.

——Doing lawful act — Pressing possession with show of physical force, of land obtained under civil courts' decree is legal.

A person is justified in posting men for the defence of his property in the presence of the police-guard, and he having done so in self-defence, it could not be said that there was any likelihood of the breach of the peace from his side. The order demanding security from him was set aside. (Walsh J.) Janki Prasad Tewari v. Emperor

AIR 1920 All 28=43 All 283=18 A L J 157=55 I C 673=L R 1 A (Cr) 160=21 Cr L J 337.

——Doing lawful act—Exercising lawful right—Power of Magistrate—Whether and when can be bound down.

Section 107, Criminal P. C. does not authorise an action against a person who is expected to do an act which may cause a breach of the peace or disturb public tranquillity unless that act is wrongful and the mere fact that the doing of lawful act may lead to a breach of the peace, while it may authorise the Magistrate to take action

CRIMINAL P. C. (V of 1898), S. 107—18. Lawful and wrongful acts—Lawful acts, illustrations of

against the persons expected to commit the breach, does not authorise the action against the persons intending to do the lawful act, unless they are themselves likely to commit a breach of the peace or disturb the public tranquillity : 12 C W N 703; 32 A 571; 6 M 203, Rel. on. (Saunders J. C.) Nagati v. Maung Kyaw Yan

AIR 1918 Upp Bur 53 = (1916) 2 U B R 157 = 11 Bur L T 59=39 I C 480=18 Cr L J 512.

——Lawful act—When object lawful, order is proper.

Persons whose object was to do a particular act with the sanction and under the protection of the authorities and not in defiance of any prohibition that may be issued by them, cannot be bound over under S. 107 of the Code. (Piggot J.) Brijanandan Prasad v. Emperor

AIR 1914 All 268=26 I C 638=37 All 33=12 A L J 1246=16 Cr L J 46.

——Doing lawful act — Security to keep peace—Breach apprehended by opposite party if one party exercises his right—If ground for demanding security.

The fact that the opposite party would commit breach of the peace, if one party exercises his right is not a ground for demanding security to keep peace from the latter : 12 C W N 703, Foll. (Sadasiva Iyer J.) In re V. Desika Chari

AIR 1915 Mad 81=25 I C 989=15 Cr L J 661.

——Wrongful act—Security to keep peace — Boycotting of servants of Zamindar.

.Where the tenants were boycotting the Zamindar's servants but doing nothing likely to disturb the public tranquillity, they were not liable to be bound down under the section. (Banerjee J.) Behari v. Emperor

19 I C 334=14 Cr L J 228 (All).

——Apprehension of disobedience to illegal order if justifies binding down to keep peace.

To justify an order under S. 107, the Magistrate must believe that the person against whom he makes the order is about to commit a breach of the peace or to disturb the public tranquillity or to do some wrongful act that may occasion a breach of the peace. Therefore, if the Magistrate after passing an order prohibiting the applicants from killing cows, bound them down to keep the peace on the belief that they would disobey it, held that as the order itself was illegal the applicants could not be bound down. (Richards and Tudball JJ.) Muhammad Yakub v. King-Emperor

7 A L J 649=32 A 571=6 I C 454=11 Cr L J 355.

——Right to take procession.

The taking of a procession along a path is not by itself a breach of the peace, nor is it likely to disturb the peace. This is not an act which comes under S. 107. When a party has the right to take a procession along a particular road, they cannot be properly bound down, because some one else proposes to interfere with that right. The proper course in such a case is to bind down the other party. (Geidt and Woodroffe JJ.) Feroze Ali Mullik v. Emperor

12 C W N 703=7 Cr L J 504.

——Exercise of jurisdiction—Duty of Magistrate.

Where exercise of his preventive jurisdiction under the section may lead to the infringement of an undoubted civil right, or it becomes impossible, because of its exercise, to enforce an obligation imposed by law or where the breach of the peace is a likely result of any party enforcing his legal right in a legal way, and the illegal denial of the corresponding obligation by the other party, the Magistrate should refrain from binding down the party having the legal right in him. In a case of doubt however as to the existence of the respective rights and obligations of parties, he should bind down both parties, so that his order may not be detrimental to either. If there is no such doubt, the party in the wrong should be bound down. The Magistrate should always make an attempt to ascertain legal rights of the parties before he binds down one or the other party under the section. (Mitra and Caspersz JJ.) Dindyal Mozumdar v. Emperor

34 C 935=11 C W N 1002=6 Cr L J 230.

——Security under, from legal practitioner, defending accused of one community in communal dispute.

Where the Magistrate does not find any specific act of instigation or provocation which would lead to communal trouble, on the part of a legal practitioner, the fact of his conducting cases in the exercise of his profession for some of the connections of the persons related to a co-accused is no ground for putting him on security under S. 107. (Chatterji, J.) M. R. v. Emperor,

1 P W R Cr 16=4 Cr L J 363.

——Security to keep the peace—Measurement of land by co-owner without consent of other co-owner—Objection by latter—Latter is not to be bound down— Bengal Tenancy Act, VIII of 1885, Ss. 90, 188.

Where one of the two co-sharer landlords makes measurements of land without the consent of the other as required by S. 188, Bengal Tenancy Act and latter objects to the measurement being carried out but does not use force, the objecting co-sharer is not to be bound down under S. 107. (Henderson and Geidt JJ.) Bhabataran Ghose v. Bankutesh Lal Mitra

2 Cr L J 338 (Cal).

——Grantee of zemindar — Zemindar's interference with possession—Resistance to interference—Order binding over.

A zemindari village was in the possession of the accused (mokhasadars) as grantee thereof from the zemindars and the ryots in the village had previously attorned to and been paying rents to him, having executed muchilikas in his favour. The agent of the zemindar, attended by a body of men, came to the village for the express purpose of ousting him by inducing the tenants to break their engagements with him and to make them go over to the zamindars and execute muchilikas and pay rents to them. The accused insisted upon the agent's party to leave the village and desist from inciting the tenants to break their contracts with him in an exciting manner. Held, that the agent acted illegally and that the conduct of the accused could afford no ground for binding him to keep the peace. (Subrahmania Aiyar J.) Chendrasekhara Dalal v. Emperor

(1904) 14 M L J 491=1 Cr L J 1076.

——Protection of legal rights—Use of section for.

A rightful act cannot be made the subject of proceedings under S. 107, even though it may provoke a breach of the peace or disturb the public tranquillity. The section should be used to protect persons exercising their legal rights and not to interfere with such rights. (Batty and Aston JJ.) Emperor v. Chanbasawa Kom Rudrappa

6 Bom L R 862=1 Cr L J 940.

19. Lawful and wrongful acts—Wrongful acts, illustrations of

——Wrongful act—Meaning—Improper act.

An act to be wrongful within the meaning of S. 107, Criminal P. C., must be an act which is forbidden or declared to be penal or wrongful by the criminal law. An act however improper it may be cannot be regarded as wrongful for purposes of S. 107, Criminal P. C., unless it is wrongful according to some law : 21 Cr L. J. 453; A. I. R. 1939 Sind 167, Rel. on. (Mehta J.) Alladin v. State

1951 R L W 137.

——Picketing may lead to breach of peace — Apprehension of picketing may form reasonable cause for reporting

CRIMINAL P. C. (V of 1898), S. 107 —19. Lawful and wrongful acts— Wrongful acts, illustrations of for action under S. 107—Knowledge of proposed picketing by plaintiff's acquired by informant after certain complaint against him by plaintiffs, does not prove malice.

Picketing is not always peaceful and frequently leads to serious trouble and its apprehension may form a reasonable cause for the report for action under S. 107.

The fact that the Sub-Inspector of Police who reported for action under S. 107 against the plaintiffs, knew of the proposed picketing by the plaintiffs only when he saw them in Court compound in the matter of a complaint by them against the Sub-Inspector for having demolished a certain "chabutra" of the plaintiffs might be a coincidence and cannot lead to the conclusion that the Sub-Inspector was actuated by malice and had reported for action under S. 107 as a counterblast to the plaintiffs' complaint against him. (Madeley J.) Hidayat Ali v. Danish Ali

AIR 1947 Oudh 88=1946 O A C C 231=1946 O W N 330=1946 A W R C C 231=227 I C 445.

——Starting of rival business in close proximity to previously established one — The best course is to prohibit the doing of the wrongful acts, or if necessary, to bind down the wrong-doer under S. 107, Criminal P. C. (Mohamad Noor J.) Rama Barik v. Emperor

AIR 1940 Pat 185=6 B R 480= 12 R P 637 = 5 Cut L T 54=187 I C 511=41 Cr L J 463.

——Magistrate whether can take action under S. 107 to prevent lawful acts resulting in breach of peace owing to wrongful acts of others.

The word "wrongful" in S. 107, Criminal P. C., must mean something more than wrongful in the opinion of the Magistrate, and "wrongful act" must mean some act wrongful according to some law. Section 107, Criminal P. C., cannot be intended to authorize a Magistrate to take action to prevent lawful acts which may result in a breach of the peace because of the wrongful or unlawful acts or others. Section 107 is intended to be applied against the wrong-doers and not also against the wronged. It was never the intention of the section that the wrong doers and the wronged should be classed together as wrong-doers and made the subjects of a common complaint and common action. The collection or the acquiescing of collection of women for the purpose of religious instruction, discourse or songs the meeting together of men and women for a joint satsang or meeting is no offence under the law nor is the education of children, aud the Magistrate, therefore, cannot take action to prevent such lawful act even if it would result in a breach of peace owing to the wrongful acts of others. (Davis J. C. and Weston J.) Mt. Jasoda Lekhraj v. Emperor

AIR 1939 Sind 167= 12 R S 31 = I L R (1939) Kar 662=182 I C 698=40 Cr L J 703.

——Where the anticipated breach is to be committed by the other side, the only point to be seen is whether the act which brings about that breach is wrongful in itself : 32 All. 571, Foll. (Harrison J.) Khazan Chand v. Emperor

AIR 1926 Lah 683=97 I C 39=7 Lah 482=27 P L R 810=7 A I Cr R 92=27 Cr L J 1063.

——Wrongful act—Dispute in a market place.

Action may be taken against the disputants under S. 107 if the dispute about certain claims to weigh grain in a market place is likely to cause a breach of the peace. (Rafique J.) Makbul Ahmad v. Emperor

AIR 1922 All 430 (1)= 68 I C 836=20 A L J 694=23 Cr L J 612.

——Wrongful act—Public thrashing.

Abetment by instigation or conspiracy of the offence of voluntarily causing hurt is a wrongful act and nothing more likely to occasion a breach of the peace can be imagined than instigating the infliction of a public thrashing. Dewat Singh v. Crown, 4 P. R. Cr. 1912, Dissented from; Emperor v. Bandhawa Singh, 64 P. R. Cr. 1887 and Raju Coomar Banerjee v. Raja Gopal Sing Deb, (1812) 17 W R Cr. 54, Distinguished. (Hallifax A. J. C.) Baines v. Emperor

AIR 1922 Nag 180= 6 N L J 274 = 67 I C 346 = 23 Cr L J 394.

——Ss. 107 and 145—Wrongful act — Propriety of order under S. 107.

Where the property was recorded in the Collector's register in the name of the widow after the death of her husband in the absence of an objection by the agnates under the Bengal Land Registration Act and where there was a dispute as to the possession of the property, proceedings under S. 107 against the agnates who claimed the properties on the ground of survivorship were proper especially where there was overwhelming evidence of the widow's possession. An order under S. 107 can be passed only when the wrongful acts can be proved by overt actions against each of the several individuals sought to be bound down. Where, however, wrongful acts are committed or threatened to be committed jointly by number of individuals and not only by some of them, the act is the act of all and therefore all of them are liable under S. 107. (Jwala Prasad J.) Lachmi Singh v. Emperor

AIR 1920 Pat 687=59 I C 374= 1 Pat L T 681 = 22 Cr L J 86

——Wrongful act—Meaning of.

The words "wrongful act" in S. 107 mean an act forbidden by the penal statutes of India or declared to be penal or wrongful by such statutes. (Das J.) Pirali Kasabi v. Emperor

AIR 1920 Pat 550=56 I C 437=21 Cr L J 453.

——Ss. 107 and 439 — Order for security to keep the peace—Rival religious sects—Interference by High Court when proper.

Where one set of persons tries to force their views on the other with the result that a disturbance of the public peace is probable, an order binding down the former under S. 107 to keep the peace will be maintained. Such an order should merely prevent them from creating a breach of the peace and continuing to annoy the others at their worship but should not prevent them from exercising their right of worship. (Adami J.) Gurdeo Singh v. Emperor

AIR 1920 Pat 661=2 U P L R (Pat) 64=55 I C 97= 21 Cr L J 225.

[The protection under the last clause to this section extends under the new amendments only to newspapers which are edited, printed and published in conformity with the Act. Ed.]

——Wrongful act—Security.

Where there was already a cattle market and certain persons intended to open another cattle market and the Magistrate apprehending that there would be a breach of the peace consequent thereupon, bound them over under S. 107, held, S. 107, Criminal P. C., which is confined to cases where the Magistrate was informed that a person was likely to commit a breach of the peace or to do any wrongful act which may occasion a breach of the peace, does not apply to cases where he was informed that the accused were intending to do something perfectly legal on their land. (Richards C. J.) Mahu v. Emperor

AIR 1918 All 102=44 I C 965= 16 A L J 279=19 Cr L J 437.

——Essentials—Likelihood of breach of the peace—Commission of specific offences.

Where the acts committed by an accused person are of such a nature that the continuity of these acts or com-

CRIMINAL P. C. (V of 1898), S. 107—19. Lawful and wrongful acts—Wrongful acts, illustrations of

mission of similar acts by the accused, is apprehended to be tending to a breach of the peace, S. 107 is applicable notwithstanding that the acts already committed by the accused constitute specific offences under the Penal Code. (Jwala Prasad J.) Khetrabasi Sahu v. Emperor,

A I R 1918 Pat 183=44 I C 38=19 Cr L J 246.

——Wrongful act — Blowing conch to wound religious feelings.

The blowing of a conch for mere amusement or at a place fixed for religious ceremonies or worship is not wrongful act, but doing it at a place not intended for religious worship with a view to wound the religious feelings of Mahommedans is an act likely to provoke a breach of peace and disturb the public tranquillity. (Piggott J.) Emperor v. Murli Singh,

13 I C 922=33 All 775=13 Cr L J 170.

——House trespass with intent to commit theft, whether offence involving breach of peace — Order for security to keep peace — Power of Court to whom case is submitted under proviso to S. 562, Criminal P. C., to pass order other than a sentence or order for release on probation.

The offence of house-trespass with intent to commit theft is not an offence involving a breach of the peace. Therefore the Judge has no power to pass an order demanding security to keep the peace from a person charged with such offence.

Quaere.—Whether a Magistrate to whom a case is submitted under S. 562 (proviso) of Criminal Procedure Code can pass, under S. 380 of the Code, any order other than a sentence or an order for release on probation. (Irwin Offig C. J.) Morali v. King-Emperor,

4 L B R 277=8 Cr L J 476.

——Resistance offered by a durputnidar to the purchaser from the putnidar by wrongful collection of rents—Likelihood of breach of peace — Bengal Regulation 8 of 1819, Ss. 11 and 15.

Where a putni taluk had been sold and everything had been done by the Revenue authorities and the Zemindar to give possession to a purchaser under Regn. 8 of 1819, the act of a dur-putnidar in continuing to collect the rents from the raiyats is wrongful and he can be bound down to keep the peace under S. 107, since his act is likely to cause a breach of the peace. The mere fact that the dur-putnidar had brought a suit to set aside the sale would not make any difference because the effect of the Putni Regulation is to render any such acts unlawful until such time as the setting aside of the sale. (Henderson and Greidt JJ.) Bisarat Ali v. Umapada Banerjee,

9 C W N 792=2 Cr L J 415.

20. Likely to commit breach of peace or disturb public tranquillity.

——Applicability—Section when applies.

There are two distinct sets of circumstances in which a Magistrate may take action under S. 107, Criminal P. C. First when a person is likely to commit a breach of the peace or disturb the public tranquillity by a direct act, e. g., by committing assault; and secondly, when he may be the indirect cause of the breach of the peace or the disturbance of the public tranquillity by doing a wrongful act.

Suspecting that A and B, two Muslims, had abducted a Hindu woman, a crowd of Hindus armed with lathis collected near their house and asked them where the woman was. The woman was found in C's house and stated that she had come to the place of her own free will and was no longer in the custody or power of A and B.

Held, that in these circumstances no proceeding under S. 107 could be started against them. (Mehta J.) Alladin v. State,

1951 R L W 137.

CIRMINAL P. C. (V of 1898), S. 107—20. Likely to commit breach of peace or disturb public tranquillity

——Existence of danger of breach of peace on particular religious festival — Proceedings started under S. 107 — Event passing off peacefully due to police intervention but danger still lurking due to strained relations of parties —Fact that event has passed off peacefully is no justification for cancellation of proceedings.

Where the danger of breach of peace exists only because of the happening of a certain event e. g., the observance of a particular religious festival, and once that event has happened the danger no longer exists then certainly the proceedings should be dropped : 26 All. 190 and A. I. R. 1927 Pat. 231, Ref.

But where although the occasion which gave rise to the apprehension of a breach of peace has passed peacefully because of police protection, the danger still lurks because of the strained relations between the parties, the fact that the event has passed off will not be a sufficient justification for the dropping of the proceedings : 31 Cal. 350 and 12 I. C. 213 (All), Ref. (Agarwalla J.) Babu Ram v. Rex,

A I R 1949 All 21 = 1948 A W R (H C) 214 = 1948 A L J 484=50 Cr L J 78.

——Only one party bound down.

Where the dispute between the parties has been going on for some time and there is no probability or even a likelihood of anything happening in the nature of a breach of the peace, security proceedings are not called for. Though it is not illegal, it is inadvisable that in such a dispute, only one side should be bound down, as it gives an unfair advantage to the other side. (Saaduddin A. J. C.) Din Mahomed v. Emperor,

A I R 1934 Pesh 21=148 I C 1078=35 Cr L J 963.

——Overt act—Necessity of.

Section 107 is one appearing in a chapter devoted in the Criminal Procedure Code to the object of preventing a breach of the peace, and to prove the existence of circumstances which may lead a reasonable man to apprehend a breach of the peace. It need not always be necessary to prove also an overt act towards a breach of the peace on behalf of any of the accused. (Dalal J.) Emperor v. Jiwan Singh,

A I R 1930 All 408=52 All 593=I R 1930 All 562= 1930 Cr C 565 = 124 I C 706 = 1930 A L J 866=31 Cr L J 710.

——Dispute about the cultivation of a bund and a proclamation forbidding people on payment of fine and shoebeating from picking fruit from a Ber tree do not come within the purview of S. 107. (Subhedar A. J. C.) Kashiram Hazari v. Asaram,

A I R 1929 Nag 328 = 120 I C 215=1929 Cr C 532= 31 Cr L J 20.

——Threatening to beat a person saying why he served a particular person and asking another to give up serving a particular person on pain of being involved in litigation are not threats of violence of such a nature as would in law justify the passing of an order under S. 107. (Subhedar A. J. C.) Kashiram Hazari v. Asaram,

A I R 1929 Nag 328 = 120 I C 215=1929 Cr C 532= 31 Cr L J 20.

——Effect of the act of accused.

If a person himself is likely to commit a breach of the peace he may be dealt with under S. 107. He would equally become amenable to the provisions of the section if, for any wrongful act on his part, other persons may do things which would probably occasion a breach of the peace or disturb the public tranquillity. (Chotzner and Gregory JJ.) Satindra Nath Sen v. Emperor,

A I R 1928 Cal 438 = 111 I C 396 = 47 C L J 444 = 32 C W N 477=11 A I Cr R 100=29 Cr L J 844.

CRIMINAL P. C. (V of 1898), S. 107 — 20. Likely to commit breach of peace or disturb public tranquillity

——Danger to public peace.

The mere fact that two parties had taken different sides in Municipal politics is not sufficient for an order being passed on the members of those parties under S. 107 without stating the risk or reasons which exist for thinking that there was a danger of the breach of the peace between the two parties. (Addison J.) Kura Mal v. Emperor,

A I R 1928 Lah 863=110 I C 458=10 A I Cr R 434=29 Cr L J 714.

——Breach of peace.

Mere existence of enmity between the persons of factions is no ground for instituting proceedings under S. 107 against one or both the parties. In order to bring a case within that section it must be established that a breach of the peace is imminent. (Tek Chand J.) Parman Rami v. Emperor,

A I R 1928 Lah 243 = 108 I C 517=10 L L J 72=29 P L R 434=10 A I Cr R 141=29 Cr L J 417.

——Overt act.

Where the accused is not shown to have committed any overt act, the mere expression of opinion by some witnesses that there is an apprehension of a breach of the peace and that the parties should be bound down is certainly insufficient to prove that there is really any danger of breach of the peace being committed by the accused : AIR 1920 Pat 681 and 32 All. 571, Foll. (Shadi Lal C. J.) Joti Sarup v. Emperor,

A I R 1926 Lah 689=96 I C 858=27 Cr L J 1002.

——Leaders discharged—Party feuds.

Where there were old standing feuds between two parties which in the course of events developed into a very serious and heavy litigation and the Magistrate finding no evidence against the masters discharged them but assuming a possibility of breach of peace ordered their servants to provide heavy securities:

Held, that the Magistrate's order was not justified. (Walsh J.) Din Dayal v. Emperor

A I R 1925 All 443 =87 I C 517 = 23 A L J 300=26 Cr L J 981.

——Charge of murder unsuccessful — Whether proceedings under S. 107 excluded.

The apprehension as to the breach of peace arose out of facts which were undisputed. In connection with those facts a charge of murder was laid unsuccessfully against certain persons and proceeding under S. 107 was also started. Held, one charge did not exclude the other and, though the charge of murder failed, order demanding security to keep the peace was valid. (Kanhaiya Lal J. C.) Emperor v. Gobardhan Singh

A I R 1922 Oudh 273 = 9 O L J 285=4 U P L R (OC) 73.

——Ss. 107 and 145—Applicability — Propriety of order under S. 107.

Where the property was recorded in the Collector's register in the name of the widow after the death of her husband in the absence of an objection by the agnates under the Bengal Land Registration Act and where there was a dispute as to the possession of the property, proceedings under S. 107 against the agnates who claimed the properties on the ground of survivorship were proper especially where there was overwhelming evidence of the widow's possession. An order under S. 107 can be passed only when the wrongful acts can be proved by overt actions against each of the several individuals sought to be bound down. Where, however, wrongful acts are committed or threatened, to be committed jointly by number of individuals and not only by some of them, the act is

CRIMINAL P. C. (V of 1898), S. 107 — 20. Likely to commit breach of peace or disturb public tranquillity

the act of all and therefore all of them are liable under S. 107. (Jwala Prasad J.) Lachmi Singh v. Emperor,

AIR 1920 Pat 687 = 1 Pat L T 681=59 I C 374=22 Cr L J 86.

——Master's liability —Owner bound for acts of servants consented to.

The manager of a zamindar resorted to acts of violence in realizing tolls from hat users; Zamindar was directed to execute a security bond of Rs. 200. It was held that the order was justified. S. 107 does not apply where the civil right is exercised in a lawful manner. (Mullick and Thornhill JJ.) Bipin Behari Mukherji v. Emperor,

AIR 1920 Pat 667=2 U P L R (Pat) 161=57 I C 667 =21 Cr L J 651.

——Essentials—Likelihood of breach of the peace—No act within six months.

Though there were no actual overt acts on the part of the accused during the six months before the commencement of the proceedings, still the proceedings were not bad as there was a likelihood that the accused might commit a breach of the peace, or disturb the public tranquillity or do some wrongful act which might occasion a breach of the peace. (Chitty and Smither JJ.) Ohiduddin Choudhury v. Emperor,

AIR 1919 Cal 469=44 I C 122=19 Cr L J 266.

——Essentials—Likelihood of breach of peace.

An order under S. 107 is proper and justifiable if the acts of the accused show a probability of public peace being disturbed. (Knox J.) Chunilal v. Emperor,

AIR 1916 All 276=14 A L J 430=35 I C 173=17 Cr L J 301.

——Evidence – Security to keep the peace—Proof.

Where evidence to show that the petitioner is likely to commit breach of the peace does not exist on record, an order under S. 107, Cr. P. C., will be set aside on revision. (Shah Din J.) Sher Singh v. Hari Singh,

195 P L R 1912=34 P W R Cr 1912=16 I C 528=13 Cr L J 720.

——Evidence—Order to be based on evidence—Duties of Magistrate.

An order under S. 107 should not be passed when there is no evidence that the accused are likely to commit breach of the peace or disturb the public tranquillity. It should not be made merely on a vague apprehension. A Magistrate must use his power to protect persons seeking to exercise their right and restrain those seeking to disturb it. (Abdur Rahim J.) Guruswami Nadar v. Emperor,

(1912) M W N 47=11 M L T 32=22 M L J 251=13 I C 831=13 Cr L J 143.

——Essentials—Likelihood of breach of the peace, security when to be taken.

Security for keeping the peace should be taken where probabilities exist of breaches of the peace taking place in the near future, although the occasion on which ill-feeling between the parties first arose has passed away. (Chamier J.) Ayodhya Prasad v. Emperor,

12 I C 213=8 A L J 1080=12 Cr L J 493.

——Security to keep the peace—Principle on which a person may be bound over.

Before a person is bound over to keep the peace, it must be shown that he is himself likely to commit a breach of peace or do a wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. He cannot be bound down merely because he is a wealthy or influential member of a party. (Chamier J.) Jagat Narain v. King-Emperor

7 A L J 1161=8 Ind Cas 818=11 Cr L J 719.

——Applicability.

The provisions of S. 107 should not be put in force un-

CRIMINAL P. C. (V of 1898), S. 107 — 20. Likely to commit breach of peace or disturb public tranquillity

less substantial grounds for an apprehension of a breach of the peace are established by proof of facts against each person implicated. The general allegation that the two parties are quarrelsome and likely to continue so is not sufficient. (Chitty J.) Radha Kishan v. Emperor,

1 P W R Cr 24=4 Cr L J 429.

——Facts to be proved.

It is not necessary under S. 107 to prove that any offences against the public tranquillity have actually been committed ; it will be enough if facts are proved, from which it may be reasonably inferred that the persons sought to be bound would be likely to disturb the public peace. But the facts proved to warrant such inference must be facts of definite nature, and must show that the persons sought to be bound are individually and not merely collectively connected with them. (Banerjee and Hindley JJ.) Prankrishna Saha v. Emperor,

8 C W N 180=1 Cr L J 58.

21. Nature of proceedings.

——Ss. 107 and 192—'Case'—Meaning of — Proceedings under S. 107.

Proceedings under S. 107 come within the meaning of the word "case" as used in S. 192. Section 192 does not concern only offence. The language of S. 192 does not use the word "offence" deliberately but uses the far more general word "case". Section 192 does apply in a proper case to proceedings under S. 107 and can be used to exercise the right to transfer the proceedings under S. 107. 51 Cr L J 205, Dissent. (P. B. Mukharji and Guha JJ.) Tulsibala Rakhit v. N. N. Khosal,

AIR 1953 Cal 109 = 56 Cal W N 193 = 1953 Cr L J 344.

——"Is informed"—Information not complaint.

A petition under S. 107 is not a complaint and, therefore, the Magistrate cannot proceed under S. 202 or S. 204. A Magistrate under S. 107 is not required to examine the complainant, far less to examine the person informed against until at a much later stage when he proceeds to act under S. 117. The proceedings before the Magistrate under S. 107 become judicial only from the stage of enquiry under S. 117. But before that stage is reached and before any notice to show cause is issued under S. 112, all that is required under S. 107 is that the Magistrate must be "informed" that a person is likely to commit breach of the peace. No hard and fast rule can be laid down about the quality and character of information on which the Magistrate should or should not act. The Magistrate must be left free with a wide discretion in the matter and it is undesirable to fetter the hands of the Magistrate in this respect. (P. B. Mukharji and Guha JJ.) Tulsibala Rakhit v. N. N. Khosal,

AIR 1953 Cal 109=56 Cal W N 193=1953 CrLJ 344.

——'Accused of an offence' — Dismissal of complaint under S. 107 — Order for payment of compensation to opposite party is illegal and must be set aside — S. 250 is applicable only when opposite party is charged with any offence—See Criminal P. C. (1898), S. 250.

1953 R L W 11.

——Information given under section — Action for malicious prosecution in respect of information whether lies — See malicious prosecution.

AIR 1951 Raj 160 = 52 Cr L J 1240.

——Application for action under S. 107.

An application for action under S. 107 against certain persons is not complaint nor are the persons proceeded against "accused" persons in the sense in which the term is used the Criminal Procedure Code. (Chandiramani J.) Ajodhiya Prasad v. Sitaram,

AIR 1949 All 350=50 Cr L J 566.

CRIMINAL P. C. (V of 1898), S. 107—21. Nature of proceedings

——'Criminal proceedings' — Meaning of — Proceedings under S. 107, Criminal P. C. are criminal proceedings — False and malicious complaint for action being taken under S. 107, Criminal P. C. —No notice, however, issued —Not S. 211, Penal Code, but S. 182, Penal Code applies—See Penal Code (1860), S. 211,

Pak L R (1948) Lah 53 (F B).

——Quaere—Where an order is passed under S. 107 against the applicant, it is doubtful whether it can be said that for the purposes of S. 423 (1) (b), the applicant had been convicted and was appealing from his conviction. (Bennett J.) Abdullah Sheikh v. Emperor,

AIR 1942 Oudh 416 = 1942 O W N 387 = 1942 A W R (C C) 251 = 15 R O 61 = 201 I C 60 = 43 Cr L J 729.

——Proceedings under S. 107—Effect of enmity between parties.

If a party goes to Court and says that owing to the existence of enmity, he apprehends danger from his adversary, and on that ground, he asks the Court to take proceedings under S. 107, Criminal P. C., and the Court decides the matter against him, then it will be very difficult to hold that it was a case which was without any reasonable and probable cause. The man may have believed that the opposite party was his enemy and he was, therefore, apprehending danger, but an enemy has no right to concoct a case against his adversary in order to put him to trouble, and if in a case it is found that with a view to support an imaginary story against an enemy one party fabricates evidence to bolster up his case against the other comes within "probable and reasonable cause." (Harries and Rachhpal Singh JJ.) Sah Chaturbhuj v. Sah Mauji Ram,

AIR 1936 All 537 = 1936 A L J 594 = 9 R A 105 = 1936 A W R 231 = 163 I C 984 (2).

——As an institution of proceedings under S. 107, Criminal P. C., is not an accusation of offence, S. 250 does not apply if the accusations prove to be false. (Coldstream J.) Rohel v. Kaura,

AIR 1935 Lah 29 = 1935 Cr C 20.

——Ss. 107, 344—Order awarding costs against complainant for failure to accompany process-server.

In a proceeding under S. 107, Criminal P. C., the complainant should not be directed to accompany the process-server. Such an order is not contemplated by S. 344 and cannot be passed under any other section. Consequently, an order awarding costs should not be passed against the complainant for failure to accompany the process server. (Addison J.) Kazam Khan v. Emperor,

AIR 1933 Lah 720 = 6 R L 426 (1)=35 P L R 183= 147 I C 675 = 35 Cr L J 457.

——Section 403 which embodies the principle of autrefois acquit, would not apply to proceedings for taking security either under S. 107 or S. 110, as there is no conviction of any offence. AIR 1929 Lah 28 (1) : 30 Cr L J 491 (1), Overruled. (Blackar and Ramlall JJ.) Subeg Singh v. Emperor,

AIR 1942 Lah 84 = 44 P L R 71=14 R L 431=ILR (1943) Lah 365 = 199 I C 532=43 Cr L J 564.

——Ss. 202 and 203, Cr. P. Code, are applicable only to complaints and a proceeding under S. 107, cannot be regarded a complaint within the meaning of cl. (h), subs. (1), S. 4 of the Code. (Shadi Lal C. J.) Hari Singh v. Jagta,

AIR 1928 Lah 694 = 29 P L R 666 = 11 A I Cr R 183 = 111 I C 450 = 29 Cr L J 866.

[Overruled in AIR 1938 Lah 861 = 40 Cr L J 193].

——S. 250 does not apply to proceedings under S. 107.

The fact that the complaint is treated as one under S. 506 of the Penal Code does not make any difference.

CRIMINAL P. C. (V of 1898), S. 107—21. Nature of proceedings

Further, where the opposite party agrees to give security, the complaint cannot be called false and frivolous. A I R 1924 All 269, Rel. on. (Iqbal Ahmad J.) Baij Nath v. Kali Charan,

AIR 1927 All 531 = 102 I C 780 = 25 A L J 493 = 7 A I Cr R 543 = 8 L R A Cr 87 = 49 All 750= 28 Cr L J 604.

——Administrative rather than judicial.

S. 107 is not intended to give any redress to the applicant because without injury there can be no redress while the section contemplates possible injury, therefore the order of a Magistrate refusing to take action cannot be interfered with by a superior Court, as the power is administrative rather than judicial. The person complained against is not an accused person. (Kendall A. J. C.) Ram Lal v. Bankateshar Rawan Bahadur Pal Singh,

AIR 1925 Oudh 138 = 81 I C 973 = 11 O L J 732 = 23 O C 44 = 25 Cr L J 1149.

——Costs.

Section 545 of the Criminal P. C. does not apply to a case under S. 107; consequently an order directing the accused to pay costs of the complainant is ultra vires. (Sulaiman J.) Sheo Prasad v. Mahanjoo Nania,

AIR 1924 All 694 = 77 I C 828 = 5 L R A Cr 12 = 25 Cr L J 476.

——Compensation.

In proceedings under S. 107 an order for compensation cannot be passed. (Ryves J.) Mannu Khan v. Chandi Prasad,

AIR 1922 All 321=67 I C 826=4 U P L R (A) 161= 20 A L J 624 = 23 Cr L J 474.

——Nature of proceedings — Order requiring security— Is not a conviction.

(Das and Adami JJ.) Rawlins v. Ananta Lal Sahu,

AIR 1921 Pat 74 = 2 Pat L T 176 = 59 I C 905 = (1921) Pat H C C 40.

——Ss. 107 and 350 — Nature of proceedings — "Trial" meaning of — S. 350 (1) Proviso (a) — Applicability of.

S. 350 (1) Proviso (a) applies to a case under S. 107. Per Wallis C. J. — "Trial" generally means the determination of the issues arising in the particular case. Per Ayling J.—The word "trial" as used in the Criminal P. C. pre-supposes the idea of an offence as defined in S. 4 of the Code. Enquiries under Chapter VIII of the Code are not trials; and the proviso of S. 350 (1) of the Code does not apply to such proceedings. Per Coutts Trotter J. —Whether proceedings under S. 117, Criminal P. C. are a "trial" is doubtful. (Wallis C. J., Ayling and Coutts-Trotter JJ.) Yelluchuri Venkatachennaya v. Emperor,

AIR 1920 Mad 337 = 43 Mad 511 = 38 M L J 370= 11 L W 435 = 27 M L T 178 = (1920) M W N 280 = 56 I C 50 = 21 Cr L J 402 (FB).

——Ss. 107 and 437 — Nature of proceedings — Accused person : 1 Cr L J 96 : 24 P R 1903 Cr ; 2 Cr L J 716 : 33 P R 1905 Cr, Overruled,

A person from whom security has been demanded under S. 107 is not an "accused person" and neither the District Magistrate nor the Sessions Judge can order inquiry under S. 437, should that person be released or discharged under S. 119 of the Criminal P. C. 1 Cr L J 96: 24 P R 1903 Cr: 2 Cr L J 716 : 33 P R 1905 Cr, Overruled. (Reid C. J. Kensington, Johnstone and Chevis JJ.) Narain Das v. Durga Debi,

6 P R 1911 Cr = 30 P W R 1911, Cr = 10 I C 178= 153 P L R 1911 = 12 Cr L J 232 (FB).

——Ss. 107 and 443 — "Enquire into or try any charge."

The expression "enquire into or try any charge" in Section 443 applies to proceedings under S. 107 as the party against whom proceedings under S. 107 are instituted is in the position of an accused party. (Sharfuddin and Coxe JJ.) R. T. Hopcroft v. The Emperor,

1 I C 737 =13 C W N 151=36 C 163=9 Cr L J 359.

——Person required to furnish security to keep the peace, position of.

The party against whom proceedings under S. 107, are instituted is in the position of an accused person. (Sharfuddin and Coxe JJ.) Bhom Lal Chawdhary v. R. F. Hopcroft,

13 C W N 151 =36 C 163=8 C L J 565=1 I C 737= 9 Cr L J 36.

——Ss. 437, 107 and 119 — Person discharged under S. 119, whether accused—Further enquiry—See Criminal P. C. S. 437,

2 Cr L J 716 (Lah).

22. Notice of proceedings.

See also Criminal P. C., S. 112.

——Procedure.

In a proceeding under S. 107, an order under S. 112 has to be read over to the second party, when they appear in Court. It is also necessary that it should be proved by evidence that the party who was going to bound down was doing some overt act from which it could be inferred that a breach of the peace might be committed. Where the Magistrate without referring to any such evidence, only contents himself by saying that by the police report it was proved that there was danger of a breach of the peace from the side of the second party, the order under S. 118 against the second party is altogether uuwarranted. (Sharma J.) Berisal Singh v. Matadin.

AIR 1953 Raj 119=1952 Raj L W 265 = ILR (1952) 2 Raj 862=1953 Cr L J 846.

——Ss. 107 and 112—"In the manner hereinafter provided."

The words "in the manner hereinafter provided" in S. 107 are essential words and the Magistrate cannot discover a manner of his own. The manner provided is clearly laid down in S. 112. Issue of a preliminary notice to show cause apart from what is provided under S. 112 is not a justified course permitted by the law. (P. B. Mukharji and Guha JJ.) Tulsibala Rakhit v. N. N. Khosal.

AIR 1953 Cal 109 = 56 Cal W N 193 = 1953 Cr L J 344.

——Ss. 107, 112—Police enquiry and notice—Distinction.

The Magistrate's power to call for a police enquiry and a police report should not be mistaken for his power to issue notice to show cause without complying with S. 112. (P. B. Mukharji and Guha JJ.) Tulsibala Rakhit v. N. N. Khosal.

AIR 1953 Cal 109 = 56 Cal W N 193 = 1953 Cr L J 344.

——Ss. 107, 112, 113, 118 — Order passed under S. 112 not on record, nor any compliance made with S. 113— Reference by Sessions Judge to set aside order passed by Magistrate under S. 107 accepted by High Court. (Wanchoo, C. J. and Bapna J.) Nahar Singh v. State.

AIR 1951 Raj 156 = I L R (1951) 1 Raj 265 = 52 Cr L J 1209.

——Ss. 107, 112—Notice requiring person to show cause —Essentials.

The notice under Ss. 107, 112 must contain something more than a mere reproduction of cl. (1) of S. 107, Cr. P. C. There should be sufficient indication as to in what way and with reference to what matter a person was likely to commit a breach of the peace and what way he was likely to do a wrongful act which might occasion a breach of the peace. Without such a specification the proceeding would be regarded as vague and liable to be set aside if

CRIMINAL P. C. (V of 1898), S. 107—22. Notice of proceedings

prejudice is caused to the person proceeded against by such omission : 47 Cr L J 642; AIR 1939 Sind 261, Rel. on. (Mehta J.) Alladin v. State,

1951 R L W 137.

——Ss. 107 and 117 — Hindu woman recovered from house of Muhammadan — Excitement among Hindus—Police apprehending breach of the peace — Magistrate ordering the Muhammadan to furnish security to keep peace — No opportunity to show cause against order — Formalities not observed—Order is unjustified.

In consequence of a search warrant issued under S. 100, Cr. P. C., upon a complaint by a Hindu husband regarding the disappearance of his wife, the woman was recovered from the house of a Muhammadan. The police reported that as a result of this recovery of a Hindu woman from a house of a Muhammadan, there was a great deal of excitement among the Hindus which gave rise to apprehension of a breach of the peace. The Magistrate, without calling upon the Muhammadan to show cause and without observing the necessary formalities, passed an order under S. 107/117 calling upon him to furnish security for keeping the peace :

Held that to call upon a person to furnish security without giving him an opportunity of defending himself, not because there was any apprehension of a breach of the peace by him but because some persons of another community had become excited and might have committed a breach of the peace was an act of undiluted injustice and that the order therefore was unjustified. (Walford J.) Abdul Jabbar v. Rex.

AIR 1949 Oudh 83=1948 O W N 86 = 1948 A W R C C 57=1948 O A C C 57=51 Cr L J 89.

——Ss. 107, 118 — Notice under S. 107 giving out the fact of preliminary inquiry following previous petition against accused—No specific wrongful act given—Accused aware of what it was for, that they were proceeded against.

Where the notice under S. 107, Cr. P. C., does not specify any particular wrongful act that the Magistrate was satisfied was likely to be committed by the accused, the proceedings are liable to be quashed on such a ground, but not after the whole matter has been enquired into, unless there is a reasonable suggestion of possible prejudice, or unless the defect goes to the jurisdiction. It cannot be contended with any show of reason that the accused were prejudiced in any way by an omission to set forth the substance of the information in the initial proceeding when they were fully aware of what it was for which in the beginning they were going to be proceeded against, and for which they were afterwards actually proceeded against, specially when the notice referred to the preliminary hearing that had followed the previous petition by the opposite party reasonably apprehending that his life and properties were in danger and the accused were holding out threats and spreading false rumours against them in the localities.

Consequently, the proceedings taken by the Magistrate in the notice cannot affect his jurisdiction in the matter so as to make the proceedings void. (Dhavle J.) Bangali Ahir v. Chaturbhuj Prasad.

AIR 1941 Pat 241=7 B R 430=13 R P 505=22 P L T 967=192 I C 463=42 Cr L J 296 (2).

——Notice under S. 112—Necessity of.

The High Court has undoubtedly power to quash proceedings where the notice issued does not comply with the requirements of S. 112, but before doing so, it must be satisfied that there has been a failure to comply. It must be remembered that the issue of the notice is merely a preliminary step and no order can be passed

CRIMINAL P. C. (V of 1898), S. 107—22. Notice of proceedings

under S. 107 unless the inquiry which follows the issue of the notice shows that the laying of the information was justified. The High Court can always interfere when the inquiry has not been held in accordance with the law or a wrong conclusion has been arrived at. (Leach C. J., Krishnaswami Ayyangar and Patanjali Sastri JJ.) In re Muthuswami Chettiar.

AIR 1940 Mad 23 = 50 M L W 802 = 1939 M W N 1209=(1940) 1 M L J 11 = 12 R M 584 = ILR (1940) Mad 335=185 I C 824=41 Cr L J 238 (FB).

——Contents of order.

A preliminary order under S. 112 on which proceedings under S. 107 were initiated must state the facts upon which the Magistrate charges the person proceeded with. AIR 1925 Mad 189, Ref. (Pandalai J.) Kalia Goundan v. Emperor.

AIR 1930 Mad 859 = 59 M L J 887 = I R 1930 Mad 1036=127 I C 652=1930 M W N 698=32 M L W 320 =1930 Cr C 1035=32 Cr L J 27 (2).

——Warning notice.

On the basis of a police report, warning notices had been issued to the parties concerned on 8th September, 1928. On 8th October, he drew up proceeding against one of the party under S. 107, Cr. P. Code :

Held, that as the order of 8th September 1928 was not a final order disposing of the police report, the Magistrate did not become functus officio and was competent to take proceedings under S. 107, Cr. P. Code. (Pearson and Mallik JJ.) Abdul Mannaf v. Mahammad Narulla.

AIR 1929 Cal 506 = I R 1930 Cal 32=120 I C 256= 31 Cr L J 58.

——Reasons for action under.

If a proceeding under S. 107 has only reproduced the language of the section without specifying in what way and with reference to what matter a person was likely to commit a breach of the peace and in what way he was likely to do a wrongful act which might occasion a breach of the peace, it cannot be supported. (Fazl Ali J.) Amanat Ali v. Emperor.

AIR 1929 Pat 67 = 115 I C 545 = 10 P L T 639=12 A I Cr R 451=30 Cr L J 492.

——Magistrate satisfying himself that no apprehension of breach of peace exists — Without making an order under S. 112 he must refuse the application. (Zafar Ali J.) Shams-ud-din v. Ram Dayal Singh.

AIR 1924 Lah 630=76 Ind Cas 25=25 Cr L J 89.

——Ss. 107 and 112—Procedure—Notice of proceedings — Substance of information — Omission to set forth — Irregularity.

The omission to set forth in an order under S. 112, Cr P. Code, the substance of the information received by the Magistrate, does not vitiate the proceedings if as a matter of fact the accused had clear notice of the case made against them and ample time and opportunity to let in evidence. (Miller C. J. and Adami J.) Jai Singh v. Emperor.

64 I C 666=23 Cr L J 42 (Pat).

——Ss. 112, 107 and 110 — Notice to proceed under S. 110 (e) — Order under S. 107 without issuing fresh notice—Legality—See Cr. P. C. (1898), S. 112.

5 Cr L J 397 (Mad).

23. Past acts.

——Past breaches of peace.

Breaches of the peace in the past do not justify an order under S. 107. Although S. 107 gives authority to a Court to call upon person to furnish security only if it is likely that a breach of the peace will occur in the future, yet the Magistrate can pass an order under S. 107,

CRIMINAL P. C. (V of 1898), S. 107 — 23. Past acts if he is satisfied that breaches of the peace will occur in the future as they have occurred in the past. (Horwill J.) In re Rangaswami Nayudu,

A I R 1943 Mad 394 = (1943) 1 M L J 246=1943 M W N 149=56 L W 217=16 R M 246 = 208 I C 227 = 44 Cr L J 756.

——Mere proof against persons of violence in past—If sufficient to justify order under section.

What must be proved in order to justify an order binding over persons under S. 107, Criminal P. C., is that they are likely to break the peace in future. Mere proof that they have committed certain acts of violence in the past is not sufficient. (King J.) In re Kumarappa Chettiar,

A I R 1938 Mad 213 = 1937 M W N 1072=47 L W 322=10 R M 684 = 1938 M W N 212 = 174 I C 248= 39 Cr L J 416.

——Object of — Information that person was committing acts involving breach of peace in the past.

The object of S. 107, Criminal P. C., is to guard against apprehended breaches of the peace or wrongful acts which might probably lead to breach of the peace. Where information laid against a person is to the effect that he was committing various acts involving breach of peace in the past, an order directing him to furnish security for keeping the peace is not justified. (Pandrang Row J.) In re Maruthapalli Goundar,

A I R 1937 Mad 356=1937 M W N 48=45 L W 308 =9 R M 685=169 I C 97=38 Cr L J 699.

——Object of S. 107 is not to punish for past offences but to prevent future breach of peace.

The object of S. 107, Criminal P. C., is not to punish persons for anything they might have done in the past but is to prevent them from doing something which is likely to occasion a breach of the peace or disturbance of public tranquillity in the immediate or near future. These proceedings are meant to be preventive and not punitive and in such proceedings, it is incumbent on the prosecution to give clear proof of acts or specific conduct on the part of the person or persons proceeded against from which a reasonable immediate inference could be drawn that a breach of the peace or disturbance of public tranquillity is likely. (Tek Chand J.) Shadi Lal v. Emperor,

AIR 1931 Lah 191=32 P L R 138=12 Lah 457=Ind Rul (1931) Lah 969=134 I C 585=32 Cr L J 1207.

——Allegation not happening.

Where the persons against whom proceedings under S. 107 are started, were likely to commit a breach of the peace on a particular occasion and that occasion passed off without any disturbance, it cannot be inferred affecting the person against whom process is issued, and from their intention in the past that they are likely to do the same thing in future. Binding over such persons becomes in such a case unnecessary. 26 All. 190; 6 Bom L.R. 662, Foll. 8 A. L. J. 1080, Ref. (Das J.) Mirza Zulfakar Beg v. King-Emperor,

A I R 1927 Pat 231=103 I C 607=8 P L T 370=8 A I Cr R 376=28 Cr L J 719.

——Hasty speech.

It is unsafe to act on a hasty speech of the speaker, particularly when all fear of a breach of the peace passes away before the order is passed. Order under S. 107 held was not justified. (Reid J.) Beliram v. Crown,

31 P W R Cr 1907=7 Cr L J 232.

——Presumption.

It cannot be presumed from the fact that a person has done a wrongful act in the past that he is likely to do the same again. Section 107 presupposes that the person sought to be put upon a rule of bail is likely

CRIMINAL P. C. (V of 1898), S. 107 — 23. Past acts.

(not was likely) to commit a breach of the peace. (Chandavarkar and Aston JJ.) In re Shivram Parashram,

6 Bom L R 663=1 Cr L J 755.

——'Is likely to commit a breach of the peace.'

Section 107 of the Criminal P. C., pre-supposes that the person sought to be put under a rule of bail is likely, (not was likely), to commit a breach of the peace or disturb the public tranquillity. Hence, the mere fact that a person was likely to commit or has committed a breach of the peace in the past is not a sufficient ground for ordering him to furnish security. (John Stanley C. J.) In the matter of the Petition of Basdeo,

26 All 190=1 Cr L J 360.

24. Power and duty of Court.

——Power to call for police enquiry and report.

The Magistrate can make any enquiry before he issues the notice for showing cause. It is the responsibility of the Magistrate to see that public peace or public tranquillity is maintained. The Magistrate, therefore, and for that purpose is competent to use the administrative machinery to call for a public enquiry and report before issuing the order to show cause. (P. B. Mukharji and Guha JJ.) Tulsibala Rakhit v. N. N. Khosal,

A I R 1953 Cal 109 = 56 Cal W N 193=1953 Cr L J 344.

——Bond for keeping peace pending enquiry.

An order cancelling bail of the person being prosecuted under S. 110, Criminal P. C. and directing him to execute a bond for keeping the peace until conclusion of the enquiry can be made only upon some material amounting to proof, presented in the proper manner. (Harries C. J. and Lahiri J.) Gajendra Duary v. The King,

A I R 1950 Cal 200=84 C L J 197=51 Cr L J 606.

——Magistrate specified in S. 107 must himself be of opinion that there is sufficient ground for proceeding—Such Magistrate can direct another Magistrate to make enquiry with regard to facts but not to make report whether action under S. 107 is necessary — Opinion of latter cannot form basis for proceeding under S. 107.

A filed a petition before the Sub-Divisional Magistrate alleging that B was forcibly preventing him from cultivating certain land and that unless action was taken at once, breach of the peace might occur. The police also submitted a report suggesting action under S. 107. The Magistrate did not consider the petition of A and the police report as affording a sufficient basis for him to form an opinion that there was sufficient ground for proceeding. The Magistrate thereupon directed another Magistrate to hold an enquiry and report if action under S. 107 was necessary. The Magistrate made a report to the Sub-Divisional Magistrate and thereafter he directed a proceeding under S. 107 to be drawn up :

Held that the procedure adopted was entirely wrong. It might have been perfectly proper for the Sub-Divisional Magistrate to direct another Magistrate to make an enquiry with regard to the facts, but it was entirely improper for the Sub-Divisional Magistrate to direct the other Magistrate to make a report as to whether action under S. 107 was necessary. The opinion of the other Magistrate could not form the basis for a proceeding under S. 107. (Agarwala J.) Deoballam Singh v. Gorakhnath Singh,

A I R 1947 Pat 235=27 P L T 231=231 I C 110=13 B R 550=48 Cr L J 703.

——The Public Prosecutor has no authority to apply for the withdrawal of proceedings taken under S. 107. However the jurisdiction of the Magistrate under this section

CRIMINAL P. C. (V of 1898), S. 107—24. Power and duty of Court

is a discretionary jurisdiction. (Dunkley J.) King v. Ba Khin,

A I R 1940 Rang 189 = 1940 Rang L R 226 = 13 R Rang 75=190 I C 196=41 Cr L J 853.

——It is not open to a Magistrate by passing repeated orders under S. 144, Criminal P. C., to avoid the decision of a dispute which may appropriately be dealt with under S. 145 or S. 107, Criminal P. C. (Dhavle J.) F. E. Chrestian v. Cartar,

A I R 1939 Pat 512=20 P L T 374 = 12 R P 232=6 B R 30=184 I C 240=40 Cr L J 895.

——Information lodged for taking proceedings under S. 107, against certain person — Magistrate, if can refer matter to Police for preliminary enquiry and report. A. I. R. 1928 Lah. 694 : 29 Cr. L. J. 866 and Cr. Revn. 703 of 1936, OVERRULED.

There is nothing in the Criminal P. C., which forbids a Magistrate before whom information has been lodged for taking proceedings under S. 107, Criminal P. C. to refer the matter to the Police for preliminary enquiry and report. Therefore, if the Magistrate, before issuing a notice under S. 112, thinks fit to consult the Police in order to form an opinion as to whether or not the matter is one in which such a notice should be issued, there is nothing illegal in his action. A. I. R. 1928 Lah. 694 : 29 Cr.L.J. 866 and Cr. Revn. No. 703 of 1946, OVERRULED. (Young C. J. and Tek Chand J.) Ismail v. Jagat Singh,

A I R 1938 Lah 861 = 40 P L R 579=11 R L 561 = ILR (1938) Lah 640=179 I C 353=40 Cr L J 193.

——Stolen property—Charge not established against the person in possession—Question to be considered by Criminal Courts in such cases.

Where it is proved that the person from whose possession the property was seized came by it dishonestly, the Magistrate may have to consider questions of title in order to determine the best right to possession. But where it appears that the Police have seized property from a person who is not shown to have committed any offence in relation to that property, then the Magistrate can only hold that that person is entitled to possession of the property. (Bose J.) Sona Bahuji v. Rao Sobhag Singh,

167 I C 848 = 19 N L J 264=9 R N 226=38 Cr L J 467.

——Ss. 107, 495—Power of Magistrate to order Police to enquire and report and to conduct prosecution.

Though a proceeding under S. 107, Criminal P. C., is not a complaint and the Magistrate is not, therefore, competent to proceed under Ss. 202 and 203, Criminal P. C., yet when dealing with such a petition, he can, independently of those sections, refer the matter to the Police for enquiry and report and after he has issued notice under S. 112 he can direct the Police to adduce evidence on behalf of the prosecution. (Iqbal Ahmad J.) Laxmi Narain v. Emperor,

AIR 1932 All 670=1932 A L J 880=Ind Rul (1932) All 668=54 All 1036=140 I C 536=34 Cr L J 42.

——Duty of Magistrate to issue process to defence witnesses.

In a case under S. 107, Criminal P. C., the Magistrate must issue summonses for the attendance of the witnesses for the defence, unless he takes the responsibility of recording his ground for refusing the application for any of the reasons specified in S. 257, Criminal P.C. (Shadilal C. J.) Emperor v. Nand Lal,

A I R 1931 Lah 56 (2) = 31 P L R 949=130 I C 816 =32 Cr L J 620.

——Reference of question of possession, legality of.

An agreement to refer the matter of possession of a property to arbitration is not bad for indefiniteness or vagueness.

CRIMINAL P. C. (V of 1898), S. 107—24. Power and dtuy of Court

A Magistrate cannot delegate his power to make an order under S. 107, Criminal P. C., to arbitration; but there is nothing illegal in referring to arbitration the question as regards possession, though a decision of that question may render the proceedings under S. 107 infructuous. (Kulwant Sahay and Macpherson JJ.) Ram Autar Sah v. Langat Singh,

AIR 1931 Pat 92=13 P L T 101=130 I C 810.

——S. 202, Criminal P. C.—Investigation.

It is perfectly open to a Magistrate who is asked to set in motion S. 107 to avail himself of the help which is available to him under S. 202, when complaint of an offence of which he is authorized to take cognizance is made to him. Apart from S. 202 it is competent to a Magistrate to refer the matter to the police and the Police are entitled to hold the investigation, and it is the duty of the complainant to assist in the investigation, and so any statement made by the complainant during the investigation is absolutely privileged. Per Coutts-Trotter C. J.—It will be well that the Code should be revised and that express provision should be made conferring power in terms upon Magistrate to refer petitions under S. 107 for investigation under S. 202. (Coutts-Trotter C. J. and Viswanatha Sastri J.) Sanjivi Reddi v. Koneri Reddi,

AIR 1926 Mad 521=50 M L J 460=49 Mad 315=23 M L W 327=93 I C 8.

——Attachment.

No order of attachment of property can be passed in a proceeding under S. 107. (Neave, A. J. C.) Ram Sarup v. Emperor,

AIR 1924 Oudh 345=77 I C 238=25 Cr L J 350.

25. Power to call for report from police or subordinate magistrate.

See ibid, S. 107 Note 24. Power and duty of Court.

26. Procedure.

——Ss. 107, 117 (3) — Order under S. 107 read with S. 112 for showing cause why accused should not be bound down to maintain peace for particular period —Order for interim security for some period also passed under S. 117 (3) — Revision — Period for which security demanded long expiring before revision — Proceedings must be quashed. (Agarwala J.) Babu Ram v. Rex,

A I R 1949 All 21 = 1948 A W R H C 214 = 1948 A L J 434=50 Cr L J 78.

——Ss. 107 to 110 — The temporary order under S. 117 must be capable of direct relation to the application under Ss. 107 to 110 on which the proceedings are based. (Davis J. C. and Weston J.) Emperor v. Sumar,

AIR 1940 Sind 175=13 R S 91=ILR (1940) Kar 494 =190 I C 532=41 Cr L J 937

——Trial as warrant case.

Trying a case under S. 107 as a warrant case is an irregularity vitiating the proceedings, especially where the punishment in default of security was rigorous. (Sulaiman J.) Uttam Chand v. Emperor,

AIR 1924 All 695=85 I C 46=5 L R A Cr 24=26 Cr L J 430.

A Magistrate while ordering a person to furnish security to keep the peace should follow the directions in Chap. VIII of the Criminal P. C. and give the persons bound over, an opportunity to show cause. (Tudball J.) Jagadamba Prasad v. Emperor,

10 A L J 353=17 I C 716=13 Cr L J 844.

——Ss. 107, 112, 115, Sch. V, No. 12 — Order to execute bond to keep the peace—Procedure prescribed in Ch. VIII not followed—Effect.

While acting under S. 107, the Magistrate did not comply with the procedure prescribed in Ch. VIII. The summonses issued were not in accord with the form set

CRIMINAL P. C. (V of 1898), S. 107—26. Procedure

out in Sch. V, No. 12, and they were not accompanied by a copy of the order under S. 112 : Held that his order requiring bonds to keep the peace was illegal and must be set aside (Aikman J.) In re Nand Prasad,

1 Ind Cas 211=9 Cr L J 179 (All).

——Security to keep the peace on conviction under S. 143, I. P. C.—Procedure—See Criminal P. C. S. 106.

5 Cr L J 19 (Cal).

27. Revision.

——Ss. 107, 119 and 439—Initiation of proceedings under S. 107 at instance of private person — Order of discharge under S. 119—Private person has no locus standi to apply in revision—Power of High Court to interfere under S. 439.

Where proceedings under S. 107, Criminal P. C., initiated at the instance of a private person have been dropped by the Magistrate and an order of discharge passed under S. 119, such private person not being a party to the proceedings has no locus standi to apply in revision against the order. This does not however mean that the Court should reject the revision on that ground. The powers of High Court under S. 439 are wide and once the proceedings have come to the knowledge of the High Court, it can examine the legality of the order passed. (Koshi C. J.) Chatha Ittaman v. State,

A I R 1953 Trav-Co 24=1952 Ker L T 496 = I L R (1953) Trav-Co 65=1953 Cr L J 244.

——Magistrate's order under — Interference by Sessions Judge, propriety of.

Since the Magistrate is responsible for the maintenance of public peace within his jurisdiction, when he has made an interim order against a person committed by him to custody on the ground that such an order is necessary for preserving the public peace, it should not be lightly interfered with by a higher authority like the Court of Session, unless there is anything irregular or illegal in the order. (Kunhi Raman, C. J. and Subramania Iyer J.) Lakshmanan Velayudhan v. State,

AIR 1952 Trav-Co 182=1951 Ker L T 620=1952 Cr L J 909.

——Where the Magistrate has jurisdiction to proceed under S. 145, there can be no interference with his discretion even if the matter might have been more suitably dealt with under S. 107. (Saunders J.) Gayaprasad Singh v. Ram Sarober Saran Singh,

AIR 1934 Pat 471=15 P L T 453=1 B R 369=7 R P 520=155 I C 36=36 Cr L J 624 (2).

——Discretion of District Magistrate—Interference by High Court, when proper—Order not illegal nor definitely improper.

The High Court should be astute not to interfere with the exercise of his discretion by the District Magistrate as to which of the powers conferred on him by statute enabling him to ensure the peace of his District he should exercise in a particular case. He is necessarily in a better position to say which of those powers is called for by the situation confronting him at the crucial moment. It is enough that the action which he is taking is not illegal or definitely improper. Where it can certainly not be predicated that action under S. 107 is not proper since it is clear that such action is legal, the Court ought not to quash the proceedings under S. 107 even if it should be possible to predicate later on (as opposed to the date of initiation months ago) that a proceeding under S. 145 might eventually give better results. Convenience is not necessarily a good criterion, still less, a general criterion. (Macpherson J.) Harihar Singh v. Emperor,

A I R 1934 Pat 463=7 R P 299=152 I C 1050=36 Cr L J 257.

CRIMINAL P. C. (V of 1898), S. 107 — 27. Revision

——Ss. 107, 443 — Order accepting claim—Appealability of—Revision.

Although no appeal lies from an order accepting a claim under S. 443, Cr. P. C., revision is competent. In the absence of an appeal, revision is always open unless there is something special barring revision. Even if there is any such barring of revision, the High Court can always hold whether an order had or had not been passed without jurisdiction, for, if an order is without jurisdiction it is a mere nullity and the High Court would not be revising an order but merely declaring that the order was a nullity. (Dalip Singh J.) Christy v. Christy,

AIR 1933 Lah 1019=6 R L 438=35 P L R 268=147 I C 997 (2)=35 Cr L J 505.

——Ss. 107, 436, 438 — Order of discharge — Power of Sessions Judge to order further inquiry— S. 436, scope of—Procedure to be followed.

Where a Magistrate discharges a person against whom an application has been made under S. 107, Criminal P. C., the Sessions Judge has no jurisdiction to set aside the order of discharge and direct further enquiry under S. 436, Criminal P. C., inasmuch as S. 436 only contemplates further inquiry into any complaint which has been dismissed under S. 203 or sub-s. (3) of S. 204 or into the case of any person accused of an offence who has been discharged.

The only section under which the Sessions Judge might take action in such a case is under S. 438 by making a report to the High Court.

The question whether it is necessary in the interest of keeping the peace to take security from a person is essentially a question which primarily concerns the District Magistrate and the local Police. The Sessions Judge or the High Court should not ordinarily interfere in such cases. (King J.) Mahomed Yusuf v. Abdul Majid,

A I R 1931 All 53=53 All 148=1931 A L J 1475= Ind Rul (1931) All 294=130 I C 630=32 Cr L J 570.

——Should be within 30 days of the order.

Persons who come to High Court in revision against an order under S. 107 are expected to do so with the utmost promptitude and certainly within thirty days of the order against which they complain. (Daniels J.) Ram Deo Singh v. Emperor,

AIR 1926 All 767=49 All 228=25 A L J 44=7 L R A Cr 174=97 I C 652=27 Cr L J 1132.

——Refusal to take action.

An order refusing to take action under Section 107 cannot be reversed by the Sessions Judge nor can he direct the Magistrate to draw up proceedings under the section. (Greaves and Panton JJ.) Phani Bhusan Roy v. Kunga Behari Biswas,

AIR 1925 Cal 262=81 I C 167=25 Cr L J 679.

——Insufficient grounds.

The High Court seldom interferes in the preliminary stage with the discretion of the Magistrate taking action under the preventive sections of the Code of Criminal Procedure, but it would interfere when the materials on which the orders are based are clearly insufficient to support the orders passed therein. (Newbould and C. C. Ghose JJ.) Nafar Chandra Pal Chowdhury v. Emperor;

A I R 1924 Cal 114=76 I C 429=38 C L J 198=28 C W N 23=25 Cr L J 189.

——The Sessions Judge has jurisdiction to make reference in a proceeding under S. 107, even before the applicants have submitted the proceedings to the District Magistrate under S. 125 of the Code. (AIR 1918 All 343, Not foll.; AIR 1917 All 258 (FB), Appr. and Foll.) The jurisdiction of the District Magistrate under S. 125 of the Code is neither appellate nor revisional. The Code has allowed an appeal

CRIMINAL P. C. (V of 1898), S. 107 — 27. Revision

expressly against an order of a Subordinate Magistrate directing a party to give security for good behaviour. As no such appeal is allowed in a case where security is ordered for keeping the peace, the District Magistrate's power is merely confined to examining the record to satisfy himself whether it was any longer necessary to keep the parties under the bond. The act is not a judicial act which the District Magistrate is called upon to exercise. (Dalal A. J. C.) Emperor v. Balwant Singh,

AIR 1924 Oudh 241=73 I C 504=24 Cr L J 616.

——Ss. 107, 125 and 439—Revision—High Court.

The High Court will revise an order of the District Magistrate cancelling the order requiring security for good behaviour only in very exceptional cases as the last resort. (Kotwal O. A. J. C) Martand Rao v. Emperor,

AIR 1918 Nag 173=47 I C 96=19 Cr L J 900.

——Dismissal by Magistrate—If District Magistrate can order re-enquiry as to possession under S. 145.

Where certain persons applied to a Magistrate to take action against the petitioners under S. 107 or 144 or 145 Cr. P. C. and their petition was dismissed as frivolous by the Magistrate but the District Magistrate remanded the case in revision for a proper determination of the question of legal possession under S. 145, Cr. P. Code. Held, that the District Magistrate had no authority to revise the order of the Magistrate in the matter and could not direct him to take action under S. 145 Cr. P. C. 24 C. 391, Ref. (Chamier C. J. and Jwala Prasad J.) Raksh Behari Singh v. Emperor,

A I R 1916 Pat 132=1 Pat L W 258=39 I C 328=18 Cr L J 488.

——High Court will not interfere unless the District Magistrate has been moved under S. 125 for cancellation of security bonds—See Cr. P. C. Ss. 125, 107 and 439,

2 Cr L J 335 (All).

28. Satisfaction of Magistrate.

——"Sufficient ground for proceeding.

Order of the Magistrate not indicating nature of information received to induce him to take action under S. 107 —Order is bad. (K. C. Das Gupta and Debabrata Mookerjee JJ.) Birdaj Roy v. State,

AIR 1953 Cal 491=57 Cal W N 251=91 Cal L J 119 =1953 Cr L J 1165.

——Ss. 107, 119, 245 — Initiation of proceedings under S. 103, Travancore Criminal P. C., on complaints—Complainants and other witnesses not appearing on several hearings — Magistrate should proceed under S. 115, Tr. Cr. P. C. and terminate proceedings and discharge the persons proceeded against—He cannot acquit them under S. 244, Tr. Cr. P. C. — (Travancore Criminal P. C., Ss. 103, 115, 244). (Koshi J.) Lekshmi Amma Kochukutty Amma v. Raman Pillai Kumara Pillia,

AIR 1952 Trav. Co 268=1952 Cr L J 1271.

——Ss. 107 and 494—Criminal P. C. (Travancore) Ss. 103 and 406—Discharge of person proceeded against—Discretion of Magistrate—Prosecutor's application to withdraw proceedings.

When once proceeding under S. 107 is started by the police and the Magistrate passes the preliminary order calling upon the counter-petitioner to show cause why he should not execute a bond for keeping the peace, the jurisdiction left in the Magistrate to discharge the person proceeded against is discretionary jurisdiction, irrespective of the fact whether the prosecutor wants to withdraw the case or not. The Magistrate is not bound to discharge the person on the mere application of the prosecutor to withdraw the proceedings as S. 494 does not apply to

CRIMINAL P. C. (V of 1898), S. 107 — 28. Satisfaction of Magistrate

security proceedings under S. 107. (Habeeb Mohamed J.) Varkey Mathai v. Pally Kuriakko,

1950 K L T 319.

——Action under—Proper procedure.

Section 107 is one of the sections of Criminal P. C., designed to enable public Officers to take action to prevent the commission of offences. They confer wide and unusual powers on the Officers concerned. As the exercise of these powers necessarily results in interference with the liberty of the subject, the powers must be exercised strictly in accordance with law. The sine qua non for the institution of a proceeding under this section is that the Magistrate shall be of opinion that there is sufficient ground for proceeding. The Legislature has been careful to restrict the exercise of the power conferred by S. 107 to certain Magistrates specified in the section. It is only when such Magistrate is of opinion that there is sufficient ground for proceeding that action can be taken. It might not be improper for a Sub-divisional Magistrate to direct another Magistrate to make an enquiry with regard to facts, but directing that Magistrate to report whether action under S. 107 is necessary, is entirely a wrong procedure. (Agarwala J.) Deoballam Singh v. Gorakhnath Singh,

A I R 1947 Pat 235=27 Pat L Tim 231=48 Cr L J 703.

——The Public Prosecutor has no authority to apply for withdrawal of proceeding under S. 107. The jurisdiction of the Magistrate, however, under this section is discretionary. (Dunkley J.) King v. Ba Khin,

A I R 1940 Rang 189=1940 Rang L R 226=13 R Rang 75=190 I C 196=41 Cr L J 853.

——Ss. 107, 112—Notice under S. 107, if must relate to breach of peace of wrongful act in contemplation at time when information is given to Magistrate.

Action taken under S. 112, Criminal P. C., constitutes a judicial act and, therefore the Magistrate should not act arbitrarily. There must be information of a nature which convinces him that there is a likelihood of a breach of the peace. It is impossible to formulate a hard and fast rule with regard to the nature of the information on which a Magistrate should act. What is reasonably sufficient to satisfy a Magistrate must depend on the particular situation. While there must be something more than the past misconduct of the person proceeded against to justify a notice being served upon him, the Code does not require the information to show the particular act which is in contemplation at the time. The Magistrate must be satisfied that there is a likelihood of a breach of the peace. What will satisfy him must depend on the particular facts of the case. (Leach C. J., Krishnaswami Ayyangar and Patanjali Sastri JJ.). In re Muthuswami Chettiar,

AIR 1940 Mad 23 = 50 M L W 802 = 1939 M W N 1209=(1940) 1 M L J 11 = 12 R M 584= I L R (1940) Mad 335=185 I C 824=41 Cr L J 238 (FB).

——It is the duty of a Magistrate to enquire if information which prompted him to issue notice is correct. And if the accused states that the information is correct, it would be tantamount to a plea of guilty and the Magistrate can proceed to make the rule absolute on the basis of it. (Middleton J. C. and Mir Ahmad A. J. C.), Sadhu Singh v. Emperor,

AIR 1935 Pesh 116 (118)=8 R Pesh 33 = 57 I C 755 =36 Cr L J 1212.

——Discharge.

Where in proceedings under S. 107, the Magistrate proceeds to enquire into the truth of the information under S. 117 (1) but the complainant and prosecution witnesses are found absent, it is proper for the Magistrate to pass

CRIMINAL P. C. (V of 1898), S. 107 — 28. Satisfaction of Magistrate

an order under S. 119 discharging the person proceeded against. (Suhrawardy and Cammiade, JJ.) Asrafali Saiyal v. Nasur Sarkar,

AIR 1927 Cal 343 = 45 C L J 211=31 C W N 388= 101 I C 607=28 Cr L J 479.

——Rejection of application.

If a Magistrate is satisfied after making an enquiry himself or through some other agency that the apprehension of a breach of the peace complained of does not exist he need not make an order under S. 112 of the Code and must refuse the application. (Zafar Ali J.) Shams-ud-din v. Ram Dayal Singh.

AIR 1924 Lah 630=76 I C 25=25 Cr L J 89.

——Drawing up of proceeding.

If the District Magistrate thinks it necessary in order to prevent a breach of the peace to take proceedings under S. 107, Criminal P. C., he should himself draw up such proceedings and he might then transfer the case to a Subordinate Magistrate for hearing. But he should not direct proceedings to be drawn up by a Subordinate Magistrate nor should the Subordinate Magistrate draw up proceedings merely because the District Magistrate has ordered him to do so. (Newbould and Suhrawardy JJ.) Hanif Sheik v. Jabani Mandal.

AIR 1924 Cal 540=72 I C 367=24 Cr L J 367.

——Essentials—Foundation of jurisdiction.

To have jurisdiction under S. 107, the Magistrate must have some tangible evidence that a wrongful act is contemplated which, if committed, is likely to cause breach of peace. (Das J.) Perali Kasab v. Emperor,

AIR 1920 Pat 550=56 I C 437=21 Cr L J 453.

——Evidence — Security ordered without enquiry—If illegal.

An order under S. 107 is bad if it is made without any inquiry as to the truth of the information upon which action had been taken. (Piggott J.) Mul Chand v. Emperor,

AIR 1914 All 646 = 37 All 30 = 12 A L J 1262=26 I C 653=16 Cr L J 61.

——Ss. 107 and 145—Discretion of Magistrate.

A Magistrate can exercise his discretion to proceed against the persons likely to cause a breach of peace for the possession of an immovable property either under S. 145 or S. 107. (Knox J.) Thakur Pandey v. Emperor,

34 All 449=9 A L J 582=15 I C 798=13 Cr L J 526.

——Ss. 107 and 145—Condition necessary—There should be reliable information as to the probability of a breach of the peace being apprehended, before proceedings either under S. 145 or S. 107 should be taken. (Anderson J.) Malik Sultan Mubaraz v. Mussammat Bano,

115 P L R 1903.

29. Security—Considerations — See also Criminal P. C., S. 122

——Ss. 107, 112 — Security under S. 107 — Nature and amount of.

The bonds for keeping the peace until the conclusion of inquiry under S. 107, Criminal P. C., should not be mixed with that for ensuring attendance. Amount of the bond and security should also be fixed after taking into consideration the circumstances of the case and the security should not be disproportionate to the ability of the person proceeded against to furnish it with reference to his means. Moreover, the provisions of the Chap. VII are not intended to punish but to prevent crime and it is not permissible to limit the security or amount of security to such description that it is perfectly impossible for the accused to furnish it thus rendering it certain that he would be committed to jail. 26 Cr LJ 179, Rel. on. (Mehta J.) Alladin v. State.

1951 R L W 137.

CRIMINAL P. C. (V of 1898), S. 107—29. Security—Considerations

——Surety considerations.

In proceedings under S. 107 the amount of the surety bonds was small and there was no question that the persons offered as sureties were financially sound for the amounts of the bonds and that they were of respectable station in life. Held, that the plainest considerations of justice and fairplay demanded that these sureties ought to have been accepted. (C. C. Ghose and Garlick JJ.) Satindra Nath Sen v. Emperor,

111 I C 394 = 48 C L J 143 = 11 A I Cr R 202 = 29 Cr L J 842.

——Rejection of.

As long as the security is ample, the Court is bound to accept the same without enquiring into the politics of the the person standing surety. (Das J.) Maung Tin U v. Emperor,

AIR 1925 Rang 353=92 I C 702=4 Bur L J 172=27 Cr L J 318.

——Rejection of, time for.

Persons against whom orders are passed under S. 107 must be given sufficient time to furnish security. The Magistrate if he is not satisfied with the sureties tendered should reject them within a reasonable time so as to give the accused an opportunity of offering fresh sureties. (Das J.) Maung Tin U v. Emperor,

AIR 1925 Rang 353=92 I C 702=4 Bur L J 172=27 Cr L J 318.

——Altering Order—Order to furnish security in a particular sum—Subsequent order to furnish larger security—Ultra vires.

A Magistrate passed an order directing security for keeping the peace in certain amounts. A month later he directed one of the accused to furnish security in a much bigger sum stating that he had overlooked that the accused was called upon in the initial stage to furnish a large security. Held that the second order was ultra vires. The Magistrate had finished with the case and it was beyond his powers to alter the order. (Tudball J.) Raj Kumar Das v. Emperor,

A I R 1919 All 329 = 51 I C 470 = 17 A L J 335=20 Cr L J 486.

——Ss. 106 (3), 107 (3) and (4) and 349 (2) — Power of appellate Court to order security — Proper procedure for passing order under S. 349 (2)—See ibid, S. 106,

10 Cr L J 309 (Lah).

——Excessive security.

As the proceedings under S. 107 are intended to be precautionary and not punitive excessive security should not be demanded. (Harington and Brett JJ.) Surjya Kanta Roy Choudhry v. Emperor,

31 Cal 350=1 Cr L J 344.

30. Suit for damages or claim under S. 250, Criminal P. C. in respect of information.

See (1) Note 21.—Nature of proceedings. and (2) Criminal P. C., Ss. 117 and 250.

31. Transfer of proceedings.

——There is no bar of jurisdiction in the way of the High Court to transfer a case under S. 107 from one District to another. (Ghulam Hasan J.) Sarfaraj Ahmad v. Mohd. Hasnain,

A I R 1942 Oudh 186 = 1942 AWR (CC) 3=14 R O 417=1941 O W N 1351=198 I C 433=43 Cr L J 365.

——In a case where the same complainant files a complaint under S. 107 and a separate complaint against the

CRIMINAL P. C. (V of 1898), S. 107 — 31. Transfer of proceedings

same persons under S. 323, Penal Code, the former alone should not be transferred to the Court of the Bench Magistrates. (Nanavutty J.) Rameshwar Dutt Singh v. Bharath Singh,

A I R 1934 Oudh 85 = 6 R O 273=11 O W N 75 = 147 I C 516=35 Cr L J 417 (2).

——Addition of parties by transferee Magistrate.

When proceedings under S. 107, Criminal P. C. pending before a Sub-Divisional Magistrate are transferred to the First Class Magistrate, it is open to him to include in the proceedings names of persons who were not included by the Magistrate who had initiated the proceeding. (Mallik and Remfry JJ.) Golam Rahman Khan v. Kalipada Mana,

AIR 1932 Cal 864 = 36 C W N 796 = 59 Cal 1484= 139 I C 850=33 Cr L J 858.

——Transfer.

Where in certain proceedings under S. 107 the Subdivisional Magistrate passed a preliminary order under S. 112 and subsequently the District Magistrate transferred the case to the joint Magistrate who had no jurisdiction for disposal.

Held that the transfer was valid and that the joint Magistrate could continue the proceeding. (Pandalai J.) Kalia Goundan v. Emperor,

AIR 1930 Mad 859 = 59 M L J 887 = I R 1930 Mad 1036=(1930) M W N 698 = 32 M L W 320 = 127 I C 652 = 1930 Cr C 1035 = 32 Cr L J 27 (2).

——Ss. 107 and 125—Jurisdiction.

On the transfer of a proceeding under S. 107 from one district to another, it is the District Magistrate of the latter district that can make an order of cancellation under S. 125 against an order for keeping peace passed by a Court subordinate to the latter district Court. (Richardson and Shamsul Huda JJ.) Guru Prasanna Roy v. Har Kumar,

AIR 1919 Cal 81 = 23 C W N 958 = 50 I C 817=20 Cr L J 337.

——S. 107 (2) — Proceedings initiated by the District Magistrate under S. 107 can be transferred by him to some other subordinate and competent Magistrate : 31 C. 150, foll ; 13 C. W. N. 580, not foll. (Teunon and Huda JJ.) Rakhul Mandar v. Emperor,

AIR 1918 Cal 892 = 27 C L J 314 = 45 I C 160= 19 Cr L J 496.

——Petition filed for action against several persons under S. 107 — Proceedings drawn up against one only — Case sent to Deputy Magistrate — Proceedings against all — Legality.

On the complaint of N against S and several others, the Sub-Divisional Magistrate after getting report from the police who reported adversely against all, started proceedings under S. 107 of the Criminal P. C. against S only and transferred the case for disposal to a Deputy Magistrate who started proceedings against all the persons reported against.

Held, that the entire case had been transferred and that the Deputy Magistrate's action was quite legal. (Chapman J.) Jai Patti Mahton v. Nagina Singh,

AIR 1917 Pat 8=1 Pat L W 610 = 43 I C 256=1918 Pat H C C 12=19 Cr L J 96.

——Transfer of case under S. 107 by District Magistrate —Order invalid.

The provisions of S. 107, Criminal P. C., do not fall within the scope of S. 528. Section 107 does not apply to such cases and the use of the word "ordinarily" in that section excludes trial of cases under S. 107, Criminal

CRIMINAL P. C. (V of 1898), S. 107 — 31. Transfer of proceedings

P. C. : 13 C. W. N. 80. (Abdur Rahim and Napier JJ.) In re Nagireddy Kondareddy,

AIR 1918 Mad 555=41 Mad 244 = 41 I C 990 = 18 Cr L J 878.

——Ss. 107 and 526 — A District Magistrate is not competent to transfer a case under S. 107 to a Magistrate of the 2nd class who is incompetent to conduct and conclude the proceedings : 24 A. 151, Dist. (Chamier J.) Gobind Sahai v. Emperor,

AIR 1914 All 546=37 All 20=12 A L J 136=26 I C 647=16 Cr L J 55.

——Proceedings under, if a criminal case and if can be transferred by High Court under S. 526, cl. 8.

A proceeding under S. 107 is a criminal case and therefore S. 526, cl. 8 of the Code applies to it. (Imam and Chapman JJ.) Wazed Ali Khan v. Emperor,

AIR 1914 Cal 792 = 41 Cal 719 = 18 C W N 274 = 22 I C 747=15 Cr L J 171.

——The object of S. 107 is to restrict the initiation only of proceedings against persons residing out of the jurisdiction of the District Magistrate, and not to restrict his power to transfer such proceedings, after initiation, to a Subordinate Magistrate. A District Magistrate has power to transfer the proceedings under S. 107 initiated before him to any subordinate Magistrate. (Harrington and Brett JJ.) Surjya Kanta Roy Chowdhry v. Emperor,

31 C 350=1 Cri L J 344.

—S. 108.

SYNOPSIS

1. Applicability.
2. Burden of proof.
3. Dissemination of matter punishable under S. 153A, Penal Code—Clause (b).
4. Dissemination of seditious matter—Cl. (a).
5. Intention. See Note (3).—Dissemination of matter punishable under S. 153A, Penal Code, Clause (b), and Note (4) Dissemination of seditious matter—Clause (a).
6. Jurisdiction.
7. Preliminary order under S. 112, Criminal P. C. See also Criminal P. C., S. 112.
8. Security.

1. Applicability.

——Condition—To take proceedings under S. 108, Cr. P. Code, there ought to be evidence that, if not prevented the person accused would continue to act in the way in which he had done. (Dalal, J.) Chiranji Lal v. Emperor,

A I R 1928 All 344=50 All 854=26 A L J 813 = 114 I C 48=30 Cr L J 216.

2. Burden of proof.

——Prosecution to prove their case.

The procedure applicable to proceedings under S. 108 is that prescribed for warrant cases except that a charge need not be framed. The prosecution has to establish the truth of the information and the person against whom an order requiring security for good behaviour is sought is entitled to keep quiet and expect prosecution to prove their case. (Shah, A. C. J. and Crump, J.) Emperor v. T. K. Pitri,

A I R 1923 Bom 255=47 Bom 438=25 Bom L R 97 =76 I C 294=25 Cr L J 150.

3. Dissemination of matter punishable under S. 153-A, Penal Code—Clause (b).

——Accused delivering one speech coming under S. 153-A, Penal Code (Act XLV of 1860)—Proceedings under S. 108 cannot be taken.

CRIMINAL P. C. (V of 1898), S. 108—3. Dissemination of matter punishable under S. 153-A, Penal Code—Clause (b)

The commission of only one offence under S. 153-A, I. P. C., is not to be taken to justify the proceedings under S. 108 of the Criminal P. C. The element of intention on the part of the accused is not to be deduced from a solitary instance. He may be prosecuted for offence under S. 153-A. (Thomas C. J. and Ghulam Hasan J.) Emperor v. Swami Sarupanand,

A I R 1941 Oudh 98=1940 O W N 1018=13 R O 189 =1940 A W R 441 = 16 Luck 260 = 190 I C 805 = 42 Cr L J 35.

——Proceedings under S. 108 for speeches offending against S. 153-A, Penal Code (Act XLV of 1860)—Previous speeches made by speaker, if admissible under S. 14, Evidence Act (I of 1872).

Where proceedings are started against a person under S. 108, Criminal P. C., in respect of certain speeches made by him offending against S. 153-A, I. P. C., the previous speeches made by such person are admissible in evidence under S. 14, Evidence Act, as his state of mind reflected in the previous speeches would be highly material in determining the speaker's intention in delivering the questioned speeches. (Niyogi, J.) Jagannath Prasad v. Emperor,

A I R 1940 Nag 134 = 13 R N 39=1940 N L J 31= I L R (1942) Nag 62=189 I C 74=41 Cr L J 713.

——Resorting to S. 108 to save trouble of prosecution under S. 153-A, I. P. Code.

Where proceedings are taken under S. 108, Cr. P. Code, against an accused convicted under S. 153-A, Penal Code, to avoid the trouble and possible refusal of Government to prosecute under the provisions of S. 153-A, Penal Code, the procedure is not permissible because, when the law has provided certain sanctions, it cannot be permitted that the same action may be taken without sanction by adopting a different course. (Dalal, J.) Chiranji Lal v. Emperor,

A I R 1928 All 344=50 All 854=26 A L J 813 = 114 I C 48=30 Cr L J 216.

——Solitary Act.

Where the accused has committed one single offence at one particular time under S. 153-A and there is no evidence whatsoever of his having done so before, or of his having an intention of doing so in the immediate future, the proceedings under S. 108, Cr. P. Code, are not legally justified. (Dalal, J.) Chiranji Lal v. Emperor,

A I R 1928 All 344=50 All 854=26 A L J 813=114 I C 48=30 Cr L J 216.

——Proceedings under S. 153-A, I. P. Code.

Merely disseminating matter is not sufficient. Intention to promote feeling of enmity is necessary. Court's opinion as to the effect of disseminated matter is not sufficient. Real intention of the accused must be looked at. AIR 1916 Cal 921 : 17 Cr L J 254, Dissented from. (Rankin and Mukerji, JJ.) P. K. Chakravarti v. Emperor,

A I R 1926 Cal 1133=54 Cal 59 = 44 C L J 172=30 C W N 953=97 I C 738=27 Cr L J 1154.

——Intention—Actual not necessary.

Under S. 108 (b) it is not necessary to find out that there was actual intention to promote or attempt to promote feelings of enmity or hatred between different classes of His Majesty's subjects but it will be sufficient that there are words in the leaflet or matter complained of which were likely to promote such feelings. [Note.—This case was dissented from in A I R 1926 Cal 1133 : 27 Cr L J 1154—Ed.] (Greaves and Walmsley, JJ.) Sital Prasad v. Emperor,

A I R 1916 Cal 921 = 43 Cal 591 =20 C W N 199= 23 C L J 105=34 I C 974=17 Cr L J 254.

——Ss. 108 (b) and 451—Penal Code, S. 153 (a).

CRIMINAL P. C. (V of 1898), S. 108—3. Dissemination of matter punishable under S. 153-A, Penal Code—Clause (b)

To sustain an order under S. 108 (b) of the Cr. P. C., it is not sufficient only to prove that the language used was highly offensive to a community but it must be shown that the applicant intended to provoke feelings of enmity or hatred between two communities. Section 451 of the Cr. P. Code applies only to trials and an inquiry under S. 108 (b) is not a trial and no jury can be claimed. (Twomey, J.) Dhammalok v. Emperor,

4 Bur L T 84=10 I C 789=12 Cr L J 248.

4. Dissemination of seditious matter—Clause (a).

——S. 108 (a)—Accused making isolated speech on special occasion at meeting for special purpose — Absence of evidence as to his having made objectionable speeches in the past or of intention to do so in future.

The provisions of S. 108 (a), Criminal P. C., cannot properly be applied in respect of an isolated speech made by the accused on a special occasion and at a meeting for a special purpose. Where there is no evidence of the accused's having made any other objectionable speech in the past or of his having any intention to do so in the future, he should not be proceeded against under S. 108 (a). (Smith, J.) Chandra Bhan Gupta v. Emperor,

A I R 1934 Oudh 70 = 11 O W N 26 = 6 R O 363= 9 Luck 344=147 I C 1082=35 Cr L J 562.

——Ss. 108, 439 — Dissemination or attempt to disseminate seditious matter—Proceeding under S. 108—Propriety of—Revision—Findings of fact, if can be interfered with.

Where the accused are alleged to have engaged in a continuous seditious propaganda in an organised manner, the mere fact that the forum of their activities is closed, owing to Police searches, will not necessarily show that the accused would not have, if left to themselves, resumed their activities. In such cases, it is proper to take proceedings under S. 108, Criminal P. C. The test is whether there is any evidence of dissemination or attempt to disseminate seditious matter by the accused, which could be reasonably accepted as sufficient to justify an order under S. 108, Criminal P. C. (Bhide, J.) Ramphul Singh v. Emperor,

A I R 1933 Lah 236=6 R L 376=35 P L R 157=147 I C 266=35 Cr L J 408.

——'Disseminates or attempts to disseminate'—Whether refers to one act or to probability of repetition of offence —Habit, if to be proved by prosecution.

The words 'disseminates or attempts to disseminate' in S. 108, Criminal P. C., are used by the Legislature as not referring to the number of acts performed but rather having reference to whether the evidence showed that there was something to show that a repetition of the offence was probable.

In such a case, the prosecution has not to show that the act complained of is a habit on the part of the person who is bound over under S. 108, Cr. P. C. (Wort, J.) Gudri Chaudhary v. Emperor,

A I R 1932 Pat 213=13 P L T 275 = Ind Rul (1932) Pat 195=139 I C 88=33 Cr L J 711 (1).

——Security proceedings — Strict proof of habitual conduct, necessity of—Mere joining Congress processions and preaching boycott of British goods.

In order that a person may be bound over under S. 108, Criminal P. C., for sedition, it must be shown that the person concerned is in the habit of intentionally disseminating or intends to disseminate seditious matters, in other words, it must be shown that there is danger of his continuing his seditious activities unless he is prevented from doing so under this section. It may be fair to assume that a person who habitually does something is likely to continue to do so, but the habitual nature of his activities sought to be prevented must be clearly proved.

CRIMINAL P. C. (V of 1898), S. 108 — 4. Dissemination of seditious matter—Clause (a)

Where all that was proved against the accused was that he had joined the processions and meetings arranged by the Congress Committee and it was not shown that he had any hand in organising them, and out of the four speeches that he was alleged to have made there was none capable of being construed as seditious :

Held, that S. 108, Criminal P. C., had no application to the facts of this case. (Jailal, J.) Jagan Nath Luthra v. Emperor,

A I R 1932 Lah 7=Ind Rul (1931) Lah 934=134 I C 486=32 Cr L J 1172.

——Sedition—Preaching Home Rule no sedition.

A speech advocating establishment of Home Rule in India and the attainment of it by constitutional means does not in itself amount to disseminating seditious matter. (Batchelor and Shah, JJ.) Bal Gangadhar Tilak v. Emperor,

A I R 1916 Bom 9=19 Bom L R 211 = 39 I C 807=18 Cr L J 567.

——Scope and applicability—Test.

The provisions of Chap. VIII of the Cri. Pro. Code, 1898, are, no doubt, preventive in their scope and object, and are aimed at person who are a danger to the public, by reason of the commission by them of certain offences. The test under S. 108 is, whether the person proceeded against has been disseminating seditious matter, and whether there is a fear of a repetition of the offence. In each case, it is a question of fact which must be determined with reference to the antecedents of the person and other surrounding circumstances. Where a person proceeded against under S. 108 for delivering seditious speeches prays for dropping of the proceedings by giving an undertaking not to deliver such speeches for one year but does not admit his guilt, the Magistrate is justified in refusing to accept the offer and drop the proceeding. (Chandavarkar, Acting C. J., and Heaton J.) Emperor v. Vaman.

11 Bom L R 743=3 Ind Cas 776=10 Cr L J 379.

——Ss. 108 and 118 — Addressing audience to exert for attainment of "swaraj"—Penal Code, S. 124-A.

"Swaraj" does not necessarily mean Government of the country to the exclusion of the present Government and literally translated, will mean Government by the people themselves, under the King and under British Sovereignty. Therefore, there is nothing in addressing an audience and inciting them to exert to secure "swaraj," which would bring the case under S. 124-A, Penal Code or S. 108, Crim. Pro. Code. (Fletcher J.) Beni Bhushan Roy v. Emperor.

34 Cal 991 = 6 C L J 699 = 11 C W N 1050 = 6 Cr L J 297.

5. Intention.

See Note (3) Dissemination of matter punishable under S. 153-A, Penal Code—Clause (b). and note (4) Dissemination of seditious matter—Clause (a)

6. Jurisdiction.

——Ss. 108, 531 — Magistrate acting on previous information having jurisdiction to do so — Discretion should not be interfered with — Even if he had no jurisdiction, S. 531 covers case when no prejudice is caused.

When S. 108, Criminal P. C., provides that a Magistrate may act on information which states that a person of the nature contemplated by that section is within the local limits of his jurisdiction, and it is clear from his order that he has believed this information and acted on it, it is in the last degree undesirable that the High Court should go behind the information, and substitute a conclusion reached after elaborate enquiry and arguments, for a discretion which the Magistrate was expected to exercise on the spot as soon as he conveniently could :

Held, that after transfer of the case, the Magistrate enquiring into the matter on the basis of previous information, had jurisdiction to proceed with the case and that even if he did not have it, S. 531, Criminal P. C., would cover the case when no failure of justice is caused. (Vivian Bose J.) Narsingh Prasad v. Emperor.

AIR 1937 Nag 70=19 N L J 183 = ILR (1936) Nag 200=9 R N 209=167 I C 739=38 Cr L J 447.

7. Preliminary order under S. 112, Criminal P. C.

See also Criminal P. C., S. 112

——Section 112, Criminal P. C., provides for a preliminary order to be passed in proceedings started under Ss. 107, 108, 109 and 110 and contemplates that the order should contain as much of the information as would be sufficient to enable the party to know under which of the several sections, or which part of any one of them, he is proceeded against. (Niyogi J.) Jagannath Prasad v. Emperor.

AIR 1940 Nag 134 = 1940 N L J 31 = 13 R N 39= ILR (1942) Nag 62=189 I C 74=41 Cr L J 713.

8. Security.

——Failure to give security under S. 108 — Only simple imprisonment can be awarded, not rigorous.

The imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under S. 108, be simple, and under the provisions of S. 123 (6), Criminal P. C., the sentence of rigorous imprisonment for one year is illegal. (Thomas C. J. and Ghulam Hasan J.) Emperor v. Swami Sarupanand.

AIR 1941 Oudh 98=1940 O W N 1018=13 R O 189 =16 Luck 260=1940 A W R 441=190 I C 805=42 Cr L J 35.

——Security for keeping the peace — Fixing excessive amount, impropriety of.

Section 108, Criminal P. C., embodies a preventive and not a punitive provision of law and it is improper to demand an excessive amount as security which leaves the accused no option even if he wanted to furnish a security and practically amounts to sending him to jail without being tried and convicted for any offence. (Abdul Qadir J.) Secretary, High Court Bar Association, Lahore v. Emperor.

AIR 1932 Lah 559 = Ind Rul (1932) Lah 606=33 P L R 911=139 I C 696=33 Cr L J 831.

——Merely because a person does not plead guilty and insists upon putting his case before the Court and taking its decision, to infer that it is necessary after the decision has been given to bind him over in order to prevent him from doing the same thing again is unwarranted. (Rankin and Mukerji JJ.) P. K. Chakravarti v. Emperor.

AIR 1926 Cal 1133 = 54 Cal 59 = 44 C L J 172=30 C W N 953=97 I C 738=27 Cr L J 1154.

——Ss. 108 and 397—Applicability of — Sentence of imprisonment—Withdrawal of security.

On 23-5-1921 the applicant was ordered to furnish security for a period of one year under S. 108, Cr. P. C. In default of finding security it was directed that he should undergo rigorous imprisonment for the same period. The accused furnished the security required so that the alternative sentence of rigorous imprisonment did not come into operation. On 31-7-1921 the applicant was convicted of a substantive offence under S. 500, I. P. C. and sentence to three months' simple imprison-

CRIMINAL P. C. (V of 1898), S. 108—8. Security

ment. He however remained on bail until 23-11-1921 when the bail-bond was cancelled. In the meanwhile on 16-10-21 the applicant had withdrawn his security under S. 108, Cr. P. Code, and had been committed to prison under that section. Held, that the substantive sentence of three months' imprisonment should commence on the date when the bail bond was cancelled, namely, 23-11-1921 : 30 All 334, dist. (Daniels A. J. C.) Ganesh Shankar v. Emperor.

AIR 1923 Oudh 56 (2)=25 O C 249=73 I C 321=24 Cr L J 577.

—S. 109.

SYNOPSIS

1. Applicability and Scope.
2. Concealment...(Cl. a).
3. Evidence— See also Criminal P. C., S. 117.
4. Forfeiture of bond—See also Criminal P. C., Ss. 121 and 514.
5. Grounds for taking security.
6. Joint inquiry.
7. Irregularities in proceedings.
8. Powers of High Court.
9. Sentence—See also Criminal P. C., S. 123.
10. Sureties—See also Criminal P. C., S. 122.
11. Simultaneous proceedings under Ss. 109 and 110.
12. Taking precautions to conceal— Jurisdiction (cl. a).
13. Who has no ostensible means of subsistence (cl. b).
14. Who cannot give satisfactory account of himself (cl. b).

1. Applicability and scope.

——Proceedings under — Persons need not be arrested under S. 55—Ss. 109 and 55 are independent — See ibid, S. 55.

AIR 1950 All 134=51 Cr L J 436.

——Proceeding is not criminal trial.

A person proceeded against under the preventive section like 109 is not accused of any offence nor is he prosecuted. The proceedings against him do not, therefore, end in his 'acquittal' or 'conviction.' (Seth J.) Rex v. Ram Dayal

AIR 1950 All 134=ILR (1950) All 935= 1949 A L J 413=51 Cr L J 436.

——S. 109 (b)—Fact that accused can be tried of substantive offence, whether bar to his prosecution under S. 109.

The mere fact that the accused could be tried for a substantive offence of attempted theft is not a bar to his prosecution under S. 109, Criminal P. C., if the case can otherwise be established to fall under any of the clauses of that section.

Where the positive facts found against the accused were that he belonged to Delhi and not to Fyzabad, that he gave a false name and address when questioned by the Police constable, that he was seen mixing in the crowd of passengers at the Railway Station and was attempting to feel their waists and pockets, that he further admitted the fact that he was a pick-pocket and had come to try his luck, and that he appeared originally at 9 a.m. and suddenly disappeared for two hours and re-appeared at 11 a.m. :

Held, that the fact left no doubt that the accused was trying to conceal his presence with a view to commit the offence of theft, and brought him within the mischief of cl. (b) of S. 109, Criminal P. C., in other words, he was unable to give a satisfactory account of himself. (Ghulam Hasan J.) Ram Lal v. Emperor

AIR 1942 Oudh 246=14 R O 392= 1942 O W N 3= 1942 A W R 34=198 I C 276=43 Cr L J 342.

CRIMINAL P. C. (V of 1898), S. 109—1. Applicability and scope

——Accused walking at midnight on thoroughfare being questioned by dafadar telling that he was going to marriage party with other persons — Absence of proof that statement was untrue.

The accused who was walking at midnight on a bandh which was used as a thoroughfare, being questioned by the dafadar on patrol duty replied that he was going to a marriage party and he also stated that he had other companions with him. Later on, three other persons came out of a reservoir :

Held, that in absence of evidence to show that the statement made by accused was untrue, S. 109, Criminal P. C., had no application to the case. (Fazl Ali and Meredith JJ.) Karu Kandu v. Emperor

AIR 1940 Pat 410 =21 P L T 171 = 6 B R 842 = 13 R P 137=189 I C 641=41 Cr L J 777.

——Ss. 109 (a), (b), 112 — Magistrate by order under S. 112 taking security under S. 109 (b) — Sessions Judge on appeal considering that facts come under cl. (a) and not cl. (b) and so changing S. 109 (b) to S. 109 (a)—Action, if without jurisdiction—Accused unable to give account of his presence and when accosted, running away after throwing away bundle of house breaking implements — Accused found to be residing in vicinity and carrying respectable profession in day time — Cl. (a) or cl. (b) applicable.

There is nothing in the provisions of S. 109 or of S. 112, Criminal P. C., which makes it imperative on the part of the Magistrate, after having recited the reasons why the person named is to be called on to execute a bond, to enter the actual section and clause which he considers appropriate. Where Sessions Judge in appeal has considered that what is set out in the body of the order by the Magistrate under S. 112, Criminal P. C., brings the matter within the terms of cl. (a) of S. 109 and not under cl. (b), as the trying Magistrate did and he has in effect corrected what he considers either to be a misconception of the trying Magistrate or a clerical error and the substance of the accusation which the applicant had to meet has not been altered in any way ; the action of the Sessions Judge is not without jurisdiction.

Where the order under S. 112 clearly states that the accused did not give a satisfactory account of his presence in the manner and under the circumstances he was seen and there is nothing about his taking precautions to conceal his presence within the local limits of the Magistrate's jurisdiction, S. 109 (b) and not S. 109 (a) is applicable though it is known that the accused resides in the vicinity and has a regular means of livelihood.

When a man is called on to give a satisfactory account of himself, the implication necessarily follows that it is not a general account of himself but an account of himself in relation to the circumstances in which he is called on to give such account. Under S. 55 of the Criminal P. C., an officer in charge of a Police Station is empowered to arrest or cause to be arrested inter alia anyone who cannot give a satisfactory account of himself, and the satisfactory account which is to be given cannot, at the moment when an arrest is impending, be considered to have reference to anything except the circumstances in which he is about to be apprehended. The wording of S. 109 is not otherwise, and it cannot be apprehended that a person can be considered to have given a satisfactory account of himself if, being found with unmistakable burgling instrument in his possession, in the middle of the night, he says that he is a respected house-holder, following an honourable profession in the day time still less can he be said to have given a satisfactory account of himself when, on being accosted, he flings away a bundle of housebreaking implements and runs to his own house by a

CRIMINAL P. C. (V of 1898), S. 109 — 1. Applicability and scope

devious route, and when forced to open his door to the Police, denies that he had left his house that night. (Grille J.) Hafiz Ahesanali v. Emperor

AIR 1938 Nag 303=11 R N 54=ILR (1938) Nag 595 =176 I C 465=39 Cr L J 747.

——S. 109 (a) and (b) — Cl. (a), if refers to isolated acts of concealment — Words "has failed to give satisfactory account of himself" in cl. (b), meaning of — Person concealing in deserted hut running out at approach of some persons — Person caught — Being questioned giving out identity and place of residence but admitting that he along with others had come to commit theft — Sindh cutter and gunny bag found in hut—S. 109, cl. (a) held did not apply but cl. (b) applied.

Persons arrested under S. 55, Criminal P. C., do not necessarily come under S. 109 (a) but may come under the provisions of S. 109 (b). In interpreting S. 109 (a), the ordinary meaning of the words should be followed. Section 109 (a) therefore refers to a continuous concealment and not to an isolated act of concealment. The expression "has failed to give a satisfactory account of himself" in cl. (b) means a satisfactory account of himself generally, and not a satisfactory account of his presence at the place and in the circumstances in which he was found.

A person was hiding in a deserted hut in an orchard, and at the approach of some persons, ran out of the hut but was chased and caught. When questioned, he gave out his identity and was living openly at the address given by him. He further admitted that he had come there with two other persons for the purpose of committing theft and that his two companions had gone away to select a house for the purpose, leaving him in the hut. When the hut was searched, a Sindh cutter and a gunny bag were found there. Proceedings under S. 109 were started against him :

Held, that S. 109 (a) did not apply but cl. (b) applied as he must be held to have failed to give a satisfactory account of himself. (Jack and Patterson JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Isabali

AIR 1938 Cal 409=42 C W N 588=11 R C 1=I L R (1938) 2 Cal 221=175 I C 722=39 Cr L J 647.

——Ss. 109 (b), 110 — Prosecution under S. 109 (b) — Evidence showing accused to be thief by habit — Proper order.

A proceeding against a man because he has no ostensible means of subsistence is a totally different proceeding from one for being by habit a thief.

An order was framed against a person under S. 109 (b), Cr. P. C. as having no ostensible means of subsistence, but the evidence led was all about his being by habit a thief. The Magistrate still passed an order under S. 109 (b) to furnish security. No appeal was filed against the order:

Held, that the proper order to be passed in such a case was one under S. 110, Cr. P. C., but as no appeal was preferred from the order, it was not right to set it aside. (Spargo J.) The King v. Nga Ba Hein

AIR 1937 Rang 544=10 R Rang 321=173 I C 213 (2) =39 Cr L J 285.

——Ss. 109, 117, 517—'Enquiry' if includes proceedings under the security sections—Proceedings under S. 117, if an enquiry within S. 117—S. 517 is not limited to cases where it is found that some offence has been committed.

The definition of "enquiry" in the Cr. P. C. is wide enough to include proceedings under the security sections and there is nothing in S. 517, Cr. P. C. to limit the applicability of an order of confiscation to cases where it is found that some offence has been committed. A proceeding

CRIMINAL P. C. (V of 1898), S. 109 — 1. Applicability and scope

under S. 117 is an enquiry within S. 517. (Gruer J.) Emperor v. Beni Madhao

AIR 1936 Nag 143=9 R N 118=I L R (1936) Nag 150=166 I C 271=38 Cr L J 175.

——Except under special circumstances, it is not a criminal offence to give a false name. (Dunkley J.) Nga Lin v. Emperor

AIR 1935 Rang 294=8 R Rang 173=158 I C 500= 36 Cr L J 1384 (2).

——A mere attempt to commit an offence does not obviously bring the person within the scope of S. 109 (a). (King J.) Emperor v. Kambala Subbanna

1935 M W N 1348 (1).

——Security bond under S. 109, Criminal P. C. cannot be demanded from a person already undergoing imprisonment; it should take effect after the expiration of term of imprisonment. (Pandrang Row J.) Emperor v. R. Seshugadu

1935 M W N 11.

——Security for good behaviour — Mere suspicion — Legality.

Section 109, Criminal P. C., would not apply to the case of three respectable residents of Delhi who come to Meerut by a night train and who were found on the road between the station and the city near to the place where a burglar's jemmy was found. Order under S. 109, Cr. P. C. passed more on suspicion than on any good basis of fact must be set aside. (Tudball J.) Ghulam Jilanu v. Emperor

AIR 1919 All 260 = 17 A L J 432 = 51 I C 161 = 20 Cr L J 401.

——S. 109 (b) — Arrest by an Inspector of Police in Calcutta, legality of — Power of Magistrate to proceed under S. 109 (b). How accused came before Magistrate is immaterial—See Criminal Procedure Code (Act V of 1898), S. 1 (2) (a)

1 Cr L J 535 (Cal).

2. Concealment — (Cl. (a).)

——S. 109 (a)—"Is taking precautions . . . jurisdiction" —Concealment need not be continuous.

The expression "is taking" in S. 109 (a) is intended to be comprehensive enough to cover the present perfect tense "has taken" or "has been taking." In every case it would be a question of fact, whether the circumstances justify the inference that a person has been taking precautions to conceal his presence. It follows, therefore, that the common sense interpretation of the expression would be that the concealment contemplated is not a continuous one and that the section can apply even if the person's concealment is transitory. (Radke Addl. J. C.) Jagannath v. State

AIR 1953 Bhopal 12=1953 Cr L J 698.

——S. 109, cl. (a)—Concealment—Continuity of.

It is obvious from the language of the section that while it speaks of a continuing act it does not expressly specify the time with respect to which the continuity of the act of concealment is to be determined. Section 109 would, therefore, mean that when it is found that a person is taking precautions to conceal his presence with a view to commit an offence and a Magistrate receives information to this effect he may take action against him under that section, and does not require that the act of concealment should be continuing at the time when the Magistrate receives information : 50 All. 909 (FB), Foll.; Case law discussed.

In order to bring a person within the operation of S. 109 (a) it is not necessary to show that he has followed a continuous course of conduct in taking precautions to conceal his presence, although it is necessary to show

CRIMINAL P. C. (V of 1898), S. 109—2. Concealment—(Cl. (a))

that the act of concealment was intended to be continued. (Seth J.) Rex v. Ram Dayal,

AIR 1950 All 134=I L R (1950) All 935=1949 A L J 413=51 Cr L J 436.

——Act of concealment need not be continuous—Whether person has been taking precautions to conceal his presence is question of fact.

It is not necessary that before S. 109 (a) can apply, it must be shown that the act of concealment is not an isolated act but a continuous one. No time limit can be put on the taking of precautions. In every case it would be a question of fact whether the circumstances justify the inference that a person has been taking precautions to conceal his presence and that there was an intention to commit an offence. (Ghulam Hasan J.) Ram Murti v. Emperor,

A I R 1946 Oudh 230 = 1946 O A C C 144 = 1946 A W R C C 144 = 1946 O W N 225 =224 I C 551=21 Luck 251=47 Cr L J 642.

——"Taking precautions to conceal" explained — Person about to commit offence, unexpectedly startled and concealing himself to prevent arrest comes under cl. (a).

A person cannot be bound down under cl. (a) of S. 109, Criminal P. C., merely because he is afraid of arrest or because he is making a nuisance of himself e. g., shouting or singing and conceals himself to avoid arrest. But, he can be bound down if the evidence shows that before running away and before being caught concealing himself, there is reason to believe that he was about to commit an offence. The words "taking precautions to conceal himself" are wide enough to include the case of anyone who is presumably about to commit an offence, who is unexpectedly startled and who then conceals himself to prevent arrest; the whole object of this clause being to prevent the commission of particular offence. (Plowden J.) Mahomed Rafi v. Emperor,

A I R 1943 All 369 = 16 R A 215 = 1943 A L J 485 (1)=I L R (1943) All 822 = 1943 A W R 255 (1)=210 I C 538=45 Cr L J 280.

——"Concealing presence" meaning explained.

The words "concealing presence" are very wide. They are sufficient to cover the concealment of bodily presence in a house or grove or under a bridge, etc., but they also are sufficient to cover the case when a man conceals his appearance, e. g., by wearing a mask or covering his face or disguising himself by a uniform or in some other manner. (Plowden J.) Abdul Ghafoor v. Emperor,

A I R 1943 All 367=1943 A W R 254=16 R A 189= 1943 A L J 481 = I L R (1943) All 816 = 210 I C 83= 45 Cr L J 219.

——Person residing within local limits — Whether there can be concealment.

There may be concealment within the meaning of S. 109 (a), Criminal P. C., even if residence within the local limits is well known.

No definite rule whether the concealment should be continuous or not should be laid down and it is a question of fact in each case.

Section 109, Criminal P. C., is one restrictive of liberty and must be applied only when strictly applicable.

The section penalises the taking of precaution to conceal whether these precautions are successful or not. (Gruer J.) In re Ganpati Barwa,

A I R 1938 Nag 465=11 R N 78=I L R (1939) Nag 405=176 I C 820=39 Cr L J 807.

——Accused standing in one position, thus hoping that he would be mistaken for inanimate object — Whether concealing himself.

When the accused does not give a satisfactory account of himself, the proper clause applicable is (b) and not (a)

CRIMINAL P. C. (V of 1898), S. 109—2. Concealment—(Cl. (a))

of S. 109. Where the accused was not actually hiding, but was walking along the road, and on observing the watchman on the alert, he stood still and waited until his attention should be diverted before proceeding on his way, standing there apparently in the hope that he might be mistaken for an inanimate object or part of a building if the watchman happened to turn his eyes on him, this cannot be considered as concealing his presence. (Grille J.) Hafiz Ahesanali v. Emperor,

A I R 1938 Nag 303 = 11 R N 54=I L R (1938) Nag 595=176 I C 465=39 Cr L J 747.

——S. 109 (a)—Continuous course of conduct in taking precautions to conceal his presence.

It is not necessary, in order to bring a person within the operation of S. 109, cl. (a), Criminal P. C., to show that the accused has followed a continuous course of conduct in taking precautions to conceal his presence. Otherwise, it would be impossible to take action against any person, however bad his character or his intention to commit an offence may be, if his attempt at concealment were confined to a solitary instance. (Thomas J.) Manik v. Emperor,

A I R 1934 Oudh 367=11 O W N 935=7 R O 103= 151 I C 286=35 Cr L J 1272.

——It is an entire mistake to read cl. (a), of S. 109 as applying to any person who takes a step to conceal himself in the sense of concealing his presence in the way in which a criminal conceals his presence when he goes in the dark or by a deserted road, or by some other secret means to commit a crime in his neighbourhood : A. I. R. 1927 All. 50, Foll. (Rankin C. J. and Patterson J.) Gagan Chandra De v. Emperor,

A I R 1929 Cal 775 = 123 I C 747=57 Cal 949=1929 Cr C 519=34 C W N 194=31 Cr L J 569.

——Section 109 (a) refers to the case of a continuous act and not the case of an isolated effort of concealment : 22 C. W. N. 163, Rel. on. (Pearson and Patterson JJ.) Gobra Badia v. Emperor,

A I R 1929 Cal 729=50 C L J 181=122 I C 295=1929 Cr C 365=31 Cr L J 408.

——It is an entire mistake to read cl. (a) of S. 109 as applying to any person who takes steps to conceal himself, in the sense of concealing his presence in the way in which a criminal conceals his presence when he goes in the dark or by a deserted road, or by some other secret means to commit a crime in his own neighbourhood. The section does not contemplate such a situation. (Walsh A. C. J. and Pullan J.) Emperor v. Bhairon,

A I R 1927 All 50=97 I C 428=49 All 240=7 L R A Cr 183=25 A L J 94=27 Cr L J 1116.

——An attempt to avoid a police patrol does not bring a person, resident and shopkeeper in a town, within the ambit of S. 109. (Le Rossignol J.) Fandoo v. Emperor,

A I R 1926 Lah 368=94 I C 141=27 Cr L J 573.

——Clause (a) of S. 109 refers to a continuous act and does not apply to a case where there is a momentary effort at concealment to avoid detection or arrest. Passing under a false name or taking precautions to conceal one's presence or identity at a place amounting to a continuous course of conduct is what is meant by the clause. Moreover, such precautions for the purpose of concealment must be taken with a view to commit offence.

Accused was loitering on a certain road at 3 A. M. and caught by a constable as he attempted to conceal himself. Accused was an old offender :

Held, that a mere attempt at concealment on the approach of a constable was nothing and an old offender could not be expected to face a constable if found at that hour of the night. The attempt to conceal himself to

CRIMINAL P. C. (V of 1898), S. 109 — 2. Concealment—(Cl. (a))

avoid observation did not bring the accused within the mischief of the section : 39 Cal. 456, Foll. (Cuming and Mukerjee JJ.) Sheikh Piru v. Emperor,

A I R 1925 Cal 616 = 86 I C 666 =41 C L J 142=26 Cr L J 842.

——Neither refusal to give names, nor giving false name first and true name afterwards, nor a desire to conceal business amount to concealing presence. (Sulaiman J.) Sheo Prasad v. Emperor,

A I R 1924 All 202 = 81 I C 598 = 21 A L J 847 =4 L R A Cr 237=25 Cr L J 950.

——Ss. 109 and 118 — Security for good behaviour — Jurisdiction.

Where petitioner who was by profession a Kaviraj was found at about midnight in a lane in a town with two others who had house breaking implements in their possession and who on being discovered fled and when arrested remained silent and gave a false explanation of his presence on the spot, to the Magistrate :

Held, Per Teunon J. that the facts found did not bring the petitioner within either cl. (a) or (b) of S. 109 as the petitioner's presence within the Magistrate's jurisdiction was well known. Per Huda J.: Cl. (a) of S. 109 refers to a continuous act and does not therefore apply to a case where there is a momentary effort at concealment to avoid arrest or detection. (Teunon and Huda JJ.) Reshu Kaviraj v. Emperor,

A I R 1918 Cal 887=27 C L J 382=22 C W N 163= 41 I C 649=18 Cr L J 825.

3. Evidence.—See also Criminal P. C., S. 117.

——Sub-sections (a) and (b) relate to different charges—Case under Cl. (a) — Evidence of unsatisfactory way of life, if can be admitted.

Sub-sections (a) and (b) of S. 109 correspond to different charges and it is impossible to switch from S. 109 (a) to S. 109 (b); if both charges are framed, the evidence must be examined separately. Evidence that the accused's general way of life is unsatisfactory cannot be admitted in a S. 109 (a) case. (Plowden J.) Abdul Ghafoor v. Emperor

A I R 1943 All 367 = 1943 A L J 481=I L R (1943) All 816=16 R A 189=210 I C 83=45 Cr L J 219.

——Evidence of previous convictions.

The evidence of the previous convictions is relevant in proceedings under S. 109, Criminal P. C. (Ghulam Hasan J.) Ram Lal v. Emperor

A I R 1942 Oudh 246=14 R O 392 = 1942 O W N 3 =1942 A W R 34=198 I C 276=43 Cr L J 342.

——Ss. 109, 110, 112 — Magistrate taking information on oath before passing order under S. 112.

The reference to 'further evidence in' S. 117 seems to indicate that some evidence may be taken before the order under S. 112 is framed. Moreover, both Ss. 109 and 110 show that the Magistrate's action must be based on information received, and there is no reason why the Magistrate should confine himself to the information contained in the Police papers. He can if he thinks fit, take information on oath in the presence of the accused before deciding whether he will take action under S. 109 or S. 110 and it is often desirable that the Magistrate should do so, before passing an order under S. 112. (A. M. B. Irwin) King Emperor v. Nga Po Thaung

U B R 1905, Crim. Pro. Code 29=2 Cr L J 462.

4. Forfeiture of bond. — See also Criminal P. C. Ss. 121 and 514.

——Ss. 109, 121—Forfeiture of bond— Sureties, time for proceeding against — Person found in suspicious circumstances.

CRIMINAL P. C. (V of 1898), S. 109 — 4. Forfeiture of bond

Where a surety bond has been forfeited on account of any act of the accused person within the period for which the sureties had bound themselves, they would be liable whether the proceedings were started against them before or after the expiry of the period. (Sulaiman and Niamat Ullah JJ.) Emperor v. Bahadur Singh

A I R 1932 All 58 (1) = 54 All 335=1932 A L J 112 Ind Rul (1932) All 197=136 I C 373=33 Cr L J 281.

——Commission of offence under S. 452, I. P. Code.

According to S. 121, the commission or attempt to commit or abetment of any offence punishable with imprisonment wherever it may be committed is a breach of bond taken under S. 109 or S. 110 for good behaviour. When therefore a person is convicted of an offence under S. 452, Penal Code, and sentenced to imprisonment, a breach of bond does take place and it is liable to forfeiture. 15 P. R. 1903 Cr., Dist. (Zafar Ali J.) Indar Singh v. Emperor

A I R 1930 Lah 227 =I R 1930 Lah 109=120 I C 605 =1930 Cr C 240=31 Cr L J 130.

——Ss. 109, 110, 514 — Breach of security bond — Payment of penalty by principal and sureties ordered — Legality of double payment.

The language of Ss. 109 and 110, leaves no doubt that the sureties to be required under these sections are sureties in the ordinary sense of the term. They undertake that their principal will be of good behaviour, and in case of a breach, the principal and sureties are jointly and severally liable for the sum named in the bond and no more. The penalty is not required to be paid twice over. Rs. 100 paid by sureties was ordered to be refunded to them. So where a person gives a bond of Rs. 100 with two sureties for his good behaviour for one year and commits the breach thereof, the Magistrate cannot order him and also his surety to pay Rs. 100 each. (A. M. B. Irwin) King Emperor v. Nga Kaung

U. B. R. 1905 Crim Pro Code 31=2 Cr L J 463.

5. Grounds for taking security.

——S. 109 (a)—Accused trying to escape arrested at night with lathis and house-breaking implements.

The accused were caught while attempting to escape from a Police raid in the middle of the night with lathis and house-breaking implements in a city:

Held, that they could be bound down to be of good behaviour. (Plowden J.) Abdul Ghafoor v. Emperor

A I R 1943 All 367=16 R A 189 = 1943 A L J 481= 1943 A W R 254=I L R (1943) All 316 = 210 I C 83= 45 Cr L J 219,

——Previous convictions.

Previous convictions do not, by themselves, prove that the person is now leading a life of crime or is dependent on the proceeds of crimes committed by others. (Plowden J.) Abdul Latif v. Emperor

A I R 1943 All 368=16 R A 174 = 1943 A L J 483= 1943 A W R 255 (2) = I L R (1943) All 818 = 209 I C 563=45 Cr L J 157.

——Man of position and substance foolishly choosing not to give his correct name and trying to run away from Police.

In the case of a man of position and substance, the mere fact that he foolishly chose not to give his correct name and very foolishly tried to run away from the Police at the time he was arrested, and declined to explain how he happened to be there, are really no reasons for holding that he could not give a satisfactory explanation of himself or for saying that he is a man of no ostensible means of subsistence. Such a person should not be dealt

CRIMINAL P. C. (V of 1898), S. 109—5. Grounds for taking security

with under S. 109, Criminal P. C. (Nanavutty J.) Din Mohammad v. Emperor

A I R 1936 Oudh 383=9 R O 36 = 1936 O W N 752 =164 I C 105=37 Cr L J 888.

——'A satisfactory account of himself'— Simply avoiding Police or taking unfrequented route.

"A satisfactory account of himself" does not necessarily mean that a person should give his correct name and address or even the object of his being present at night, but that he should satisfy the authorities by explaining the suspicious circumstances appearing against him. Simply avoiding the Police by a bad character or taking an unfrequented route is by itself no ground for action under S. 109. It may be that in some cases simply not giving an explanation may not be enough, for instance, an apparently respectable person returning from the house of his mistress very late at night is using unfrequented streets and avoiding being seen. He cannot come under S. 109, Criminal P. C. Each case must be decided on its own facts. (Mohammad Noor J.) Emperor v. Bishi Sahara

A I R 1935 Pat 69 = 15 P L T 836 = 1 B R 482 =7 R P 611=155 I C 729=36 Cr L J 846.

——S. 109 (a) (b) — Person found with house-breaking implements near wealthy man's house — Admission of object of being there.

If a man be found by the Police with implements of house-breaking.lurking near the house of a wealthy man thereby indicating that he is about to commit burglary there and when challenged by the Police, he admits the object of his being there, he can be dealt with under cls. (a) and (b). (Mohammad Noor J.) Emperor v. Bishi Sahara

A I R 1935 Pat 69 = 15 P L T 836 = 1 B R 482 =7 R P 611=155 I C 729=36 Cr L J 846.

——Person convicted under S. 411.

Where a petitioner has already been tried and convicted of an offence under S. 411, Penal Code, in respect of any particular incident, he cannot be proceeded against for the same incident also under S. 109, Cr. P. Code. The person having already been punished for his act and there being no other evidence against him, proceedings under S. 109, Cr. P. Code, are not justified. (Tekchand J.) Lal v. Emperor

A I R 1928 Lah 928=112 I C 467 = 11 A I Cr R 397 =29 Cr L J 1043.

——The only evidence against the accused was that he was seen coming out of a sugar-cane field at 10 p. m. by two persons who challenged him. He tried to run away, but was caught by them. It was found that he was a resident of a village near the place where he was arrested.

Held, that on these facts he cannot be ordered to be bound over under S. 109. (Sulaiman Ag. C. J. Boys, Banerji, Kendall and Weir JJ.) Emperor v. Bishambhar

A I R 1928 All 476=111 I C 448 = 26 A L J 896=10 A I Cr R 353=9 L R A Cr 128 = 29 Cr L J 864 (F B)

——Dependence upon father — Unsatisfactory account is sufficient ground.

A person dependant upon his father who earns an honest living is not a person who has no ostensible means of subsistence. Where a person, arrested under suspicious circumstances gives a wrong name and address he fails to give a satisfactory account of himself and proceedings against him under S. 109 are perfectly justified : A I R 1919 All 260, dist.(Sulaiman J.)Abdul Rashid v. Emperor,

64 I C 141=22 Cr L J 749.

——S. 109 (b)—Ostensible means of subsistence — Cattle-dealers—Encamping on open ground.

Petitioners were professional cattle-dealers who were residents of Bindki, district Fatepur. They had money

CRIMINAL P. C. (V of 1898), S. 109—5. Grounds for taking security

in deposit with bankers there, and their occupation was to go about selling cattle for about eight months in the year after which they returned to their homes for the rainy seasons.

Held, that the men had ostensible means of subsistence and had given a satisfactory account of themselves within S. 109 (b) : AIR 1919 All. 260, Ref. (Banerjee J.) Nanka v. Emperor,

AIR 1920 All 138 = 18 A L J 321=2 U P L R (All) 87=55 I C 734=21 Cr L J 366.

——Persons frequenting melas and carrying on game played with rings.

Certain persons, who belonged to a gang which frequented melas and carried on a game played with rings, were ordered to furnish security to be of good behaviour, under S. 109, held (1) that the conviction under cl. (a) of the section was illegal, inasmuch as whether the game was legal or illegal depended on the manner in which it was played; (2) that cl. (b) was very wide, and the Magistrate, upon the evidence, did not act illegally. (Richards J.) Mahadeo v. King-Emperor,

6 A L J 253=2 Ind Cas 219=9 Cr L J 527.

6. Joint inquiry.

——Ss. 109 and 110—Joint enquiry against two.

A single enquiry under Ss. 109 and 110 against two persons unless there is evidence that the two were associated in the acts under charge, should not be held. (Miller J.) Kakkal Reddi alias Govindan v. Emperor,

5 Ind Cas 156=11 Cr L J 50 (Mad).

——Ss. 109, 110 and 117 — Joint inquiry of person proceeded against under S. 109 and another under S. 110 — Legality—See Criminal P. C., S. 117,

2 Cr L J 224 (Oudh).

7. Irregularities in proceedings.

——Ss. 109, 499—Order of Court silent about attendance of accused — Security bond both for attendance and for good behaviour—Validity.

Where the Security bond which was executed by the Surety was both for security for good behaviour of the accused and also for his attendance in the Court of the Magistrate during the enquiry of the case under S. 109, Criminal P. C., but the order of the Magistrate demanding security from the accused was silent as regards the arrangement for his attendance :

'Held' that in accepting the bond which was executed by the surety the action of the Court clearly indicated that it accepted the bond and considered the arrangement therein stated regarding the attendance of accused during the further proceedings against him. Simply because no express record of the proceedings was made regarding the fact of taking a surety bond from the accused under S. 499, Criminal P. C., the security bond executed by the surety and accepted by the Court should not be considered to be void. The latter was bound by the terms of his security bond and he could not escape the liability on account of defect in the record of the proceedings of the Court. (Ranawat J.) Abdul Shakur v. State,

AIR 1952 Raj 54=1952 Cr L J 599.

——Ss. 109, 112 and 537 — Proceedings under S. 109 — Omission to read order under S. 112 at commencement of proceedings—Defect is curable under S. 537.

An omission to read the order under S. 112 to the person concerned who is present in Court at the commencement of the proceedings under S. 109 does not render them illegal and the defect is curable under S. 537. (Ghulam Hasan J.) Ram Murti v. Emperor,

A I R 1946 Oudh 230 = 1946 O A C C 144 = 1946 A W R C C 144 = 224 I C 551 = 21 Luck 251 = 1946 O W N 225=47 Cr L J 642.

CRIMINAL P. C. (V of 1898), S. 109

8. Powers of High Court.

——Ss. 109 to 112 — Where in a case under S. 110, Criminal P. C., evidence was produced before a Magistrate which he disbelieved and in a reference to High Court under S. 438, Criminal P. C., against his order cancelling under S. 119 notice to show cause made under Ss. 109 to 112, the District Magistrate stated some reasons why this evidence ought to be believed but these reasons could be explained away :

Held, that the case was not one in which the High Court should interfere and set aside the order of the Magistrate, cancelling under S. 119, Criminal P. C., the notice to show cause made under Ss. 109 to 112. (Zia-ul-Hasan and Madeley JJ.) Emperor v. Mulhe,

170 I C 482=1937 O W N 816 = 10 R O 14 = 38 Cr L J 889.

——Magistrate satisfied that security need not be provided — High Court, if can demand security later — Reversal of order of Magistrate.

Failure of a person to give a satisfactory account of himself in suspicious circumstances brings the case of the person proceeded against under S. 109 (b), Criminal P. C. The question of whether the circumstances are suspicious is mainly a question of fact, and if a Magistrate is satisfied that the circumstances in which a person who is brought before him under S. 109, Criminal P. C., was found are not suspicious and that there is no need for him to call upon that person to provide security, it is not the part of the High Court to reverse his order and to demand security a year later on the ground that the circumstances had been suspicious. Section 109, Criminal P. C., is one of the preventive sections which are to be employed by Magistrates for the prevention of crimes, and it must be rarely, if ever, that a High Court will feel called upon to reverse an order of a Magistrate refusing to demand security under any of those sections. (Kendall J.) Emperor v. Gayan Singh,

AIR 1934 All 24 = 1933 A L J 1201 = 6 R A 536 = 147 I C 433=35 Cr L J 446.

——Ss. 109, 119, 439 — Order of discharge under S. 119 — Reference to High Court to set aside order — Mere conflict of opinion on value of evidence—Interference.

Where a District Magistrate made a reference to the High Court recommending that an order of a Magistrate passed under S. 119, Criminal P. C., discharging an accused person who had been ordered to show cause why security should not be taken from him under S. 109, on the ground that while the trying Magistrate did not believe certain witnesses he believed them :

Held that there was a mere conflict of opinion on the value of evidence and that there was no ground for interference on the revisional side. In such cases the Court would not go into the merits of the case unless there was something to show that there was a material departure from the legal principles according to which the case ought to have been dealt with ; or if it were asked to go into the facts, it would only do so if something were shown which particularly indicated that it was desirable to enter into those facts. (Bannet J.) Emperor v. Sundar,

146 I C 831 (1) = 1933 A L J 272 = 6 R A 351 = 35 Cr L J 189 (1).

9. Sentence.

See also Criminal P. C., S. 123.

——Ss. 109, 112 — Order specifying period of imprisonment in default—Legality of.

Section 109, Criminal P. C., merely requires a Magistrate to issue a notice and does not empower him to pass the final order. This is done under S. 118, which in its turn is dependent upon the order passed under S. 112.

CRIMINAL P. C. (V of 1898), S. 109—9. Sentence

All that the final order can contain is a direction to furnish security to be of good behaviour for a period which cannot, in any case exceed one year, and which must not be beyond that specified in the order under S. 112. Any order which specifies a period of imprisonment in default is to that extent illegal.

No person committed to prison under S. 120 (1) can be detained there if he furnishes the security required of him after his commitment. Consequently, an order stating that he should suffer a period of imprisonment in default is illegal. (Bose J.) In re Rangi,

AIR 1936 Nag 265=9 R N 185 = I L R (1937) Nag 173=167 I C 403=38 Cr L J 388.

——Imprisonment under S. 109 should be simple in absence of special reasons.

Section 109, Criminal P. C., is a preventive and not a punitive section and so, in the absence of special reasons, the type of imprisonment should be simple. (Bose J.) In re Rangi

A I R 1936 Nag 265=9 R N 185=I L R (1937) Nag 173=167 I C 403=38 Cr L J 388.

——Ss. 109, 397, proviso 2—Imprisonment for default in furnishing security under S. 109—Subsequent conviction under Opium Act for offence committed prior to order under S. 109 — Order that sentence under Opium Act should commence after expiry of sentence under S. 109.

Where in default of furnishing security under S. 109, Criminal P. C., the accused was sent to jail, and subsequently, the accused was convicted by another Magistrate of an offence, punishable under S. 9, Opium Act, committed prior to the order under S. 109, Criminal P. C., and that Magistrate ordered that the sentence under the Opium Act should begin after the sentence imposed under S. 109, Criminal P. C., had expired :

Held, that the order that the second sentence should run consecutively was incorrect and should be set aside, inasmuch as having regard to the second proviso to S. 397, Criminal P. C., the sentence imposed under the Opium Act had to commence immediately, and it had, therefore, come to an end long before the expiration of the sentence imposed in default of furnishing security under S. 109, Cr. P. C. (Smith J.) Emperor v. Jagmohan

A I R 1933 Oudh 381=10 O W N 786 = 6 R O 75= 145 I C 1007=34 Cr L J 1152.

——Ss. 109, 110, 123 — Security for good behaviour — Imprisonment in default.

A Magistrate cannot award imprisonment in the event of the accused's failing to furnish security in anticipation of non-compliance with his order requiring security for good behaviour; he should give the accused an opportunity to obey his order by fixing a time within which to furnish security. (Nanjundayya O. C. J. and Krishna Rao, J.) In the matter of Ganga alias Thimma

12 M C C R 145=9 Cr L J 350.

10. Sureties.

See also Criminal P. C., S. 122.

——Surety under—Fitness.

The fitness of the surety should be considered from his general stability and the property and not from his moveable property only. (Johnstone C. J. and Rattigan J.) Bachinta v. Emperor

A I R 1916 Lah 380=7 P W R 1916 Cr = 32 I C 833 17 Cr L J 97.

——Fitness of sureties.

In a bad livelihood case when several sureties are required, it is not necessary that each one of them should

CRIMINAL P. C. (V of 1898), S. 109—10. Sureties

live in the neighbourhood of the accused. (Sharfuddin and Teunon JJ.) Romesh Chandra v. Emperor

A I R 1916 Cal 360=32 I C 687=17 Cr L J 95.

——Stability of sureties.

Immoveable properties should be taken into consideration in deciding whether sureties under S. 109 are stable. (Chitty and Walmsley JJ.) Purna Chandra v. Emperor

A I R 1916 Cal 348=83 I C 683=17 Cr L J 91.

——Ss. 109 and 122—Fitness of sureties.

Sureties for good behaviour ought not to be rejected merely on the strength of a report of a Tahsildar or Sub-Inspector without an opportunity being given to the sureties to meet the allegations made against them. (Piggott J.) Bairagi v. Emperor

A I R 1914 All 487=26 I C 175=15 Cr L J 727.

11. Simultaneous proceeding under Ss. 109 & 110.

——Ss. 109 and 110—Security for good behaviour under both sections—If legal.

No person should be bound over to be of good behaviour under both sections 109 and 110, Cr. P. C. (Davies and Sankaran Nair JJ.) Re Kosa Kumaran

A I R 1916 Mad 657 (1)=38 M 556 (Note) = 30 I C 450 (2)=16 Cr L J 626.

——Ss. 109 and 110—Legality of requiring security under both sections.

Security should not be demanded of a person under both Ss. 109 and 110, Criminal P. C. (Miller J.) Kakkal Reddi alias Govindan v. Emperor

5 Ind Cas 156=11 Cr L J 50 (Mad).

——Ss. 109 and 110—Scope.

There is no provision for taking security bonds from an accused person both under S. 109 and S. 110 of the Code. (Munro and Abdur Rahim JJ.) Manikkam v. Emperor

6 M L T 158=3 Ind Cas 77=10 Cr L J 243.

——Ss. 109, 110—Order under S. 110, during continuance of an order under S. 109—Validity.

As both Ss. 109 and 110 have the same object, an order under S. 110 is not valid during the continuance of an order under S. 109. (Ameer Ali and Handley JJ.) Ghulam Ali v. Emperor

8 C W N 543=1 Cr L J 457.

——Ss. 109 and 110—One proceeding against same person.

No person ought to be proceeded against under both Ss. 109 and 110 of the Criminal P. C. in the same proceeding. When action is taken under S. 110, the question of having an ostensible means of subsistence should be excluded from the preliminary order and treated as irrelevant. (Irwin J.) King-Emperor v. Nga Po Saung

2 L B R 40.

12. Taking precautions to conceal . . . . jurisdiction — Cl. (a).

——S. 109 (a) — "Is taking precautions . . . jurisdiction" —Concealment within Magistrate's jurisdiction.

Even if a man is known to be the resident of some part of the Magistrate's jurisdiction he can come within the ambit of the section, if he takes precautions to conceal his presence in the other part of the same jurisdiction. But a man, whose place of residence is well-known and who goes out at night on the house-breaking expedition with scoundrels armed with weapons, does not come within the mischief of cl. (a) at all. If such a man at the approach of the Police eludes the arrest and conceals himself under a tree or behind a wall, it cannot be said that it is enough to attract the section. Hear the concealment is not to facilitate the commission of the crime, but to avoid the arrest. The circumstances must be proved to show that the concealment is to commit an offence and not to escape the arrest by the Police. (Radke Addl. J. C.) Jagannath v. State.

CRIMINAL P. C. (V of 1898), S. 109 — 12. Taking precautions to conceal . . . . jurisdiction —Cl. (a)

A I R 1953 Bhopal 12=1953 Cr L J 698.

——Case under cl. (a)—Duty of prosecution.

In a case under S. 109 (a) the prosecution must establish that the applicants had with a view to commit some offence taken some active steps to conceal their presence in the house or done something to show that they did not wish their presence in the house to be known. (Chandiramani J.) Sheetal Baksh Singh v. Rex

A I R 1950 All 184=1949 A L J 565=51 Cr L J 609.

——S. 109, cl. (a)—Clause applies to persons being or coming within local limits of jurisdiction.

Clause (a) of S. 109 applies as much to persons residing within Magistrate's jurisdiction as to persons coming from outside : AIR 1929 All 33 (FB), Foll. (Seth J.) Rex v. Ram Dayal

A I R 1950 All 134=1949 A L J 413 = I L R (1950) All 935=51 Cr L J 436.

——S. 109 (a) — Persons wearing ordinary clothes and just leaving railway platform.

Magistrate cannot take security from the accused under S. 109 (a), Cr. P. C., even if it was suspected with good reason that they had alighted at the platform in order to commit an offence as men who had just left the railway platform and who were wearing ordinary clothes cannot be held either to have concealed or disguised their presence. (Plowden J.) Abdul Latif v. Emperor

A I R 1943 All 368=1943 A L J 483 = 16 R A 174= 1943 A W R 255 (2)=I L R (1943) All 818 = 209 I C 563=45 Cr L J 157.

——S. 109 (a) — Applicability — Accused coming within local limits of jurisdiction of certain Magistrate and taking precaution to conceal himself—S. 109 (a) applies.

Section 109 (a) of Cr. P. C., is applicable to a person who being or coming within the local limits of the jurisdiction of a certain Magistrate, takes precautions to conceal his presence with a view to committing an offence. It is not limited to the more restricted case of a person who, with a similar object, takes precautions to conceal the fact of his presence within the local limits of the jurisdiction of a certain Magistrate. If a man is taking precautions anywhere in order to conceal his presence, and that concealing is to be effected within the jurisdiction of a Magistrate who receives information, such Magistrate has power to demand security, even though the residence of the person informed against within the jurisdiction is well known. (Ghulam Hasan J.) Chhutai (Chitai) v. King-Emperor

A I R 1941 Oudh 509 =14 R O 38=1941 O W N 867 = 1941 A W R 241=17 Luck 105 = 194 I C 740 = 42 Cr L J 617.

——S. 109 (a) (b) — Clause (a) of S. 109, Criminal P. C., should be applied with proper discretion. It cannot be applied to a person who was merely found talking at night time with bad characters in a place open to the public or to one who merely shows a disinclination for the society of the Police and endeavours to avoid them by running away on their approach. There must be some definite attempt at concealment by taking precautions with that object in view, whether it be by disguise or otherwise, 'indicating a desire to hide the fact that the person is present within the local limits of the Magistrate's jurisdiction :

Held, having regard to the entire circumstances, that it was a matter of common experience that a person in the position of the petitioner would ordinarily try to run away when challenged at night, from the Police or the chaukidars, and that there was no sufficient evidence which would justify the inference that the petitioner had

CRIMINAL P. C. (V of 1898), S. 109 — 12. Taking precautions to conceal . . . . jurisdiction— Cl. (a) been found to be taking precautions to hide his presence, far less than he was taking such precautions in order to commit an offence. (Monohar Lall J.) Lakhman Kurmi v. Emperor

AIR 1941 Pat 478=7 B R 747 = 22 P L T 545 = 13 R P 700=194 I C 295=42 Cr L J 554.

——S. 109 (a) (b)—Cl. (a), meaning and effect of.

In S. 109, cl. (a) the words "is taking" mean "has taken" or "has been taking" — Section 109, cl. (a) Criminal P. C., does not mean that the man is taking precautions to conceal the fact of his being present within the local limits of such Magistrate ; but it means that he is taking precautions to conceal his presence and that the concealment is to be within the local limits of such Magistrate. (Mohammad Noor J.) Emperor v. Bishi Sahara

AIR 1935 Pat 69=15 P L T 836= 1 B R 482=7 R P 611=155 I C 729=36 Cr L J 846.

——S. 109, cl. (a)—Accused proved to be habitual offender —Precaution at concealment of his whereabouts.

Where it was in evidence that the accused was once bound down under S. 110, Criminal P. C., he was also convicted under S. 454, I. P. C., it was also proved that he had sold some ornaments to a person where he was arrested and that person doubted that the ornaments were stolen property :

Held, that the accused was arrested under very suspicious circumstances and an order passed against him under S. 109, cl. (a), Criminal P. C., was legal. (Thomas J.) Manik v. Emperor

AIR 1934 Oudh 367=11 O W N 935 = 7 R O 103 = 151 I C 286=35 Cr L J 1272.

——S. 109 (a) — Impersonation of another — Whether covered by the provisions of the section — Criterion to decide if action under the section can be taken.

In order to attract the provisions of cl. (a) to S. 109, Criminal P. C., it is necessary to show that the person concerned was concealing his own presence for the purpose of committing the offence— in other words, that the act which was to help him to commit the offence was the concealment of his own presence or identity and not the impersonation of another.

Where the accused represented to a Raja that he was the Maharaj Kumar of another place, a person of influence who would be able to help the Raja to make a rich marriage and to arrange for loans at low rates of interest :

Held, that the concealment of his identity was no part of his criminal objective and the criminality of assuming the identity of Maharaj Kumar was not a criminality contemplated by S. 109 (a), Criminal P. C., and that the provisions of S. 109 (a) did not cover the case. (Kendall J. On difference of opinion between Sulaiman C. J. and King J.) Kashi Nath Singh v. Emperor

AIR 1934 All 45=6 R A 462=1933 A L J 1601 = 56 All 314=147 I C 368=35 Cr L J 442.

——Sub-section (a) cannot be interpreted too literally so as to necessitate the continuance of taking precautions till the information is received by the Magistrate. No time limit can be put on the taking of precautions. In every case, it would be a question of fact whether the circumstances justify the inference that he has been taking precautions to conceal his presence and that there was the intention to commit an offence : 27 Cr. L. J. 382 and A. I. R. 1925 Cal. 616, Diss. from. (Sulaiman A. C. J., Boys, Banerji, Kendall and Weir JJ.) Emperor v. Phuchal

AIR 1929 All 33=113 I C 417=50 All 909=26 A L J 1257=9 L R A Cr 149 = 10 A I Cr R 531 = 30 Cr L J 145 (FB).

CRIMINAL P. C. (V of 1898), S. 109 — 12. Taking precautions to conceal . . . . jurisdiction—Cl. (a) ——Concealment to be effected at a certain place. A.I.R. 1927 All. 50=27 Cr. L. J. 1116, and A.I.R. 1927 All 592= 28 Cr. L. J. 567, Overruled.

——Magistrate within whose jurisdiction concealment is to be effected has jurisdiction and not one within whose jurisdiction precautions are taken that has power to demand security. If a person is concealing his presence in a part of the territorial limits of the jurisdiction he is necessarily concealing his presence within that jurisdiction also. Therefore, if a man is taking precautions anywhere in order to conceal his presence, and that concealing is to be effected within the jurisdiction of a Magistrate who receives the information, such Magistrate has power to demand security even though the residence of the person informed against within the jurisdiction is well-known. A. I. R. 1927 All. 50=27 Cr. L. J. 1116; A. I. R. 1927 All. 592=28 Cri. L. J. 567, Overruled. (Sulaiman A. C. J., Boys, Banerji, Kendall and Weir JJ.) Emperor v. Phuchal

AIR 1929 All 33=113 I C 417=50 All 909=26 A L J 1257 = 9 L R A Cr 149 = 10 A I Cr R 531=30 Cr L J 145 (FB).

——"Within the local limits."

The words "within the local limits of such Magistrate's jurisdiction" are part of the predicate "to conceal his presence" and are not words defining the tribunal which has jurisdiction. A. I. R. 1927 All. 50, Foll. (Walsh and Banerji JJ.) Emperor v. Himayatullah

AIR 1927 All 592=102 I C 503=49 All 844 = 8 L R A Cr 106=25 A L J 679 = 8 A I Cr R 102= 28 Cr L J 567.

[Overruled in A I R 1929 All 33=30 Cr L J 145].

——A man who is deliberately preparing to commit a burglary, and when caught by the police admits his intention, cannot be dealt with under the provisions of S. 109. (Walsh and Banerji JJ.) Emperor v. Himayatullah

AIR 1927 All 592=49 All 844=8 L R A Cr 106=102 I C 503=25 A L J 679=8 A I Cr R 102=28 Cr L J 567.

——Persons brought under arrest — 'Concealment' — Meaning of.

The application of clause (a) cannot be limited only to cases where a person has not been brought under arrest, nor is it necessary in all cases to prove that the accused has followed a continuous course of conduct in taking precautions to conceal his presence. 22 C. W. N. 163 and 41 C L J 142, Diss. from.

A person, whether he be of good or bad character, who merely shows a disinclination for the society of the police and endeavours to avoid them by running away on their approach cannot be said to come within the mischief aimed at in Cl. (a).

It is certainly undesirable to lay down any general principles as to the conditions which would bring a case within the purview of the clause, for the circumstances which may arise are so multiple and various, but there must be some definite attempt at concealment by taking precautions with that object in view, whether it be by disguise or otherwise, indicating a desire to hide the fact that the accused is present within the local limits of the Magistrate's jurisdiction. The clause is one which should be used with proper discretion and was never intended to apply to a person merely found talking at night time with bad characters in a place which is open to the public. (Dawson Miller C. J. and Foster J.) Rambirich Ahir v. Emperor

AIR 1926 Pat 569=8 P L T 95=1926 P H C C 290= 97 I C 648=27 Cr L J 1128.

——"Within the local limits of such Magistrate's jurisdiction" must be read with "conceal his presence" —"Jurisdiction."

CRIMINAL P. C. (V of 1898), S. 109 — 12. Taking precautions to conceal . . . . . jurisdiction—Cl. (a)

The passage "within the local limits of such Magistrate's jnrisdiction" is part of the predicate "to conceal his presence," and the offence contemplated is that of a person, probably, although not necessarily, coming from outside the jurisdiction, into the Magistrate's jurisdiction for some nefarious purpose and taking precautions to conceal the fact that he is present in that jurisdiction. 8 A. L. J. 1097; 17 A. L. J. 891 and 17 A. L. J. 432, Rel. on. (Walsh A. C. J. and Pullan J.) Emperor v. Bhairon

AIR 1927 All 50=97 I C 428=49 All 240 = 7 L R A Cr 183=25 A L J 94=27 Cr L J 1116.

[Overruled in A I R 1929 All 33=30 Cr L J 145].

——High Courts are reluctant to place restrictions upon the discretion of a Magistrate in administering S. 109, but the statutory provisions of the section are so stringent that it may be made an engine of oppression unless care is taken by Magistrates to prevent its abuse. The object of the section is to enable Magistrates to take action against suspicious strangers lurking within their jurisdiction. Merely to be penniless or out of work is not an offence. If a person is unable to prove the source of his livelihood he ought not to be ordered to execute a bond under Ss. 109 and 118 unless there is reasonable ground for suspecting that he is sustaining himself by dishonest means, for such an order can be made only where it is necessary for keeping peace or good behaviour.

In such a case, the prosecution must satisfy the Magistrate that suspicion that he is living dishonestly attaches to the accused because of his failure to give a satisfactory explanation when called upon to account for his presence in the place where he is found. (Page and Mukerji JJ.) Victor v. Emperor.

AIR 1926 Cal 648=93 I C 961=53 Cal 345 = 43 C L J 202=30 C W N 380=27 Cr L J 497.

——S. 109 (a) — Giving false name and then correcting it—If concealing presence.

Action cannot be taken under S. 109 (a) Cr. P. C., in a case where a person who is asked his name by the police first gives a wrong name and then corrects it and there is nothing else to show he was taking precautions to conceal his presence. (Sulaiman J.) Sheo Prasad v. Emperor.

AIR 1924 All 202=21 A L J 847=L R 4 A 237 (Cr) =81 I C 598=25 Cr L J 950.

——S. 109 (a) and (b) — Giving false name and delivery of letters inciting crime—Security for good behaviour.

A person giving a false name and delivering secretly letters containing an incitement to commit crime or demanding money for the means therefor falls within S. 109 (a) of the Code and should in the interest of public peace be called upon to give security for good behaviour. (Holmwood and Sharfuddin JJ.) Preo Nath Datta v. Emperor.

AIR 1914 Cal 585=23 I C 207=15 Cr L J 255.

13. Who has no ostensible means of subsistence—cl. (b)

——S. 109 (b).

The mere fact that a man has no source of livelihood will not be sufficient to demand security from him as there are many persons who have no fixed source of livelihood and depend on alms. But if a man does nothing and yet lives in affluent circumstances and there is reason to believe that he lives on the proceeds of theft or dacoity, he can be called upon to give security for good behaviour. (Radke Addl. J. C.) Jagannath v. State.

AIR 1953 Bhopal 12=1953 Cr L J 698.

——The fact that a man does not work or that he was convicted previously for bad livelihood does not justify a Magistrate, without being satisfied from the evidence that since his release he has no ostensible means of livelihood, to order him to furnish securities for good behaviour. (Cuming and Mukerji JJ.) Sheikh Piru v. Emperor.

AIR 1925 Cal 616 = 86 I C 665 = 41 C L J 142=26 Cr L J 842.

——Ss. 109 and 113 — Good behaviour — "Ostensible means of living"—Meaning of.

The mere fact that a person lives by means of a certain game (i. e.,) ring game, does not justify the conclusion that he has no ostensible means of subsistence if the game itself can be honestly conducted. (Coxe and Chatterjee JJ.) Bengali Shah v. Emperor.

40 Cal 702 = 17 C W N 883 = 20 I C 612=14 Cr L J 452.

——Ss. 109, cl. (b)—Object of.

The object of the last part of S. 109 is to enable Magistrates to take action against suspicious stranger lurking within their jurisdiction, so the section cannot be used against a son residing temporarily in his father's house and the father who is a man of substance cannot be said to be without means of subsistence. (Holmwood and Sharfuddin JJ.) Satish Chandra v. Emperor.

39 Cal 456=16 C W N 499 = 15 C L J 396 = 13 I C 913=13 Cr L J 161.

14. Who cannot give satisfactory account of himself—cl. (b)

——S. 109 (b)—Person spending leisure time in manner giving rise to grave suspicion.

It is obviously true that the second part of cl. (b) does not justify broadly calling upon any person to satisfactorily account for how he spends his leisure time, but if there is definite evidence that he has been caught spending a portion of his leisure time in a manner giving rise to grave suspicion and he does not give satisfactory account of the incident, cl. (b) would apply. The giving of satisfactory account has reference to its circumstances in which he was seen. Unless the circumstances give rise to grave suspicion no action can be taken. When a man is called upon to give satisfactory account of himself, the implication necessarily follows that it is not only the general account of himself but an account of himself in relation to the circumstances in which he is called upon to give such an account. (Radke Addl. J. C.) Jagannath v. State.

AIR 1953 Bhopal 12=1953 Cr L J 698.

——S. 109 (b) — "Give a satisfactory account of himself" —Meaning of.

The words "give a satisfactory account of himself" cannot be given the meaning "explain what he was doing" or "explain his conduct" at any particular time or place. If a man is unable to explain his course of conduct as distinct from failure to explain a momentary behaviour, he may come under cl. (b) but a man's failure to explain his presence does not bring him within the section. (Harnam Singh J.) Kartar Kaur v. Crown.

AIR 1951 Punj 422=52 Cr L J 939.

——S. 109 (b) — Satisfactory account must be rendered to Magistrate — Magistrate not asking any question — Person cannot be bound under this clause.

The section contemplates an account to Magistrate and not an account to a police officer. Where, therefore, the opposite party was not at all questioned by the Magistrate on the point, it could not be held that the opposite party was unable to give a satisfactory account of himself, as required by the section and for that reason he

CRIMINAL P. C. (V of 1898), S. 109—14. Who cannot give satisfactory account of himself—Cl. (b)

could be bound over on this ground. (Seth J.) Rex v. Ram Dayal.

AIR 1950 All 134=ILR (1950) All 935=1949 A L J 413=51 Cr LJ 436.

——S. 109 (b) — General conduct or livelihood is referred to — Suspicious conduct on particular occasion is not sufficient — It can be considered merely with evidence of general unsatisfactory conduct.

The last words of S. 109 (b) refer to the general conduct or livelihood of a man. No action can be taken by the Police under the words of S. 109 (b) "or who cannot give a satisfactory account of himself" on the strength of suspicious conduct on a particular occasion. Either the man has committed a substantive offence or he has not. If he has not, no action can be taken against him. He can only be ordered to give security under these words of S. 109 (b), if he is unable to give a satisfactory account of himself which is entirely different from being unable to give satisfactory explanation of his conduct on a particular occasion. Such unsatisfactory conduct can only be taken into consideration along with evidence about general unsatisfactory conduct or livelihood. (Plowden J.) Abdul Latif v. Emperor.

AIR 1943 All 368 = 1943 A L J 483 = 16 R A 174= 1943 A W R 255 (2) = ILR (1943) All 818 = 209 I C 563=45 Cr L J 157.

——Where the accused persons give correct names and addresses when questioned by the police, the mere fact that they did not give satisfactory account of what they were doing at the time of arrest cannot justify action under S. 109 : AIR 1925 Cal 616, Ref. (Pearson and Patterson JJ.) Gobra Badia v. Emperor.

AIR 1929 Cal 729=122 I C 295=50 C L J 181=1929 Cr C 365=31 Cr L J 408.

——Give a satisfactory account.

Per Full Bench. — If the words "give a satisfactory account of himself" are given the meaning "explain what he was doing" or "explain his conduct" at any particular time or place it would make the scope of S. 109 (b) too wide. The Legislature did not contemplate such an extension of its scope. The expression is somewhat akin to the other expression used in the same clause, namely "who has no ostensible means of subsistence." If a man is unable to explain his course of conduct, as distinct from failure to explain a momentary behaviour, he may very well come under the clause, but a man's failure to explain his presence does not bring him within the section : 8 A L J 1097; 17 A L J 432; and 17 A L J 891, Rel. on. Boys and Banerji JJ. contra. (Sulaiman A.C.J., Boys, Banerji, Kendal and Weir JJ.) Emperor v. Phuchai.

AIR 1929 All 33=113 I C 417=50 All 909=26 A L J 1257=9 L R A Cr 149 = 10 A I Cr R 531 = 30 Cr L J 145 (FB).

——"Satisfactory account".

The words "satisfactory account" as used in S. 109 mean satisfactory in accordance with the known facts that are consistent with the surrounding circumstances. (Walsh and Banerji JJ.) Emperor v. Himayatullah,

A I R 1927 All 592=102 I C 503=49 All 844=8 L R A Cr 106=25 A L J 679=8 A I Cr R 102=28 CrLJ 567.

——Satisfactory account.

The whole object of the latter part of cl. (b) is to enable the Magistrate to take action against suspicious strangers lurking within their jurisdiction. The expression "give a satisfactory account of himself" does not mean that the person should satisfy the Magistrate how he spends his time, but it means that he has satisfactorily accounted for his presence within the limits of the Magis-

CRIMINAL P. C. (V of 1898), S. 109—14. Who cannot give satisfactory account of himself—Cl. (b)

trate's jurisdiction. It means that if a person is present within such limits or is present at a place within such limits, to which place he does not belong, and there are circumstances justifying a suspicion that he is there not for an innocent purpose, he has got to explain his presence.

Where the accused's explanation was that he came to the city in question about a month and a half before and that he worked as a cooly but had no fixed abode.

Held, that if true it was a satisfactory explanation as to his presence and the accused must be taken to have given a satisfactory account of himself. A finding that the accused has no work and no place to live in did not mean that the accused had not come to the city as he stated to work as a cooly or that he did not work as such at any time within the period, but was in the city for some ulterior object. (Cuming and Mukerji JJ.) Sheikh Piru v. Emperor,

A I R 1925 Cal 616=86 I C 666=41 C L J 142=26 Cr L J 842.

——S. 109 (b)—Satisfactory account of presence—Accused living within jurisdiction of.

Certain persons were arrested under suspicious circumstances of whom one was a resident within the jurisdiction of the Magistrate trying the case. He was called upon to furnish security as he could not give a satisfactory account of his presence at the spot. Held, that the order was not justified. (Piggott J.) Laltu v. Emperor,

AIR 1919 All 369=17 A L J 891=52 I C 60=20 Cr L J 572.

——Ss. 109 (b) and 110 (c)—Person unable to give account of himself—Association with political conspirator.

Where a person who cannot give a satisfactory account of himself is found in the house of another in another district who is suspected to be a dangerous character and a political conspirator, a Magistrate is justified in passing an order under S. 109 (b) to give an account of himself. S. 109 is not restricted to vagrants but applies also to persons unable to give a satisfactory account of themselves: 13 I. C. 913, referred to. (Holmwood and Sharfuddin JJ.) Narendra Mohan Ghose v. Emperor,

14 I C 431=13 Cr L J 239 (Cal).

——"Give a satisfactory account of himself," meaning of.

A peon in the employ of a Municipality, whose occupation and place of residence are well known but who is said to "prowl about at night, associate with scoundrels, bolt from the place and be armed with and use a lathi," cannot be proceeded against under S. 109 of the Code. The words "give a satisfactory account of himself" do not mean that a person spends his time and leisure hours in a satisfactory manner. (Chamier J.) Sharif Ahmad v. King-Emperor,

8 A L J 1097=12 Ind Cas 304=12 Cr L J 536.

—S. 110.

SYNOPSIS

1. Validity of section 110.
2. Scope and object of section 110.
3. Power of police officer to conduct proceeding.
4. Proceedings under Sections 107 and 110.
5. Proceedings under Sections 108 and 110.
6. Proceedings under Sections 109 and 110.
7. Proceedings under Sections 110 and 145.
8. Section 110 and Penal Code, S. 401.
9. Section 110 and Criminal Tribes Act, 1924.
10. "Receives information".
11. Notice embodying substance of information.

See also under S. 112.

CRIMINAL P. C. (V of 1898), S. 110

12. Local limits of jurisdiction.
    (a) Interpretation.
    (b) Permanent residence.
    (c) Person in jail.
    (d) Person arrested outside jurisdiction.
13. Competency of Magistrate.
14. Bail.
15. Cl. (a) —By habit thief, etc.
16. Dacoits and gang of dacoits.
17. Cl. (b)—Receiver of stolen property.
18. Cl. (c)—Protects or harbours.
19. Cl. (d)—"Habitually commits", etc.
20. Cl. (e)—Breach of the peace.
21. Cl. (f)—Desperate and dangerous character.
    (a) Meaning of.
    (b) Illustrations.
    (c) Proof.
22. Evidence
    (a) General principles.
    (b) Admissibility of evidence.
    (c) Corroboration.
    (d) Duty of prosecution.
    (e) Evidence equally balanced.
    (f) Habit.
    (g) Insufficient.
    (h) Personal knowledge of Magistrate.
    (i) Police record.
    (j) Suspicion.
    (k) Weight and value.
    (l) Witnesses.
    (m) Vague.
23. Evidence of general repute — See also under S. 117.
    (a) Admissibility.
    (b) Duty of Court.
    (c) General repute.
    (d) Quantum.
    (e) Reputation.
    (f) Rumour.
    (g) Suspected and named.
    (h) Witnesses.
24. Evidence of previous conviction.
25. Demand of security from person previously convicted.
26. Proceeding under S. 110 started after acquittal or discharge.
27. Joint enquiry and trial—See also under S. 117.
28. Interim security—See S. 117 (3).
29. Demand of fresh security — See also under S. 125.
30. Terms of security—See S. 118.
31. Amount of the bond.
32. Failure to furnish security—Effect—See also under S. 123.

CRIMINAL P. C. (V of 1898), S. 110

33. Period of security—See also under S. 118.
34. Surety—See also under Ss. 122 and 514.
    (a) Enquiry.
    (b) Personal security.
    (c) Qualifications.
    (d) Rejection.
    (e) Liability.
35. Practice and procedure.
36. Arrest and detention.
37. Transfer of proceeding.
38. Effect of consent to give security.
39. Fresh proceedings.
40. Applicability of other sections.
41. Breach of the bond—See also under S. 121.
42. Suit for malicious prosecution — See also under S. 117.
43. Appeal—See also under S. 406.
44. Revision—See also under S. 118.
    (a) Powers of High Court.
    (b) Calling for record.
    (c) Weighing of evidence.
    (d) Interference.
    (e) No interference.

1. Validity of S. 110.

——Ss. 110, 118 and 123—Order under—Applicability of Art. 22, Constitution of India — (Constitution of India, Art. 22).

The detention to which the clauses of Art. 22 apply is made otherwise than by an order of a Court. Article 22 has therefore no application to an order made under Ss. 110, 118 and 123, Criminal P. C., and the said sections have not been rendered void by Art. 22. (Malik C. J. and Agarwala J.) Jit Bahadur Singh v. State,

A I R 1953 All 753 = 1953 All L J 438 = 1953 All W R (H C) 429=1953 Cr L J 1759.

2. Scope and object of S. 110.

The object of S. 110 is preventive and not punitive. The section is intended to deal with and control ex-convicts or habitual criminals and dangerous and desperate outlaws and to secure the interest of the community from injury at their hands It is not intended to provide an indirect means of securing conviction in cases where a prosecution for a substantive offence is likely to fail. The section should be used with caution and discretion, otherwise it might become an engine of oppression : A. I. R. 1938 Mad. 35 and A. I. R. 1928 All. 682, Rel. on. (Niyogi C. J.) Emperor v. Vijaidatta,

A I R 1948 Nag 28=1947 N L J 141=229 I C 117= 1947 A W R Sup 44 (2)=I L R (1947) Nag 237=1947 O A Sup 44 (2)=48 Cr L J 252.

——Proceedings under—Nature of.

The proceedings under S. 110 are judicial and not executive and the Court is expected to follow the procedure strictly : A. I. R. 1919 Mad. 633, Rel. on.

When a person is sought to be proceeded against under S. 110, it must be made clear to him as to which particular sub-section he is charged under. Mere assertion that a person is of criminal tendencies or of tyrannical habits is not enough. It must be specifically stated under

CRIMINAL P. C. (V of 1898), S. 110 — 2. Scope and object of S. 110

which of the categories specified in S. 110 the accused is alleged to come : A. I. R. 1926 Lah. 45, Rel. on. (Niyogi C. J.) Emperor v. Vijaidatta,

A I R 1948 Nag 28=1947 N L J 141=229 I C 117=1947 A W R Sup 44 (2)=I L R (1947) Nag 237=1947 O A Sup 44 (2)=48 Cr L J 252.

——Scope — Section, if intended to deal only with strangers to locality in which offences are committed—Proof of previous convictions, if necessary — Evidence of reputation requires material corroboration.

Section 110, Criminal P. C., is intended to deal with persons who cannot readily be brought under the ordinary law and who for special reasons could not be convicted under the Penal Code, in respect of the offences said to have been committed by them. There is nothing in the wording of S. 110, or of any other section of the Code that leads to the inference that S. 110 can only be used where the parties are strangers to the locality in which the offences are committed. If the persons or the acts which they commit are such as to make it difficult to deal with them under the ordinary provisions of law, then S. 110 can be used. Before a person can be bound over under this or similar sections, it is not necessary that a certain number of previous convictions should have been proved, if the evidence that a person is a habitual robber or house-breaker or thief can be proved otherwise. If there are no previous convictions, the quantum of proof necessary would naturally be greater. Evidence of reputation is the weakest form of evidence and requires material corroboration by other evidence proving the habits of the persons against whom the Police are proceeding. (Horwill J.) In re Shanmugham Asari,

A I R 1938 Mad 482=1938 M W N 93 = 47 M L W 196=(1938) 1 M L J 178=10 R M 777 = 175 I C 417=39 Cr L J 588.

——Section if can be used against undisciplined people.

Section 110 is intended to protect the public against irresponsible criminal maniacs and desperadoes and the weapon of public opinion is the only one adapted to the suppression of undisciplined local dictators. Section 110, Criminal P. C., is obviously not intended for use against merely undisciplined people such as local bosses and faction leaders to clip their wings, to deplete their resources by an expensive inquiry, to humble their pride by treating them as criminal mad men, to advertise publicly their high-handed behaviour. To apply the section to such as these is undoubtedly to abuse it. (Newsam J.) In re Rathinam Pillai,

A I R 1938 Mad 35 = 1937 M W N 1065 = 1937-2 M L J 749=46 M L W 858=10 R M 498=172 I C 866 =39 Cr L J 230.

——Ss. 122 and 123—It cannot be overlooked that the question whether it is necessary, in the interest of keeping the peace, to take security from a person, is essentially a question which concerns the Magistrate and the local Police. The power to demand security from suspected persons is a power that is almost as much of an executive as of a judicial nature. (Patterson and Guha JJ.) Parbati Charan v. Emperor,

A I R 1934 Cal 482=6 R C 593=61 Cal 588=149 I C 460=35 Cr L J 952.

——Whether can be used to punish accused persons for offences committed.

Section 110, Criminal P. C., is one of the preventive sections of the Code and is not intended to be used to punish accused persons for offences that have been committed but to prevent them from committing offences

CRIMINAL P. C. (V of 1898), S. 110 — 2. Scope and object of S. 110

which they are, by their nature or habit, likely to commit. (Kendall J.) Jafar Husain v. Emperor,

A I R 1933 All 859=1933 A L J 883 = 6 R A 534=147 I C 551=35 Cr L J 435.

——Reason to suppose accused guilty—Whether sufficient for accused to be proceeded against under S. 110 — Solitary confinement on failure to provide security—Legality of—Possession of revolutionary literature.

The mere fact that there may be some reason to suppose that the accused have committed some substantive offence under the Penal Code, is no obstacle for the institution of proceedings under S. 110, Criminal P. C.

Persons who have been called on to provide security and have failed to do so and have been confined in jail in consequence, are not to be kept in solitary confinement unless they have become liable to it for some infringement of the jail rules.

The mere possession of books dealing with revolution or with a political party may not be an offence in any sense, but the fact that these books were sent to the possessor in continuation of very inflammatory conversation with the accused shows that the latter was trying to corrupt the former and turn him into a revolutionary. The mere fact that some suspicious books and pictures and four leaden bullets were found in a person's house and a box with some air pistol slugs, is not sufficient to show that he entertained revolutionary ideas and was preparing himself for revolutionary crimes. (Kendall J.) Sundar Lal v. Emperor,

A I R 1933 All 676=1933 A L J 777 = 6 R A 375=146 I C 900=35 Cr L J 218.

——Specific offence.

When charge in the notice under S. 110 amounts to definite and specific offence, preventive sections could not be used : A. I. R. 1925 All. 250, Foll.; A. I. R. 1925 All. 694, Ref. (Young J.) Ram Rup Bhar v. Emperor,

A I R 1929 All 813=119 I C 571=10 L R A Cr 127=1929 A L J 981=12 A I Cr R 208=1929 Cr C 449 = 30 Cr L J 1086.

[Overruled in A I R 1930 All 274=31 Cr L J 627.]

——Considerations as to vigilance of police.

Though the Magistrate should take all precautions possible before ordering security to be furnished, if the evidence actually taken is sufficient to prove that the accused is a fit person to be placed on security, that is all that the law requires. The Magistrate should not consider whether the police and village authorities could not ensure good behaviour on the part of the accused if they exerted themselves more in executing their duties. (Carr and Godfrey JJ.) Emperor v. Po Yin,

A I R 1925 Rang 174=85 I C 368 = 4 Bur L J 6=2 Rang 686=26 Cr L J 528.

——Applicability and scope of—Powers when to be exercised.

The powers under S. 110, Criminal P. C. should be exercised only where the evidence is very clear and precise. It was never intended by the Legislature to provide a means of punishment by enactment of S. 110. (Abdul Raoof J.) Jagat Singh v. The Crown,

A I R 1921 Lah 179=2 Lah L J 237=68 I C 43=23 Cr L J 507.

——Applicability and scope—Badmashi sections are not intended to help Police to detain persons against whom a definite charge has failed.

Every High Court always looks with grave suspicion on cases in which proceedings are started against an accused, because the Police have failed to procure evidence against

CRIMINAL P. C. (V of 1898), S. 110—2. Scope and object of S. 110

him on a charge of substantive offence. The Badmashi sections were not intended for furnishing the police with the means of detaining persons against whom a definite charge has been made but has broken down. (Daniels J. C.) Bhagvat Prasad v. Emperor,

A I R 1922 Oudh 26=9 O L J 57 = 65 I C 551 = 24 O C 317=23 Cr L J 119.

——Applicability and scope — Sufficient evidence not forthcoming.

Proceedings under S. 110, do not enable the Police to send a person to Jail where sufficient evidence is not produced to prosecute him for any specific offence. (Abdul Raoof J.) Harnam Das v. Emperor,

60 I C 669 (Lah)=22 Cr L J 269.

——Evidence—General repute—Habitually bringing false cases.

Section 110 does not apply to a person who has the reputation of habitually bringing false claims in Civil Courts. In proceeding against such a person although evidence of general repute is admissible, it cannot be allowed to override the findings arrived at by the Civil Courts after trial. (Mitra A. J. C.) Bapujee v. Emperor,

A I R 1917 Nag 32=47 I C 81=19 Cr L J 885.

——Ss. 110 and 439—Object—Bona fide—Interference by the Court—Police Report—Value of—Gazetteer—Extract from evidence.

The object of S. 110 is not punitive but preventive, to afford protection not only where the security of persons is menaced by crimes, but also where the safety of property is menaced. It is necessary that the power given under S. 110 should be exercised. with caution and discretion. The section was never intended to be applied to coerce landlords to adopt methods of managing their estates. A police report is not in every case an answer to the application that the proceedings under S. 110 are not bona fide. A High Court is competent and bound to interfere with the proceedings at the initial stage if it is satisfied that they are not bona fide and that their continuance would mean an abuse of the statutory provisions. (Mookerjee, Carnduff and Imam, JJ.) Rajendra Narayan Singh v. Emperor,

17 C W N 238 = 16 C L J 467 = 18 I C 149=14 Cr L J 5.

——Demanding security from a person trying to reform himself.

S. 110 is preventive, and not punitive. Its object is to protect society against persons who are so likely to commit offences that it is not advisable to leave them at large unchecked. It is very undesirable to proceed under that section against a person who is trying to reform himself and to live an honest life. No security should therefore be demanded from an accused person where it is found that he is trying to reform himself and has for a fortnight led an honest life, on the ground that there was no guarantee that he had mended his ways. (Sundara Aiyar J.) In re Billa Appayya,

10 Ind Cas 624=10 M L T 333=12 Cr L J 328.

——Ss. 109 and 110, Applicability.

It is only when the ordinary means for detection and prevention of crime and ensuring good behaviour have been adopted and failed that resort to the special means provided by Ss. 109 and 110 is justifiable. The proceedings are not meant to be used as a means of getting every suspected habitual offender and village loafer confined in jail and saving the troubles to the police. (Bigge J.) Nga Po Aung v. Emperor,

13 Bur L R 91=5 Cr L J 377.

CRIMINAL P. C. (V of 1898), S. 110. 2—Scope and object of S. 110

——Person proceeded against if can be regarded as accused person.

A person against whom proceedings are taken under S. 110 may be considered to be in the position of an accused person from the time that he appears before the Court till the conclusion of the proceedings; and, if not called upon to furnish security, he may be regarded as discharged. (William Clark C. J. and Anderson J.) Manna v. Emperor,

24 P R 1903 Cr=20 P L R 1904=1 Cr L J 96.

[Overruled in 12 Cr L J 232 (FB)]

3. Power of police officer to conduct proceeding.

——Ss. 110 and 495 (1), (4) — Inquiry under S. 110 — Whether S. 495 (1) or (4) applies — Discretion of Magistrate.

A person in respect of whom an inquiry is being made under S. 110, Criminal P. C., is not being prosecuted for any offence. Hence sub-s. (4) of S. 495 does not apply in the case of an inquiry under S. 110, but on the other hand, sub-s. (1) of S. 495 does apply, since the Magistrate is enquiring into a case. Under that sub-section, the Magistrate has a discretion whether to allow the Police Sub-Inspector to conduct the prosecution or not, and he is entitled to exercise his discretion by analogy to sub-s. (4). It is generally undesirable for the Police Sub-Inspector, who has been inquiring into a case under S. 110, to conduct such case. (Beaumont C. J. and Wassoodew J.) Emperor Anandya Sambhya,

A I R 1940 Bom 416=42 Bom L R 909=13 R B 194 =191 I C 334=42 Cr L J 150.

4. Proceedings under Sections 107 and 110.

——Under S. 107, a Court is entitled to act upon a solemn and free consent amounting to a plea of guilty given before it by the person summoned. In such cases the person summoned might waive the formal production of evidence. A. I. R. 1924 All. 269, Appr.

Obiter—Under S. 110 the procedure is somewhat different, but the principles applicable are not necessarily different. 34 Mad. 139 and 54 I. C. 784, Cons. (Walsh and Banerji JJ.) Emperor v. Kishan Narain.

A I R 1928 All 270=112 I C 774=9 L R A Cr 39=9 A I Cr R 291=26 A L J 312=50 All 599=30 Cr L J 6.

——Enquiry.

In principle there is no distinction between trials under S. 107 and trials under S. 110. In either case it is the duty of the Magistrate to hold an enquiry of the offence and not to bind an accused person merely because he agrees to furnish security. 37 All. 30; 54 I. C. 411 and 54 I. C. 784, Foll. (Sulaiman J.) Ramcharan v. Emperor,

A I R 1926 All 614=92 I C 882=24 A L J 317 = 7 L R A Cr 54=27 Cr L J 370.

——Ss. 110, 107 and 537 — Procedure—Summons under S. 107—Proceedings under S. 110—Irregularity.

Where after issuing summons under S. 107, Criminal P. C. the Magistrate took proceedings under S. 110 but evidence was recorded at length and the parties were not prejudiced, held the irregularity in procedure was cured by S. 537. (Miller J.) Sangamma Naick v. Emperor,

18 I C 401=14 Cr L J 65 (Mad).

——Order under S. 107—When passed—See ibid, 107,

1 Cr L J 710 (All).

CRIMINAL P. C. (V of 1898), S. 110—11. Notice embodying substance of information

not be said to be the basis of an order under this preventive section. (Young J.) Ram Rup Bhar v. Emperor,

AIR 1929 All 813=119 I C 571=10 L R A Cr 127=1929 A L J 981=12 A I Cr R 208=1929 Cr C 449 = 30 Cr L J 1086.

——A joint notice to show cause to more than one person is undesirable. (Boys and Sen JJ.) Emperor v. Ram Lal,

A I R 1929 All 273 = 116 I C 25=51 All 663 = 1929 A L J 361=10 L R A Cr 66=11 A I Cr R 486 = 30 Cr L J 562.

——What the notice should contain—Meagre information.

It is not necessary to state more than will show the person against whom proceedings are taken the particular sub-section on which the Court proposes to proceed against him. The order need not show the nature of the case against him. If, for example, a Magistrate receives information from a police-officer, that a certain person is a habitual thief, the Magistrate has a right to proceed to the next stage and issue a notice to him. He may be unwise in taking such action without carefully checking that information; but he has a legal right to take such an action; and if his information is meagre, the substance of his information would be meagre. Nevertheless, it is sufficient for him to state it to make an order under S. 112 legal. If he has taken action on insufficient information, the proceedings may, on the evidence, be found to have been without justification; no ill-results will follow from the adoption of this view, and irregularity, if any, is curable under S. 537. A I R 1926 All 759 and 42 All 646, Diss from. (Stuart C. J. and Wazir Hasan J.) Emperor v. Ram Ghulam,

A I R 1927 Oudh 306 = 103 I C 792=2 Luck 157=8 A I Cr R 394=6 O W N 1202=28 Cr L J 744.

——First order and finding.

Magistrates ought to do their best to see that the first order does actually contain the substance of the information received by them, no less and no more. The next thing is that the finding on enquiry should conform to the first order which in its turn should conform to the information received by the Magistrate. Deviation from this procedure is likely to gravely prejudice the position of the accused and the order passed against him calling on him to furnish security will be set aside if such prejudice has occurred. (Kennedy J. C. and Rupchand Bilaram A. J. C.) Sultan Khan v. Emperor,

A I R 1925 Sind 236=86 I C 351=19 S L R 332=26 Cr L J 767.

——Essentials of.

Merely informing an accused person that he was suspected to be a habitual thief is not sufficient notice under S. 112 of the Code. There must be something in the nature of an indictment or charge containing substantial particulars indicating the grounds upon which the police have given information to the Magistrate. Accused were arrested as suspected habitual thieves. The Magistrate fixed a date for the production of evidence with the object of issuing a notice under S. 112. On the date fixed, after hearing prosecution evidence, he at once called upon the accused to enter upon their defence to a charge under S. 110, held, the procedure was bad and the proceedings must be set aside. It is only after the Magistrate has made the order required by S. 112 which is really a notice in writing that the actual hearing under S. 110 can by law take place at all. (Walsh J.) Raj Bansi v. Emperor,

AIR 1920 All 268=60 I C 420=42 All 646=18 A L J 673=L R 1 All 182 (Cr)=22 Cr L J 228.

CRIMINAL P. C. (V of 1898), S. 110—11. Notice embodying substance of information

——Ss. 110 and 439 — Notice — Omission of detail—No surprise—No irregularity.

If in a notice to an accused person under S. 110, Criminal P. C., it is not possible to give detailed information as to the nature of the evidence for the prosecution; the omission to do so is not an irregularity sufficient to validate the proceedings, especially if the accused had cross-examined at great length the witnesses of the prosecution and had not been taken by surprise. (Mullick J.) Dhora Ahir v. Emperor,

AIR 1919 Pat 337=51 I C 260=20 Cr L J 436.

——Notice—Form and contents of.

Notice issued under S. 110 should sufficiently indicate the time and place of the acts charged and give sufficient details which would enable the accused to know what he is to meet though a list of the witnesses need not be given. They should not merely reproduce the clauses of the section. But if the defect has not prejudiced the accused, the High Court will not quash the proceedings in revision. (Kumaraswami Sastri J.) Kripa Sindhu Naiko v. Emperor,

AIR 1919 Mad 633=8 L W 461=(1918) M W N 751 47 I C 277=19 Cr L J 905.

——Procedure—Charge to be communicated to accused—Evidence of—Reputation, nature of — Sureties, qualification of.

An order under S. 110 should not be made unless the charge which the accused has to meet is communicated to him. When it is sought to prove the reputation of a person, the evidence which is required is the evidence of respectable persons who are acquainted with the person on his trial and who should ordinarily not be officials. An order under S. 110 framed without reasonable grounds or with the express intention of preventing the accused from furnishing security is ultra vires. (Saunders, A. J. C.) Nga Hein v. Emperor,

AIR 1915 U B 13=29 I C 825=8 Bur L T 53=16 Cr L J 553.

——Notice which cannot constitute the basis for proceedings under the section.

A notice which omits to mention as required by S. 112 the substance of the information received and purports to issue under the old Code of 1882 and requires security in excess of what is mentioned in the original order and which has not been served personally on the person to whom it is issued is not a valid notice in law and therefore cannot be the basis of a proceeding under S. 110. (Shah Din J.) Bahadoor Singh v. Crown.

6 Ind Cas 626 = 1910 P W R 18 (Cr) = 11 Cr L J 388.

——Ss. 112, 107 and 110—Notice to proceed under S. 110 (e) — Order under S. 107 without issuing fresh notice—Legality — See Criminal P. C. (1898), S. 112,

5 Cr L J 397 (Mad).

12. Local limits of jurisdiction

(a) Interpretation.
(b) Permanent residence.
(c) Person in jail.
(d) Person arrested outside jurisdiction.

12. Local limits of jurisdiction—(a) Interpretation.

——Person proceeded against temporarily leaving jurisdiction of Magistrate—Magistrate cannot proceed against him under S. 110.

CRIMINAL P. C. (V of 1898), S. 110 — 12. Local limits of jurisdiction — (a) Interpretation

Only a Sub-divisional Magistrate within whose jurisdiction the person complained against is living at the date on which the complaint is made to such Magistrate can proceed against him under S. 110, Criminal P. C. It is immaterial that the person against whom such complaint is made has in fact been carrying on his activities within the jurisdiction of such Magistrate. If he has left the jurisdiction of such Magistrate even temporarily and is living outside the limits of such jurisdiction, the Magistrate has no jurisdiction, to try him under S. 110. The object of S. 110, is preventive and if an accused person has gone outside the jurisdiction of a Magistrate, there is no ground left for any proceedings under that section being taken against him by such Magistrate. If he returns to the jurisdiction of the Magistrate and starts his activities afresh, there will be ample time for proceedings to be taken against him under that section : 17 I C 540 (Bom) ; AIR 1940 Bom 204 ; A I R 1932 All 162 and A I R 1931 Cal 65, Rel. on; AIR 1922 All 86 and 31 Cal 419, Disting (Harish Chandra J.) Hanwant v. Emperor,

AIR 1948 All 185=1947 A L J 624=1948 A W R HC 9=1948 O A H C 9=ILR 1948 All 139=49 Cr L J 194.

——Residence within local limits, if necessary.

Section 110, Criminal P. C., does not say that the person must be residing within the local limits of the jurisdiction of the Magistrate concerned. There is no justification for interpreting the words "within the local limits" as meaning "residing within the local limits."

Where the alleged acts of person proceeded against (threats to and intimidation of witnesses) which have led to the proceedings against him under S. 110, Criminal P. C., were acts committed within the jurisdiction of the Sub-Divisional Magistrate of Rohri, and the apprehension of the repetition of such acts also related to persons within the jurisdiction of that Sub-Divisional Magistrate :

Held, that the Sub-Divisional Magistrate of Rohri could proceed against the person under S. 110. (Lobo and Tyabji JJ.), Emperor v. Sardar Khan,

AIR 1944 Sind 106=I L R (1943) Kar 514 = 16 R S 246=212 I C 114=45 Cr L J 532.

——S. 110, refers merely to place where person proceeded against was, when information was received.

A Magistrate, in order to have jurisdiction, must receive information that the person to be dealt with is within the limits of his jurisdiction. Section 110, Criminal P.C., cannot grammatically be read as referring to the place where the acts on which an order is to be based were committed. The words of the section do not refer to the place where the person proceeded against became a robber or a receiver of stolen property and so forth; it refers merely to the place where he was when the information was received. When it comes to proving the truth of the information no doubt the words of the section must be construed in a common sense manner, and a person can be said to be within the jurisdiction of a Magistrate if he was ordinarily within the jurisdiction of the Magistrate. The mere fact that on the particular date on which the information was received he had gone temporarily out of the jurisdiction would not prevent the section from applying. (Beaumont C. J. and Sen J.), In re Hanmantrao Annarao,

AIR 1940 Bom 204=42 Bom L R 353 = 13 R B 36= ILR (1940) Bom 397=188 I C 830=41 Cr L J 686.

——Residence within jurisdiction of person bound down under — Whether necessary to give jurisdiction to Magistrate.

The words of S. 110, Criminal P. C., do not mention residence within the jurisdiction of the Magistrate but are "any person within the local limits of the Magistrate's jurisdiction." Consequently, where a person who is bound down under S. 110 is within the jurisdiction of the Magistrate this is sufficient to give the Magistrate jurisdiction over him. The residence of the person is immaterial. (Coldstream J.) Ghulam Hussain v. Emperor,

165 I C 648 (649) = 17 Lah 453 = 38 P L R 905 = 9 R L 274=38 Cr L J 144 (2).

——To start proceedings under S. 110, on receipt of information or on a petition received through post is a non-judicial act and not a delegation of powers. (Lakshmana Rao J.) Abdul Karim Sahib v. Emperor,

1934 M W N 695,

——Ss. 110, 112 and 115—Jurisdiction — Persons outside local jurisdiction — Police report — Order under S. 112 not accompanying warrant — Irregularity — General repute.

It is legal for a Magistrate in charge of a Sub-division of a district to take proceedings under S. 110 of the Criminal P. C. upon a police report in respect of persons residing outside his local jurisdiction, irrespective of how the police report came before him. Where a copy of the order made under S. 112 of the Criminal P. C. does not accompany the warrant as required by S. 115 but the order is read over to the person affected thereby and there is nothing to show that there was any prejudice, the omission to attach a copy of the order to the warrant is a mere irregularity not fatal to the trial. To establish a general repute for the purposes of S. 110 of the Criminal P. C., the evidence of the investigating Police Officer is inadmissible and irrelevant. (Mullick and Sultan Ahmad JJ.) Rameshwar Dusadh v. Emperor,

A I R 1920 Pat 25 = 1 Pat L T 632 = 55 I C 593 = 21 Cr L J 321.

——Jurisdiction — Person not residing but found within the jurisdiction—Initiation of proceedings.

It is enough if a person proceeded against under S. 110 is found within the local limits of the Magistrate taking action under the section. He need not reside or be arrested within such limits : 3 Cal C J 195 : 43 Cal 153 ; 26 Mad 96 ; 39 All 139, Foll. (Richardson and Huda JJ.) Lakhi Narain Das v. Emperor,

A I R 1919 Cal 460 = 23 C W N 100 = 49 I C 165= 30 C L J 173=20 Cr L J 133.

——Ss. 110, 117, 528 and 530—Bad livelihood —Accused living out of the jurisdiction of Magistrate — Issue of notice — Judicial or executive act — Initiation of proceedings.

The issue of notice under S. 110 of the Criminal P. C. is not a formal matter but it is a judicial act to be exercised after a due consideration of the materials placed before the Magistrate. A Magistrate has no jurisdiction to issue the notice under S. 110 of the Criminal P. C. unless the person to be bound over resides within the limits of his jurisdiction, 41 Mad 246, Foll. A Magistrate to whom the information referred to in S. 110 is given by the Police cannot be said to have initiated the proceedings until he issues notice to the persons charged to show cause why he should not be proceeded against. Where a District Magistrate to whom information was given by the Police merely passed it on to the Head-Quarters Deputy Magistrate who had no jurisdiction over the place where the persons informed against resided and the Deputy Magistrate thereupon drew up proceedings against them the Deputy Magistrate cannot be said to have initiated proceedings and then transferred the case to the other. The Sub-Divisional Magistrate had no jurisdiction to issue the notice and try

CRIMINAL P. C. (V of 1898), S. 110—12. Local limits of jurisdiction—(a) Interpretation

the case and that the proceedings were void. (Kumaraswamy Sastry J.) Kripa Sindu Naiko v. Emperor,

AIR 1919 Mad 633 = 8 L W 461= 47 I C 277=1918 M W N 751=19 Cr L J 905.

——Jurisdiction—"Within the local limits" Meaning of.

The words "within the local limits of his jurisdiction" are not equivalent to "residing within the local limits." It is sufficient to give the Magistrate jurisdiction, if the evil habits of the accused were practised and evil reputation acquired within the local limits of his jurisdiction. (Chitty and Chapman JJ.) Emperor v. Durga Halwai

AIR 1916 Cal 707=43 Cal 153=19 C W N 1022= 30 I C 442=16 Cr L J 618.

——Jurisdiction —"Person within local limits.'

The expression "any person within local limits" means any person who is within the local limits at the time the Magistrate takes action. If a narrow meaning is applied and the scope of the section restricted to persons residing within the local limits of the jurisdiction, the object of the section which is to prevent crime would be defeated. (Benson and Boddam JJ.) In re Kora Rangan,

36 Mad 96=23 M L J 535=17 I C 413=13 Cr L J 781.

——Enquiry held outside the local limits of the Magistrate's jurisdiction.

An enquiry, under S. 110, should not be conducted by a Magistrate at a place, which is outside the local limits of his jurisdiction and where he has no power to conduct any proceedings. The person, against whom proceedings are taken under S. 110, must be, at the time when such proceedings are taken, within the local limits of the jurisdiction of the Magistrate taking such proceedings.

Non-compliance with these provisions vitiates the proceedings, as made without jurisdiction, and the order passed must be set aside. (Pargiter and Woodroffe JJ.) Sona Ram, R. Sangma v. King-Emperor,

3 C L J 195=3 Cr L J 246.

12. Local limits of jurisdiction—

(b) Permanent residence.

——Security proceedings — Jurisdiction — 'Within the limits of his jurisdiction', meaning of — Accused not within local limits of jurisdiction on initiation of proceedings, legality of—Onus of proof.

The expression 'within the local limits of his jurisdiction' in S. 110, Cr. P. C., is not used in the sense of 'residing' within the jurisdiction but in the literal and physical sense of being within the territorial limits.

A Magistrate acts illegally in instituting proceedings under S. 110, Cr. P. C., against a person when he is outside the local limits of his jurisdiction. But the burden is on the person bound over to show that he was not within the jurisdiction of the Magistrate when the proceedings were drawn up. (Graham and S. K. Bose, JJ.) Sonardi Biswas v. Emperor,

A I R 1931 Cal 65 (1)=52 C L J 415=35 C W N 255 =129 I C 688=32 Cr L J 425.

——Permanent residence.

There is nothing in S. 110 to support the plea that the person complained against should be a permanent resident within the jurisdiction of the Magistrate in whose Court proceedings are taken. 36 Mad 96, Foll. (Kincaid, J. C.) Ghulam Kadir v. Emperor,

A I R 1927 Sind 59 = 98 I C 109=20 S L R 310=27 Cr L J 1261.

CRIMINAL P. C. (V of 1898), S. 110—12. Local limits of jurisdiction—(b) Permanent residence

——Jurisdiction—Within the local limits, meaning of.

Where proceedings under S. 110, Cr. P. Code, were instituted against a person in the Cantonment Magistrate's Court in the local limits of whose jurisdiction he lived and carried on a career of crime. Held that S. 110 has left the question of permanent residence open and it is not the question of permanent residence but of where the man practises his career of crime that will decide jurisdiction. (Stuart, J.) Bhola v. Emperor,

A I R 1922 All 86 (2)=20 A L J 49=65 I C 438=23 Cr L J 86.

——'Any person within the local limits', meaning of.

The legislature has advisedly adopted the expression "any person within the local limits" to exclude the necessity of proving anything approaching permanent residence, and to leave it in the power of the Magistrate to deal with what are perhaps the most dangerous habitual criminals, who wander from place to place and have no well-known residence, where the Police or the Magistracy could be sure at any time of finding them. (Batty and Pratt, JJ.) Emperor v. Bapoo Yellapa,

9 Bom L R 244=5 Cr L J 249.

——Jurisdiction of Magistrate.

Proceedings can be taken by a Magistrate against a person under S. 110, when such person has a residential house and occasionally resides for the purpose of business within the local limits of the Magistrate's jurisdiction, and when the acts attributed to him are acts done by him while residing at that place. (Ghose and Stephen, JJ.) Kasi Sundar Roy v. Emperor,

31 C 419=1 Cr L J 438.

12. Local limits of jurisdiction—

(c) Person in jail.

——Date of report.

Person proceeded against under S. 110 at Barisal was in a jail in Calcutta on the date of the making of report against him by the police, on which report the inquiry was founded.

Held, that the persons proceeded against being outside the local limits of the jurisdiction of the Magistrate of Barisal he had no jurisdiction to hold the proceedings, (C. C. Ghose and Garlick, JJ.) Satindra Nath Sen v. Emperor,

111 I C 394=48 C L J 143=11 A I Cr R 202=29 Cr L J 842.

——Jurisdiction—Person in local jail: 7 Cr L J 447 (LB), Overruled.

A person in jail is also a person under the jurisdiction of the Magistrate if the jail is in his jurisdiction: 7 Cr L J 447 (LB), Overruled. (Fox, C. J., Robinson and Parlett, JJ.) Emperor v. Nga Saing,

A I R 1916 L B 1 = 9 Bur L T 39 = 32 I C 680=8 L B R 353=17 Cr L J 88.

——"Any person within the local limits of his jurisdiction."

The words of S. 110 'any person within the local limits of his jurisdiction,' are obviously not intended to apply to persons undergoing imprisonment, whether the jail happens to be within the local limits of the Magistrate's jurisdiction or not. (Irwin, J.) King-Emperor v. Po Thaw,

4 L B R 148=7 Cr L J 447.

[Overruled in A I R 1916 L B 1=17 Cr L J 88.]

CRIMINAL P. C. (V of 1898), S. 110

12. Local limits of jurisdiction—
(d) Person arrested outside jurisdiction.

——Jurisdiction—Arrest—Magistrate.

A person residing within the local limits of a Magistrate's jurisdiction can be proceeded against by such Magistrate though he was arrested in another jurisdiction in connection with another proceeding. 9 Bom L R 244 : 35 M 96, Foll.; 37 C 993 : 6 C L J 195, Diss. (Parlett, J.) Emperor v. Nga Po Aung,

A I R 1917 L B 140 = 10 Bur L T 44=8 L B R 378 =35 I C 495=17 Cr L J 319.

13. Competency of Magistrate.

——Jurisdiction—Foundation of.

An order under S. 110 by a Magistrate who when the investigation commenced was a Sub-Divisional Magistrate but had ceased to be so on the date of passing the order is invalid. (Richards, C. J.) Puran v. Emperor,

A I R 1916 All 222=33 I C 317=17 Cr L J 141.

14. Bail.

——Refusal of bail is contrary to the spirit of the provisions of Ch. 8. The object of this Chapter is to prevent a suspect from committing offences and to allay public apprehensions, and that object is sufficiently attained by requiring him to find sureties. (Rupchand Bilaram, A. J. C.) Jatoi v. Emperor,

A I R 1926 Sind 288=96 I C 391=20 S L R 122=27 Cr L J 935.

15. Clause (a)—By habit thief, etc.

——Evidence showing complicity in thefts—Order under S. 110, if proper.

Where in a proceeding under S. 110 of the Cr. P. C., there is evidence showing that the accused had been suspected of complicity in certain thefts and had been mentioned in each case in the reports made in the Police Station at the time of each theft and there is further unrebutted evidence of the residents of the village that he has the general repute of being a burglar and a thief, an order under S. 110 of the Cr. P. C., requiring the accused to execute a bond with sureties to be of good behaviour is a proper order. (Srivastava and Nanavutty, JJ.) Emperor v. Bachchu,

A I R 1936 Oudh 238=1936 O W N 247=8 R O 297 =12 Luck 36=160 I C 1039=37 Cr L J 390.

——Police report that accused are 'reputed' to have been habitually committing theft of electricity.

Where a Police report speaks of certain persons being "reputed" to have been habitually committing theft of electric current, and when the Magistrate repeats the phrase in his notice, what is really meant is that they are "suspected" of stealing the current, and the only reason for not prosecuting them for a definite offence is that the evidence is not sufficient, and S. 110, Criminal P. C., cannot be used on the information referred to in the report. (Kendall J.) Jafar Husain v. Emperor,

AIR 1933 All 859=1933 A L J 883=6 R A 534=147 I C 551=35 Cr L J 435.

——Reputation—Nature and character of.

A witness should not be allowed to state merely that an accused person is a "bad character" if he does not explain more precisely what he means by that expression. But when a witness starts by saying that a person is a "bad character" and immediately follows this up by saying that the person habitually commits theft, then there is no ambiguity about his meaning and his deposition is then relevant and admissible as evidence of general repute. AIR 1928 All 357, Ref. (Ashworth and King JJ.) Emperor v. Kumera,

AIR 1929 All 650 = I R 1930 All 643=125 I C 19= 51 All 275=1929 Cr C 346=31 Cr L J 755.

CRIMINAL P. C. (V of 1898), S. 110—15. Clause (a) —By habit thief, etc.

——Testimony of police officer.

The testimony of police officer that a person is by habit a thief is inadmissible in evidence against a person against whom proceedings are instituted under S. 110 when such evidence is only a matter of opinion and hearsay. This fact, however, is not sufficient to set aside the order passed against him under S. 110 when the latest incident is coupled with two previous convictions on charges of his belonging to, and associated with, a gang of habitual thieves and robbers. 43 Mad 459, Rel. on. (Subhedar A. J. C.) Kondia v. Emperor,

AIR 1930 Nag 148=120 I C 734=1930 Cr C 504=31 Cr L J 165.

——When the charge against the accused is that of being a habitual robber, the facts that the accused gathered bad characters at his house does not go far enough to be in itself relevant. It would be necessary to show that these bad characters were robbers, or were gathered there for the purpose of robbery or theft. (Boys and Banerji JJ.) Budhan v. Emperor,

AIR 1925 All 694=88 I C 362=47 All 733=23 A L J 5.7=6 L R A Cr 129=26 Cr L J 1130.

——Offences—Forgery.

The obtaining of decree by forged documents being neither cheating nor extortion, such habitual offender is not liable under the section. A habitual forger is now liable. Note : Cl. (a) of S. 110 as amended now includes a habitual forger. (Smith J.) Emperor v. Chunni,

AIR 1914 Lah 575=21 P R Cr 1914=27 I C 200=206 P L R 1915=16 Cr L J 136.

——S. 110, Cl. (a) —Accused father and sons—Complicity of each—Case of association — Evidence would be dealt with together.

Where in a bad livelihood case under S. 110 it was established that the accused, who were father and sons, had formed themselves into a gang, and the evidence against them was the same : Held, that it was a clear case of association and that the evidence could rightly be dealt with together and no minute enquiry into the complicity of each of the accused individually was necessary. (Holmwood and Ryves JJ.) Parasulla v. Emperor,

13 C W N 244=4 Ind Cas 10=10 Cr L J 460.

——Scope.

To bring a person under S. 110 his mere association with men of bad character is not sufficient. The association must be to commit theft or dacoity. (Mitra and Fletcher JJ.) Nilkamal Das v. Emperer,

6 C L J 711=6 Cr L J 403.

——Ss. 110 and 439—Security for good behaviour.

The person, who was required security for good behaviour, had been convicted once of the offence of theft. His house was searched on three occasions, but no stolen property was found. There was no suggestion that he protected or harboured thieves, but he was said to have been associated with two or three persons of bad character Held, that no security should have been demanded. (Chitty J.) Kasim Shah v. Crown,

23 P L R 1907=P W R 1906 p 44 Cr=5 Cr L J 24.

CRIMINAL P. C. (V of 1898), S. 110

16. Dacoits and gang of dacoits.

——Substantive offence.

The legislature did not desire that the provisions of S. 110 should be applied to a person suspected of harbouring dacoits, the intention being that such a man should be dealt with under the substantive provision of the Penal Code, i. e. S. 216A. (Dalal J.) Manni Lal Awasthi v. Emperor,

AIR 1928 All 682=51 All 459=11 A I Cr R 250=10 L R A Cr 34=116 I C 804=1929 A L J 93 = 30 Cr L J 694.

——Guilty of substantive offence.

Section 110 does not provide for any person being called upon to furnish security on the ground that he was by habit a dacoit and belonged to a gang of dacoits. Being a member of a gang of dacoits is a definite offence defined and punishable under the Penal Code and it cannot be permitted that instead of the specific charge being tried in a proper Court on a proper evidence the person should be indirectly punished by proceedings under the preventive sections. (Mukerji J.) Ram Prasad v. Emperor,

AIR 1925 All 250=23 A L J 18=6 L R A Cr 45=86 I C 282=26 Cr L J 746.

[Overruled in AIR 1930 All 274=31 Cr L J 627.]

——Applicability and Scope.

Where the accused was arrested on a charge of dacoity but on account of want of evidence he was not even placed before Court, it is contrary to all principles of law to make use of this evidence to bind him over as a bad character. (Daniels J.) Ghandu Singh v. Emperor,

AIR 1924 All 142=75 I C 733=L R 4 All 216 (Cr)= 25 Cr L J 45.

17. Cl. (b)—Receiver of stolen property.

——"Stolen property" does not mean property transferred by dacoity. (Dalal J.) Manni Lal Awasthi v. Emperor,

AIR 1928 All 682=51 All 459 = 11 A I Cr R 250=10 L R A Cr 34=116 I C 804=1929 A L J 93 = 30 Cr L J 694.

18. Cl. (c)—Protects or harbours.

——Dacoits living with father—Son, if guilty of harbouring dacoits—Quashing of proceedings against son.

If certain dacoits have been living with a person, his son cannot be held to be guilty of harbouring them. If a mare which was alleged to have been lent to them by the son, presumably belonged to the father, proceedings against the son should be quashed and he should be discharged. (Jai Lal J.) Ajaib Singh v. Emperor,

AIR 1934 Lah 62=6 R L 546=148 I C 325=35 CrLJ 653.

——S. 110 (c)—Helping the accused.

To bring a person within S. 110 cl. (c), it is not enough to prove that he helped the accused persons in whom he was interested in one or two cases, but it must be proved that he is in the habit of protecting thieves as such. (Mohammad Noor J.) Firangi Rai v. Emperor,

AIR 1933 Pat 189=34 Cr L J 643.

——Habitually protects or harbours thieves.

A shrine which is free to all the public is not the house of its manager. Even if on several occasions thieves and gambler had been arrested there, the manager cannot be said to harbour them so as to justify the call upon him to furnish security for good behaviour under S. 110 (c). (Ryves J.) Soman Son of Mohammad Baksh v. Crown,

37 P W R 1910 Cr=8 Ind Cas 249=11 Cr L J 603.

——S. 110 (c) — "Protecting or harbouring.

The acts which amount to harbouring under the Penal Code must be done with the intention of screening the offender from legal punishment or with the intention of preventing him from being apprehended. If a man from

CRIMINAL P. C. (V of 1898), S. 110—18. Cl. (c)—Protects or harbours

mere motives of humanity and without any intention of enabling the fugitive to escape from justice, were to give food to a man who was starving, or surgical assistance to one who was wounded even with a full knowledge of his character it would seem that he had committed no criminal act. The protecting or harbouring' of S. 110 (c), Criminal P. C., seems to contemplate assistance of the former kind not of the latter. The clause is designed to meet the case of the professional receiver of stolen property who assists the thief after the theft by relieving him and encouraging him, protecting him from discovery and arrest and helping him to dispose of his stolen property. It does not apply to a mere associate of suspected thieves or of persons who have at some previous date been convicted of theft and have served their sentences. (Shaw J. C.) Nga Pu Gyi v. King-Emperor,

U B R 1910, 1st Qr Cr P C 4 = 7 I C 462=11 Cr L J 490.

19. Cl. (d) — "Habitually commits" etc.

——Burma Opium Act, S. 3.

A person who earns his living in whole or in part by unlawful sale of opium, can be placed on security under S. 3, but an order of restriction cannot be passed under S. 7 on those grounds. 2 Rang. 61, Diss. from. (Carr and Duckworth JJ.) Emperor v. Nga Kyaw Hla,

AIR 1926 Rang 182 = 98 I C 714 = 4 Rang 123 = 5 Bur L J 78 = 27 Cr L J 1402.

——Burma Opium Act, S. 3.

The effect of S. 3, Burma Opium Law Amendment Act is to introduce an additional ground on which S. 110 of the Code can be applied. (May Oung J.) Emperor v. Nga Kyaung.

AIR 1924 Rang 244 = 2 Rang 61= 3 Bur L J 17 = 81 I C 546 = 25 Cr L J 930.

——Offence — False claim in Civil Court.

A man habitually bringing false claims in civil suits though punishable under S. 209, I. P. C. does not commit extortion or an attempt to commit extortion and does not fall within S. 110, Evidence Act of general repute though admissible in such a case, cannot override the Civil Court's findings after trial. (Mittra A. J. C.) Bapujee v. Emperor,

AIR 1917 Nag 32 = 47 I C 81 = 19 Cr L J 885.

——Offence — Habitually bringing false claims in Civil Courts.

S. 110 (d) of the Criminal P. C. does not apply to cases of persons having the reputation of habitually bringing false claims in Civil Courts. Such a person is punishable under S. 209, I. P. C. and not for extortion. (Lindsay J. C.) Kushal v. Emperor,

AIR 1917 Oudh 117 = 4 O L J 143 = 20 O C 129 = 40 I C 299 = 18 Cr L J 661.

——Security for good behaviour — Joinder of charges.

The law, as to the joinder of charges against a person accused of definite offences, has no application to an enquiry under S. 110, cl. (d). (Harington and Geidt JJ.) Wahid Ali Khan v. Emperor,

11 C W N 789 = 6 Cr L J 1.

20. Cl. (e)—Breach of the peace.

——Complaints by relatives.

There is no warrant in law for the view that because the complaints against a person are all made by his relations action under S. 110 (e) cannot be maintained against him. (Koshi C. J. and Kumara Pillai J.) State v. Kesava Kurup Rama Kurup,

AIR 1953 T-C 231=ILR (1953) T C 253 = 1953 Ker L T 166=1953 Cr L J 1246.

CRIMINAL P. C. (V of 1898), S. 110—20. Cl. (e)— Breach of the peace

——"Offences involving breach of the peace," meaning of.

The words "offences involving a breach of the peace" in S. 110 (e), Criminal P. C., mean offences in which a breach of the peace is an ingredient and not offences provoking or likely to lead to a breach of the peace. (Mya Bu J.) Maung Po Aung v. King,

AIR 1940 Rang 95 = 12 R Rang 340 =187 I C 609= 41 Cr L J 495.

——Ss. 110, 118 — Order under S. 118, whether can be based on act committed before compromise — Mere membership of association with illegal activities, whether ground for demanding security — Amount of security, fixing of.

Where a person, being aware that violence is the inevitable outcome of the doctrines he preaches, conducts a propaganda against the forces of law and order and instigates breaches of the peace and he must be treated as an abettor of such breaches of the peace and may be ordered to give security under S. 118, Cr. P. C.

Where an association has not been declared unlawful, security cannot be demanded from all the members of the association merely because some of the activities of the association have been shown to involve breach of the peace.

The security demanded under S. 118, Cr. P. C., should not be more than the accused may reasonably be expected to furnish.

Certain persons formed themselves into an association and started a satyagraha movement in connection with a dispute between Hindus and Muslims. The members of the movement defied the law and many of them were convicted. The matter was afterwards compromised between the satyagraha leaders and the Muhammadans. Proceeding under S. 118, Cr. P. C., were subsequently started against the members of the association:

Held, that it would not be right to base an order under S. 110, Cr. P. C. only on events which took place prior to the compromise and security could not, therefore, be demanded from members who were not shown to have taken an active part in any undesirable conduct since the compromise. (Jack and Panckridge JJ.) Satindra Nath v. Emperor,

AIR 1931 Cal 18 = 52 C L J 405 = Ind Rul (1931) Cal 400 = 130 I C 880 = 32 Cr L J 593.

——S. 110 is intended to put a curb upon the activities of persons who set the ball of discord in motion and try to create or foment dissensions between man and man or between one community and another in matters which result in or have a tendency to result in breach of peace. (Sen J.) Alayar Khan v. Emperor,

AIR 1930 All 23 = I R 1930 All 17 = 120 I C 193 = 1930 Cr C 39 = 1930 A L J 254 = 31 Cr L J 1.

——Bad livelihood — Taking precaution to conceal— Failure to give satisfactory account of himself—Delivering letters secretly.

Where a person charged with endeavouring to secretly deliver letters containing an incitement to commit crime was unable to give a satisfactory account of himself,

Held that was sufficient to bring him under S. 110 of the Code (Holmwood and Sharfuddin JJ. Preo Nath Datta v. Emperor,

AIR 1914 Cal 585 = 23 I C 207 = 15 Cr L J 255.

——Applicability of.

S. 110 (e) of the Code can be applied only when persons are found to have habitually committed, attempted to commit or abetted the commitment of such an offence. It must be applied cautiously, lest the court should be utilized for wreaking private vengeance. (Chatterjee and Richardson JJ.) Kali Prasanna Basu Roy v. Emperor,

38 Cal 156 = 15 C W N 366 = 9 I C 916=12 Cr L J 164.

——"Offences involving."

Offences involving breach of the peace mean offences of which a breach to the peace is an ingredient. (Chatterjee and Richardson JJ.) Kali Prasanna Basu Roy v. Emperor,

38 Cal 156 = 15 C W N 366 = 9 I C 916=12 Cr L J 164.

——Zamindar — Abetment of commission of offence — Breach of peace.

Where a Zamindar abets other people to commit offences involving a breach of the peace, in order to compel the raiyats to pay him enhanced rents, held, that the conduct of the Zemindar would come under S. 110 (a) of of the Code, although the Zemindar is a person of considerable means. (Ghose and Stephen JJ.) Kasi Sundar Roy v. Emperor,

31 C 419=1 Cr L J 438.

21. Cl. (f)—Desparate and dangerous character.

(a) Meaning.
(b) Illustrations.
(c) Proof.

21. Cl. (f)—Desparate and dangerous character — (a) Meaning.

——The fact that a man is by temperament quarrelsome and that he occasionally gives threats does not make him a desperate character or one who is dangerous to the community. The owner of a forest, which served the needs of a large group of adjacent villages, who used threats to prevent evasion of his dues cannot be denounced as a dangerous or desperate character : A. I. R. 1931 All. 437, Rel. on. (Niyogi C. J.) Emperor v. Vijaidatta,

A I R 1948 Nag 28=1947 N L J 141=229 I C 117 = 1947 A W R Sup 44 (2)=ILR (1947) Nag 237 = 1947 O A Sup. 44 (2)=48 Cr L J 252.

——Person threatening and beating people.

A person who threatens and beats people can certainly be called a desperate and dangerous character. (Agarwal J.) Sahdeo Singh v. Emperor,

A I R 1942 Oudh 356=1942 O W N 39=14 R O 422 =1942 A W R 51=198 I C 547=43 Cr L J 398.

——'Desperate and dangerous, meaning of — Mere quarrelsome nature and petty assaults, whether ground for binding over.

The fact that a man is quarrelsome and ill-tempered and has managed to fall foul of persons in high places, and throws bricks into other people's houses and has been guilty of petty assaults does not make him a desperate or dangerous character within the meaning of S. 110 (f), Criminal P. C., and is therefore, not a ground for binding him over under S. 110. (Pullan J.) Bangi Lal v. Emperor,

A I R 1931 All 437=Ind Rul (1931) All 695=133 I C 535=32 Cr L J 1070.

——Offence—Promoting litigation.

The mere fact that a man promotes litigation does not make him a dangerous or desperate character within S. 110. (Banerjee J.) Iswari Dutt v. Emperor,

A I R 1918 All 318 = 46 I C 701=16 A L J 776=19 Cr L J 781.

——Admissibility of evidence of general repute.

In S. 110, cl. (f), a man of desperate and dangerous character means a man who has a reckless disregard of the safety of the person or the pro-

CRIMINAL P. C. (V of 1898), S. 110 — 21. Cl. (f)— Desperate and dangerous character — (a) Meaning perty of his neighbours; Evidence of general repute is not admissible to prove that the person in question was of that character. (Harington and Geidt, JJ.) Wahid Ali Khan v. Emperor.

11 CWN 789 : 6 Cr LJ 1.

21. Cl. (f)—Desperate and dangerous character—(b) Illustrations.

——Applicants held "desperate and dangerous" to community.

Every case under S. 110 has got to be decided according to the evidence in that case. The problem which faces a Court in all such cases is whether upon the evidence in a particular case against a particular person it can be said that he is so desperate and dangerous as to render his remaining at large without security hazardous to the community. Much assistance cannot be had from rulings in cases which have got to be decided on their own facts.

The applicants were in the habit of resorting to violence and of giving beating to anyone residing in their village, who had the audacity not to respect their wishes. Persons were beaten when they asked for the price of articles supplied to the applicants. There were various reports and complaints against the applicants regarding offences under Ss. 323, 352 and 426, Penal Code. The applicants took liquor and came out in a drunken state and assaulted and threatened the residents of the village. They had threatened a person to kill him when he refused to do bigar for them and they actually gave him a beating when he reported this threat to the police. Similarly, they threatened to set fire to the house of another person:

Held that the applicants were not mere bullies, but were so desperate and dangerous as to render their being at large without security hazardous to the community: 4 N W P H C R 117; A I R 1915 All 352; A I R 1918 All 318 and AIR 1931 All 437, Expl. and Disting; A I R 1942 Oudh 356, Rel. on. (Seth, J.) Iqbal Ahmad v. Rex.

AIR 1949 All 12 : 1948 ALJ 332 : 1948 AWR HC 233 : 50 Cr LJ 22.

——Desperate and dangerous persons—Who are.

Persons who carry lathis in order to protect themselves from an attack by a gang of ruffians cannot be said to be desperate and dangerous men,. Such persons cannot be called upon to execute bonds to be of good behaviour in the absence of any specific incident to suggest that they are dangerous and desperate men. (Henderson, J.) Abdul Hamid v. Emperor.

AIR 1941 Cal 107 : 230 IC 143 : 48 Cr LJ 541.

——S. 110 (e) and (f) — Person, leader of local factions responsible for bullying.—He is none the less dangerous because he owns house and lands.

A person who is a leader of local factions responsible for constant threat and bullying is none the less dangerous to the community because he lives in a house and owns land and S. 110 (e) and

CRIMINAL P. C. (V of 1898), S. 110 — 21. Cl. (f) — Desperate and dangerous character—(b) Illustrations. (f) of the Criminal P. C., applies to such a type of person. (Horwill, J.) In re Mana.

AIR 1938 Mad 448 : 47 MLW 139 : 1938 MWN 213 : 10 RM 783 : 175 IC 491 : 39 Cr LJ 595.

——Person warning assessor that he would be shot —Whether liable to be proceeded with.

The applicant, who was not one of those accused in conspiracy case, had been present in the precincts of the Court and had threatened one of the assessors in unmistakable terms. He was proved to have warned him that if he did not give his opinion in favour of the accused, he would be killed by a pistol or a bomb, and to have made use of other threatening expressions, and he was proved by the evidence of the said assessor and another witness to have sent a threatening message, worded in a similar way:

Held, that he was a desperate and dangerous character who had unmistakably laid himself open to proceedings under S. 110, Criminal P. C. (Kendall, J.) Tek Chand v. Emperor.

AIR 1935 All 638 : 1935 AWR 795 : 8 RA 187 : 1935 ALJ 1069 : 157 IC 413 : 36 Cr LJ 1142.

——Allegation that a person is a smuggler — Whether a person contemplated by cls. (e) and (f), S. 110—Nature of proof necessary for action.

The allegation that a person is a smuggler does not, by itself necessarily lead to the conclusion that he is one of the individuals contemplated by cls. (e) and (f), S. 110, Criminal P. C. The activities which point to a tendency to cause breach of the peace or to violence of character in the person concerned must, in addition, be definitely proved according to the law of evidence, before he can be asked to furnish security for good behaviour under that portion of the section. (Middleton J. C. and Mir Ahmad, A. J. C.) Abdul Karim v. Emperor.

AIR 1935 Pesh 80 (2) : 8 R Pesh 3 : 156 IC 659 : 36 Cr LJ 1127.

——Evidence regarded insufficient to convict on dacoity charge—Whether can be used to show accused is a dangerous and desperate character.

Although evidence which was regarded as unreliable and insufficient to convict a person on the charge of dacoity, should not be treated as reliable evidence to show that such person is a dangerous and desperate character who ought to be called upon to furnish security for good behaviour, where the petitioners were discharged before the trial of the dacoity case by a Special Tribunal, and there was no question of any evidence against them so far as their participation or association with others in the dacoity who were actually tried before the Special Tribunal, it cannot be said that the proceedings under S. 110 (f), Criminal P. C., were not justified. (Patterson and Guha, JJ.) Parbati Charan v. Emperor.

AIR 1934 Cal 482 : 6 RC 593 : 61 Cal 588 : 149 IC 460 : 35 Cr LJ 952.

CRIMINAL P. C. (V of 1898), S. 110 — 21. Cl. (f) — Desperate and dangerous character—(b) Illustrations

——Dangerous to society.

Persons forming into a party claiming common rights and privileges can be said to become members of a community within Cl. (f).

Where certain persons have executed an agreement between themselves and rightly or wrongly they believe that the agreement is a valid agreement and if in enforcing the same in an improper way they commit offences, they cannot be said to have acquired the habit of committing those offences or that they were habitually offenders so as to bring them within the purview of Cls. (a) to (e) of S. 110. But where the course of their conduct shows that they have become desperate and dangerous and therefore it is not safe to let them wander about at large, they can be bound down to be of good behaviour under Cl. (f). (Jwala Prasad, J.) Bhubaneshwar Kuar v. King-Emperor. **6 Pat 1 : 28 Cr L J 359 : 100 I C 967 : 8 P L T 335 : A I R 1927 Pat 126.**

——Ss. 110 (a) and (f) and 117 (3) — Evidence—General repute—Hearsay—Police reports.

When a person is charged under S. 110 (f) of the Cr. P. C. evidence of general repute is not admissible to prove that he is a desperate and dangerous character. To prove the charge against him evidence of special acts showing that he is a desperate and dangerous character is necessary. Per Seshagiri Iyer, J:—To sustain a charge under S. 110, Cl. (a) to (e) of the Cr. P. Code, the evidence must relate to particular instances which have come to the knowledge of the deponent. Evidence relating to mere beliefs and opinion without reference to acts or instances which are the grounds for such opinion are hardly evidence of repute within S. 117 (3) of the Cr. P. C. Habitual criminality cannot be regarded as established by the repetition of beliefs and opinions. In proceeding under S. 110 of the Cr. P. Code police evidence should, if not wholly discarded, be allowed to influence the judgment of the Magistrate as little as possible. Per Moore, J.:—Hearsay evidence amounts to evidence of repute and is admissible for the purpose of proving a charge under S. 110 (a) of the Cr. P. C. When it is sought to prove the reputation of a person the evidence required is that of respectable persons who are acquainted with the accused and live in the neighbourhood and are aware of his reputation. The test of admissibility of the evidence of general opinion is whether it shows the general reputation of the accused and it should at least be the opinion of a considerable number of persons. It must not merely be the repetition of what certain persons have said to the witnesses. (Seshagiri Iyer and Moore, JJ.) Kothamidde Ranga Reddi, In re. **A I R 1920 Mad 534 : 38 M L J 97 : 11 L W 331 : 21 Cr L J 354 : (1920) M W N 398 : 55 I C 722 : 43 Mad 450**

——Applicability—Duty of Court—Rival factions.

Where there are two parties equally dangerous in a village, it is not proper to bind one party without binding the other. (Stuart, J.) Bindraban v. Emperor. **L R 2 A (Cr) 112.**

21. Cl (f) — Desperate and dangerous character—(c) Proof.

——Proof of.

The characteristic of being a desperate and dangerous character is a personal attribute and should be proved separately against every individual charged with that attribute. (Panigrahi J.) Krupasindhu v. Rex. **I L R (1949) 1 Cut 751 : A I R 1951 Orissa 277 : 52 Cr L J 848.**

——Evidence of general repute by Crown—Admissibility—Nature of evidence required to establish—Hearsay evidence—When admissible—Demand of security.

In proceedings under sub-s. (f) of S. 110 of the Cr. P. C., evidence of general repute may be tendered by the Crown to prove that a person is so desperate and dangerous as to render his being at large without security hazardous to the community. Evidence of association with proved revolutionaries is also evidence of reputation. A Police Officer is certainly a competent witness to speak to the reputation of a person who resides within his circle or to the reputation of a person with regard to whom he has had special occasion to make observations and enquiries in the course of his official duties. If the evidence given by such officers is evidence of general repute and of association with proved revolutionaries, and not merely rumour or suspicion, it is undoubtedly admissible.

Hearsay evidence does amount to evidence of general repute for the purpose of S. 110, provided there is a reasonable foundation for it. This relaxation of the ordinary rules of evidence is justified by the fact that the object of proceedings under S. 110 is the prevention of crime and not its punishment.

When security is demanded from a person who, though anxious to find it, finds it difficult to get the amount which is too much for his financial status, it is preferable that he should be at large, when there is a chance of moderating influences being brought to bear on him, than that he should be associating with confirmed criminals in jail (Kisch, J.) Satgur Dayal v. Emperor. **A I R 1933 All 674 (2) : 1933 A L J 927 : 35 Cr L J 183 : 6 R A 359 : 146 I C 875 (2).**

——Evidence—General repute—Dangerous character.

The dangerous and desperate character of the accused, rendering his liberty without security, hazardous to the community, should be definitely proved by evidence for a case to come under S. 110, cl. (f) and evidence as to general repute is inadmissible. (Shah Din, J.) Nur Mahomed v. Emperor. **8 P W R Cr 1917 : 37 I C 471 : 18 Cr L J 119 : A I R 1917 Lah 260.**

CRIMINAL P. C. (V of 1898), S. 110 — 21. Cl. (f) — Desperate and dangerous character—(c) Proof

—Evidence showing acts of extortion unaccompanied by danger caused to the person and property of others is insufficient to bring the case under clause (f). (Harington and Geidt, JJ.) Wahid Ali Khan v. Emperor. **11 C W N 789 : 6 Cr L J 1.**

22. EVIDENCE

(a) General principles.
(b) Admissibility of evidence.
(c) Corroboration.
(d) Duty of prosecution.
(e) Evidence equally balanced.
(f) Habit.
(g) Insufficient.
(h) Personal knowledge of Magistrate.
(i) Police record.
(j) Suspicion.
(k) Weight and value.
(l) Witnesses.
(m) Vague.

22. Evidence—(a) General principles.

——Security proceedings—Court's duty—Magistrate limiting the number of defence witnesses—Magistrate should not act as prosecutor.

In cases arising out of security proceedings, the Courts ought to approach the consideration of the case in a fair way having regard to the interest not only of the prosecution but also of the accused. A Magistrate has no sanction in law and no right to arbitrarily limit the number of witnesses whom the accused wants to examine in his defence. A person who is called upon to furnish security under S. 110, Cr. P. C., is entitled like other accused persons to have his full say in the matter and there is no warrant in law for calling upon such a person to play the role of a Judge and to decide for himself who are his "best witnesses" and examine only such witnesses in his defence. When trying a case under S. 110, the Magistrate is required by law to function as a judicial officer, and public policy dictates that nothing should be done in the trial of such cases which may lay the proceedings open to the comment that the Magistrate was both in the position of a prosecutor and a Judge. In the trial of such cases, like other cases, the procedure prescribed by law must be faithfully followed, the evidence must be judicially considered and findings based on judicial principles must be recorded (Iqbal Ahmad, J.) Raghubar Dayal v. Emperor **A I R 1934 All 735 : 7 R A 261 : 36 Cr L J 33 : 3 A W R 655 : 152 I C 120.**

——Tangible facts.

The object of S. 110 is to offer protection to the members of the public and is not intended to be an engine of oppression. The Courts below have got, in all cases coming up either under Ss. 103, 109 or 110 to pay strict regard to the question whether the evidence produced is legal evidence in the case on the question of repute. Nothing is more easy than to put forward a general charge against a certain person that he is a burglar and thief. The said statement has got to be tested in the light of tangible facts and particulars, if there are any such facts to support the story. If there are no such facts the evidence loses its value. (Young and Sen, JJ.) Emperor v. Kudua Bari. **121 I C 559 : 1930 Cr C 53 : 31 Cr L J 301 : A I R 1930 All 37.**

CRIMINAL P. C. (V of 1898), S. 110—22. Evidence—(a) General principles

——Suspicion—General repute.

There are only two kinds of evidence which are properly admissible. Ordinarily speaking the case will be governed by exactly the same rules of evidence as govern any other cases. (1) A witness cannot say what he suspects. If the prosecution knows that the witness does suspect the accused of having taken part in a theft, the prosecution can question that witness before he is put into the witness box and ask him what are his reasons for suspecting the accused. They can themselves ascertain from the witness that facts are within his knowledge, and then put him into the witness-box to give evidence as to those facts, and it will be for the Magistrate to determine whether those facts alone as supported by other evidence create such a conviction in his mind as to justify calling for security. But a witness's 'suspicions' and his 'allegations' that the accused is a thief, etc. are worth nothing and should not be admitted. (2) In addition to this the witness may be asked about his special means of knowledge as to the reputation of the accused. (Boys and Sen, JJ.) Emperor v. Ramlal. **161 I C 25 : 51 All 663 . 1929 A L J 361 : 10 L R ACr 66 : 11 A I Cr R 486 : 30 Cr L J 562 : A I R 1929 All 273.**

——Inquiries under Chap. 8 are governed by the ordinary rules of evidence, and evidence which is not admissible under the Evidence Act cannot be admitted in proceedings under S. 110 12 A L J 937, Foll. (Banerji, J.) Rajnarayan Pandey v. King-Emperor. **101 I C 886 : 25 A L J 393 : 8 L R A Cr 53 : 7 A I Cr R 353 : 28 Cr L J 502 : A I R 1927 All 394.**

——An order under S. 110 cannot be maintained unless the record upon which the order is passed is such that it proves conclusively the charge read out to the accused person under that section. (Banerji, J.) Din Dayal v. Emperor. **99 I C 40 : 28 Cr L J 8 : A I R 1927 All 146.**

——Ss. 110 and 439—Evidence—Proceedings under—Several accused—Legality of—Evidence of friends and relations—Value of—Evidence—Duty of High Court to consider.

In proceedings under S. 110 Cr. P. C. against a particular individual, evidence should be confined to his case alone unless the case is that he has a confederate or partner to whom all the evidence is equally applicable. Where witnesses voluntarily come forward as friends or associates of the accused and give evidence it ought not to be brushed aside unless the witnesses are discredited as regards their good faith and honesty. Evidence of general

CRIMINAL P. C. (V of 1898), S. 110 — 22. Evidence — (a) General principles

repute by persons having no personal knowledge of the accused is insufficient. It is open to a District Magistrate to lay down rules for the guidance of his subordinates so as not to allow an unnecessarily large number of witnesses to be examined. In revision the High Court would weigh the evidence and see whether the case has been considered from the point of view of the accused and if the evidence for the defence is equally good as that of the prosecution, the High Court would quash the conviction. Mere repetitions unaccompanied by direct evidence personally affecting each accused or accompanied by direct evidence which is worthless and incredible is insufficient in a case under S. 110, Cr. P. C. (Walsh, J.) Angnoo Singh v. Emperor. **L R 3 A 149 (Cr) : 20 A L J 881: 71 I C 865 : 45 A 109 : 24 Cr L J 257 : A I R 1923 All 35.**

——Scope of inquiry.

In cases under S. 110, Cr. P. C., each accused is entitled to an entirely independent examination of his own case. To take up facts, against an accused, of dates older than the previous security bond, is against law and justice, and cannot be made the ground for fresh proceedings. (Johnstone, J.) Bahadur Shah v. Emperor. **4 I C 432 : 25 P W R 1909 Cr : 4 P R 1909 : 149 P L R 1909 : 10 Cr L J 591.**

——Ss. 110, 439—Evidence necessary.

The law requires that there should be evidence forthcoming, before any man can be called upon to furnish security for good behaviour, and that evidence must establish one or more points set out in S. 110. In each case the evidence upon the record needs to be carefully considered and weighed. If after such consideration there seem good grounds for the conclusion at which the Magistrate arrived, the High Court will not interfere with that order simply because a defect here and there in the evidence can be pointed out. When the evidence against certain persons consisted mainly of the fact that they were Mewatis of a particular place and that the Mewatis of that place were looked upon generally and collectively by the other inhabitants of the neighbourhood as bad characters and dangerous persons, held, that the evidence did not really press against each individual so much as against the whole gang. Such evidence was not enough to support an order for security. (Knox, J.) Hurmat Khan v. King Emperor.
2 A L J 174 : A W N 1905, 41 : 2 Cr L J 88.

——Evidence supporting order under—Nature of.

The evidence necessary for passing an order under S. 110 must be such as would lead to a reasonable and definite ground for coming to the conclusion that they are habitual thieves. (Ameer Ali and Handley, JJ.) Ghulam Ali v. Emperor.
8 C W N 543 : 1 Cr L J 457.

22. Evidence—(b) Admissibility of evidence.

——Evidence of substantive offence. A I R 1925 All 250 : 26 Cr L J 746 and A I R 1929 All 813 : 30 Cr L J 1086 overruled.

The mere fact that there is an allegation of a substantive offence is no obstacle to the using of the evidence such as it is in regard to the commission of that offence in proceedings under S. 110. A I R 1929 All 813 : 30 Cr L J 1086 and AIR 1925 All 250 : 26 Cr L J 746, Overruled; A I R 1925 All 694, Ref. (Boys and Young, JJ.) Chandan v. Emperor. **1930 A L J 389 : 31 Cr L J 627 : 1930 Cr C 442 : 124 IC 40 : 52 All 448 : A I R 1930 All 274.**

——The evidence going to show that a substantive offence had been committed, or, which might form the basis of a charge of a substantive offence is not necessarily to be excluded in proceedings under S. 110. A I R 1925 All 694, Foll. (Iqbal Ahmad J.) Lachman v. Emperor. **8 L R A Cr 70 : 7 A I Cr R 482 : 102 I C 211 : 28 Cr L J 515 : A I R 1927 All 473.**

——Evidence of substantive offence.

Evidence going to show that a substantive offence had been committed, or evidence which might possibly form the basis of a charge of a substantive offence need not necessarily be excluded in proceedings under S. 110 and can form the basis of an order under S. 112 and a finding under S. 118. (1925 All. 250, Expl.) (Boys and Banerji, JJ.) Budhan v. Emperor. **88 I C 362 : 47 All 733 : 23 A L J 507 : 26 Cr L J 1130 : 6 L R A Cr 129 : A I R 1925 All 694.**

——Admissibility of evidence—Result of proceedings under S. 110, Cr. P. C. is not evidence in trial for offence under S. 396, Penal Code.

See Penal Code, S. 396.
22 Cr L J 60 : A I R 1920 Cal 698.

22. Evidence—(c) Corroboration.

——Ss. 110 and 118—Evidence—Corroboration of an approver's evidence.

Relationship of a person with another bound down under S. 118 is not a sufficient corroboration of an approver's evidence against the former in a proceeding under S. 110.. (Teunon and Ghosh, JJ.) Pochai Rai v. Emperor. **22 Cr L J 486 : 62 I C 182 (Cal.)**

——Ss. 110 and 118—Evidence—General repute—Dacoity cases—Statements of approvers—Corroboration—Police suspicion—Good character.

The Police instituted proceedings under S. 110 though they failed to prove guilt in regard to charges of dacoity. Held, the Magistrate was not wrong in initiating proceedings under S. 110 but the evidence against the accused must be very satisfactory. Statements of approvers in different dacoity cases implicating the accused in a proceeding under S. 110 ought to be left out of consideration if there is nothing to corroborate them. Where in a proceeding under S. 110 the prosecution witnesses for general repute say in cross-ex-

CRIMINAL P. C. (V of 1898), S. 110—22. Evidence—(c) Corroboration

amination that their suspicion about accused being a thief is the outcome of house searches and arrests by the police, the accused is entitled to the benefit of the admission by the prosecution witnesses as to the origin of their suspicion. Where there is positive evidence for the defence that the accused is a good man want of proof of malice against the accused on the part of prosecution does not justify the rejection of the defence evidence. (Walmsley and Huda, JJ.) Surendra Nath Manna v. Emperor. **54 I C 778 : 21 Cr L J 170 : A I R 1920 Cal 301.**

22. Evidence—(d) Duty of prosecution.

——Evidence—Prosecution—Duty of.

In a case under S. 110, the decision rests not on the point whether the defence evidence outweighs that of the prosecution, but on the point whether the prosecution evidence is sufficient to establish the case or not and whether the court ought to come to a decision on the point. (Chatterjee and Cuming, JJ.) Sadat Ali v. Emperor. **58 I C 826 : 21 Cr L J 826 : A I R 1920 Cal 412.**

22. Evidence—(e) Evidence equally balanced.

——Evidence for defence at least as good as that for prosecution—There can be no order under S. 110 : 17 A I R 1930 Lah. 1051, Rel. on. (Niyogi C. J.) Emperor v. Vijaidatta Jha **A I R 1948 Nag 28 : 1947 N L J 141 : 229 I C 117 : 1947 A W R Sup 44 (2) : 48 Cr L J 252 : I L R (1947) Nag 237 : 1947 O A Sup 44 (2).**

——Evidence equally good on both sides—Security should not be taken.

Where the evidence on both the prosecution as well as the accused's side is equally good, security should not be demanded. (Gokul Prasad, J.) Hemraj v. Emperor. **L R 1 A (Cr) 142.**

——Evidence as good on both sides—No bond should be taken.

Where in a proceeding under S. 110 the evidence as to the character of the accused is equally good on both sides, no bond should be taken from the accused. (Rafique, J.) Manni Singh v. Emperor. **L R 1 A (Cr) 1.**

——Evidence—Security should not be ordered where evidence on both sides is equal.

Where there is a large volume of evidence in favour of the accused which was as good as if not better than that of the prosecution, there is no ground for ordering security under S. 110, Cr. P. C. (Scott Smith, J.) Krishna v. The Crown **4 Lah L J 531.**

——Evidence—Evenly balanced—No bond should be taken.

In a case under S. 110 of the Cr. P. C. if the evidence for the defence is as good as that for the prosecution no bond should be taken from the accused. (Rafique. J.) Manni Singh v. Emperor. **1 U P L R (H. C). 140 : 52 I C 796 (All) : 20 Cr L J 716 : A I R 1919 All 399.**

CRIMINAL P. C. (V of 1898), S. 110—22. Evidence—(e) Evidence equally balanced

——Evidence—Evenly balanced—No order for security should be made.

Where in a case under S. 110 of the Code the evidence is equally balanced, no order requiring security should be made. (Rafique, J.) Rahman Ali v. Emperor. **11 A L J 461 : 20 I C 231 : 14 Cr L J 407.**

——Evidence—Defence evidence as good as prosecution.

If the defence evidence is as good as the prosecution, the accused ought to be acquitted. (Rafique, J.) Gangasingh v. Emperor. **10 A L J 383 : 17 I C 404 : 13 Cr L J 772.**

22. Evidence—(f) Habit.

——S. 110 (e)—"Habitully," meaning of.

The word "habitually" in S. 110 (e), Cr. P. C., implies frequent practice or use. It implies a tendency or a capacity resulting from the frequent repetition of the same acts. (Mya Bu, J.) Maung Po Aung v. King. **A I R 1940 Rang 95 : 12 R Rang 340 : 41 Cr L J 495 : 187 I C 609.**

——Who is.

Habit has to be proved by an aggregate of facts and it would be straining the provisions of S. 110, if it were to be held that a man being suspected mainly by the police in four thefts after he had been acquitted on a charge of theft amounted to sufficient evidence of habit. (Broadway, J.) Rahman v. Emperor. **109 I C 510 : 10 A I Cr R 355 : 10 L L J 317 : 29 Cr L J 574**

——Meaning of.

The word "habit" implies a tendency or capacity resulting from the frequent repetition of the same acts. The words "by habit" and "habitually" imply frequent practice or use. The words have been used in S. 110 in the sense of depravity of character as evidenced by the frequent repetition or commission of offences mentioned in the section. (Jwala Prasad, J.) Bhubaneshwar Kuar v. King-Emperor. **6 Pat 1 : 28 Cr L J 359 : 100 I C 967 : 8 P L T 335 : A I R 1927 Pat 126.**

——S. 110 (f)—Habitual offender—Evidence of general repute.

Evidence of general repute is only admissible under S. 117 Cr. P. C., to prove that a person is a habitual offender under S. 110, but not to prove a charge under S. 110 (f) of being of desperate and dangerous character. (Maung Kin, J.) Emperor v. Pyu Zin. **13 Bur L T 157 : 62 I C 188 : 22 Cr L J 492 : A I R 1920 L B 86.**

——Habitual offender—Evidence.

The mere circumstance that a person is found under a bush for the whole night and has property which he does not account for is not sufficient to make him a habitual offender and to justify an order under S. 110 of the Cr. P. C. (Sundara Iyer, J.) Madira Nagadu v. Emperor. **(1911) 1 M W N 355 : 10 I C 959 : 12 Cr L J 359.**

——Ss. 110 and 118—Order under S. 118, when can be made.

CRIMINAL P. C. (V of 1898), S. 110 — 22. Evidence —(f) Habit

Evidence of acts of misconduct committed by the defendant years ago is admissible in evidence in the enquiry as to whether he is a habitual offender to show the formation of the habit. But such evidence, to justify the making of an order under S. 118, must be supplemented by evidence of misconduct committed within a year or so before the institution of the proceeding under S. 110. (Harington and Geidt JJ.) Wahid Ali Khan v. Emperor. **11 C W N 789 : 6 Cr L J 1.**

22. Evidence—(g) Insufficient.

——Isolated instance.

An isolated instance of violence of a young zamindar on which no report was made would not be a sufficient cause for taking action against him under S. 110. (Wazir Hasan, C. J. and Pullan, J.) Jai Singh v. Emperor. **6 Luck 36 : I R 1930 Oudh 373 : 126 I C 501 : 31 Cr L J 1020 : 7 O W N 493 : A I R 1930 Oudh 357.**

——Suspicion.

The evidence that a person was suspected of having committed murders is not a class of evidence which is admissible for the purpose of binding over that person under S. 110. 11 A L J 461, Rel. on. (Banerji, J.) Din Dayal v. Emperor. **99 I C 46 : 28 Cr L J 8 : A I R 1927 All 146.**

——Evidence—Association with persons of bad character—I. P. C., S. 457.

The evidence against the petitioner consisted of the statements of a Sub-Inspector of Police, a Safed-Posh, a Zaildar, some Lambardars and of one Fazal who stated that the petitioner was a habitual thief, that he associated with persons of bad character. In 1922 the petitioner was suspected on three occasions under section 457, Penal Code, and on two of these occasions his house was searched. It was, however, admitted that though the petitioner's house was searched on two occasions no stolen property was ever found in his house and as to his having been suspected of having committed an offence under section 457, the petitioner was never criminally prosecuted and no written complaints were ever made to the police against him. Fazal was admittedly not on good terms with the petitioner. The petitioner had produced 17 witnesses of respectable position who testified to the petitioner's good character and deposed to the fact that he was not a habitual thief by reputation. Held, that the evidence on the record is not sufficient to justify action being taken against him under section 110. (Moti Sagar, J.) Abdullah v. Emperor. **76 I C 1034 : A I R 1923 Lah 419 : 25 Cr L J 314.**

——Offence for which accused was not charged.

Evidence showing that the applicant took part in a dacoity, that he was actually arrested in connection with the dacoity but the police considered the evidence against him of so little value that he was released under S. 169 of Cr. P. C. without even being placed before the Court, is totally insufficient for binding the accused over on a charge of being a bad character. (Daniels, J.) Jhandoo Singh v. King-Emperor. **75 I C 733 : 4 L R A Cr 216 : 25 Cr L J 45 : A I R 1924 All 142.**

CRIMINAL P. C. (V of 1898), S. 110 — 22. Evidence —(g) Insufficient

——Offence—Evidence as to reputation only.

Where the prosecution merely gives evidence about the reputation of the accused but none beyond reputation, and the witness knows nothing about the business carried by or the circumstances of the accused, an order under S. 110 is not justified. (Ryves, J.) Kallu v. Emperor. **19 A L J 39 : 60 I C 1002 : 22 Cr L J 314 : A I R 1921 All 88.**

——Evidence of bad character.

Evidence of bad character is not sufficient to put a man on security. (Johnstone, J.) Muhammad Husain v. Emperor. **30 P L R 1916 : 33 I C 318 : 17 Cr L J 142 : A I R 1916 Lah 412.**

——Offence—"Not opposing dacoits"—Whether it comes under S. 110.

A person could not be bound over under S. 110 Cr. P. C. simply because he did not actively oppose the dacoits in the neighbourhood. (Richards, C. J.) Miharban Singh v. Emperor. **13 A L J 1046 : 31 I C 821 : 16 Cr L J 805 : A I R 1915 All 464.**

——Evidence—Indecent overtures to passers by—Nuisance.

Making indecent overtures to boys passing by shop and abusing people is not a ground for proceeding under S. 110, Cr. P. C. (Chamier, J.) Muhammad Asghar Khan v. Emperor. **30 I C 134 (All) : 16 Cr L J 582 : A I R 1915 All 352.**

——Evidence—Weight on both sides—Instances of suspicion—Previous discharge.

Where in a proceeding under S. 110 of the Cr. P. C. the evidence for the prosecution consisted mostly of witnesses produced by the police and a few instances of suspicion and the accused gave evidence of a previous discharge on similar facts the evidence was insufficient to justify the taking from the accused of security for good behaviour. (Shah Din, J.) Lala v. Emperor **33 P W R (Cr.) 1913 : 316 P L R 1913 : 21 I C 475 : 14 Cr L J 603.**

——Ss. 110 and 439—Bad livelihood—Proof.

None of the following circumstances are sufficient to place a person on security. (1) Two successful searches of his house. (2) His having been seen in the company of some suspected persons none of whom has however been convicted of theft. (3) Allegations of some Sufedposhes and Lambardars, to the effect that the people of their villages know him to be a Badmash while no one has ever suspected him in a theft case; (Chevis, J.) Sambanda v. Emperor. **20 P W R Cr 1912 : 15 I C 966 : 13 Cr L J 550.**

——Evidence—Disreputable friendship is no ground for binding the accused.

CRIMINAL P. C. (V of 1898), S. 110 — 22. Evidence —(g) Insufficient

Disreputable friendship with certain pasis, for immoral relations with some of the women of pasis without a conviction of any criminal offence, is not sufficient to bind the accused under S. 110. (Piggott, A. J. C.) Gur Baksh Singh v. Emperor. **12 I C 518 : 12 Cr L J 542 (Oudh).**

——Evidence—Habitual offender—No conviction if evidence is insufficient—No presumption of guilt.

The only evidence against the accused was that he was seen in a prickly pear bush and articles not claimed by him to be his own were found when his person was searched; the evidence is insufficient to prove the guilt and that in such cases it cannot be presumed that the accused had an intention of committing a crime and was an "habitual offender" (Sundara Aiyar, J.) Madira Nagadu v. Emperor. **12 Cr L J 359 : 10 I C 959 (1) : (1911) 2 M W N 355.**

——Evidence of bad character.

Where all the evidence proved was that a person was of bad character, such a finding does not bring the case within S. 110. (Munro and Abdur Rahim, JJ.) In re E. V. Karuppanan Servai. **8 M L T 246 : 8 I C 320 : 11 Cr L J 638.**

22. Evidence—(h) Personal knowledge of Magistrate.

——Private knowledge of Magistrate.

Private knowledge of a Magistrate is not in itself substantive evidence which may be used against the accused, but it is a form of check which the trial Court may legitimately use in order to test the nature of the evidence with which it has to deal, and to negative, for example, a suggestion that the police investigation has been unfair. A finding for example that "inquiries about the accused satisfy me that he is a badmash," would be objectionable, but "the result of my inquiries in the neighbourhood, so far as they appear in the case of this accused tend to show that the case against him has not been got up without reason" would be quite legitimate. 23 All 596, Expl. (Walsh, J.) Darbari Singh v. Emperor. **81 I C 269 : 45 All 749 : 25 Cr L J 781 : A I R 1924 All 451.**

——Ss. 110, 117—Security proceeding—Nature of—Personal knowledge of Magistrate—Jurisdiction to enquire.

The proceedings under S. 110 of the Cr. P. C., are judicial and not executive. A Magistrate, therefore, cannot base his order in such proceedings on his local and personal knowledge of the accused and witnesses. If it is important to utilize the personal knowledge of a Magistrate, the proper procedure is for the case to be tried by another Magistrate and the Magistrate with personal knowledge to give evidence as a witness. A Magistrate cannot himself be a witness in a case in which he is the sole judge of law and fact. (William Clark, C. J.) Nurdin alias Kada v. Emperor. **21 P L R 1904 : 27 P R 1903 Cr : 1 Cr L J 99.**

CRIMINAL P. C. (V of 1898), S. 110

22. Evidence—(i) Police record.

——Police records—Action taken on police diary—Binding over accused—Evidence.

Where the accused was not even brought before the court, the charge of dacoity not being proved, he can never be bound down as a bad character. This would be quite illegal.

A judge cannot take any action simply on the evidence of Police diaries. All the evidence has to be produced in open court. (Daniels, J.) Jhandu Singh v. Emperor. **L R 4 All 216 (Cr) : 75 I C 733 (1) : 25 Cr L J 45 (1) : A I R 1924 All 142.**

——Evidence — Police history sheets are not evidence.

History sheets produced by police are no evidence against accused. Police list of cases in which the accused is said to have been suspected is inadmissible as evidence. 12 A L J 937 foll. (Wallach, J.) Jabr-uddin v. Emperor. **L R 1 A (Cr) 4.**

——Police Records — History sheets of Police not admissible.

History sheets kept by police of persons proceeded against under the section cannot be considered by the court. (Walmsley and Greaves, JJ.) Jogendra Kumar Nag v. Emperor. **57 I C 940 : 21 Cr L J 700 : A I R 1920 Cal 556.**

——Evidence—Police list—Cases in which accused suspected—Admissibility of evidence.

In cases under S. 110, a list of cases in which the accused was suspected of having been concerned in, is not admissible in evidence. 10 O C 132; 10 O C 168, Foll. (Lindsay, J. C.) Chandi v. Emperor. **21 O C 132 : 46 I C 841 : 19 Cr L J 825 : A I R 1918 Oudh 190.**

22. Evidence—(j) Suspicion.

——Evidence—Suspicion of Sub-Inspector, whether legal evidence.

The mere suspicion of the Sub-Inspector is no legal evidence. No weight should be attached to the view of the Sub-Inspector that the accused are murderers and of bad characters when that view is not based on solid facts. (Mir Ahmad, A. J. C.) Tor Gul v. Emperor. **A I R 1935 Pesh 158 : 8 R Pesh 77 : 159 I C 97 : 1935 Cr C 1127.**

——When sufficient.

Evidence as to mere suspicion on particular isolated occasions is not sufficient evidence at all for the purposes of a case under S. 110, Cr. P. C. What is necessary is evidence to prove that the man is by habit a thief. Evidence can no doubt be led of his general reputation about the matter and that he was suspected in a particular case by a particular person or the police, of having committed a theft. But there must be a large number of cases before it can be held to be proved on this evidence alone that he is by habit a thief (Dalip Singh, J.) Lilu v. Emperor. **I R 1930 Lah 893 : 32 Cr L J 62 : 127 I C 861: 1930 Cr C 393 : A I R 1930 Lah 345.**

CRIMINAL P. C. (V of 1898), S. 110 — 22. Evidence —(j) Suspicion

——Belief of prosecution witnesses of accused being man of desperate and dangerous character based upon suspicion that accused committed crime and certain acts of oppression—But Court holding suspicion not proved and acts of violence only youthful frolics — Many other persons including accused's tenants deposing to his being peaceful citizen and good landlord—Court should not demand security. (Wazir Hasan, C. J. and Pullan, J.) Jai Singh v. Emperor. **6 Luck 36 : I R 1930 Oudh 373 : 7 O W N 493 : 126 I C 501 : 31 Cr L J 1020 : A I R 1930 Oudh 357.**

——"Suspicion" is worthless and inadmissible to support an order under S. 110 unless supported by good reasons and then it is the reason and the facts on which the suspicion is based, and not the suspicion, to which only weight can be given. (Boys, J.) Dalle Singh v. Emperor. **116 I C 801 : 10 L R A Cr 106 : 1929 Cr C 174 : 30 Cr L J 693 : 1929 A L J 938 : 12 A I Cr R 114 : A I R 1920 All 599.**

——The suspicions of a witness that a particular man committed, either singly or with others, a theft in his house is wholly inadmissible in a proceeding under S. 110. In this respect a police officer stands in no stronger position than any other witness. (Boys and Sen, JJ.) Emperor v. Ram Lal. **116 I C 25 : 51 All 663 : 1929 A L J 361 : 10 L R A Cr 66 : 11 A I Cr R 486 : 30 Cr L J 562 : A I R 1929 All 273.**

——Suspicion.

The general reputation of a man is that which he bears among his fellow-townsmen and mere suspicion of complicity in this or that offence is not evidence of general reputation. A I R 1928 Lah 49, Foll. (Addison, J.) Ghulam Mahommad v. Emperor. **113 I C 909 : 30 Cr L J 220 : 12 A I Cr R 112.**

——Mere suspicion of complicity in any offence is no evidence of general reputation. (A I R 1928 Lah 49, Foll) (Addison, J.) Kehr Singh v. Emperor. **9 Lah 586 : 10 A I Cr R 214 : 109 I C 127 : 29 P L R 443 : 29 Cr L J 479 : A I R 1929 Lah 41.**

——Suspicion is not a legitimate basis for findings under S. 110. A witness may have suspicion against a person in respect of whom he is giving evidence, but if he has, he ought to be able to give the grounds for that suspicion, and the value of the facts stated can then be weighed by the Magistrate. The evidence which he can give of general repute is of a totally different matter. (Boys and Iqbal Ahmad, JJ.) Emperor v. Babu Ram. **8 L R A Cr 163 : 8 A I Cr R 557 : 26 A L J 99 : 29 Cr L J 92 : 106 I C 684 : A I R 1928 All 1.**

——Mere suspicion of complicity in this or that isolated offence is not evidence of general reputation. A man's general reputation is that which he bears amongst the fellow-townsmen or in the neighbourhood in which he lives. (Addison, J.) Kundan v. Emperor.

CRIMINAL P. C. (V of 1898), S. 110 — 22. Evidence —(j) Suspicion

9 Lah 133 : 28 Cr L J 813 : 104 I C 253 : 29 P L R 368 : A I R 1928 Lah 49.

——Mere suspicion is no evidence in a case. (21 O. C. 132 ; A I R 1924 Oudh 112 ; 11 A L J 461 and 23 O C 371, Rel.on) (Banerji, J.) Raj Narayan Pandey v. Emperor. **25 A L J 393 : 8 L R A Cr 53 : 7 A I Cr R 353 : 28 Cr L J 502 : 101 I C 886 : A I R 1927 All 394.**

——Mere suspicion, and mere allegations that a person is man of ill-repute, is not sufficient to base an order under S. 110. (Fforde, J.) Sohna v. Emperor. **97 I C 43 : 7 A I Cr R 159 : 27 Cr L J 1067.**

——Evidence—Evidence of suspicion is not sufficient for passing order.

Evidence as to the accused having been suspected in particular cases is clearly not evidence on the basis of which any person could be bound over, yet when evidence of general repute has been given, the fact that the accused have been suspected in a large number of cases may be admissible as corroboration. Conversely the fact that the accused had never been suspected in any case might tend to weaken the evidence of general repute. (Daniels, J.) Gudri Khatik v. Emperor. **A I R 1923 All 595 : 77 I C 886 : 25 Cr L J 486.**

——Instances of mere suspicion are not sufficient in order to bind down a person to be of good behaviour under S. 110. The evidence in such a case must be evidence by which the petitioner is proved to have been concerned or some direct evidence to establish the complicity of the petitioner in such cases. The evidence ought to be of such a nature as to lead to a reasonable and definite ground for coming to the conclusion that the petitioner is a habitual offender. (Kulwant Sahay, J.) Shaikh Amjad Ali v. King-Emperor. **75 I C 723 : 5 P L T 129 : 2 Pat L R Cr 79 : 25 Cr L J 35 : A I R 1924 Pat 498.**

——Evidence—Private enquiry by the Magistrate—Effect.

Where the evidence for the prosecution is partly inadmissible, partly inconclusive and hearsay, vague and unsubstantial and there is nothing definite proved against them and no evidence called against them from their own village, but there are number of persons of good character and position from their village itself and from the neighbouring villages who speak well of these men, while nobody has been able to suggest that they have got resources for living as they do live, without support from theft or bad means of livelihood. Held, that it would be unfair to brand these men as bad characters upon this evidence. No doubt a Magistrate is compelled in the performance of his duties to make private enquiries as to the character of his neighbourhood and as to the persons reputed to be of bad character and be likely to cause trouble. These enquiries are necessary to an executive officer having to inform

CRIMINAL P. C. (V of 1898), S. 110 — 22. Evidence —(j) Suspicion

himself of the nature of the population committed to his charge but where it is shown, that the Magistrate has allowed actual information ad hominem to influence his judgment in a judicial decision against particular individuals brought before him by process of law, his order would be quashed as being vitiated by the admission of such information. (Walsh, J.) Ashiz Ali v. Emperor. **21 A L J 513 : 73 I C 337 : 24 Cr L J 593 : L R 4 A (Cr) 126 : A I R 1923 All 596.**

——Ss. 110, 117 and 439.—Evidence—Powers of Magistrate—General repute—Evidence of character —Revision.

Specific instances of crime in which the accused is "suspected" are not good evidence and do not fall within "general repute" under S. 117, because suspicion cannot take the place of proof that a man has committed offence. Similarly, history sheets are not evidence, especially where the official who produces them is not himself responsible for all the entries therein. The mere fact that, assuming the accused is guilty, it was easy for the accused to get witnesses of fairly good status to give evidence on his behalf is no ground for disbelieving the witness. (Wallach, J.) Jabruddin v. Emperor. **20 Cr L J 689 : 52 I C 657 (All) : 1 U P L R (H C) 143 : A I R 1919 All 136.**

——Evidence—Suspicion.

A mere suspicion of having been concerned in some thefts soon after his release, is not enough for binding over the accused a second time under S. 110, Cr. P. C. (Kanhaiya Lal, A. J. C.) Akbara v. Emperor. **4 O L J 319 : 40 I C 710 : 18 Cr L J 710 : A I R 1917 Oudh 350.**

——Mere statement of witnesses as to their suspicion, whether enough to bind down person

Mere statements of witnesses that they suspect or are under impression that certain persons are thieves or dacoits, without mentioning any fact as reason for their suspicion or impression, are not enough to bind down those persons under S. 110. (Brett and Gupta, JJ.) Alep Pramanik v. Emperor. **11 C W N 413 : 5 Cr L J 191.**

Where, there was no evidence of any complaint of the commission of an offence having been made to the police or the Magistrate against the person called on to furnish security for good behaviour, except that he was suspected on many occasions held that there was no sufficient warrant for an order under Ss. 110, 118, Cr. P. C. against him. (Burkitt, J.) Emperor v. Husain Ahmad Khan. **A W N 1905, 34 : 2 Cr L J 86.**

22. Evidence—(k) Weight and value.

——Testing of evidence.

The mere production of a string of witnesses, who say that an accused person's general repute is so and so, can carry very little weight unless some attempt has been made to show that he is a person in a position to know the general repute, and there has been some reasonable attempt by

CRIMINAL P. C. (V of 1898), S. 110 — 22. Evidence —(k) Weight and value

the counsel for the accused or by the Court to check the value of the evidence. (Boys and Sen JJ.) Emperor v. Ram Lal. **116 I C 25 : 51 All 663 : 1929 A L J 361 : 10 L R A Cr 66 : 11 A I Cr R 486 : 30 Cr L J 562 : A I R 1929 All 273.**

——Weight of evidence.

The mere fact that some of the witnesses are persons who have had commercial dealings with the appellants, and others are persons of the same class and position as the appellant, is not a sufficient ground to exclude their evidence in a case under S. 110 (Fforde, J.) Sohna v. Emperor. **97 I C 43 : 7 A I Cr R 159 : 27 Cr L J 1067.**

——Acquittal of a particular charge.

The fact that the accused person has been acquitted of a particular charge may diminish in many cases, and may even destroy wholly, the value of the evidence as to the allegations made against the accused in the case in which he was acquitted, but does not render it inadmissible. (Boys and Banerji, JJ.) Budhan v. Emperor. **88 I C 362 : 47 All 733 : 23 A L J 507 : 26 Cr L J 1130 : 6 L R A Cr 129 : A I R 1925 All 694.**

——Prosecution witnesses enemies of accused.

Where the prosecution witnesses were mostly enemies of the accused and they were men of influence so as to procure a large number of people to speak as to the general bad character of the accused.

Held, the accused should not be convicted on such evidence especially when there was a large number of persons who deposed to his good character. (Dalal, A. J. C.) Gur Dayal v. Emperor. **83 I C 659 : 26 Cr L J 99 : A I R 1925 Oudh 277.**

——Nature of evidence.

In absence of strong evidence of repute which is of universal kind. order under S. 110 should not be passed. Evidence of an avowed enemy cannot be worth very much. (Scott-Smith, J.) Wali Muhammad Khan v. Emperor. **25 Cr L J 808 : 81 I C 344 : A I R 1925 Lah 166.**

——Nature of the evidence.

The rule, that in order to satisfy himself that an accused's general repute is that of an habitual offender of one of the types mentioned, a Magistrate should require more evidence than that of policemen and village authorities, is not a rule of law and a Magistrate must, in each case, weigh the evidence and decide as to its sufficiency. 2 L B R 166, Ref. and Expl. (May Oung, J.) Nga Pan Yin v. Emperor. **76 IC 709 : 2 Bur L J 153 : 1 Rang 447 : 25 Cr L J 245 : A I R 1924 Rang 22.**

——Evidence—Appreciation of—Attention paid to witnesses speaking in good character of accused.

A Court in taking proceedings under S. 110, Cr. P. C., ought to pay particular attention to the evidence of witnesses produced by accused about his good character, and though not bound to believe,

CRIMINAL P. C. (V of 1898), S. 110—22. Evidence—(k) Weight and value

should have good reasons to disbelieve such evidence before making an order. If it fails to do so, the order can be revised. (Richards, C. J.) Hakim Singh v. Emperor. **16 Cr L J 810 : 31 I C 826 : 13 A L J 1055 : A I R 1915 All 415.**

22. Evidence— (l) Witnesses.

——Defence witnesses more numerous than prosecution witnesses—Whether ground for acquittal.

The accused is not entitled to an acquittal in a case under S. 110, Cr. P. C.,merely because the defence witnesses were as numerous or more numerous than the prosecution witnesses. It is the weight of the evidence and not the number of witnesses which the Court has to consider. (Agarwal, J.) Sahdeo Singh v. Emperor. **AIR 1942 Oudh 356 : 43 Cr LJ 398 : 1942 O W N 39 : 14 R O 422 : 1942 A W R (C.C.) 51 : 198 I C 547.**

——Witnesses not belonging to accused's place of residence—Admissibility of evidence

In proceedings under S. 110, Cr. P .C., it is not necessary that the witnesses who speak to the general reputation of the accused must be residents of the same village where the accused lived. Evidence of witnesses of other villages is certainly admissible in evidence. (Agarwal, J.) Sahdeo Singh v. Emperor **A I R 1942 Oudh 356 : 43 Cr L J 398 · 1942 O W N 39 : 1942 A W R (C. C.) 51 : 14 R O 422 : 198 I C 547.**

——Mukhias and Sarpanches — Whether to be treated as quasi-Police witnesses—Presumption, if can be made against them.

Mukhias and Sarpanches are respectable persons and they are appointed to these offices because of their respectability. It is totally wrong to describe them as "quasi-Police witnesses". On account of the position held by these men in villages in which they reside, they are in a far better position to know about the bad characters residing in their villages. It is altogether absurd to start with a presumption against them. The proper way of judging the evidence of a witness is to consider the statement made by him and then to arrive at a conclusion whether he has given true evidence or not. No presumption should be made against him merely on the ground that he happens to be a Mukhia or a Sarpanch. (Bennet and Rachhpal Singh, JJ.) Emperor v. Dipu **A I R 1935 All 850 (851) : 8 R A 298 : 36 Cr L J 1362 : 1935 A W R 1089 : 158 I C 424.**

——Police Officer, if a good witness.

A Police Officer is as good a witness as any other person, if he has proved facts which establish that the person concerned is acting in a manner likely to cause breach of the peace or is of a dangerous character. (Middletone, J. C., and Amir Ahmad A. J. C.) Abdul Karim v. Emperor **A I R 1935 Pesh 80 (2) : 8 R Pesh 3 : 36 Cr L J 1127 : 156 I C 659.**

——Security—Imprisonment on failure to give security—Release—Fresh notice — Proceedings—

CRIMINAL P. C. (V of 1898), S. 110—22. Evidence—(l) Witnesses

Witnesses—Evidence of general repute—Period subsequent to release.

In cases where there has been a previous order under S. 110, Cr. P. C. witnesses ought to make it clear in their evidence that their evidence relates to the reputation of the persons proceeded against, subsequent to their release from imprisonment. (Young, J.) Emperor v. Niranjan Singh **A I R 1933 All 369 : 1933 A L J 263 : 55 All 404 : 6 R A 442 : 35 Cr L J 417 (1) : 147 I C 227 (1).**

——Evidence—Defence evidence when should not be discredited.

The fact that a large number of defence witnesses are caste fellows of the accused that they come voluntarily without summons from villages several miles from the village of the accused and that they admit that they have come forward because they regard the accused as head of their brotherhood, is not sufficient to discredit their evidence. (Piggott, J.) Rahu v. Emperor. **43 All 186 : 18 A L J 1114 : 22 Cr L J 115 : 59 I C 547 : L R 2 A Cr 76 : A I R 1921 All 278.**

——Evidence—Rejection on ground of same caste is not proper.

The mere fact that some of the witnesses produced by a person against whom proceedings have been instituted under S. 110, Cr. P. Code are his caste fellows is not by itself a sufficient reason for discrediting their testimony. (Kanhaiya Lal, A. J. C.) Rohan v. Emperor. **21 Cr L J 60 : 54 I C 412 : 6 O L J 541 : A I R 1919 Oudh 79.**

——Evidence — General repute — Statements to Police.

Statements made by Police officers to the effect that three other persons made certain statements are not admissible except as evidence of general repute. (Piggott, J.) Chainsukh v. Emperor. **27 I C 845 (All) : 16 Cr L J 221 : A I R 1915 All 125.**

22. Evidence—(m) Vague.

——Order under S. 110 read with S. 118, cannot be made on vague allegations.

An order under S. 110 read with S. 118, Criminal P. C., cannot be made on vague allegations, as person proceeded against had been suspected in several cases of having committed offences against property, otherwise none would be safe. Unless the requirements of S. 110 are fulfilled or in other words, a man is proved by habit a robber, housebreaker, thief or forger or by habit a receiver of stolen property, etc., this drastic measure cannot be taken against him, and if in all cases in which the person proceeded against were sent up, he was either discharged or acquitted, it cannot be urged that the requirements of S. 110, Criminal P. C., are satisfied. (Din Muhammad, J.) Islam-ud-Din v. Emperor. **A I R 1939 Lah 269 : 41 P L R 431 : I L R (1939) Lah 53 : 12 R L 105 (2) : 40 Cr L J 753 : 183 I C 269.**

——Evidence to prove the charge against the accused under S. 110, Cls. (a) (d) and (f) should not

CRIMINAL P. C. (V of 1898), S. 110—22. Evidence—(m) Vague

be vague, general and of hearsay character. (Jwala Prasad, J.) Deodhari Pandey v. Emperor. **86 I C 274 : 6 P L T 810 : 1925 P H C C 6 : 26 Cr L J 738 : A I R 1925 Pat 131.**

——Vague.

Where the only evidence against the applicant was that the applicant was a thief and the neighbourhood believed in such a rumour, but there was no evidence as to who the applicant's associates were, what were his means of subsistence or whether increase of thefts synchronised with his appearance in any particular locality.

Held, that an order against the applicant was not justified. (Dalal, A. J. C.) Raghu Detta v. Emperor. **74 I C 535 : 24 Cr L J 791 : A I R 1924 Oudh 187.**

——Ss. 110 and 118—Bad livelihood — Vague evidence—High Court refusing to confirm.

Where the evidence against persons charged with bad livelihood under S. 110 is vague and general, the High Court would refuse to maintain the Magistrate's order under S. 118. (Chitty and Walmsley, JJ.) Emperor v. Sheikh Abdul. **43 Cal 1128 : 20 C W N 725 : 33 I C 825 : 17 Cr L J 185 : A I R 1916 Cal 344.**

23. Evidence of general repute.

—See also under S. 117.

(a) Admissibility.
(b) Duty of Court.
(c) General repute.
(d) Quantum.
(e) Reputation.
(f) Rumour.
(g) Suspected and named.
(h) Witnesses.

23. Evidence of general repute—(a) Admissibility.

——Ss. 110, 117—Evidence of general repute—Admissibility in proceedings under S. 110.

In proceedings under S. 110, Cr. P. C., if the witnesses have clearly deposed that the accused has the general repute of being an habitual offender such evidence is admissible under sub-s. (4) of S. 117 of the said Code :

Held, that the evidence adduced on behalf of the prosecution was quite sufficient to justify the order passed against the accused under S. 118, Cr. P. C. (Srivastava and Nanavutty, JJ.) Emperor v. Bachchu. **A I R 1936 Oudh 238 (240) : 1936 O W N 247 : 8 R O 297 : 37 Cr L J 390 : 12 Luck 36 : 160 I C 1039.**

——Ss. 110, 117 (4)—Evidence that accused has the general reputation of being habitual thief and burglar—Admissibility of.

Evidence showing clearly that the person sought to be proceeded against under S. 110, Cr. P. C., has the general reputation of being a habitual thief and burglar is admissible under sub-s. (4) of S. 117, Cr. P. C. (Nanavutty, J.) Likha Singh v. Emperor. **A I R 1934 Oudh 49 (49) : 6 R O 264 : 35 Cr L J 403 : 11 O W N 84 : 147 I C 388.**

CRIMINAL P. C. (V of 1898), S. 110—23. Evidence of general repute—(a) Admissibility

——Ss. 110, 117 (4)—Evidence of general repute of accused—Admissibility of.

Evidence as to the general repute of the accused as being a habitual offender, where clearly deposed in proceedings under S. 110, Cr. P. C., is admissible under the provisions of S. 117, sub-s. (4), and is sufficient ground for requiring the accused to give security. (Bisheshwar Nath and Kisch, JJ.) Emperor v. Gajadhar. **A I R 1933 Oudh 58 : 9 O W N 1012 : Ind Rul (1933) Oudh 48 : 34 Cr L J 160 : 141 I C 251.**

——Ss. 110 and 122—Fitnees of sureties.

Under S. 110 hearsay evidence of general repute is clearly not admissible as against sureties. (Wazir Hasan A. J. C.) Sheopal v. Emperor. **9 O L J 353 : 23 Cr L J 639 : 68 I C 959 : A I R 1922 Oudh 227.**

——Evidence—General repute—Offence alleged to be proved.

In a proceeding under S. 110 of the Cr. P. C. any particular offence alleged against the person or persons called upon to furnish security must be proved by relevant evidence and not by general evidence of repute that he or they are habitual offenders. (Piggott, J.) Indar v. Emperor. **40 A 372 : 16 A L J 208 : 44 I C 463 : 19 Cr L J 351 : A I R 1918 All 257.**

——Ss. 110 (f), 117—Security for good behaviour—Evidence of general repute—Admissibility.

Under s. 110, cl. (f), evidence of general repute is not admissible, as a provision of law which is an exception to the general rules of evidence must be only applied to the cases to which it is confined by the Legislature. Evidence of general repute is only admissible under s. 117 to prove that a person is habitual offender, under S. 110, but not to prove a charge under s. 110, cl. (f) of being a desperate and dangerous character. (Sankaran Nair, J.) In re Muthu Pillai. **8 M L T 347 : 8 Ind Cas 493 : 34 Mad 255 : 21 M L J 488 : 11 Cr L J 663.**

——S. 110, cls. (a), (f)—Proceedings under—Appreciation of evidence—Evidence of repute.

The petitioners against whom proceedings under cls. (a) and (f) of S. 110 were initiated were members of the same family and formed a gang, and the evidence against all of them was the same. Held, that the case was one in which the evidence against the petitioners could rightly be dealt with together, and that any minute enquiry into the complicity of each of the accused individually was not necessary. Where evidence is admissible and has been admitted to show that a man is a habitual offender under other clauses of S. 110 and he is also being proceeded against under cl.(f) it is a mere inference of fact from the nature of the offences as to whether he is a dangerous and desperate character. (Holmwood and Ryves, JJ.) Parasulla v. King-Emperor. **13 C W N 244 : 4 Ind Cas 10 : 10 Cr L J 460.**

CRIMINAL P. C. (V of 1898), S. 110—23. Evidence of general repute—(a) Admissibility

——Ss. 110, 117 and 337—Evidence of general repute—Approver's evidence in previous case—Admissibility.

In proceedings under S. 110, Cr. P. C., the uncorroborated evidence of a person who had been an approver in a previous case is useless and should not be admitted. Statements of general repute though hearsay evidence by virtue of S. 117 (4) is admissible in enquiries of this nature. (Fox, C. J., Irwin and Hartnoll, JJ.) King-Emperor v. Nga Po. **5 L B R 72 : 3 Ind Cas 681 : 10 Cr L J 355.**

——Evidence of good character.

The accused who was suspected by his master of burglary and prosecuted, was continuously for a period of ten or eleven years employed as a servant of the Tahsildars of Orai. He was discharged, and proceedings under S. 110, were started against him. He produced evidence to show that his character while he was in the service of his former masters was satisfactory. Held, that such evidence was material to the case. (Alston, J.) Shiam Lal v. King-Emperor. **6 A L J 487 : 2 Ind Cas 225 : 9 Cr L J 528.**

——Ss. 110 and 117 (3)—Proceedings under S. 110—Evidence of general repute—Admissibility—Evidence Act (1872) S. 54.

To admit evidence of what is generally said of a person in a proceeding under S. 110 Cr. P. C. is not contrary to the Evidence Act. The estimation in which a man is held by his neighbours is known, as a rule, by what they say of him. The evidence of what is generally said is, therefore, direct evidence of the fact in issue. (Chamier J.) Gokul v. Emperor. **10 O C 132 : 6 Cr L J 97.**

——S. 110 (f)—General repute evidence.

A charge under S. 110 (f) cannot be proved by general reputation but by definite evidence. (Bigge, J.) Nga Po Aung v. Emperor. **13 Bur L R 91 : 5 Cr L J 377.**

23. Evidence of general repute—(b) Duty of Court.

——Offences involving breach of the peace.

To sustain a charge under S. 110 (e), proof of previous convictions for offences involving breach of peace is not necessary. In inquiries under Chap. 8 of the Code the Court is not considering whether the person proceeded against has or has not committed a specific offence, but whether his general reputation is such that security should be taken for his good behaviour. Evidence relating to instances of specific crimes need not in such proceeding be so strong as would secure a conviction for any specific charge. (Koshi C. J. and Kumara Pillai J.) State v. Kesave Kurup Rama Kurup. **A I R 1953 Trav Co 231 : I L R (1953) T C 253 : 1953 Ker L T 166 : 1953 Cr L J 1246.**

——Ss. 110, 367—Proceeding under S. 110—Evidence of general repute—Consideration of.

CRIMINAL P. C. (V of 1898), S. 110—23. Evidence of general repute—(b) Duty of Court

In proceedings under S. 110, Cr. P. C., the Magistrate should consider evidence regarding the general repute of the persons accused. He must also consider whether this evidence is to be regarded as in any way rebutted by the evidence of repute adduced on behalf of the accused, and must discuss in the judgment how this evidence affects each individual among the accused. (James, J.) Dhaju Mandal v. Emperor **A I R 1933 Pat 112 : Ind Rul (1933) Pat 187 : 34 Cr L J 476 : 146 I C 934.**

In a case under S. 110, Cr. P. C. the Court is not considering whether the accused person has or has not committed a specific offence but whether his general reputation is such that security should be taken for his good behaviour. When evidence is taken as to reputation of bad behaviour, the Court cannot and should not exclude the reasons which induced the members of the community to form a bad opinion of the accused person and if their opinion is based wholly or partly on the belief that the accused person committed a crime which had not been brought home, the court cannot rule out as inadmissible all evidence on which the belief of the witnesses is based. (Meaning of general reputation indicated.) (Hasan, C. J. and Pullan, J.) Jai Singh v. Emperor **6 Luck 36 : I R 1930 Oudh 373 : 126 I C 501 : 31 Cr L J 1020 : 7 O W N 493 : A I R 1930 Oudh 357.**

——Evidence of good character.

Where a large body of apparently respectable witnesses of the neighbourhood testify to the good character of the accused as against meagre prosecution evidence or the evidence of police officers, an order demanding security is not justifiable. 37 P W R 1910 (Cr) Foll. When as good witnesses come forward to state that a man's reputation is good as those who state the contrary it cannot be said that his reputation is bad, unless there is something to corroborate the witnesses against him. 2 P R 1898 Cr Foll. (Addison, J.) Kundan v. Emperor. **9 Lah 133 : 28 Cr L J 813 : 104 I C 253 : 29 P L R 368 : A I R 1928 Lah 49.**

——Where a number of witnesses who are considered to be respectable and reliable by the Court have deposed that the accused are men of good character, this is quite sufficient to entitle them to an acquittal. (Dalal, J. C.) Bahadur v. Emperor. **85 I C 370 : 26 Cr L J 530 : 27 O C 327 : A I R 1925 Oudh 501.**

——Rejection of.

The Court ought to pay particular attention to evidence adduced on behalf of the accused who speak of his good character; without substantial reasons it should not disbelieve such evidence. (Kulwant Sahay, J.) Ramalgaon v. Emperor. **81 I C 633 : 5 P L T 166 : 2 Pat L R Cr 98 : 25 Cr L J 985 : A I R 1924 Pat 500.**

——Where proceedings under S. 110 are taken against a person and he is able to produce witnes-

CRIMINAL P. C. (V of 1898), S. 110—23. Evidence of general repute—(b) Duty of Court

ses on his behalf to speak of his good character, the Court ought to pay particular attention to such evidence. The Court should find substantial reason for not believing the evidence before it makes an order. Powers given by the Code under S. 110 should be exercised with extreme caution and with very great discretion. A person must be found upon evidence to have habitually committed or attempted to commit offences before he could be bound down to be of good behaviour. 31 I C 826, Foll. (Kulwant Sahay, J.) Shaikh Amjad Ali v. King-Emperor. **75 I C 723 : 5 P L T 129 : 2 Pat L R Cr 79 : 25 Cr L J 35 : A I R 1924 Pat 498.**

——Evidence—"General repute."

Where in a bad livelihood case the only evidence against an accused is that of general repute which is not universal or beyond doubt, it is not safe to bind him over. (Scott Smith, J.) Jhandu Ram v. Emperor. **48 P W R Cr 1914 : 16 Cr L J 106 : 27 I C 154 : 215 P L R 1915 : A I R 1914 Lah 553.**

23. Evidence of general repute—(c) General repute.

The general reputation of a man amongst the community may no doubt be evidence in inquiries under S. 110, Cr. P. C., the nature of which is such as to render admissible what persons who know him think of him. But the fact in no way nullifies the provisions of S. 50, Evidence Act. (Roberts C. J. and Dunkley J.) Maung Maung v. Ma Sein Kyi **A I R 1940 Rang 181 : 1940 Rang L R 562 : 13 R Rang 163 : 192 I C 49.**

——Evidence of reputation—Specific crimes but not evidence to bring home guilt to accused.

In a case under S. 110, the Court is not considering whether the accused person has or has not committed a specific offence but whether his general reputation is such that security should be taken for his good behaviour. When evidence is taken as to reputation of bad behaviour the Court cannot and should not exclude the reasons which induced the members of the community to form a bad opinion of the accused person, and if their opinion is based, wholly or partly on the belief that the accused person committed a crime which has not been brought home to him the Court cannot rule out as inadmissible all evidence on which the belief of the witness is based. Hence instances of specific crimes are admissible in evidence in these proceedings although they are not supported by evidence of such amount and value as would secure a conviction for the substantive offence. (A I R 1922 Oudh 26,Appr.; A I R 1925 All 694,Rel. on.) (Wazir Hasan, C. J. and Pullan, J.) Jai Singh v. Emperor. **6 Luck 36 : I R 1930 Oudh 373 : 7 O W N 493 : 126 I C 501 : 31 Cr L J 1020 : A I R 1930 Oudh 357.**

——Good character.

The general reputation of a man is that which he bears amongst his fellow townsmen or in the

CRIMINAL P. C. (V of 1898), S. 110—23. Evidence of general repute—(c) General repute

neighbourhood in which he lives. Where such persons depose to good character of a man proceeded against under S. 110 and there is no other evidence worth the name coming forth against him, he cannot be bound over under S. 110 (Addison, J.) Rahman v. Emperor. **110 I C 674 : 10 A I Cr R 529 : 29 P L R 539 : 29 Cr L J 738.**

——Evidence as to.

A witness can come into Court and say "This man is by general repute an habitual thief". Whether this evidence is worth anything will depend upon his position, his partiality or impartiality and whether the defence have by cross-examination been able to show that the witness has no real grounds for saying that he has knowledge of the general reputation of the man in the dock. Such evidence of general repute does not offend against the rule against hearsay evidence. This is not hearsay. It is direct evidence given on the basis of the witness's own knowledge of a fact, the fact that people are talking about this man in a certain way, the fact that he has such a general reputation. (Boys and Iqbal Ahmed, JJ.) Emperor v.Babu Ram. **8 L R A Cr 163 : 8 A I Cr R 557 : 26 A L J 99 : 29 Cr L J 92 : 106 I C 684 : A I R 1928 All 1.**

——S. 110 provides six categories of cases within one or more of which the offender's case must come in order that a penalty may be imposed in accordance with that section. When a person is sought to be proceeded against under this section it must be made clear as to which sub-section he is charged with. It is not enough merely to assert that he is a person of criminal tendencies or that he is suspected of having committed certain crimes or to charge him generally with having committed an offence under S. 110. Moreover, the evidence must prove the accused person to come within one or more of the descriptions set out in the section. General evidence of the accused's bad character and of his association with people of bad character does not bring his case within the provisions of S. 110. Evidence of general ill-repute is not sufficient to base an order under S. 110, nor can the accused person be condemned upon suspicion. (Fforde, J.) Sohan Singh v. Emperor. **26 Cr L J 1377 : 89 I C 513 : A I R 1926 Lah 45.**

——Opinion—Evidence of general repute.

"Evidence of general repute" means, with reference to a man's character, evidence as to his general character founded on the general opinion of the neighbourhood in which he lives. Such evidence need not show that such general opinion is based on the personal knowledge of the man by his neighbours generally nor that such general opinion has been publicly expressed by the neighbours.

If a witness is asked what the man's character is, and he were to say that in the general opinion of the man's neighbours the man is an habitual thief, that statement is 'evidence of general repute' and if he were to say that he did not know what the

CRIMINAL P. C. (V of 1898), S. 110 — 23. Evidence of general repute —(c) General repute

neighbours in general thought of the man, but his opinion was that the man was an habitual thief, that also would be admissible as evidence of the man's character. Evidence of what is generally said of a man by his neighbours is a direct evidence of the fact in issue. 5 O. C. 203 and 10 O. C. 132, Foll. Admissibility of a witness's answer depends upon the substance of it, not upon its form. The real test is whether the answer shows what is the general reputation of the man in question, and the opinion given by the witness need not be the opinion of the entire community but it must at least give the opinion of a considerable number of persons and not be merely a repetition of what one or two persons have said to the witness. (Gokaran Nath, A. J. C.) Kewal Kishore v. King-Emperor. **89 I C 147 : 12 O L J 413 : 26 Cr L J 1283 : 29 O C 44 : A I R 1925 Oudh 473.**

A man's general reputation is the reputation which he bears in the place in which he lives among the inhabitants of that place. Though this definition may be accepted as correct in the great majority of cases it can hardly be recognised as conclusive. (Carr and Godfrey, JJ.) Emperor v. Po Yin. **85 I C 368 : 26 Cr L J 528 : 4 Bur L J 6 : 2 Rang 686 : A I R 1925 Rang 174.**

——Evidence—Being suspected in previous dacoities is no evidence of general repute.

The evidence regarding the accused being suspected in previous dacoities and other offences would not be evidence of general repute. 11 A. L. J. 461, foll.—(Gokul Prasad, J.) Chanchal v. Emperor. **L R 1 A 175 Cr.**

——Evidence—General repute—Evidence of.

Where the chairman of a Municipality was proceeded against under S. 110 the evidence of general repute let in against the accused must be the evidence of a reputation acquired by the accused since his appointment to the chairmanship. (Heaton and Shah, JJ.) Bhan Savalaram Kotasthana v. Emperor. **16 Bom L R 943 : 26 I C 1003 : 16 Cr L J 91 : A I R 1914 Bom 199.**

——S. 110 (a) and (f)—Evidence of general repute.

Where evidence is admissible and has been admitted to show that a man is a habitual offender under other clauses of S. 110 and is also being tried under cl. (f), it is a mere inference of fact from the nature of the offences whether he is a dangerous and desperate character or not. (Holmwood and Ryves, JJ.) Parasulla v. Emperor. **4 Ind Cas 10 : 13 C W N 244 : 10 Cr L J 460.**

——Evidence of general repute.

Evidence of the general repute of a person includes what is generally said of him in the neighbourhood in which he lives. (Mr. Chamier, J.) Raghuber Dial v. King-Emperor. **10 O C 168 : 6 Cr L J 256.**

——Ss. 117 and 110—Habitual Offender—Evidence

CRIMINAL P. C. (V of 1898), S. 110 — 23. Evidence of general repute— (c) General repute

of general repute—No specific instances need be given—Criminal Procedure Code (5 of 1898), S. 117. **5 Cr L J 178 (Bom).**

——Evidence of general repute, admissibility of—Joint trial of master and servant—Legality.

Where there is no evidence of habitual association beyond the fact of the two accused being master and servant, a joint trial is illegal, but it need not be set aside unless is is shown that the accused was actually prejudiced or that the trial led to an improper order being passed.

Under Ss. 110, Cl. (f), 112 and 117 of the Code, evidence of mere general repute is not sufficient to prove that a person is of so desperate and dangerous a character that he cannot be allowed to remain at large, but that such a finding must be based on evidence of facts. It is not sufficient to do so on vague and general evidence that some one was robbed or beaten and people say that accused was responsible for it. (Mr. Wells) Babu Murtaza Husain v. King-Emperor. **9 O C 69 : 3 Cr L J 290.**

——Ss. 110, 117—Habitual offender — Evidence of repute—Duty of Magistrate.

In order to satisfy himself that an accused's general repute is that of an habitual offender of one of the types mentioned in s. 110, Cr. P. C. a Magistrate should require more evidence than that of policemen and village authorities. Inquiries under s. 117 should, if possible, be conducted in the place where the accused has lived, and the Magistrate should himself pick out at haphazard some of the villagers, and examine them as to the accused's general repute. He should not be content with the evidence of merely such witnesses as the police or village authorities choose to send up to him. He should also consider in every case whether the necessity for putting the alleged habitual offender on security has been proved, and whether the police and village authorities could not ensure good behaviour on the part of the accused, if they exerted themselves more in executing their duties. (Fox J.) King-Emperor v. Nga Shwe U. **2 L B R 166.**

23. Evidence of general repute—(d) Quantum.

——Evidence — Quantum — General repute—Habitual offender—S. 117 (4).

No hard and fast rule can be laid down as to the quantum of evidence necessary before the Court can act thereon, nor is it necessary that the suspicion against a person charged under S. 110 must be embodied in some document.

When a large body of persons have come forward to swear as to the reputation of a person and he is not able to show anything as to why the witnesses have come forward to give him a bad character, such evidence cannot be lightly brushed aside. (Walford J.) Ram Din v. Emperor. **A I R 1946 Oudh 50 : 1945 A W R (C. C.) 231 : 1945 O W N (C. C.) 361.**

CRIMINAL P. C. (V of 1898), S. 110

23. Evidence of general repute—(e) Reputation.

——Ss. 110, 117—General repute—Evidence of—Police witness, value of—Stranger to place, if can give such evidence.

Per Burn J.—The question what is a person's reputation is a question of fact. It can be spoken to by any one who knows what his general reputation is. The Police Officer who goes to the place where a particular person lives and who makes enquiries to find out what his reputation is, is perfectly competent to speak in the witness-box about the result of his enquiries. His evidence that the reputation of such and such a person is so and so is evidence of a fact and it is not to be excluded as mere hearsay evidence. In one sense, the evidence of general repute is of course hearsay but it is hearsay of a particular kind which is made admissible in cases under S. 110 by S. 117, Cr. P. C. It is not necessary that the witness who speaks to the general reputation of a person must be resident in the same place. A stranger can find out what the general repute of a person is and he is competent to testify to that fact.

Per Venkataramana Rao J.—Reputation of a man's character is the inference or estimate from the sum total of a man's actions and qualities drawn or formed by persons who are acquainted with or among whom he resides and with whom he is chiefly conversant or the circle in which he moves; it is the prevailing opinion formed by those with whom he associates and who would have the best opportunity of knowing his habits and general behaviour. It is generally understood that the 'place' or 'community' with reference to which reputation evidence is tendered should relate to the neighbourhood where he dwells or moves, but having regard to modern conditions, it is impossible to define "neighbourhood" or "community" with any degree of accuracy. (Burn and Venkataramana Rao. JJ.) In re Perne Maila Rai. **A I R 1938 Mad 591 : 1938 M W N 313 : 47 M L W 423 : I L R (1938) Mad 720 : 11 R M 351 : 39 Cr L J 898 : 177 I C 586.**

——Ss. 110, 123 and 362—Applicability of S. 362 — Evidence of repute — Association with bad characters—Previous conviction, value of, as evidence.

Section 362, Cr. P. C., does not apply to cases under S. 110, Cr. P. C., where it has become necessary to make a reference to the High Court under S. 123 (2), Cr. P. C. The record of evidence by the Presidency Magistrate in such a case need not be as full as in a similar case in the Court of a Mofussil Magistrate. Evidence of association with bad characters, against the accused, in a proceeding under S. 110, Cr. P. C., is evidence of reputation, but such reputation can only be based upon association with proved bad characters and not with reputed bad characters. Previous convictions are not substantive evidence in a case under S. 110, Cr. P. C., though they may have an effect in deciding for what length of time the accused is to be bound down. (Holmwood and Ryves, JJ.) Emperor v. Nepal Shikary. **13 C W N 318 : 9 C L J 439 : 2 Ind Cas 651 : 10 Cr L J 122.**

CRIMINAL P. C. (V of 1898), S. 110 — 23. Evidence of general repute—(e) Reputation

23. Evidence of general repute—(f) Rumour.

——Rumour, whether can be taken into consideration.

There is no legal justification for taking rumours into consideration against persons charged under S. 110, Cr. P. C. (Mir Ahmad, A. J. C.) Tor Gul v. Emperor **A I R 1935 Pesh 158 : 8 R Pesh 77 : 159 I C 97 : 1935 Cr C 1127.**

——Evidence—General repute.

The belief of a class of persons that a particular individual has done particular acts or has characteristics of a certain kind because there are rumours to that effect in a particular place, is not admissible as evidence of repute where no facts are mentioned to justify the impression. Inferences drawn by forest officers as to the persons who committed forest offences are not evidence of repute. The Court should test the sources of the information that led the officials to infer that the accused had anything to do with the offences. (Kumaraswamy Sastri, J.) Kripa Sindu Naiko v. Emperor. **(1918) M W N 751 : 19 Cr L J 905 : 47 I C 277 : 8 L W 461 : A I R 1919 Mad 633.**

——Ss. 110, 117—General repute—Rumour.

Rumours that a man is of a bad character is not evidence of general repute. Where the evidence for the defence to the effect that the accused is a man of good character is as weighty as, or weightier than, the evidence for the prosecution, it could not be held as proved that the accused is by general repute a bad character. (Banerji, J.) Rajendra Prasad Sahi v. King-Emperor. **1 A L J 611 : 1 Cr L J 984.**

23. Evidence of general repute—(g) Suspected and named.

——Evidence of specific instances wherein accused was suspected is good for corroboration.

Evidence of instances in which the accused has been suspected is certainly not evidence of general repute. But when independent evidence of the accused's reputation has been given, evidence that he has been suspected in a number of instances may be admissible as corroboration. 23 O. C. 371. Foll. (Daniels, A. J. C.) Sanku v. Emperor. **9 O and A L R 269 : 73 I C 352 : 24 Cr L J 608 : A I R 1924 Oudh 112.**

——Offence—Substantive charge not proved—Suspicion—How far evidence of bad reputation.

Where a substantive charge is made but not proved, the Court is not right in binding the accused under S. 110. Mere suspicion does not justify such an order; but evidence that a person had been suspected and named in a large number of years extending over a long interval, may serve as evidence of general bad reputation and conversely the fact that a person has never been suspected of any

CRIMINAL P. C (V of 1898), S. 110 — 23. Evidence of general repute—(g) Suspected and named

offence may weaken the evidence of bad reputation given against him. (Daniels, A. J. C.) Raja Ram v. Emperor. **22 Cr L J 273 : 60 I C 673 : 23 O C 371 : A I R 1920 Oudh 226 (2).**

23. Evidence of general repute—(h) Witnesses.

——It is not an absolute rule of law that the repute under S. 110 should only be proved by immediate neighbours. The meaning of the word 'place' necessarily varies with the circumstances of the case. But where the witnesses are living at a considerable distance from the accused the Court should satisfy itself that the evidence is true. Evidence of witnesses sufficiently near is admissible. (Carr and Godfrey, JJ.) Emperor v. Po Yin. **85 I C 368 : 26 Cr L J 528 : 4 Bur L J 6 : 2 Rang 686 : A I R 1925 Rang 174.**

——Evidence of general repute—Evidence not based on personal knowledge—Admissibility.

A police officer who has no personal knowledge of the reputation of the person to whom the enquiry relates should not be permitted to speak as to the result of his enquiry of that point or be allowed to put in a list showing the number of cases in which that person was suspected by others. (Mr. Chamier, J.) Raghuber Dial v. King Emperor. **10 O C 168 : 6 Cr L J 256.**

——Where the person, against whom proceedings under S. 110 are instituted, is a well known citizen of the city, even the fellow citizens not living in his immediate neighbourhood are competent witnesses to prove his general repute. (Harington and Geidt, JJ.) Wahid Ali Khan v. Emperor. **11 C W N 789 : 6 Cr L J 1.**

24. Evidence of previous conviction.

——Previous conviction, whether necessary for passing order of security—Evidence produced by prosecution must be considered and weighed.

A previous conviction is not necessary for proceedings under S. 110, Cr. P. C. There is no such provision in the law itself which on the other hand lays down in S. 117 (4) that the fact that the man is an habitual offender can be proved by evidence of general repute or otherwise. Before passing any order under S. 110, therefore, the Magistrate must consider and weigh the evidence produced by the prosecution to prove that the person against whom the proceedings are instituted was a habitual thief even if there is no evidence that such person had any previous conviction. (Blacker, J.) Emperor v. Khuda Bakhsh. **A I R 1938 Lah 428 : 10 R L 732 : 40 P L R 222 : 39 Cr L J 599 : 175 I C 522.**

——Previous order under S. 110, Cr. P. Code.

The fact that a person has been bound over previously under S. 110, may be stated and proved as one of the grounds on which the witnesses to general repute believe the accused to be a habitual offender. The value to be attached to the proof of a previous order under S. 110, is, of course, a question for the Court to consider. (Ashworth and King, JJ.) Emperor v. Kumera. **51 All 275 : 1929 Cr C 346 : 125 I C 19 : 31 Cr L J 755 : AIR 1929 All 650.**

CRIMINAL P. C. (V of 1898), S. 110 — 24. Evidence of previous conviction

——Previous convictions.

The existence of a number of previous convictions for offences such as theft is a matter which may and should be taken into consideration as indicating the character and disposition of the accused. (Boys and Sen, JJ.) Emperor v. Ram Lal. **116 I C 25 : 51 All 663 : 1929 A L J 361 : 10 L R A Cr 66 : 11 A I Cr 486 : 30 Cr L J 562 : A I R 1929 All 273.**

——Proof of previous conviction.

Whenever it is required to prove a previous conviction against a man in proceedings under Chap. VIII, Cr. P. Code, such previous convictions must be proved strictly and in accordance with law. (Chitty and Walmsley, JJ.) Emperor v. Sheikh Abdul. **43 Cal 1128 : 20 C W N 725 : 33 I C 825 : 17 Cr L J 185 : A I R 1916 Cal 344.**

25. Demand of security from person previously convicted.

——What must be considered.

The existence of convictions is not by itself sufficient to justify ordering the accused to furnish security. Weight must be given to a consideration of the period that has elapsed subsequent to the last of two convictions in order to see whether during that period the accused has apparently shown a disposition to conduct himself properly or whether there are indications that he has during that period continued in his previous course, though he may not have actually brought himself within the clutches of the law. (Boys and Sen, JJ.) Emperor v. Ram Lal. **116 I C 25 : 51 All 663 : 1929 A L J 361 : 10 L R A Cr 66 : 11 A I Cr R 486 : 30 Cr L J 562 : A I R 1929 All 273.**

It is hard on accused to put them on their trial under the Badmashi Chapter shortly after they are released from jail, since they have no sufficient opportunity to reform. (Kennedy, J. C. and Rupchand Bilaram, A. J. C.) Thanwor v. Emperor. **19 S L R 176 : 26 Cr L J 1398 : 89 I C 710 : A I R 1926 Sind 69.**

——Person previously convicted—Demand of security from.

Security cannot be demanded where there was no evidence to show that since his last conviction, the accused had been a bad character, or had done anything that would justify an order under S. 110. (Scott-Smith, J.) Naku v. Crown. **29 P R 1910 Cr : 78 Ind Cas 385 : 196 P L R 1910 : 11 Cr L J 637.**

——Fresh proceedings immediately after release from imprisonment under S. 110—Propriety of.

Where a person within two months of his release from jail after an imprisonment of three years under an order passed against him under s. 110, is

CRIMINAL P. C. (V of 1898), S. 110 — 25. Demand of security from person previously convicted

again proceeded against under s. 110, such procedure is premature. It is to say the least of it, not fair to run a man in as badmash before he has had an opportunity of showing that he is willing to adopt an honest livelihood. He cannot be proceeded against on evidence relating to the period prior to the imprisonment under the former order. (Burkitt J.) Emperor v. Husain Ahmad Khan. **A W N 1905, 34 : 2 Cr L J 86.**

26. Proceeding under S. 110 started after acquittal or discharge.

——Person proceeded against, if should be ex-convict—Finding that person is habitual criminal, if can be based on criminal case against him in which he was exonerated.

Per Burn J. (Obiter.)—A person against whom proceedings under S. 110, Cr. P. C., are taken, need not be ex-convict.

In proceedings under S. 110, the Court is not warranted in basing its finding that the person proceeded against is a habitual criminal on the evidence gathered from the proceedings in those cases, when he was exonerated in respect of the charges laid against him in those proceedings. (Burn and Venkatramana Rao, JJ.) In re Perne Maila Rai **A I R 1938 Mad 591 : 1938 M W N 313 : 47 M L W 428 : I L R (1938) Mad 720 : 11 R M 351 : 39 Cr L J 898 : 177 I C 589.**

——Section should not be used as a weapon in case substantive offence failing.

In cases where proceedings under S. 110 follow soon after a discharge or an acquittal, the Court, before passing an order binding over the person proceeded against. must be satisfied that the proceeding under S. 110 was not instituted with a view to get him punished when the police had failed to secure his conviction for a substantive offence and, as such in such cases the Courts are called upon to scrutinise the evidence with the greatest care. But if, notwithstanding such a scrutiny of evidence the Court comes to the conclusion that there is sufficient evidence to warrant an order demanding security, the Court is bound to pass such an order. 6 A L J 487, Foll. (Iqbal Ahmed, J.) Lachman v. Emperor. **8 L R A Cr 70 : 7 A I Cr 482 : 102 I C 211 : 28 Cr L J 515 : A I R 1927 All 473.**

——Acquittal of substantive offence.

Where in a case under S. 411, I. P. C., the accused was acquitted and immediately an order was passed against him under S. 110 of the Cr. P. C.

Held, that he should not have been restricted under S. 110, Cr. P. C., immediately after without a very stong case being made out against him. (Harrison, J.) Abdullah v. Emperor. **26 P L R 789 : 27 Cr L J 190 : 91 I C 1006 . A I R 1926 Lah 190.**

——Acquitted of substantive offence of dacoity.

There is no legal bar to a prosecution for bad livelihood of men acquitted of the substantive offence of dacoity, but in weighing evidence such a matter is to be taken into consideration as indicating the desire of the Police to get rid of the presence of such men from villages whether satisfactory evidence of their bad character be available or not. (Dalal, J. C.) Bahadur v. Emperor. **85 I C 370 : 27 O C 327 : 26 Cr L J 530 : A I R 1925 Oudh 501.**

CRIMINAL P. C. (V of 1898), S. 110 — 26. Proceeding under S. 110 started after acquittal or discharge

——Discharge of substantive offence.

Where a man has been arrested on a substantive charge but released for the reason that that charge could not be sustained, a prosecution under S. 110 on the same evidence on which the charge for the substantive offence was founded or on evidence which arose as a natural sequel to the charge of the substantive offence is not desirable. But, if the evidence in support of the charge under S. 110 is antecedent to charge for the substantive offence and is wholly independent of it, the proceedings under S. 110 are not illegal. (Wazir Hasan, A.J.C.) Sital Din v. The King-Emperor. **77 I C 302 : 25 Cr L J 366 : A I R 1925 Oudh 49.**

——S. 110 (f)—Evidence—Sufficiency of—Evidence put forward in a previous case in which the person had been acquitted.

An accused person who had been acquitted of the offence of dacoity, etc., could not be called upon to furnish security under S. 110 (f) on the same evidence. (Lindsay, J. C.) Gulab Chand v. Emperor. **3 O L J 43 : 33 I C 824 : 17 Cr L J 184 : A I R 1916 Oudh 122.**

——Proceedings taken after failure of prosecution on definite charges.

Where the Magistrate not maliciously but upon police information and upon the evidence before him took proceedings against some of these persons who had been acquitted from a charge of dacoity and bound them over.

Held that his order was a proper one. (Tudball, J.) Raj Karan v. King-Emperor. **6 A L J 961 : 32 A 55 : 4 Ind Cas 709 : 11 Cr L J 36.**

——Proceedings as means of punishment.

When proceedings under s. 110 are started against a man soon after a discharge or acquittal from a charge of burglary of which he was suspected, it is always necessary to make it clear that the proceedings were not taken as a means of punishing, in an indirect way, a man, whom the police considers guilty. (Alston, J.) Shiam Lal v. King-Emperor. **6 A L J 487 : 2 Ind Cas 225 : 9 Cr L J 528.**

——Failure of prosecution for substantive offences —Subsequent order under s. 110—Validity.

Proceedings under s. 110 were instituted, with a view to bind down persons on an indefinite charge, after prosecutions against them, on definite charges under the Penal Code, had failed. Those persons were bound down under S. 110 of the Code, upon the mere statements of witnesses that they suspected or were under the impression that the persons proceeded against were thieves or dacoits. when no fact was mentioned to indicate, that there was sufficient reason for their suspicion or

CRIMINAL P.C. (V of 1898), S. 110—26. Proceedings under S. 110 started after acquittal or discharge

impression. Held that the order passed under S. 110 could not be sustained. (Brett and Gupta JJ.) Alep Pramanik v. King-Emperor. **11 C W N 413 : 5 Cr L J 191.**

——Previous acquittal for dacoity—Proceeding under S. 110 on same evidence—Legality.

A person acquitted of dacoity cannot be bound over under s. 110 of the Code, when there is no evidence other than that given in the dacoity case which was disbelieved. (Mitra and Holmwood, JJ.) Kismat Akanda v. Emperor. **11 C W N 129 : 4 Cr L J 464.**

27. Joint enquiry and trial—See also under S. 117.

——Ss. 110, 117 (5)—Joint trial.

A notice was served on A, B and C requiring them under S. 110 (a), (d), (e) and (f), to show cause why they should not execute a security bond and the Magistrate ordered a joint enquiry. Out of them, A was not accused of any acts falling within cls. (a), (d), (e) and (f) of S. 110 these being charged specifically against B and C only. The acts of highhandedness charged against A were of extorting documents and rendering persons homeless. Specific acts alleged against A ranged over a period of 12 years:

Held that the order for the joint enquiry of A along with B and C was bad. (Panigrahi J.) Krupasindhu v. Rex. **I L R (1949) 1 Cut 751 : A I R 1951 Orissa 277 : 52 Cr L J 848.**

——Ss. 110 and 117 (2) and (5) — Joint enquiry —Accusation.

In the absence of an accusation which would justify a joint trial, a joint enquiry under S. 110 is not in accordance with the provisions of law: A I R 1938 P C 130, Foll. (Harries C. J. and Das Gupta J.) Ohid Sk. v. Crown. **51 Cr L J 856 : A I R 1950 Cal 177.**

—Ss. 110, 117: Penal Code (1860), S. 401 — Joint trial of habitual offenders—Legality of — Difference between Ss. 110, 117, Cr. P. C., and S. 401, I. P. C.

Reading cl. (a) of S. 110 with sub-s. (5) of S. 117, Cr. P. C., it is clear that, one or more persons, believed to be habitually committing one or more offences, mentioned either jointly or severally, can be proceeded against under S. 110, jointly or severally, notwithstanding that their activity may fall within the purview of S. 401, I. P. C. The difference between the two sections is that, under S. 401, it is necessary to prove that several persons have associated together, forming a gang for the purpose of habitually committing theft or robbery; and their activities, in fact, materialised into active robberies and thefts or attempts at such offences; whereas S. 110, Cr. P C., being only a preventive section, evidence of strong suspicion and evil repute that such person or persons engage in criminal activities

CRIMINAL P. C. (V of 1898), S. 110 — 27. Joint enquiry and trial

is enough to render them liable to be bound down to be of good behaviour. Section 401 is punitive; while S. 110 is preventive. (Walford, J.) Ramlakhan v. Emperor. **227 I C 204 : 47 Cr L J 1019 : 1946 O A (C C) 227 : 1946 O W N (C C) 316 : AIR 1947 Oudh 86.**

When it is alleged that a person is in the habit of committing theft in association with other persons as members of a gang of thieves, the Magistrate is at liberty in his discretion, to deal with the case of all such persons in the same inquiry. (Page, C. J. and Das, J.) Rangoo Mean v Emperor. **AIR 1934 Rang 121 : 12 Rang 169 : 7 R Rang 49 : 35 Cr L J 1257 : 151 I C 205.**

——Ss. 110, 122, 123, 406-A— Order under S. 110—Interference in revision—Powers of High Court—Evidence in the nature of conspiracy or acting in concert—Joint trial.

Where there is evidence in the nature of a conspiracy or acting in concert, the legality of a joint trial depends on what is alleged for the prosecution. A man of "desperate and dangerous character" in cl. (f) of S. 110, means a man who has reckless disregard of the safety of persons and the property of his neighbours.

A joint trial is the proper procedure in the case of persons acting in concert—persons who are associates and confederates, so as to call into operation the provision contained in S. 117 (5) of the Cr. P. C. In cases where proceedings are taken jointly against more persons than one under S. 110, the Magistrate is required to come to separate findings as regards each of the person charged individually.

Where the subject-matter of the charge against the petitioners was that they were so desperate and dangerous as to render their being at large without security hazardous to the community, as mentioned in S. 110 (f) of the Cr. P. C., a joint enquiry is the proper procedure to be followed. A joint trial is not only permissible but a joint trial is the only procedure that could be followed in the case. (Patterson and Guha, JJ.) Parbati Charan v. Emperor. **A I R 1934 Cal 482 : 6 R C 593 : 35 Cr L J 952 : 61 Cal 588 : 149 I C 460.**

——Ss. 110, 112—Two persons alleged to be members of gang of habitual thieves — One order under S. 112—Joint trial.

Where two persons were alleged to be members of a gang of habitual thieves and robbers and were always associated jointly in the commission of thefts, burglaries and robberies, a Magistrate acts properly in issuing one order against both of them under S. 112, Cr. P. C., calling upon them to show cause why they should not be bound over to be of good behaviour under S. 110 and the joint trial of the two is perfectly legal.

CRIMINAL P. C. (V of 1898), S. 110 — 27. Joint enquiry and trial

(Nanavutty, J.) Hubdar Ali v. Emperor. **A I R 1933 Oudh 251 : 10 O W N 325 : 34 Cr L J 852: 6 R O 20 : 144 I C 944.**

——S. 110 (a), (d) and (f) — A joint trial of several persons charged under S. 110, is not illegal if the evidence discloses that they belong to the same gang. (Kulwant Sahay, J.) Bishundeo Missir v. King-Emperor **12 Pat L Tim 880.**

——Joint trial.

Joint inquiries under S. 117 are not illegal even where part of the inquiry is under Cl. (f), S. 110. The evidence of reputation admitted against the several persons should of course not be against each accused separately but against them all together. A I R 1925 Mad 189 and 27 Cal 781, Not Foll.; A I R 1923 Cal 35, Rel. on. (Pandalai, J.) Appasamy Mudali. In re. **54 Mad 334 : 128 I C 449 : 1930 M W N 1045 : 1930 Cr C 1149 : 32 M L W 743 : A I R 1930 Mad 873 : 59 M L J 853 : 3 M Cr C 368 : 32 Cr L J 144 : 15 A I Cr R 376.**

——Committing violence jointly.

Where there is evidence of joint acts committed by the two accused and some of the evidence applies to one and some to the other, the joint trial of the two accused under S. 110 is not illegal. A I R 1923 All 35, Expl. (Baker, J. C.) Shamsuddin v. Emperor. **88 I C 282 : 26 Cr L J 1114 : A I R 1925 Nag 381.**

——Where action is also taken under cl. (f).

Joint trial must be condemned as prejudicial to the accused, where proceedings are taken against the accused not only for conduct coming within S. 110, Cls. (d) and (e) but also under Cl. (f) for the reason that they are so desperate and dangerous as to make their being at large without security hazardous to the community, and where the accused are tried jointly and evidence pertaining exclusively to the nefarious acts of each of the accused is let in, in addition to the evidence as to the events in which it is alleged that they are associated together and the Magistrate passes an order against them on a consideration of the entire evidence thus introduced into the record against all the accused. (Madhavan Nair, J.) Kutti Goundan, In re. **86 I C 49 : 26 Cr L J 673 : 47 M L J 689 : 1925 M W N 57 : AIR 1925 Mad 189.**

——When can be allowed.

It is very hard, to any set of defendants to charge them together, unless the whole of the evidence against all of them is precisely the same and they are to be dealt with on the same facts, and compel them to fight each his own individual battle during a prolonged enquiry, a great deal of which concerns for the moment only one out of the general body. (Walsh, J.) Angnoo Singh v. Emperor. **71 I C 865 : 20 A L J 881 : 45 All 109 : 24 Cr L J 257 : A I R 1923 All 35.**

CRIMINAL P. C. (V of 1898), S. 110 — 27. Joint enquiry and trial

——Ss. 110 and 117—Joint trial—Legality.

The legality of a joint trial does not depend upon what is alleged for the prosecution but on the facts subsequently found to be true. The Magistrate of course, will bear in mind that a joint trial is not permissible unless there is evidence of something in the nature of conspiracy or of concert in respect of the various acts of habitual mischief to which the witnesses depose. Ordinarily, under S. 110 Cr. P. C. every person has to be tried separately for the offences enumerated therein. In other words a joint trial is only permissible when two or more persons have been associated for the purpose of committing the offences mentioned in S. 110, clauses (a) to (f). But for clause (4) of S. 117 Cr. P. C. a joint trial would not have been in any case permitted. The circumstances mentioned therein, namely the association of several persons in the commission of the offence mentioned in S. 110 of the Cr. P. C. must be established in order to entitle the Magistrate to try several persons jointly. In a case under S. 110, Cr. P. C. in which the evidence of bad character of the accused persons and of the individual nefarious acts committed by them form the integral parts of the offence, it is impossible to conceive that the evidence led against one will not at all prejudice the case of the other accused persons assembled together in the same dock. (Jwala Prasad and Ross, JJ.) Jai Sao v. Emperor. **3 Pat L T 538 : 23 Cr L J 100 : 65 I C 484 : 1923 Pat HCC 8 : A I R 1923 Pat 104.**

——Ss. 110 and 118—Joint trial—Accused belonging to different villages.

Where there is an association of several persons belonging to different villages at several places for committing offences their joint trial in a proceeding under S. 110, Cr. P. C. is not bad. (Teunon and Suhrawardy, JJ.) Rahim Bux Pramanik v. Emperor. **64 I C 842 : 23 Cr. L. J. 58 (Cal.).**

——Joint trial—Legality of—Evidence—Weight due to.

In proceedings under S. 110, Cr. P. C. the joint trial of several persons is illegal. (Scott Smith, J.) Krishna v. Emperor. **4 Lah L J 531.**

——Ss. 110 and 234—Joint trial — Misjoinder—Test of—Mis-conduct of member of family.

Whenever in security proceedings a plea of misjoinder is raised, the test to be applied is whether there has been habitual association between the persons charged in respect of the conduct alleged in the complaint. The mere fact that the persons charged are members of undivided family would not by itself render each member liable for the misconduct of any other member and where they are living separately there is not even the presumption that one member knew and assented to the misdeeds of the others. (Kumara-

CRIMINAL P. C. (V of 1898), S. 110 — 27. Joint enquiry and trial

swami Sastri, J.) Kripa Sindhu Naiko v. Emperor. **8 L W 461 : (1918) M W N 751 : 47 I C 277 : 19 Cr L J 905 : A I R 1919 Mad 633.**

——Joint trial.

Without proof of association in the same offence there should be no joint trial. (Smith, J.). Emperor v. Chuni. **21 PR Cr 1914 : 16 Cr L J 136 : 27 I C 200: 206 P L R 1915 : AIR 1914 Lah 575.**

——Ss. 110 and 122—Joint trial—Magistrate's duty.

In a joint trial of several persons under S. 110 it is incumbent on the Magistrate to exercise care and caution and to insist that definite evidence be given against each person charged. (Lindsay, A. J. C.) Jai Govind v. Emperor. **15 O C 263 : 17 I C 72 : 13 Cr L J 760.**

——Single enquiry against two persons under Ss. 109 and 110.

See ibid S. 109. **11 Cr L J 50 (Mad).**

——Charge of being thieves by habit against several persons — Trial together of all the persons — Legality. See ibid S. 117. **6 Cr L J 284 (L B).**

——Ss. 110, 109 and 117—Joint inquiry of person proceeded against under S. 110 and another under S. 109—Legality. See Cr. P. C. Ss. 117, 109, 110 and 112.
2 Cr L J 224 (Oudh).

——Joint inquiry.

With respect to the matters specified in S. 110, if there is a habitual connection between different persons, their cases may be dealt with in a joint inquiry. (Chandavarkar and Aston, JJ.) Emperor v. Raoji Fulchand. **6 Bom L R 34 : 1 Cr L J 3.**

——Ss. 109 and 110—One proceeding against same person.

See ibid S. 109. **2 L B R 40.**

28. Interim security—See S. 117 (3).

29. Demand of fresh security—See also under S. 125.

——Ss. 110, 122a, 125 — Fresh security.

Where a person has furnished security for good behaviour, and the security has been accepted by the Magistrate, he cannot be ordered to furnish fresh local sureties. (Reid, J.) King-Emperor v. Pirya Lal. **16 P R 1905 Cr : 120 P L R 1905 : 2 Cr L J 278.**

30. Terms of Security — See S. 118.

31. Amount of the bond.

——Amount and terms of the bond.

In so far as an order does not state the amount of the bond to be executed, or the term for which the bond is to be in force, as required under the provisions of S. 112 of the Cr. P. C. the order is not a proper one for the purpose of S. 110, Cl (f) of the Cr. P. C. (Lentaigne, J.) Parsodan v. Emperor. **85 I C 33 : 26 Cr L J 417 : 2 Rang 524 : A I R 1925 Rang 69.**

CRIMINAL P. C. (V of 1898), S. 110

32. Failure to furnish security—Effect.

See also under S. 123.

——Scope.

Solitary confinement cannot be awarded for failure to furnish security under S. 110, Cr. P. C. (Sulaiman, J.) Emperor v. Phakkar. **102 I C 342 : 8 L R A Cr 74 : 7 A I Cr R 516 : 28 Cr L J 534 : A I R 1927 All 472.**

——Ss. 110 and 123 (6)—Imprisonment should ordinarily be simple.

S. 110, Cr. P. C. being essentially a preventive rather than a punitive provision, the imprisonment awarded in default of furnishing security should in ordinary cases be simple unless the accused is habitual thief, house-braker or the like, in which case the imprisonment may be rigorous. (Mears, C. J.) Gandharp Singh v. Emperor. **42 All 563 : 18 A L J 640 : 2 U P L R (A) 159 : 21 Cr L J 580 : 57 I C 100 : L R 1 A (Cr) 115 : A I R 1920 All 205.**

——Security for good behaviour — Imprisonment in default.

See Criminal Procedure Code (Act V of 1898) Ss. 109, 110, 123. **9 Cr L J 350 (Mysore).**

33. Period of security.

See also under S. 118.

——Period of security—Largest period—Exceptional cases.

Security for good behaviour should be taken at the most for one year, except in very exceptional cases but in such cases proper course would be a sentence of imprisonment. (Sadasiva Aiyar, J.) In re. A Shakoor Sait. **30 I C 438: 16 Cr L J 614 : AIR 1916 Mad 654.**

34. SURETY

See also under Ss. 122 and 514
(a) Enquiry
(b) Personal security
(c) Qualifications
(d) Rejection
(e) Liability

34. Surety—(a) Enquiry

——Ss. 110 and 125—Evidence—Sureties—Hearsay evidence of repute—Admissibility.

In the case of persons standing sureties for a person charged under S. 110 Cr. P. Code hearsay evidence as to general repute is not admissible. (Wazir Hasan, A. J. C.) Sheopal v. Emperor, **9 O L J 353 : 68 I C 959 : 23 Cr L J 639 : 4 U P L R (O) 2 : A I R 1922 Oudh 227.**

34. Surety—(b) Personal Security

Where the accused are landed proprietors, their personal security should be deemed as sufficient. (Stuart, J.) Bindraban v. Emperor. **L R 2 A (Cr) 112.**

——Taking of security without personal bonds—Legality.

There is no provision of law empowering a Court to call upon a person to provide sure-

CRIMINAL P. C. (V of 1898), S. 110 — 34. Surety — (b) Personal security

ties for good behaviour without his giving his own bond at the same time. (Knox, Actg. C J and Aikman, J.) Emperor v. Udmi, **27 A 262: 1 A L J 593 : A W N 1904, 230 :1 Cr L J 897.**

34. Surety—(c) Qualifications

——Rejection of sureties—Accused cannot be ordered to produce sureties residing within certain limits.

An order directing an accused person to produce sureties residing within certain limits is illegal. A Magistrate has no authority to lay down any limits within which sureties must reside (Lindsay, J.) Raghunandan Prasad v. Emperor. **20 A L J 520 : 23 Cr L J 400 : L R 3 A 116 Cr: 67 I C 352 : AIR 1922 All 489 (1).**

——Rejection of sureties—Relationship is not a valid ground—Legality.

The mere fact that the surety offered under S. 110 of the Code is a relation of the person from whom the security is demanded, is his intimate friend and is named by him as a witness is no valid reason in law for refusing to accept the surety. (Piggott, J.) Muhammad Wasi v. Emperor. **59 I C 134 : 22 Cr L J 22 : A I R 1920 All 309.**

——Rejection of sureties—Non-residence in district—Effect of.

The mere fact that a person ordered to produce sureties under S. 110 of the Cr. P. C. gives as security two persons who are residents of a different police district and who helped him in his defence will not make them improper as sureties. The Magistrate should not refuse to accept them. (Richards, C. J.) Gobharadan v. Emperor. **16 A L J 263 : 44 I C 969 : A I R 1918 All 108 : 19 Cr L J 441.**

——Ss. 110 and 123—Rejection of surety — Relationship is no ground for rejection—Security for good behaviour—Delegation of inquiry—Reduction of period.

As the order did not specify whether the sureties were each to be liable for Rs. 1,000 or in all Rs. 1,000 it was bad in law. Relationship is no ground for rejecting a surety; it is a recommendation for being accepted. 25 A. 131, Foll. The Magistrate should himself enquire into the sufficiency of the sureties and not act on a police report without giving an opportunity to the parties concerned. The policy of the law is not to fill the jails with bad persons but to make them respect the law. The demanding of four sureties is unreasonable and hard on the accused. The Magistrate had no jurisdiction to cut short the period during which the accused was to be of good behaviour, and send him to jail but he should report for orders to the Sessions Court. (Johnstone, J.) Mahala v. Crown. **16 Cr. L. J. 337 : 142 P L R 1914 : 28 I. C. 721 : 6 P. R. (Cr.) 1914 : A I R 1914 Lah 492.**

CRIMINAL P C (V of 1898), S. 110 — 34. Surety — (c) Qualifications

——Fitness of surety—Security for good behaviour—Condition as to residence of surety.

Where a Magistrate, while acting under S. 110 ordered that security must be furnished of a respectable gentleman residing in the same or a neighbouring village in which the accused was living ; Held, it was quite unnecessary to demand that the surety should be a resident of any particular place when the Magistrate was satisfied that the surety could exercise proper influence over the person bound over. (Tudball, J.) Zikri v. Emperor. **8 A. L. J. 785 : 11 I. C. 1008 : 12 Cr. L. J. 472.**

34. Surety—(d) Rejection

——Ss. 110, 122—Sureties by accused, whether can be rejected without inquiry merely on Police report.

In a case under S. 110 Cr. P. C., the Magistrate cannot reject the sureties merely on the Police report unless he inquires himself or orders an inquiry by another Magistrate. (Wort, J.) Ramadhani Mahto v. Emperor **A I R 1935 Pat. 421 : 8 R P 224 : 16 P L T 478 : 2 B R 32 (1) : 36 Cr. L J 1473 : 158 I C 948.**

——Rejection of surety—Distant residence by itself is no ground for rejection unless that indicates absence of control—Personal security must be given.

Sureties should not be rejected merely because they are not close neighbours of the persons called upon to execute the bond, but this does not mean that sureties cannot be rejected when in the particular case the Magistrate finds that they live too far away—to be able to exercise any control over the conduct of the person called upon to execute the bond. Inability to control, whether owing to distance or any other reason, is a good reason for rejection, though mere distance is not.

In the case of a bond for good behaviour and a bond to keep the peace, personal security is necessary. (Ashworth, J. C.) Emperor v. Mahammad Baksh **26 O C 284 : A I R 1924 Oudh 80 : 81 I C 316 : 25 Cr. L J 796.**

——Acceptance of.

Where a surety for good behaviour was not accepted on the ground that he had already stood surety for some other man, held that that ground is clearly insufficient. (Kanhaiya Lal, J. C.) Ghisa v. Emperor. **73 I.C. 53 : 24 Cr. L. J. 517 : A I R 1924 Oudh 132.**

——Rejection of surety because of his being on friendly terms with accused is illegal.

Where the surety offered was a petty zamindar but the magistrate refused to accept him on the ground that he was on intimate terms with the accused, held that the rejection was illegal. (Piggott, J.) Muhammad Wasi v. Emperor. **L. R. 1 A (Cr.) 146.**

CRIMINAL P. C. (V of 1898), S. 110 — 34. Surety — (d) Rejection

——Ss. 110 and 125—Rejection of sureties—Police report—Illegality.

When sureties are offered the court ought to accept them unless it itself is satisfied that they are not proper persons. A magistrate is wrong in rejecting the sureties on the police report. (Ryves, J.) Gopikhatik v. Emperor. **L. R. 3 A 140 Cr. : 20 A. L. J. 760 : 68 I. C. 35 : 23 Cr L. J. 499 : A I R 1922 A. 541.**

——Rejection of sureties, sufficiency of grounds for.

Refusal to accept a surety on the ground that the surety lived 4 miles away from the accused and that he looked a boy and inexperienced and would consequently be too weak to take proper care of the accused is bad. (Lindsay, J. C.) Emperor v. Panchu. **24 O C 292 : 67 I C 585 : 23 Cr L J 425 : A I R 1921 Oudh 229 (1).**

——Rejection of sureties — Residing at a distance—If should be rejected.

Unnecessary difficulties should not be placed in the way of people required to furnish security for good behaviour and sureties ought not to be rejected merely because they reside at a distance from that of the accused. (Mears, C. J.) Rahmatullah v. Emperor. **61 I C 523 : 22 Cr L J 395 (All.).**

——Rejection of sureties—Residing at distant places—No judicial inquiry—Order illegal.

The rejection by the Magistrate of sureties on the mere ground that they live at a distance from the village of the persons required to furnish security for good behaviour without any judicial enquiry and without finding that they could not exercise control over the accused is not a proper order and should be set aside. (Bannerjee, J.) Mansa v. Emperor. **15 A L J 848 : 42 I C 783 : 18 Cr L J 1039 : A I R 1917 All 215.**

——Rejection of surety—Sufficient cause.

The fact that the sureties lived nine miles off the residence of the accused is not sufficient for refusing to accept sureties. (Richards, C. J.) Mashuk Ali v. Emperor. **19 I C 310 : 14 Cr L J 214 (All.).**

——Grounds for refusing to accept surety — see ibid S. 122. **4 Cr L J 169 (Cal.).**

34. Surety—(e) Liability.

——Liability of sureties—Bond for good behaviour—Liability on conviction of accused.

When a Badmash's friend saves him from jail by standing surety for him and then his conduct shows that he has not turned over a new leaf and that the surety is exercising no real supervision over his movements, no leniency should be shown to the surety. (Johnstone, C. J.) Bhita Singh v. Emperor. **3 P R Cr 1917 : 39 I C 476 : 18 Cr L J 508 : A I R 1917 Lah. 224.**

——Ss. 110 and 514—Liability of surety.

The liability of a surety for appearance of a man called upon to furnish security under S. 110 of the Cr. P. Code does not cease until the culprit, if so ordered, appears with the sureties and executes the bond. (Johnstone, J.) Abdul Karim v. Emperor. **32 P R Cr 1914 : 16 Cr L J 74 : 26 I C 668 : 134 P L R 1915 : A I R 1914 Lah 568.**

CRIMINAL P. C. (V of 1898), S. 110 — 34. Surety— (e) Liability

——Ss. 110, 514—Liability of surety—Forfeiture.

Persons who stand surety under S. 110 Cr. P. C. undertake liability only for such good conduct as is indicated by the circumstances under which the security was demanded.

Where the subsequent conviction is for offence other than that for which the surety originally stood, the surety should not be held liable and the security given not confiscated. (Kensington, J.) Udham Singh v. Emperor. **15 P R Cr 1913 : 39 P W R Cr 1913 : 14 Cr L J 575 : 21 I C 175 : 334 P L R 1913.**

——Liability of sureties—If one surety can be made liable for whole amount.

It is a serious mistake to make each of the sureties liable for the full amount of the bond. (Shaw, J. C.) Emperor v. Nga Po Sin. **4 Bur L T 270 : 13 I C 398 : 13 Cr L J 62.**

35. Practice and procedure.

——Plea of guilty.

An admission of guilt in a proceeding under S. 110 or in proceedings of a mere informal character cannot amount to a plea of guilty. (Cunliffe and Henderson, JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Jiban Kumar De. **A I R 1936 Cal. 292 : 8 R C 727 : 37 Cr L J 818 : 163 I C 228 (2).**

——Notice under S. 110 calling upon person to show cause why he should not execute bond—Notice made absolute—Sentence on default—Legality of—Proper procedure.

Where by notice under S. 110, a person is called upon to show cause why he should not execute a bond in Rs. 5,000 with two sureties to be of good behaviour for a period of three years, and the notice is made absolute, the Magistrate cannot sentence him to imprisonment on default. The case should be submitted to the Sessions Judge if the security is not furnished and if it becomes necessary to send the man to jail. (Middleton, J. C., and Mir Ahmad, A.J.C.) Abdul Karim v. Emperor. **A I R 1935 Pesh. 80 (2) : 36 Cr L J 1127 : 8 R Pesh 3 : 156 I C 659.**

——Procedure—Witnesses—Time to produce.

Where witnesses are cited for the defence in proceedings for security for good behaviour there should be no order unless and until time and opportunity are given to have the witnesses produced. (Buckland and Cuming, JJ.) Ponthiram Joab v. Emperor. **38 C L J 285 : 76 I C 965 : A I R 1924 Cal. 196 : 25 Cr L J 293.**

——Threat of prosecution as a bad character—Order to leave the town is ultra vires.

CRIMINAL P. C. (V of 1898), S. 110 — 35. Practice and procedure

An order by a District Magistrate that a person should leave the town under a threat of prosecution as a bad character is illegal and ultra vires. (Lindsay, J.) Ram Prasad v. Emperor. **19 A L J 951 : 65 I C 554 : 23 Cr L J 122 : A I R 1921 All 145.**

——Ss. 110 and 112—Procedure—Irregular procedure—Accused not given an opportunity to obtain legal assistance.

Two persons were arrested under S. 55 of the code on the ground that they were habitual thieves and house breakers. On the date fixed the Magistrate recorded the evidence given by the police and without giving the accused any opportunity to obtain legal assistance called upon them to conduct their case. Held, the procedure was irregular. Merely informing the accused that he is a suspected thief is not sufficient as it does not give him the slightest intimation as to the grounds of the allegation. (Walsh, J.) Raj Bansi v. Emperor. **42 All 646 : 22 Cr L J 228 : 18 A L J 673 : 60 I C 420 : L R 1 A (Cr) 182 : A I R 1920 All 268.**

——Evidence—Previous acquittal—Legality of—Question as to.

Where an accused is being tried by a Magistrate under S. 110 of the Cr. P. Code and it is found that in a previous case of dacoity he was acquitted by the Court of Sessions it is not for the Magistrate to question in his judgment the decisions of the Sessions Judge. (Wallach, J.) Badlu v. Emperor. **20 Cr L J 727 : 52 I C 887: 6 O L J 327 : A I R 1919 Oudh 360.**

——Procedure—Magistrate declining to examine witnesses—Confession of co-accused.

Where a Magistrate in a proceeding under S. 110 of the Code refused to examine more witnesses for the defence than the number of prosecution witnesses, his action is arbitrary and open to revision. A confession by an accused implicating himself and two others in a charge of dacoity is inadmissible against others in a proceeding under S. 110. (Teunon and Newbould, JJ.) Amirulla Pramanik v. Emperor. **22 C W N 408 : 49 I C 649 : 20 Cr L J 201 : A I R 1919 Cal 69.**

——Ss. 110 and 123—Reference to Sessions Judge—Order for security by Dt. Magistrate—Security furnished.

When a person called upon by a Dt. Magistrate to furnish security under S. 110 does furnish security as required, it is not necessary to send the record to the Sessions Judge for orders. S. 128 refers only to a case in which default is made in furnishing the security required. 23 C. 121, Foll. (Banerji, J.) Ram Kishen v. Emperor. **40 All. 39 : 15 A L J 822 : 42 I C 914 (1) : 19 Cr L J 2 : A I R 1918 All 215.**

——Ss. 110, 112, 113 and 117—Procedure—Irregularity—Accused must have time to bring witness.

CRIMINAL P. C. (V of 1898), S. 110 — 35. Practice and procedure

In a proceeding under S. 110 of the Code unless the accused is allowed time to bring his witnesses and their evidence is recorded, the order against him must be set aside. (Holmwood and Sharfuddin, JJ.) Karamuddin Sarkar v. Emperor. **41 Cal 806 : 23 I C 721 : 15 Cr L J 353 : A I R 1914 Cal 357.**

——Procedure — Prosecution witnesses examined after close of defence.

Examination of some prosecution witnesses after the close of the defence in a case under S. 110 is erroneous and irregular. (Rafique, J.) Gangasingh v. Emperor. **10 A L J 383 : 17 I C 404 : 13 Cr L J 772.**

——Crim. Pro. Code, S. 118—Showing cause—Meaning.

When a person is called upon to show cause why he should not be required to give security for good behaviour he must be ready with his evidence when he appears in obedience to the notice. That is the meaning of the expression "to show cause" in law. If he has been unable to bring the evidence with him on account of the shortness of the notice or other reasonable cause, it is his duty, when he appears, to apply at once for summonses to the witnesses he proposes to call. (Chandavarkar and Knight, JJ.) Emperor v. Narayan Shivram Barve. **9 Bom L R 1385 : 7 Cr L J 24 : 3 M L T 53.**

36. Arrest and detention.

——Issue of warrant.

A Magistrate holding an inquiry under S. 110 derives jurisdiction to issue a warrant against a suspect only after he has passed an order under S. 112, and after he has satisfied himself that there is reason to fear the commission of a breach of the peace, and such breach of peace cannot be prevented otherwise than by the immediate arrest of the suspect. (Rupchand Bilaram, A. J. C.) Jatoi v. Emperor. **96 I C 391 : 20 S L R 122 : 27 Cr L J 935 : A I R 1926 Sind 288.**

——Reasons for arrest.

If it is intended that the police officer should arrest a man with a view of taking proceedings under S. 110, it is strictly and specially necessary that he should specify one of the clauses given in S. 55, Cr. P. C., although it may be for the cause so stated that he intends to proceed under S. 110. (Kincaid, J. C. and Kennedy, A. J. C.) Har-dayal Singh v. Emperor. **94 I C 404 : 20 S L R 85 : 27 Cr L J 628 : A I R 1926 Sind 190.**

——Arrest.

The mere fact there is an intention to act under Ch. 8 by the police does not grant to the accused persons immunity from preliminary arrest. (Kincaid, J. C. and Kennedy, A. J. C.) Hurdayal Singh v. Emperor. **94 I C 404 : 20 S L R 85 : 27 Cr L J 628 : A I R 1926 Sind 190.**

CRIMINAL P. C. (V of 1898), S. 110—36. Arrest and detention

——Detention in jail.

A Magistrate should not detain a person under S. 110 unless he has the information upon which he can make the order required by S. 112. 10 A L J 351, Appr. (Walsh, J.) Rajbansi v. Emperor. **42 All 646 : 18 A L J 673 : 60 I C 420 : 22 Cr L J 228 : L R 1 A (Cr) 182 : A I R 1920 All 268.**

——Ss. 110 and 167—Detention in jail—Proceeding under S. 110.

In proceedings under S. 110 the Magistrate cannot remand an accused person to custody. S. 167 applies to proceedings under Ch. XIV and not to those under S. 110; 5 Bom L R 27, Ref. (Tyabji and Phillips, JJ.) Subaraya Chetty In re. **18 Cr L J 403 : 38 I C 963 : 39 Mad 928 : AIR 1918 Mad 1186.**

——Detention in Jail.

Sending a person to jail while an inquiry under S. 110 is in progress, will prejudice his interest and render the inquiry unfair. (Heaton and Shah, JJ.) Bhan Savala Ram Kotasthane v. Emperor. **16 Bom L R 943 : 26 I C 1003 : 16 Cr L J 91 : A I R 1914 Bom 199.**

——Detention in Jail.

Under S. 110, the police cannot keep a suspected person until they prepare a case against him. Any such action by the police throws doubt on their work. A Magistrate should not detain a person under this section unless he has sufficient information to make an order under S. 112 (Knox, J.) Emperor v. Paimal Nai. **10 A L J 351 : 17 I C 571 : 13 Cr L J 827.**

——Ss. 110 and 123 — Detention in jail — Period mentioned in security bond.

A Magistrate cannot keep a man in jail beyond the period for which security was ordered. (Shaw, J. C.) Emperor v. Nga Po Sin **13 I C 398 : 4 Bur L T 270 : 13 Cr L J 62.**

37. Transfer of proceedings.

——Convenience.

The fact that it would be inconvenient for the person against whom proceedings have been started under S. 110 to summon witnesses from the place of his residence is no ground for tranferring the case to the Court within whose jurisdiction such a person resides. (14 A. L. J. 1074, Rel. on.) (Kincaid, J. C.) Ghulam Kadir v. Emperor. **93 I C 109 : 20 S L R 310 : 27 Cr L J 1261 : AIR 1927 Sind 59.**

——Ss. 110 and 526 — Transfer of case—Grounds—Apprehension of having no impartial trial.

A petition for transfer of a proceeding under S. 110 from one district to another on several grounds which does not in any way show bias or prejudice in the mind of the Magistrate will not lie, but other grounds taken with the fact of several like proceedings prior to the proceeding under S. 110 having been instituted would be likely to give rise to an apprehension that he may not get justice, especially when those proceedings were pending and it is a fit case for transfer. (Rafique, J.) Jafar Hussain v. Emperor. **12 A L J 736 : 26 I C 648 : 16 Cr L J 56 : A I R 1914 All 262.**

CRIMINAL P. C. (V of 1898), S. 110—37. Transfer of proceedings

——Ss. 110 and 526—Transfer of case—Jurisdiction of High Court — Inquiry or trial into an offence — "Accused person" — "Criminal Case."

The High Court under S. 526 Cr. P. C. cannot transfer proceedings taken under S. 110 of the Code, as they are not an inquiry or trial of an offence; the person against whom such proceedings are taken is not "an accused person" and the case against such a person is in no sense " a criminal case." (Rattigan, J.) Ahmad Bakhsh v. Emperor. **154 P L R 1914 : 5 P R (Cr.) 1914 : 24 I C 971 : 15 Cr L J 563 : A I R 1914 Lah 231.**

(Note,—The provisions in S. 111 as to the non-applicability of Ss. 109 and 110 to European British subjects have now been repealed—Ed.)

——Ss. 110 and 526—Transfer of case—Proceedings prolonged.

Where owing to the weakness of a Magistrate, it was apprehended that proceedings under S. 110 of the Code would be much prolonged, the High Court ordered a transfer. (Knox, J.) Govind Sahai v. Emperor. **12 A L J 262 : 23 I C 731 : 15 Cr L J 363 : A I R 1914 All 430.**

——Proceedings under — District Magistrate's power to transfer to a Magistrate not specially empowered.

District Magistrate has jurisdiction to transfer proceedings, which had been properly instituted under S. 110 before a competent Magistrate, to a Magistrate subordinate to himself, though such Magistrate was not competent to institute the same. (R. Knight J. C. and H. N. Crouch A. J. C.) Crown v. Allahyar walad Gulbeg Jamali. **9 Cr L J 346 : 1 S L R 2 Cr.**

——Ss. 110, 526—Proceedings under S. 110—Transfer outside district.

Proceedings under S. 110 can be transfered to a Court outside the district wherein such proceedings have been instituted. (Knight J. C. and Hayward, A. J. C.) Crown v. Mahomed Shah Kamil. **1 S L R Cr 98 : 8 Cr L J 356.**

——Ss. 110 and 526 — Transfer to another district.

A case under S. 110 cannot be transferred to another district. (Banerji and Aikman JJ.) Emperor v. Mahendra Singh. **A W N 1907, 268 : 7 Cr L J 214 : 30 A 47.**

——Ss. 110, 192, 529—Transfer of case under S. 110.

The District Magistrate has ample powers under S. 192 to transfer a case under S. 110. The power of transfer is not restricted to criminal cases only. Even if the objection with regard to transfer had any force, held it could not be regarded as vitiating the whole proceedings as the action of the Magistrate in transferring the case could only amount to an irregularity which would be covered by S. 529 cl (f). (Rampini and Sharfuddin, JJ.) Chinta-

CRIMINAL P. C. (V of 1898), S 110—37. Transfer of proceedings

mon Singh v. Emperor. **35 C 243 : 12 C W N 299 : 7 C L J 177 : 7 Cr L J 146.**

38. Effect of consent to give security.

——Ss. 110, 117—Effect of consent to give security.

Where the person from whom security is demanded denies all the allegations made against him, his preparedness in the end to give security cannot be taken to be a plea of guilty and the Magistrate's order requiring security cannot be justified. Case-law discussed. (Sharma J.) Bhagirath v. State. **1953 R L W 205.**

——Consent to give security when a plea of guilty.

Whether the statement of the accused "I am prepared to give security for good behaviour" is in effect equivalent to a plea of guilty, can be decided upon an examination of the particular facts. In one case an expression of readiness on the part of the accused to give security may fairly be construed as a plea of guilty; in other cases it could not possibly fairly be so construed. Where the man has already flatly denied his guilt on every point, then his statement: "I am prepared to give security for good behaviour" cannot be equivalent to a plea of guilty. (Boys and Weir, JJ.) Emperor v. Kurwa. **26 A L J 519 : 9 L R A Cr 75 : 9 A I Cr R 467 : 30 Cr L J 122 : 113 I C 282 : A I R 1928 All 357.**

39. Fresh proceedings.

——Fresh evidence.

Where the accused was run in under S. 110 and was discharged on a finding that the prosecution had entirely broken down and proceedings were again started against him only seven months afterwards, under the same section,

Held, that under these circumstances it was obviously the duty of the Courts to be very careful to see that there was sufficient evidence of accused's conduct after the conclusion of the previous proceedings to justify fresh proceedings being started against him after so short an interval. (Daniels, A.J.C.) Shakur v. King-Emperor. **26 O C 242 : 73 I C 261 : 24 Cr L J 565 : A I R 1924 Oudh 84.**

——Discharge does not bar.

An order of discharge in the proceeding under S. 110 of the Act is no bar to subsequent proceedings under the section, if in future it becomes necessary to take them. (Ryves, J.) Udai Raj Singh v. Emperor. **44 All 691 : 71 I C 528 : 24 Cr L J 176 : A I R 1922 All 429 (2).**

——Ss. 110, 119 and 437—Fresh proceedings—Security for good behaviour—Discharge of person against whom proceedings taken—Further inquiry.

Where after proceedings against the accused under S. 110, Cr. P. Code terminated in his discharge under S. 119, the District Magistrate acting on a note put up by the Superintendent of Police but without taking fresh evidence or issuing notice to the accused to show cause, directed further proceedings to be taken in the case:

CRIMINAL P. C. (V of 1898), S. 110 — 39. Fresh proceedings

Held, the order was illegal and should be set aside. It was further held that it was open to the Magistrate to issue notice to the accused to show cause why the order under S. 119 should not be set aside. (Stuart, J.) Jaswant v. Emperor. **19 A L J 985 : L R 3 A 5 (Cr) : 64 I C 846 : 23 Cr L J 62 : A I R 1921 All 181.**

——Successive orders—Binding a person with security under S. 110.

No order under S. 110 can be made against an accused who has been imprisoned for failure to furnish security until he has had time to retrieve his character. (Saunders, A.J.C.) Nga Po Hmi v. Emperor. **(1915) II U B R 86 : 32 I C 677 : 17 Cr L J 85 : A I R 1916 U.B. 11.**

——Fresh proceedings—Grounds for.

When after the expiration of the period of a bond for good behaviour taken under S. 110 Cr. P. Code fresh proceedings are taken against the accused, such proceedings must be confined to facts and circumstances alleged against him after release from his last security. (Holmwood and Sharfuddin, JJ.) Ram Deo Pande v. The Emperor. **19 C W N 223 : 28 I C 648 : 16 Cr L J 312 : A I R 1915 Cal 643.**

——Ss. 110, 117—Discharge from previous order under S. 110 — Subsequent proceedings under S. 110 without fresh facts.

Where a person is discharged from an order under S. 110, he cannot be proceeded against subsequently under that section when nothing fresh is alleged against him subsequent to his release from the previous order. (Chitty J.) Gohar v. Emperor. **1 P W R Cr 37 : 4 Cr L J 486.**

——Security for good behaviour—Locus penetentiae.

The petitioner was released from jail after having undergone one year's imprisonment on failure to furnish security for his good behaviour under S. 110. About fifteen months afterwards fresh proceedings of the same nature were started against him and in the result he was again ordered to furnish security to be of good behaviour for a period of one year.

Held that the order should be set aside as the petitioner had not had a sufficient locus penetentiae. (Pratt and Handley JJ.) Junab Ali v. Emperor. **31 Cal 783 : 8 C W N 909 : 1 Cr L J 801.**

40. Applicability of other sections.

——Prosecution or defence should not be hampered in any way—Defence should be allowed to cross-examine prosecution witnesses.

Neither the prosecution nor the defence in proceedings under S. 110. Cr. P. C., or enquiries of this kind, ought to be hampered in any way. It ought to be open to the defence to cross-examine the prosecution witnesses if they wish to do so.

CRIMINAL P. C. (V of 1898), S. 110—40. Applicability of other sections

(Cunliffe and Henderson JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Jiban Kumar De. **A I R 1936 Cal 292 : 8 R C 727 : 37 Cr L J 818 : 163 I C 228 (2).**

——Section 30, Evi. Act, applies to a case where there is a proceeding under S. 110, Cr. P. C., against a number of persons, one of whom has made a confession implicating other persons whose conduct is also the subject of an enquiry. Further, as procedure to be followed under S. 110 is, by virtue of S. 117, Cr. P. C., that for a warrant case, the procedure under S. 30, Evi. Act applies. (Bennet, J.) Richpal Singh v. Emperor **A I R 1934 All 927 : 7 R A 408 : 4 A W R 42 : 1934 A L J 1170 : 36 Cr L J 198 : 57 All 312 : 152 I C 881.**

——Right of accused to cross-examine witnesses.

In security cases, the order passed by the Magistrate under S. 112 is equivalent to a charge in a warrant case and the Magistrate has no power to go beyond the terms of his order. Therefore, where the person against whom the order is made is fully aware of what is alleged against him, and the evidence of the prosecution witnesses is recorded in his presence he has every opportunity of cross-examining them. There is consequently no conceivable reason why he should be allowed the right of a second cross-examination and protract the proceedings unnecessarily. (Ba U J.) Zamin v. Emperor. **A I R 1933 Rang. 29 : 34 Cr L J 468 : Ind Rul (1933) Rang 52 : 142 I C 752.**

——S. 256 applies to cases under S. 110.

S. 256 is applicable to inquiry into cases under S. 110, so far as practicable. (A I R 1927 All 660, Foll.) (Boys and Young, JJ.) Chandan v. Emperor. **1930 A L J 389 : 31 Cr L J 627 : 124 I C 40 : 1930 Cr C 442 : 52 All 448 : A I R 1930 All 274.**

——S. 254 and S. 256, Cr. P. Code.

There is no reason why Ss. 254 and 255 should not be applied to an enquiry under S. 117, except in so far as the framing of a charge and the reading of it to the accused is concerned ; in other words, at any stage of the prosecution the Magistrate if he is prima facie satisfied that there is a case against the accused, may interrupt the proceedings for the purpose of asking the accused whether he pleads guilty or whether he has any defence to make. When the stage is reached of asking the accused whether he wishes to plead guilty or to defend, the accused must be allowed an opportunity of cross-examining any witnesses whom he desires to cross-examine. (Boys, J.) Tirlok v. Emperor. **104 I C 232 : 25 A L J 749 : 8 A I Cr R 183 : 8 L R A Cr 122 : 28 Cr L J 792 : A I R 1927 All 660.**

——Further cross-examination.

A person proceeded against under S. 110 has no right to further cross-examine the prosecution witnesses under S. 256. (1 P. R. 1916, Cr.; 35 Cal 243, Foll.) (Shadi Lal, C. J.) Bija v. Emperor. **99 I C 1039 : 8 Lah 265 : 28 P L R 438 : 28 Cr L J 239 : A I R 1927 Lah 470.**

——The provisions of S. 190 do not apply to proceedings taken under S. 110 by a Magistrate upon information received from any person other than a police-officer. (27 All 172, Foll.) (Kincaid, J. C.) Manomedally v. Emperor. **98 I C 128 : 27 Cr L J 1280 : 20 S L R 291 : A I R 1927 Sind 77.**

——Opportunity to defend.

A suspect is as much, if not more, entitled as a matter of right as any other person accused of a substantive offence to have a reasonable opportunity afforded to him of defending himself. (Rupchand Bilaram, A.J.C.) Jatoi v. Emperor. **96 I C 391 : 20 S L R 122 : 27 Cr L J 935 : A I R 1926 Sind 288.**

——S. 342, Cr. P. Code.

Where it was found that the omission to formally examine, after close of prosecution and before defence, the person called upon to furnish security had not prejudiced him, held, that the omission was only an irregularity curable under S. 537. 50 Cal. 223, not Foll. (C. C. Ghose and Cuming, JJ.) Binode Behari Nath v. Emperor. **81 I C 909 : 50 Cal 985 : 25 Cr L J 1085 : A I R 1924 Cal 392.**

——Ss. 110 and 190 (c)—Procedure—Cognizance by Magistrate.

The conviction based on preliminary local investigation was bad as the Magistrate should not have tried the case himself. Although S. 190 (c) applies only to offences, the principle must apply to cases of a miscellaneous character. (Mullick and Thornhill, JJ.) Godhan Ahir v. Emperor. **19 Cr L J 899 : 47 I C 95 : 4 Pat L J 7 : A I R 1918 Pat 98.**

——Evidence—Right of further cross-examination.

In proceedings under S. 110, the accused is not entitled to call again the prosecution witnesses for further cross-examination. (Shadi Lal, J.) Ahmad Baksh v. Emperor. **1 P R Cr 1916 : 32 I C 676 : 17 Cr L J 84: 58 P W R Cr 1915 : A I R 1916 Lah 295.**

——Ss. 110 and 256 — Applicability of S. 256 to cases under S. 110.

The provisions of S. 256 relate to cases where a formal charge has been drawn and the accused has been called to meet the charge. S. 256 has no application to a case under S. 110, and a person called upon to show cause under S. 110, has no right to further cross-examine the prosecution witnesses under S. 256. (Rampini and Sharfuddin, JJ.) Chintamon Singh v. Emperor. **35 C 243 : 12 C W N 299 : 7 Cr L J 146 : 7 C L J 177.**

41. Breach of the bond—see also under S. 121.

——Surety—Two bonds executed.

A bond to be of good behaviour can be forfeited on a conviction of the person bound down, under

CRIMINAL P. C. (V of 1898), S. 110 —41. Breach of the bond

S. 323 or 325, Penal Code. 6 P. R. 1915 (Cr.) and 10 P. R. (Cr.) 1915, Foll. But where two bonds have been executed one by the accused and the other by his surety, only one of the two can be forfeited and not both. (26 P. R. (Cr.) 1894, Foll.) (Moti Sagar, J.) Emperor v. Abdul Aziz. **81 I C 955 : 4 Lah 462 : 25 Cr L J 1131 : A I R 1924 Lah 262.**

——Forfeiture of security—Security for good behaviour—Subsequent conviction—Forfeiture of bond of sureties.

Where a man was placed on security under S. 110, Cr. P. C., not merely as receiver of stolen goods but also as a dangerous man and the son of a notorious dacoit and was convicted of an offence under Sec. 325, I. P. Code, Held, that there was nothing in law which can prevent the forfeiture of the bond of sureties under the circumstances. (Kensington, C.J. and Rattigan J.) Emperor v. Sher Singh. **10 P R 1915 (Cr) : 16 Cr L J 549 : 29 I C 821 : 21 P L R 1916 : A I R 1914 Lah 563.**

——Ss. 110 and 514—Forfeiture of security bond—Effect.

A bond under S. 17 of the Gambling Act read with S. 110 of the Cr. P. C. is a bond with single penalty and once it is forfeited or the penalty under it exacted, it ceases to remain in force. A remission under S. 514 (5) of the Cr P. C. is an extinction of the liability of the parties to the bond for the amount remitted. U. B. R. (1897-01), 1 Cr. Pro. 20 ; U. B. R. (1897-01) 1 Cr. Pro. 26 ; U. B. R. (1897-01) 1 Cr. Pro. 17 Appr. (Saunders, J. C.) Emperor v. Ignatio Reis. **(1913) 1 U B R 159 : 20 I C 414 : 14 Cr L J 430.**

——Ss. 110 and 514— Bond for good behaviour—Conviction in Native State—Forfeiture of bond.

A mere conviction in a Native State is not sufficient, while proof of commission of an offence against a British subject and punishable under one of the sections of the Penal Code is sufficient to entail a forfeiture of security bond executed by a person under S. 110 of the Criminal Procedure Code. (Arthur Reid, C. J. and Johnstone, J.) Crown v. Dewa Singh. **28 P R 1910 Cr : 199 P L R 1910 : 11 Cr L J 635 : 45 P W R 1910 Cr : 8 I C 383.**

——Ss. 110 and 514—Breach of bond—Security for good behaviour—Conviction for gambling—Forfeiture of security.

Where a conviction for an offence under the Gambling Act was had against a person, who was, at the time under security to be of good behaviour,

Held that such a conviction was a good ground for taking action under S. 514 Cr. P. C., but having regard to the nature of the offence, the Magistrate might well exercise the discretion conferred on him by cl. (5) of the section. (Aikman, J.) Emperor v. Abdul Hai. **A W N 1906, 13 : 3 Cr LJ 91.**

CRIMINAL P. C. (V of 1898), S. 110 — 41. Breach of the bond

——Breach of security bond—Payment by surety and principal—Double payment—Legality. See Cr. P. C., S. 109. **2 Cr L J 463 (U. B.)**

42. Suit for malicious prosecution—See also under S. 117.

——S. 110—Evidence—Police Officers—Diaries are dangerous evidence.

In proceedings under S. 110, a Police Officer was examined at great length; but no security was demanded. The accused applied for and obtained sanction to prosecute the Police Officer. Held that sanction should not be granted inasmuch as the Police Officer had made the statements about the accused from what he had heard from others. Police diaries even if evidence at all, are dangerous evidence against an accused person. (Knox, J.) Abdul Khaliq v. Emperor. **13 A L J 412 : 28 I C 329 : 16 Cr L J 281 : A I R 1915 All 144.**

Information leading to proceeding under S. 110 —Information found false—Suit for damages for malicious prosecution — See Malicious Prosecution. **9 O C 357.**

43. Appeal—See also under S. 406.

——Appeal—Retrial.

An order of retrial can be passed only in cases of appeal against a conviction. In an appeal from any other order the appellate Court can only alter or reverse such an order. A District Magistrate, therefore while setting aside, on appeal, an order requiring a person to furnish security under S. 110, cannot remand the case for a de novo trial, i.e., for fresh enquiry. (Zafar Ali, J.) Chandan v. Emperor. **115 I C 544 : 30 Cr L J 491 (1) : 30 P L R 416 : 12 A I Cr R 273 : A I R 1929 Lah 28 (1).**

——Order under S. 110—Appellate Court—Powers of to enhance security.

Any accused in a badmashi case who is able to produce a large number of defence witnesses is not necessarily entitled to a discharge. Although the word "alter" in section 423 (c) literally includes an alteration which increases the severity of the order, still the whole tenor of the section is that the appellate Court can make any necessary alteration in the terms of the order of the Court below but it has no power to increase the severity of the penalty imposed by the trial Court. Under section 123 imprisonment follows automatically on failure to furnish the security and where the appellate Court doubles the amount of security demanded by the trial Court the effect of it would be to practically sentence the accused to imprisonment because the accused might find himself unable to furnish the amount as a result of the increase. Such a result cannot be within the intention of the Legislature. (Daniels, J. C., Rameshwar Baksh Singh v. Emperor. **9 OLJ 28 : 64 I C 286 : 22 Cr L J 766 : 24 O C 286 : A I R 1923 Oudh 44 (2).**

CRIMINAL P. C. (V of 1898), S. 110 — 43. Appeal

——Appeal from order under S. 110--Judgment—Appeal from an order for security.

A District Magistrate should dispose of an appeal from an order to furnish security for good behaviour by a judgment showing on the face of it that he has applied his mind to a consideration of the evidence on record and of the pleas raised by the appellant, both in the lower court and in his memo of appeal. (Piggott, J.) Lal Behari v. Emperor. **38 All 393 : 14 A L J 445 : 35 I C 485 : 17 Cr L J 309 : A I R 1916 All 197.**

——Appeal on order under S. 110—Evidence—Not duly weighed.

An appeal is not properly disposed off where the evidence against or for the accused is not duly weighed and examined by the Court. (Tudball, J.) Sarwan v. Emperor. **14 A L J 279 : 33 I C 647 : 17 Cr L J 167 : A I R 1916 All 180.**

——Evidence—Judgment of Criminal Court—Evidence of defence not considered—Effect.

In an appeal under S. 110 of the Code, the Appellate Court must look into the defence evidence even if the Counsel for the defence did not make any reference to it; and where this is not done, retrial may be ordered by the High Court. (Sharfuddin and Cox, JJ.) Fidol Hossein v. Emperor. **40 Cal 376 : 20 I C 403 : 14 Cr L J 419.**

——Appeal from order for security for good behaviour —Power to order further inquiry.

Where on appeal from an order requiring security for good behaviour passed by Deputy Magistrate under S. 110 Cr. P. C., the District Magistrate directed further inquiry and also increased the amount of security,

Held that the District Magistrate had no power to pass the order in the terms in which he did, which was therefore, set aside as illegal. (Pargiter and Woodroffe JJ.) Daya Nath Taluqdar v. Emperor, **33 C 8 : 3 Cr L J 243.**

——Ss. 406, 110, 118—Order for security under S. 17 Burma Gambling Act — Appeal—See Burma Gambling Act (1 of 1899) S. 17. **2 Cr L J 378 (L.B.)**

44. Revision

See also under S. 118

(a) Powers of High Court.
(b) Calling for record.
(c) Weighing of evidence.
(d) Interference.
(e) No interference.

44. Revision—(a) Powers of High Court.

——Revision against order under S. 110—High Court will not ordinarily enter into findings of facts—Yet High Court did enter into it to consider the validity of the contention raised by petitioner.

CRIMINAL P. C. (V of 1898), S. 110 — 44. Revision —(a) Powers of High Court

Though the High Court is not a Court of appeal for cases under S. 110, and does not ordinarily interfere in revision with the findings of facts recorded by the Courts below in such cases, in order to satisfy itself about the validity of the contention put forward by the counsel for the petitioners, the High Court examined the evidence. It was contended on behalf of the petitioners that all that the facts found against them established was that they were bullies and that this did not justify an order under S. 110 (f). (Seth J.) Iqbal Ahmad v. Rex. **1948 A I J 332 : 1948 A W R H C 233 : A I R 1949 All 12 : 50 Cr L J 22.**

——Order under—Revision—Interference.

Though in cases under S. 110, Cr. P. C., the Court of the Judicial Commissioner, Sind, does not sit as a Court of Appeal, nevertheless when there appears anything unsatisfactory or unusual in the proceedings of the lower Court, that Court will look into the record to satisfy itself that an order under S. 110 has been properly passed. (Ferrers, J. C. and Rupchand Bilaram A. J. C.) Khairati Ram v. Emperor. **A I R 1932 Sind 100 : 33 Cr L J 324 : Ind. Rul. (1932) Sind 49 : 136 I C 753.**

——Section ought to be administered with scrupulous care—High Court will look into the record only when there is something unusual. (Banerji, J.) Raj Narayan Pandey v. Emperor. **101 I C 886 : 25 A L J 393 : 8 L R A Cr 53 : 7 A I Cr R 353 : 28 Cr L J 502 : A I R 1927 All 394.**

A High Court is not a Court of appeal under S. 110, the provisions of which Magistrates ought to administer with the most scrupulous care. The High Court will see if the Lower Court has exercised its jurisdiction fairly and properly. Hence if a Magistrate has disbelieved all witnesses for defence on the ground of probability of accused's influence being brought to bear on them High Court ought not to interfere in revision. (Richards, C.J.) Miharban Singh v. Emperor. **13 A L J 1016 : 31 I C 821 : 16 Cr L J 805 : A I R 1915 All 464.**

——Ss. 110 and 439—Revision—High Court.

The High Court can revise under S. 439, Cr. P. C. an order for security passed under S. **110.** (Rattigan, J.) Ahamed Baksh v. Emperor. **154 P L R 1914 : 5 P R (Cr) 1914 : 24 I C 971 : 15 Cr L J 563 : A I R 1914 Lah 281.**

44. Revision—(b) Calling for record

——Order under S. 110 does not enable a Sessions Judge to call for the record. (Walsh, J.) Ashiq Ali v. Emperor. **21 A L J 573 : 73 I C 337 : L R 4 All (Cr) 126 : 24 Cr L J 593 : A I R 1923 All 596.**

CRIMINAL P. C. (V of 1898), S. 110

44. Revision—(c) Weighing of evidence.

——Trial Court's opinion as to sufficiency or insufficiency of evidence cannot be questioned.

In a case under S. 110, Cr. P. C., the opinion of the Court of first instance in respect of sufficiency or insufficiency of evidence will not be questioned in revision. (Agarwal, J.) Sahadeo Singh v. Emperor. **A I R 1942 Oudh 356 : 43 Cr L J 398 : 1942 O W N 39 : 14 R O 422 : 1942 A W R (C. C.) 51 : 198 I C 547.**

——Duty of High Court in revision.

In cases under S. 110, Cr. P. C., it is not the duty of the High Court sitting in revision to weigh the evidence of one side or the other but only to see whether the Court below considered the case in a fair way having regard to the interest not only of the prosecution but also of the accused. (Nanavutty, J.) Likha Singh v. Emperor. **A I R 1934 Oudh 49 : 6 R O 264 : 35 Cr L J 403 : 11 O W N 84: 147 I C 388.**

——Considerations by High Court.

The High Court is not a Court of appeal in cases under S. 110, and if it is satisfied that the Courts below have approached the consideration of the evidence in a fair way having regard to the interests not only of the prosecution but also of the accused, it is not called upon in revisions against orders passed under S. 110 to weigh the evidence given on behalf of one side or the other. A. I. R. 1922 Oudh 26, Foll. But at the same time before affirming an order demanding security, High Court is to be satisfied that the evidence in the case was of a character which made it imperative in the interests of public security to pass an order under S. 118. (6 A. L. J. 487, Foll.) (Iqbal Ahmad, J.) Lachman v. Emperor. **8 L R A Cr 70 : 7 A I Cr R 482 : 28 Cr L J 515 : 102 I C 211 : A I R 1927 All 473.**

——Fair consideration of the case.

The High Court is not a Court of appeal in cases under S. 110 and the duty of the High Court is not to weigh the evidence given, on behalf of one side or the other, but only to see whether the Court below had approached the consideration of the case in a fair way, having regard to the interest not only of the prosecution but also of the accused. 13 A. L. J. 1046 and 24 O. C. 225, Rel. on. (Gokaran Noth, A. J. C.) Kewal Kishore v. King-Emperor. **89 I C 147 : 12 O L J 413 : 26 Cr L J 1283 : 29 O C 44 : A I R 1925 Oudh 473.**

——Considerations which will induce the High Court to quash the order.

The High Court is not in criminal cases a Court of appeal, but it is its duty to endeavour to weigh the evidence and to see whether the case has been fairly considered from the point of view of the defendant. Secondly, when the evidence for the defence is equally good as that for the prosecution the High Court may quash the order in revision.

CRIMINAL P. C. (V of 1898), S. 110 — **44. Revision—(c) Weighing of evidence**

Thirdly, witnesses, who voluntarily come forward whether as friends or associates of the accused to give them a good character, must not be brushed aside, unless they are discredited as regards their good faith and honesty, just as witnesses in any other proceeding must be discredited before they are rejected by the tribunal. Fourthly, evidence of general repute by persons who have no personal knowledge of the accused and know nothing of his business and circumstances, is not sufficient to justify an order and lastly vague repetition unaccompanied by direct evidence personally affecting each accused person or accompanied by direct evidence which breaks down, is not sufficient in itself to justify an order. (Walsh, J.) Angnoo Singh v. Emperor. **71 I C 865 : 20 A L J 881 : 45 All 109 : 24 Cr L J 257 : A I R 1923 All 35.**

44. Revision—(d) Interference.

——Case under—Wrong appraisal of evidence by lower Courts—High Court should interfere in revision—See ibid, S. 117. **A I R 1952 All 927 : 1952 Cr L J 1692.**

——What prosecution evidence should be.

Although it is very difficult in revision to interfere in cases under S. 110 still the Court must be satisfied that the prosecution evidence is of such a character that it will reasonably support the inference that it is necessary in the interest of public security to send the person to prison or bind him down. (Ryves, J.) Alim-uddin v. Emperor. **82 I C 36 : 22 A L J 678 : 5 L R A Cr 97 : 25 Cr L J 1172 : A I R 1924 All 569.**

——Revision.

Where the Dt. Magistrate disposed of an appeal from an order under S. 110 in a few lines, making some general observation upon the volume of evidence put before him, held that that was not the proper way of disposing an appeal. Retrial ordered. (Lindsay, J.) Sunchri v. Emperor. **L R 2 A (Cr) 150.**

——Ss. 110 and 406—Evidence—Not properly dealt with—Judgment of Lower Court very sketchy — Revision.

The High Court will interfere in revision with an order of the Dt. Magistrate in an appeal under S. 110 of the Code, if it finds that the judgment is very sketchy and that the evidence was not properly weighed. (Tudball, J.) Babu Prashad v. Emperor. **13 Cr L J 9 : 13 I C 102 (All).**

44. Revision—(e) No interference.

——Ss. 110, 119, 109, 112, 438—Notice to show cause under Ss. 109-112—Cancelling of— Magistrate disbelieving prosecution— Accused ignorant of legal procedure—No cross-examination of prosecution evidence—Presumption—Interference under S. 438.

Where in a case under S. 110, Cr. P. C., evidence was produced before the Magistrate which he disbelieved and in a reference to High Court under S. 438, Cr. P. C., against his order cancelling under

CRIMINAL P. C. (V of 1898), S. 110—44. Revision —(e) No interference

S. 119 notice to show cause made under Ss. 109-112, the District Magistrate stated some reasons why this evidence ought to be believed but these reasons could be explained away :

Held, that the case was not one in which the High Court should interfere and set aside the order of the Magistrate cancelling, under S. 119, Cr. P. C., the notice to show cause made under Ss. 109-112.

Where the accused is an ignorant Pasi and could not be expected to know the legal presumption that uncross-examined evidence is probably reliable, the fact that the accused, in S 110 proceedings did not cross-examine the prosecution witnesses is of no value.

The evidence of suspicion under S. 457, is evidence of a very weak nature even in S. 110 case. (Zia-Ul-Hasan and Madeley, JJ.) Emperor v. Mulhe. **170 I C 482 : 10 R O 14 : 38 Cr L J 889 : 1937 O W N 816.**

——Person of revolutionary tendencies—Security—Interference in revision—Sentence of rigorous imprisonment —Accused kept in simple imprisonment pending revision—Reduction of period of rigorous imprisonment.

A person was arrested in connection with the Lahore Conspiracy Case, but he was acquitted in that case in the following year. It was, however, proved by the evidence that he was associating with a number of persons who were known to be members of the revolutionary party. Several of these associates were suspected of taking part in dacoities committed in pursuance of revolutionary objects. There were indications in the evidence of his sympathy with other persons who wished to upset the social order by violent revolution. The status of his family was also such that there should have been no difficulty in the applicant finding the security required. He was ordered to give security to the extent of Rs. 2000 or to undergo rigorous imprisonment for one year :

Held, on revision, that there was no reason to interfere with the order.

(In view of the fact that when the application for revision was admitted, the order that the applicant should undergo rigorous imprisonment was suspended and he was detained in the jail under conditions of simple imprisonment, his Lordship reduced the term of rigorous imprisonment.) (Kisch, J.) Ajay Kumar Ghose v. Emperor. **A I R 1933 All 674 (1) : 6 R A 396 : 35 Cr L J 284 (2) : 146 I C 1070.**

——Bad livelihood proceedings— Pendency for a long time due to fault of accused— Murder of witnesses in bad livelihood case—Proceedings, if can be stayed.

Where bad livelihood proceedings had been pending for a long time mainly due to the fault of the accused themselves as against many of them, warrants and proclamation and attachment orders had to issue in order to secure their attendance, and according to the prosecution, murders had taken place as the murdered persons were witnesses in the bad livelihood case :

Held, that the High Court would not interfere in revision to stay proceedings in the case and to order that the two cases—the bad livelihood case and the murder case—should not go on together. (Scroope, J.) Girdhari Ahir v. Emperor. **A I R 1933 Pat. 116 : 34 Cr L J 1145 · 6 R P 224 : 146 I C 37.**

——Ss. 112 and 115 not complied with.

An order passed against an accused in the proceedings under S. 110 cannot be set aside by High Court on the ground that the provisions of Ss. 112 and 115 were not strictly complied with, where it appears that the accused is sufficiently informed as to the allegation against him. (Martineau, J.) Daya Ram v. Emperor. **27 Cr L J 575 : 94 I C 143 : A I R 1926 Lah 366.**

——Local inquiry.

Though local inquiry is most appropriate where proceedings under S. 110 are to be instituted it is entirely out of place when the accused are brought before the Court. Once the accused are before the Court the case must be decided on the evidence alone. But where the Magistrate merely used his enquiries to confirm the result at which he had arrived on a consideration of the evidence.

Held, that though the course taken by the Magistrate was irregular, yet it was not sufficient ground for setting aside the whole proceedings & directing a retrial. (Daniels, J. C.) Ram Pargat v. Emperor. **88 I C 461 : 12 O L J 341 : 2 O W N 350 : 26 Cr L J 1149 : A I R 1925 Oudh 441.**

——Revision.

It is sufficient if the evidence establishes that there is a gang of persons joined together to commit such acts as the security section exists to prevent. Where the lower Courts are satisfied by evidence that the occasion has arisen to bind down certain people to be of good behaviour, the High Court will always be loath to interfere with such orders unless it is obvious that a miscarriage of justice has taken place. (Prideaux, A. J. C.) Bakaram v. Emperor. **69 I C 629 : 23 Cr L J 741 : A I R 1923 Nag 53**

——Revision — Question of fact.

The High Court will not ordinarily interfere in revision on questions of facts under S. 110 of the Code. (Walsh, J.) Bisheshwar Dyal v. Emperor. **19 A L J 668 : 22 Cr L J 660 : 63 I C 452 : L R 2 A (Cr.) 114.**

——Ss. 110 and 107—Revision — Interference by High Court on merits — Appeal — Judgment—Court, duty of.

In questions arising under Ss. 110 and 107 when the Courts below have done something either in excess of their powers or by misapplying the rules of evidence for the defence, revision should be

CRIMINAL P. C. (V of 1898), S. 110—44. Revision —(e) No interference

admitted but the High Court should not interfere on the merits except in very exceptional cases. In an appeal in such a case the lower Appellate Court should set out over again in detail all the points in the evidence and the reasons, provided they are clear and the Court has shown by its judgment that it has taken the trouble to rehear the case. (Walsh, J.) Gayani v. Emperor. **36 I C 141 : 17 Cr L J 461 : A I R 1916 All 48.**

——Interference by High Court with merits of proceedings.

The High Court will not, except in a very exceptional case, interfere on the merits with proceedings under S. 110 provided that the Court hearing the appeal, under S. 406, shows in its judgment that it has really and not merely nominally considered the evidence on the record. (Alston, J.) Shiam Lal v. King-Emperor, **6 A L J 487 : 9 Cr L J 528 : 2 I C 225.**

—S. 112.

Synopsis.

1. Scope.
2. Substance of the information.
3. Amount of the bond to be executed.
4. Character and class of sureties.
5. Amendment of order.
6. Effect of non-compliance with the section.
7. Joint order against two or more persons.
8. Failure to read out order.
9. Order under S. 117 (3).
10. Final order under S. 118.

1. Scope.

——Police enquiry and notice—Distinction. See ibid, S. 107.

A I R 1953 Cal 109 : 1953 Cr L J 344.

——Notice requiring person to show cause—Essentials. See Cr. P. C. (1898), S. 107.

1951 R L W 137.

Section 114, Cr. P. C., is applicable only to the stage prior to the service of preliminary order under S. 112. (Byers, J.) In re Kontam Hamaiah. **A I R 1944 Mad 575 (2) : 1944 M W N 557 : (1944) 2 M L J 120 : 216 I C 308.**

——In security cases, the order passed by the Magistrate under S. 112 is equivalent to a charge in a warrant case and the Magistrate has no power to go beyond the terms of his order. (Ba U, J.) Zamin v. Emperor. **A I R 1933 Rang 29 : Ind Rul (1933) Rang 52 : 34 Cr L J 468 : 142 I C 752.**

——Ss. 112, 123, 438—Case submitted to Sessions Judge under S. 123—Powers of Sessions Court—Re-trial

Where a Sub-Divisional Magistrate submits a case to the Sessions Judge under S. 123, Cr. P. C., and a suspect is liable to imprisonment for a longer period than one year, the Court should deal with the case as a Court of first instance and not as an Appellate Court. The Court is also vested with all such subsidiary powers as may be necessary to enable it to finally dispose of the case. No appeal being provided in a case of this nature, the Sessions Judge has no jurisdiction to deal with it as an appeal or to order a re-trial. In certain fit cases, the Sessions Judge may refer the case to the High Court under S. 438 with a recommendation to quash the proceedings and order a re-trial.

CRIMINAL P. C. (V of 1898), S. 112—1. Scope

In a submission under S. 123, the Sessions Judge has no jurisdiction to direct the Magistrate to pass a fresh order under S. 112 and to try the case de novo after complying with the provisions of S. 112. (Rupchand Bilaram and Mehta, A. J. Cs.) Emperor v. Nim. **A I R 1932 Sind 88 : 26 Sind L R 200 : Ind Rul (1932) Sind 144 : 33 Cr L J 898 : 139 I C 783.**

——Rights of accused to copy of written information.

The accused who is ordered to show cause under S. 112 is not entitled to a copy of the written information given by the Police on which the order is based. It is not a report under S. 173 nor part of the record under S. 548. (Pandalai, J.) Anantapadmanabhiah v. Emperor. **54 Mad 422 : 129 I C 70 : 1930 M W N 1100 : 32 M L W 784 : 1930 Cr C 1191 : A I R 1930 Mad 975 : 59 M L J 914 : 3 M Cr C 285 : 15 A I Cr R 401 : 32 Cr L J 217.**

——A Magistrate acting under S. 112 is a Court. 39 Cal 953, Foll. (Pandalai, J.) Anantapadmanabhiah v. Emperor. **54 Mad 422 : 129 I C 70 : 1930 M W N 1100 : 32 M L W 784 : 1930 Cr C 1191 : A I R 1930 Mad 975 : 59 M L J 914 : 3 M Cr C 285 : 32 Cr L J 217 : 15 A I Cr R 401.**

——Transfer.

Where a Magistrate having jurisdiction according to S. 107 has made an order under S. 112, District Magistrate has power to transfer the case as initiated to another Magistrate competent to try the case though not qualified under S. 107 as regards territorial jurisdiction. (Pandalai, J.) Kalia Goundan v. Emperor. **I R 1930 Mad 1036 : 32 Cr L J 27 : 1930 M W N 698 : 32 M L W 320 : 1930 Cr C 1035 : 127 I C 652 : A I R 1930 Mad 859 : 59 M L J 887.**

——Order is equivalent to a charge.

The words "no charge need be framed" in S. 117 (2) can only mean that no occasion can arise for framing a charge because under S. 221 (1) every charge shall state the offence with which the accused is charged. In security proceedings the place of charge is taken by the "order in writing setting forth the substance of the information received" prescribed by S. 112. This order has to be read over to the person in respect of whom it is made, and although the Code does not provide that he should plead to it, it resembles a charge in that it must contain a statement in abstract of the prosecution case. (Kumaraswamy Sastri,

CRIMINAL P. C. (V of 1898), S. 112—1. Scope

Curgenven and Walsh, JJ.) Karuthaswami Servai, In re. **124 I C 1 : 31 M L W 243 : 3 M Cr C 34 : 1930 M W N 178 : 53 Mad 173 : 31 Cr L J 618 : A I R 1930 Mad 331 : 58 M L J 229 (F B).**

Proceedings started on a rubkar based on a police report not on file and in absence of the substance of the information and the other particulars required by the section are irregular and must be set aside. The provisions of S. 112 must be strictly complied with: (Sulaiman, J.) Uttamchand v. Emperor. **85 I C 46 : 5 L R A Cr 24 : 26 Cr L J 430 : A I R 1924 All 695.**

——List of witnesses.

Where an order is made under S. 112 the law does not require that a list of witnesses in support of the proceeding should be given either in the report to the Magistrate or in the Order of the Magistrate. (Rampini and Sharfuddin, JJ.) Chintamon Singh v. Emperor. **35 C 243 : 12 C W N 299 : 7 C L J 177 : 7 Cr L J 146.**

——Ss. 112, 114, 115—Accused suspected of gambling— Arrest under S. 55— Burma Gambling Act (1899) S. 17.

S. 55 does not empower the Police to arrest a person suspected of earning his livelihood by unlawful gaming. The Magistrate should make an order in writing under S. 112 and summon the accused to appear under S. 114, attaching to the summons a copy of the said order under S. 112 as required by S. 115 of the Crim. Pro. Code. (H. Adamson, C. J.) King-Emperor v. Kyaw Dun. **3 L B R 94 : 3 Cr L J 20.**

——Magistrate taking information on oath before framing order under S. 112. See Cr. P. C. S 109. **2 Cr L J 462 (U. B.)**

2. Substance of the information.

——Meaning of—Repetition of mere words of S. 110 in notice—Effect.

The words "substance of the information" in S. 112 mean such or so much of the information as would enable the party to know under what clause of S. 110 he is charged or to what particular class of offenders he is said to belong. However, a mere repetition of the words of the various clauses of S. 110 ought to be avoided; but it may not be possible to do so in every notice, and, therefore, where a notice contains a mere repetition of the words of the various clauses of S. 110, it is not, on that account alone, illegal. (Jamuar and Ahmad, JJ.) Raghunath Singh v. State. **AIR 1953 Pat 1 : 31 Pat 902 : 1953 Cr L J 110.**

——Content of notice—What should be indicated.

A notice issued to a person against whom a proceeding under S. 107 is deemed necessary to be started must set forth the substance of the information received. He should be supplied with substance of his overt acts for the purpose of his information so as to enable him to know the

CRIMINAL P. C. (V of 1898), S. 112 — 2. Substance of the information

charges he has to meet. Information is something other than generalisation of the nature of the overt acts. Generalisation tends to be vague and therefore should be avoided. For it does not amount to fulfilment of the law to keep the person in dark as to substantive facts and just to vilify him and give out general character into which the particular acts can be classified.

Ed. Note:—This decision seems to go against the general current of decisions considered in A I R Com. on Cr. P. C., S. 112 N 3. (Ray C. J.) Sanatan Baliarsing v. State. **A I R 1952 Orissa 33 : 19 Cut L T 370.**

——Order under S. 112 must give definite information to persons proceeded against as to what they are called upon to answer.

An order under S. 112, Criminal P. C., is in the nature of a charge and the person to whom the order is issued is entitled to definite information as to the case he is called upon to answer. But the question whether the omission of such particulars in an order under S. 112 has in any particular case any material effect, is a question of fact. Where the accused had full knowledge before they opened their cross-examination as to what the case of the prosecution against them was and what they were called upon to meet, an irregularity in the matter of the contents of the order under S. 112, Cr. P. C., is purely technical and may well be ignored. (Lobo and Weston, JJ.) Emperor v. Rasul Bux. **A I R 1942 Sind 122 : I L R (1942) Kar 252 : 44 Cr L J 367 : 15 R S 136 : 205 I C 309.**

——Ss. 112, 108— Preliminary order under S. 112, requirements of.

Section 112, Cr. P. C., does not contemplate that the allegations of fact constituting the information should be embodied in the preliminary order. That section provides for a preliminary order to be passed in proceedings started under Ss. 107, 108, 109 and 110 and contemplates that the order should contain as much of the information as would be sufficient to enable the party to know under which of the several sections or which part of any one of them he is proceeded against. The preliminary order under S. 112, Cr. P. C., need not contain more than an indication of the particular offence which is sought to be prevented. (Niyogi, J.) Jagannath Prasad v. Emperor. **A I R 1940 Nag. 134 : 13 R N 39 : 1940 N L J 31 : 41 Cr L J 713 : I L R (1942) Nag 62 : 189 I C 74**

——Where the substance of information received under S. 110, Cr. P. C., as set out under S. 112, relates to disputes concerning land special provisions of S. 145 apply excluding the general provisions of S. 110. (Davis, J. C. and Tyabji, J.) Emperor v. Alisher Dost Mohammad. **A I R 1939 Sind 261 : 12 R S 94 : 40 Cr L J 887 (2) : 184 I C 189 (2).**

CRIMINAL P. C. (V of 1898), S. 112 — 2. Substance of the information

——Ss. 112. 107—Order under S. 112, how far can exceed information given under S. 107.

Quaere.—It is doubtful how far an order under S. 112, Cr. P. C., can properly exceed the information given under S. 107. (Davis, J. C. and Weston, J.) Mt. Jasoda Lekhraj v. Emperor. **A I R 1939 Sind 167 : 12 R S 31 : 40 Cr L J 703 : I L R (1939) Kar 662 : 182 I C 698.**

——The information given in an order under S. 112 Cr. P. C., should be sufficiently detailed to satisfy the requirements of law. Where neither time nor place nor the identity of the persons threatened is given, the order is illegal (King, J.) Santhanaramaswami v. Emperor. **1937 M W N 885.**

——In a preliminary order under S. 112, Cr. P. C., mere reference to Police report is not proper. The Magistrate should state the facts which, if established, necessitate the taking of security. (Burn, J.) Bahadur Patnaik v. Emperor. **1933 M W N 875.**

——Offence.

Ordinarily it is sufficient under S. 112 if that portion of the clause of S. 110 which is applicable to the particular case is specified in the notice that is given But where the particular clause refers to two or more offences, the particular offence or offences which is appropriate to the particular case should also be mentioned in the notice. This applies more particularly to Cl. (d). A. I. R. 1927 Oudh 306, Appr. (Boys and Young, JJ.) Chandan v. Emperor. **1930 A L J 389 : 31 Cr L J 627 : 124 I C 40 : 1930 Cr C 442 : 52 A 448 : A I R 1930 All 274.**

——'Detailed information'.

Repetition of the words of the section should as far as possible be avoided and although there may be cases where it is possible to convey the substance of the information briefly, ordinarily details cannot be insisted upon, and omission to give more information where possible does not vitiate the entire proceedings without proof of prejudice to the accused. (35 Cal. 243; 17 C. W. N 238, Foll. AIR 1920 Mad 534 and AIR 1926 All 759, Diss. from.) (C. C. Ghose, J. on difference of opinion between Suhrawardy and Graham,JJ.) Bhut Nath v. Emperor. **57 Cal 503 : I R 1930 Cal 391 : 124 I C 71 : 31 Cr L J 614 : 33 C W N 852 : 1929 Cr C 387 : A I R 1929 Cal 739.**

——Liberty to reserve cross-examination.

Per Suhrawardy, J.—When an accused is proceeded against, appears and prays for information about the evidence which the Crown proposes to adduce against him, it should be supplied or so much of it as is practicable. This may be done in two ways. He may be given sufficient information of the evidence to be called or he may be allowed to reserve cross-examination till he has full information about the case against him.

CRIMINAL P. C. (V of 1898), S. 112 — 2. Substance of the information

Denial of either is to prejudice him materially notwithstanding S. 256. (C. C. Ghose, J., on difference between Suhrawardy and Graham, JJ.) Bhut Nath v. Emperor. **33 C W N 852 : 1929 Cr C 387 : A I R 1929 Cal 739 : 124 I C 71 : 57 Cal 503 : 31 Cr L J 614.**

The words "substance of information" means such or so much of information as would enable the party to know under what clause of S. 110 he is charged or to what particular class of offenders he belongs. (C. C. Ghose, J. on difference between Suhrawardy and Graham, JJ.) Bhut Nath v. Emperor. **57 Cal 503 : 124 I C 71 : 31 Cr L J 614 : 33 C W N 852 : 1929 Cr C 387 : A I R 1929 Cal 739.**

——Mere statement that accused is a habitual thief.

Even when the accused is represented by a mukhtar, it is undesirable that, where persons are arrested under S. 55, they should not be told the substance of the information against them. The procedure clearly requires something in the nature of an indictment or charge containing substantial particulars indicating the grounds upon which the police have given information to the Magistrate. Merely setting out in a notice under S. 112 that a man is an habitual thief or robber is not sufficient. (Banerji, J.) Nihal v. King-Emperor. **49 All 5 : 24 A L J 908 : 7 L R A Cr 165 : 28 Cr L J 9 : 99 I C 41 : A I R 1926 All 759.**

——Substance of information and amount of bond as laid down in S. 112 should be recorded. (Das, J.) Maung Tun U v. Emperor. **92 I C 702 : 27 Cr L J 318 : 4 Bur L J 172 : A I R 1925 Rang 353.**

——Ss. 112 and 107—Public peace.

A First Class Magistrate getting information from a reliable source that a person is likely to disturb the public peace, may proceed under S. 112 without mentioning any definite acts intended to be committed. S. 107 must be read with S. 112 .(Knox, J.) Jaguji Rai v. Emperor. **16 A L J 567 : 47 I C 72 : 19 Cr L J 876 : A I R 1918 All 93.**

3. Amount of the bond to be executed.

——Security under S. 107—Nature and amount of —See Cr. P. C. (1898). S. 107. **1951 R L W 137.**

——Ss 118, 112 and 439—Amount of security.

See ibid S. 118. **5 Cr L J. 219 (Punj)**

——Ss. 107 and 112—Dispute regarding property—Order requiring security from one party not in possession if proper —Order under S. 112—Condition to be imposed.

See Criminal P. C. (1898) S. 107. **4 Cr L J 456 (Cal).**

4. Character and class of sureties.

——Requiring security—Accused's sureties rejected —Application to Sessions Judge referring the matter to the High Court as irregular—High

CRIMINAL P. C. (V of 1898), S. 112 — 4. Character and class of sureties

Court's power to question though no appeal to it by accused.

When an accused under S. 112 whose offer of sureties was rejected by the Magistrate applied to the Sessions Judge to invoke the aid of the High Court to set aside the Magistrate's order rejecting the sureties and the Sessions Judge finding the whole proceeding irregular and unsustainable, referred the matter to the High Court it was held by the High Court that though the accused had not appealed to it against the order requiring him to furnish security under S. 112, yet the High Court had on the reference made to it by the Sessions Judge, jurisdiction to deal with the entire question and to set aside the proceeding of the Magistrate as illegal. (Piggott, J.) Emperor v. Sukhdeo. **14 A L J 215 : 33 I C 637 : 17 Cr L J 157 : A I R 1916 All 316.**

——Sureties for good behaviour— Qualifications of.

Sureties for good behaviour ought not to be rejected merely because they are caste fellows or relations of the accused and to require that he must be capable of controlling the accused is undesirable, but not that he should be of the landholding class. (Heaton and Shah, JJ.) Jiwanatha v. Emperor. **16 Bom L R 138 : 23 I C 476 : 16 Cr L J 268 : A I R 1914 Bom 5.**

——Ss. 112, 118 and 439 (5) —Surety— Power of Magistrate to define class of surety.

An order requiring that the sureties should own 100 acres or be paying income-tax and able to control the accused is a perfectly valid order. So also an order requiring the accused to find sureties who shall be neighbouring Zemindars paying a certain assessment is valid. An order under S. 118 as to the class of sureties to be furnished is appealable under S. 406. Where therefore, no appeal has been preferred against such an order, the High Court will not interfere in revision. (Fawcett, J. C., and Crump, A. J. C.) Jumo v. Crown. **8 S L R 229 : 28 I C 108 : 16 Cr L J 252 : A I R 1914 Sind 139.**

——Sureties—Rejection of—Grounds for.

An order under S. 112 must be such that if a suspect has a bona fide intention to be of good behaviour, it will not be impossible for him to find sureties. It is unfair to a suspect to call on him to produce sureties of a certain class and then reject the persons offered because they do not conform to an arbitrary standard, not set up in the order. A surety should not be rejected merely because a Police Inspector informs the Magistrate that he is of bad character when such rejection involves the committal of the accused to prison. (Fawcett, J. C. and Crouch, A. J. C.) Muhammad Ibrahim v. Emperor. **8 S L R 173 : 27 I C 148 : 16 Cr L J 100 : A I R 1914 Sind 13.**

——Surety—Not required to be local men—Jurisdiction.

CRIMINAL P. C. (V of 1898), S. 112 — 4. Character and class of sureties

A Magistrate has no jurisdiction to direct that the sureties under S. 112 should be local men unless at a later stage they are objected to by the Police authorities. (Holmwood and Sharfuddin, JJ.) Islam Khan v. Emperor. **23 I C 206 : 15 Cr L J 254 : A I R 1914 Cal 445.**

——Order to find sureties from Zamindar class—Legality—Revision.

An order, rejecting sureties, who were not of the class of Zamindars holding twenty acres of land round a particular locality as fixed by the sub-divisional magistrate by an order under S. 112, is legal. The High Court in revision will not consider whether the sub-divisional magistrate had sufficient evidence of general repute before him to support the order he passed and therefore will not interfere with the order rejecting the sureties on the ground that they did not belong to the required class. (Hayward, J. C. and Crouch, A. J. C.) Crown v. Jan Mohomed. **3 S L R 239 : 6 Ind. Cas. 887 : 11 Cr L J 417.**

——Ss. 112 and 122— Power to reject sureties—Ascertainment of suitability of surety—Discretion of magistrate—Record of reasons.

In determining whether or not a surety is "respectable" within the meaning of that term as used in the order under S. 112, the Magistrate may fairly demand a reasonable degree of social importance and influence, and, if it be found, on proper enquiry, that the income of any surety offered is such as to make it reasonably certain that he does not possess that degree of social importance and influence, such surety may be rejected. What the standard of respectability should be in any particular case must be left to the Magistrate to determine. The Magistrate is justified in using and applying his knowledge of his division when acting under S. 122, and if he knows that the inhabitants generally of a village bear a bad character, he is justified in rejecting as unfit any such inhabitant who may be offered as a surety, provided that he records his reasons for so doing. The duty of the High Court is merely to see that the Magistrate has exercised his authority with reasonable discretion and has infringed no rule of law. (Lucas J. C. and Crouch A. J. C.) Imperator v. Din Mahomed. **3 S L R 168 Cr : 4 Ind Cas 1153 : 11 Cr L J 198.**

——Ss. 112, 118—Rejection of surety.

A Magistrate should not reject a surety merely on the report of the police without making any inquiry himself. (Evans, J.) Rama Nand Singh v. King-Emperor. **11 O C 267 : 8 Cr L J 344.**

——Ss. 112 and 122—Fitness of Surety—Mere solvency.

The fitness of a surety executing a bond under Form XI, Sch. V, must be judged chiefly by his ability to perform his contract of guarantee and to enforce the good behaviour of his principal. This is also the intention of the provisions in

CRIMINAL P. C. (V of 1898), S. 112 — 4. Character and class of sureties

S. 112. Mere solvency of the surety is not the only test of his fitness. The Magistrate has also to consider the question of the ability of the surety to influence the conduct of the bad character, as relevant to his fitness. But in so doing, the Magistrate should not exercise his power arbitrarily or impose impossible restrictions. (Pratt and Crouch J. Cs.) Imperator v. Mahommed Pahor. **8 Cr L J 166 : 1 S L R 46 Cr.**

——Class of sureties if any.

A Magistrate has no power to order that security be given by any particular person or class of persons, or to prohibit the acceptance of security from lambardars, inamdars and chaukidars. (Reid, C. J.) King-Emperor v. Kaim Khan. **18 P R 1906 Cr : 14 P L R 1907 : 5 Cr L J 148 : 5 P W R 1907 Cr.**

——Ss. 112 and 118—Period of bond—Commencement of.

See ibid, S. 118. **2 L B R 40.**

5. Amendment of order.

——Ss. 112, 257, 162, 123 (3), 548, 350, 342—Amendment of order under S. 112, before proceedings started—Whether irregularity.

An order under S. 112, Cr. P. C., made in Chap. VIII proceedings is analogous to a charge framed in the case of a regular trial of an accused person for an offence, and as under the provisions of the Cr. P. C., contained in S. 227, a charge may be altered or added to or amended at any time before judgment is pronounced subject to conditions contained in certain sections that follow, so also can an order under S. 112, Cr. P. C. Hence where an order which is clearly an amendment of the previous orders under S. 112, on which no proceedings had actually been started is passed there is no irregularity in the procedure adopted. (Lobo and Weston JJ.) Emperor v. Rasul Bux. **A I R 1942 Sind 122 : I L R (1942) Kar 252 : 44 Cr L J 367 : 15 R S 136 : 205 I C 309.**

——Accused continuing to flout law and to commit illegal acts—Subsequent conduct—Supplementary order under S. 112, if can be issued.

If the subsequent conduct of a person against whom a preliminary order is issued calling upon him to show cause why he should not be bound over to keep peace, indicates that despite the existence of these proceedings and his having been called upon to show cause why he should not be bound over to keep the peace and be of good behaviour, he continues to flout the law and to commit illegal acts, it is most desirable that the Court should take notice of this and be influenced by it in framing its final order. There is nothing in the Cr. P. C., which prohibits the issuing of a supplementary order under S. 112 and it is open to no objection. The person affected by the second notice should, of course, have sufficient time to consider it. (Horwill, J.) In re Srinivasalu Reddiar. **A I R 1942 Mad 242 (1) : 43 Cr L J 409 : (1941) 2 M L J 1036 : 14 R M 494 : 1942 M W N 426 (1) : 55 M L W 757 (1) : 198 I C 528.**

CRIMINAL P. C. (V of 1898), S. 112 — 5. Amendment of order

——The Court has no power, after the order under S. 112 is drawn up and communicated to the accused, to alter the period during which the accused is to be of good behaviour. (Ferrers, J. C. and Aston, A. J. C.) Nim Sahibkhan v. Emperor. **A I R 1933 Sind 8 : 27 Sind L R 19 : Ind Rul (1932) Sind 182 : 34 Cr L J 9 : 140 I C 170.**

——The Court can amend a notice under S. 112 of Cr. P. C., which in many respects is analogous to a charge. (Curgenven, J.) Hyder Khan Sahib v. Emperor. **1933 M W N 551.**

——Requiring more security after notice.

Certain persons appeared before a Magistrate in pursuance of an order to show cause why they should not be required to furnish security in the sum of Rs. 2,000. On that day the Magistrate passed an entirely fresh order under S. 112 in which the amount of security demanded was Rs. 5,000. It was this latter order that was read out to them as required by S. 113.

Held, that in the circumstances the proceedings were not vitiated in any way by the procedure adopted by the Magistrate. (Broadway J.) Mahomed Ishar v. Emperor. **28 Cr L J 815 : 104 I C 255 : A I R 1927 Lah 689.**

——Object.

The object is to prevent future offences and not punish past ones — Order as to sureties cannot be varied at the time of being made absolute—Sureties' want of influence on suspect is no disqualification. (Kennedy and Rupchand Bilaram, A. J. Cs.) Emperor v. Manu Ismail. **82 I C 154 : 18 S L R 298 : 25 Cr L J 1226 : A I R 1925 Sind 57 (2).**

——Ss. 112 and 118 — Conditional order—Variation of.

A Magistrate cannot vary the conditional order made under S. 112 by enforcing further conditions in the order absolute. (Evans, J.) Ramanand Singh v. King-Emperor. **11 O C 267 : 8 Cr L J 344.**

6. Effect of non-compliance with the section.

——Notice failing to comply with S. 112—Divestment of Magistrate's jurisdiction.

The object of S. 112 in requiring the substance of the information to be given in the notice is to afford reasonable opportunity to the accused to come prepared with what he has to meet. The failure to comply with the provisions of S. 112, however, does not divest the Magistrate of his jurisdiction to deal with the proceeding; and, in the absence of prejudice, the subsequent proceedings ought not to be treated as being void ab initio. (Jamuar and Ahmad, JJ.) Raghunath Singh v. State. **A I R 1953 Pat 1 : 31 Pat 902 : 1953 Cr L J 110.**

——Want of particulars in notice — Right of accused to ask to furnish them.

CRIMINAL P. C. (V of 1898), S. 112 — 6. Effect of non-compliance with the section

If an order made under S. 112, and served upon the person against whom it is made, does not contain any particulars, which he wanted to know, he is entitled to complain and to ask to be furnished with such particulars. If no exception is taken to the notice and the person against whom it is made shows cause and is eventually bound over, he can scarcely have any legitimate ground for complaint on that score. (Jamuar and Ahmad, JJ.) Raghunath Singh v. State. **A I R 1953 Pat 1 : 31 Pat 902 : 1953 Cr L J 110.**

——Defect in notice whether vitiates proceeding.

A defect in the notice issued by a Magistrate under S. 112 does not vitiate the proceeding started under S. 107. It is a defect curable provided there has been no prejudice to the person proceeded against: I. L. R. 1 Cut. 751, Criticised; Case law discussed.

(Note:—In the present case the High Court held that even though the notice did not strictly comply with the requirements of S. 112, it was not void and did not go to the root of the validity of the proceeding: but in the peculiar circumstances of the case it would be expedient in the interests of justice to quash the proceeding and release the petitioners.) (Ray, C. J.) Sanatan Baliarsing v. State. **A I R 1952 Orissa 33 : 19 Cut L T 370.**

——Order under—Failure to set out substance of 'information.'

An order under S. 112 is not a formal order but is intended to give sufficient notice to the individual against whom the order is made, of the accusation made against him and therefore the order must set forth the substance of the information received. Where the Magistrate had not set out the substance of the information before him and had not annexed a copy of the Police report :

Held that it was a grave irregularity which in the circumstances of the case, vitiated the proceedings. (Panigrahi, J.) Krupasindhu v. Rex. **A I R 1951 Orissa 277 : I L R (1949) 1 Cut 751: 52 Cr L J 848.**

——Order under S. 112— Particulars required not given—Order of execution of a surety bond under S. 110 is illegal. (Horwill, J.) Manickam v. Emperor. **1941 M W N 512 : 54 M L W 63.**

——The High Court has undoubtedly power to quash proceedings where the notice issued does not comply with the requirements of S. 112, but before doing so, it must be satisfied that there has been a failure to comply. (Leach, C. J., Krishnaswami Ayyangar and Patanjali Sastri, JJ.) In re, Muthuswami Chettiar. **A I R 1940 Mad 23 : 50 M L W 802 : 1939 M W N 1209 : 41 Cr L J 238 : (1940) 1 M L J 11 : 12 R M 584 : I L R (1940) Mad 335 : 185 I C 824 (FB).**

CRIMINAL P. C. (V of 1898), S. 112 — 6. Effect of non-compliance with the section

——Ss. 112, 439, 107, 144 — Magistrate applying powers under S. 112 equally to wrong-doer as well as wronged—Interference in revision.

The Judicial Commissioner's Court is always very unwilling to interfere in the case of orders passed under the preventive sections of the Cr. P. C. These orders are largely of an administrative nature; they are concerned with the maintenance of the public peace and the prevention of breaches of the public peace for the maintenance of which the District Magistrate is responsible, and the needs of which he, as the responsible officer on the spot, is presumably in the best position to know; but these orders though largely of an administrative nature have a legal basis and if it is clear that an order under S. 112, Cr. P. C., has no legal basis and that the District Magistrate has proceeded upon a wrong legal principle applying equally to the wrong-doers as well as to the wronged the wide powers conferred upon him by the law for the restraint of the wrong-doers and for the protection of the wronged, the Judicial Commissioner's Court is bound to interfere. (Davis, J. C. and Weston, J.) Mt. Jasoda Lekhraj v. Emperor. **A I R 1939 Sind 167 : 12 R S 31 : 40 Cr L J 703 : I L R (1939) Kar 662 : 182 I C 698.**

——In passing an order under S. 112 the Magistrate should give in substance an abstract of the facts upon which the Magistrate charges the persons proceeded against with being likely to commit a breach of the peace so as to give them notice of what they have to meet and be prepared to meet it. Non-compliance with this requirement is not a mere irregularity but an illegality vitiating the conviction. (Pandalai, J.) Kalia Goundan v. Emperor. **I R 1930 Mad 1036 : 32 Cr L J 27 : 1930 M W N 698 : 32 M L W 320 : 1930 Cr C 1035 : 127 I C 652 : A I R 1930 Mad 859 : 59 M L J 887.**

——An order not setting forth the substance of the information received about the petitioner is illegal. (Addison, J.) Ujagar Singh v. Emperor. **117 I C 807 : 10 Lah 155 : 30 Cr L J 839 : 30 P L R 694 : 1929 Cr C 61 : A I R 1929 Lah 504.**

——The action of a Magistrate in not recording the substance of the information he had received does not amount to a mere irregularity which would be covered by S. 537. (Banerji, J.) Nihal v. King-Emperor. **49 All 5 : 24 A L J 908 : 7 L R A Cr 165 : 28 Cr L J 9 : 99 I C 41 : A I R 1926 All 759.**

——Irregularity.

Where the Magistrate wrote the order under S. 107 on the back of a Police report and instead of sending a copy of his order with the summons he gave the substance of the information in the summons itself.

Held, that irregularity is covered by the provisions of S. 537. 11 Bom L R 740. Appl. (Daniels, J.) Ram Deo Singh v. Emperor. **49 All 228 : 25**

CRIMINAL P. C. (V of 1898), S. 112 — 6. Effect of non-compliance with the section

A L J 44 : 27 Cr L J 1132 : 7 L R A Cr 174 : 97 I C 652 : A I R 1926 All 767.

——Failure to incorporate substance of information does not vitiate proceedings unless accused is prejudiced — Reproducing S. 110 is not compliance with the section. (Kennedy, J.C. and Rupchand Bilaram, A. J. C.) Thanwor v. Emperor. **19 S L R 176 : 26 Cr L J 1398 : 89 I C 710 : A I R 1926 Sind 69.**

——Compliance.

An order under S. 112 is illegal in so far as it travels beyond the terms of S. 110. (Boys and Banerji, JJ.) Budhan v. Emperor. **88 I C 362 : 47 All 733 : 23 A L J 507 : 26 Cr L J 1130 : 6 L R A Cr 129 : A I R 1925 All 694.**

——Full details to enable accused to prepare for defence — Issue of notice judicial act.

A notice served under S. 112, which is very meagre and does not contain sufficient details regarding the charges brought against the persons must be held not to comply with the provisions of the Code. Any explanation given by the Prosecuting Inspector at the commencement of the trial cannot have the effect of remedying the defect in the notice because the object of S. 112 is to enable the accused person to prepare for his defence and to summon witnesses on his side before actual commencement of trial. The issue of a preliminary notice under S. 112 of the Cr. P. C., is not a formal matter; but it is a judicial act which must be exercised by the Magistrate after due consideration of the materials before him. (Madhavan Nair, J.) Kutti Goundan, In re. **86 I C 49 : 26 Cr L J 673 : 1925 M W N 57 : AIR 1925 Mad 189 : 47 M L J 689.**

——Order under —Contents of—Defect.

Where a preliminary order under S. 112, Cr. P. C. merely reproduces the contents of S. 110 without setting forth substance of the information against the accused the proceedings under S. 110 cannot be regarded as legal. Where, however, the defect in the preliminary order did not prejudice the accused in the trial and he let in all his evidence, the proceedings will not be quashed on the ground of defect in the order. (Seshagiri Iyer and Moore, JJ.) Kothamidde Ranga Reddi In re. **43 Mad 450 : 38 M L J 97 : 11 L W 331 : 21 Cr L J 354 : 55 I C 722 : (1920) M W N 398 : A I R 1920 Mad 534.**

——Powers of Magistrate to issue summons, warrant or order of detention.

The Code does not authorise a Magistrate to issue summons, warrant or order of detention, until something is recorded by him in writing showing the ground for his action. A Magistrate acting under Chap. VIII cannot act until after he has recorded an order under S. 112 based on some information which the Magistrate has reasons to believe. (Knox, J.) Rameshwar v. Emperor. **36 All 262 : 12 A L J 365 : 23 I C 496 :15 Cr L J 288 : A I R 1914 All 466.**

CRIMINAL P. C. (V of 1898), S. 112 — 6. Effect of non-compliance with the section

——Notice not in strict compliance with — Effect.

A notice to show cause under S. 112, stating that the opposite party was "by general habit" instead of 'by habit' (as required by S. 110) is not bad if the opposite party is not prejudiced by the terms of the order. (Carnduff and Imam, JJ.) Deputy Legal Remembrancer v. Kadir Mirza. **17 C W N 331 : 17 I C 416 : 13 Cr L J 784.**

——Bond under S. 107 — Procedure prescribed in Ch. VIII and S. 112 not followed—Effect.

See Cr. P. C. S. 107. **9 Cr L J 179 (All).**

——Ss. 112, 107, 110—Notice to proceed under S. 110 (e)—Order under S. 107 without issuing fresh notice—Legality.

Where a Magistrate finds that S. 110, with reference to which notice under S. 112 had been issued, is inapplicable to a case, he ought not to proceed to deal with the case as one under S. 107, without first issuing a fresh notice under S. 112, with reference to the altered view of the circumstances. The notice issued with reference to S. 110 (e) cannot be held to be sufficient, as a preliminary to the Magistrate making an order under S. 107. The facts necessary to be proved, in order to make the accused liable under S. 110 (e) are different from those necessary to be proved, in order to make him liable under S. 107, and the party proceeded against should have due notice of the fact, on which the Magistrate proposes to proceed against him. The omission to issue such fresh notice is a non-compliance with an express provision of the law rendering the subsequent proceedings invalid. (Subramanian Aiyar and Benson, JJ.) Krishnaswami Thathachari v. Vanamamalai Bhashiakar, **30 M 282 : 2 M L T 183 : 5 Cr L J 397.**

7. Joint order against two or more persons.

——Where two persons were alleged to be members of a gang of habitual thieves and robbers and were always associated jointly in the commission of thefts, burglaries and robberies, a Magistrate acts properly in issuing one order against both of them under S. 112, Cr. P. C., calling upon them to show cause why they should not be bound over to be of good behaviour under S. 110, and the joint trial of the two is perfectly legal. (Nanavutty, J.) Hubdar Ali v. Emperor. **AIR 1933 Oudh 251 : 34 Cr L J 852 : 6 R O 20 . 10 O W N 325 : 144 I C 944.**

——Joint trial—Legality of.

When two persons are both reported by the Police to be members of the same gang of bad characters, the Magistrate can proceed under S. 112, Cr. P. C. against both and try their cases jointly. (Nanavutty, J.) Chheda Lal v. Emperor. **A I R 1933 Oudh 195 : 10 O W N 233 : Ind Rul (1933) Oudh 269 : 34 Cr L J 793 : 144 I C 577.**

——Ss. 112, 115 and 118—Failure to draw up or serve proceeding as required by Ss. 112 and 115

CRIMINAL P. C. (V of 1898), S. 112—7. Joint order against two or more persons —Effect—Joint trial in inquiry under Ch. VII—Legality.

An order under S. 118 of the Cr. P. Code is not liable to be set aside merely because no proceedings drawn up according to S. 112 was served on the accused as laid down in S. 115 provided that an order under S. 112 is drawn up and read out and explained to the accused when they are brought into court in pursuance of summonses issued under Chap. VII of the Code, 17 M. L. J. 438. Dist. Where a number of persons are jointly concerned in a matter under inquiry under the preventive sections of the Code, a joint enquiry with respect to all of them is legal. (Abdur Rahim, J.) Kavathum Patturaju, In re. **26 M L T 385 : (1919) M W N 639 : 10 L W 267 : 53 I C 491 : 20 Cr L J 763 : A I R 1920 Mad 1014.**

——Evidence of general repute—Admissibility—Joint trial of master and servant—Legality.

See Cr. P. Code (5 of 1898), S. 110. **3 Cr L J 290 (Oudh).**

8. Failure to read out order.

——Order passed under not on record, nor any compliance made with S. 113—Proceeding culminating in order under S. 118 read with S. 107 is completely irregular.

See ibid, S. 107. **A I R 1951 Raj 156 : I L R (1951) 1 Raj 265 : 52 Cr L J 1209.**

——The error on the part of the Magistrate in failing to read out the order under S. 112, Cr. P. C., to the accused or to explain its substance to them vitiates the order under S. 117 (3), Cr. P. C. The failure to comply with the provisions of S. 117 (1) is not a mere irregularity but is an illegality which goes to the root of the proceedings. (Davis, C. J. and Tyabji J.) Emperor v. Yusif Jumo, **A I R 1943 Sind 175 : 45 Cr L J 164 : 16 R S 146 : 209 I C 614.**

——If in a case a preliminary order is not served on an absent accused and then that accused appears and the order is read out to him, the requirements of the law are substantially complied with. (Prideaux, A. J. C.) Bajirao, In re. **76 I C 228 : 25 Cr L J 132 : A I R 1924 Nag 166.**

9. Order under S. 117 (3)

——Ss. 112, 117—Order for keeping peace pending inquiry.

Where the Magistrate without making any order under S. 112 passes an order, presumably under S. 117 (3), calling upon the accused to execute bond for keeping peace until the conclusion of the inquiry under S. 117 (1) the order is wholly wrong and absolutely unwarranted. The Magistrate cannot pass such an order without previously passing an order under S. 112. (Gupta, J.) Ramlal v. The State. **A I R 1951 Raj 116.**

——An order under S. 117 (3), Cr. P. C., must have reference to the information under S. 110 and the order under S. 112 which follows it. (Davis, C. J. and Lobo, J.) Emperor v. Mahammad Rahim. **A I R 1943 Sind 173 : I L R (1943) Kar 275 : 45 Cr L J 147 : 16 R S 130 : 209 I C 477.**

——An order under S. 117 (3), Cr. P. C., shall be passed after the order under S. 112 has been made and read out or explained to the accused under S. 113 of the Code. An order under S. 117 (3) passed before such reading is passed prematurely. (Davis, C. J. and Weston, J.) Emperor v. Sidik Ghulam. **A I R 1943 Sind 163 (163) : 44 Cr L J 815 : I L R (1943) Kar 513 : 16 R S 88 : 209 I C 49.**

——When the Magistrate, while passing an order under S. 117 (3), Cr. P. C. has clearly considered the question of emergency as a separate question but has related it to his order under S. 112 of the Code and has acted on the same information which justified his order under S. 112, there is nothing wrong in this. (Davis, C. J. and Lobo, J.) Emperor v. Ghulam Muhammad. **A I R 1943 Sind 122 : 44 Cr L J 779 : I L R (1943) Kar 279 : 16 R S 75 : 208 I C 338.**

——An order under S. 117 (3), Cr. P. C., passed more than two months after proceedings under S. 112 are initiated is not justified. (Davis, C. J. and Weston, J.) Emperor v. Nabi Bux. **A I R 1942 Sind 86 : I L R (1942) Kar 189 : 43 Cr L J 788 : 15 R S 28 : 202 I C 43.**

——The orders under S. 117 (3), Cr. P. C., are not mere matters of routine orders appended as it were to orders passed by a Magistrate under S. 112, Cr. P. C., on an application made under S. 110 Cr. P. C. (Davis, C. J. and Weston, J.) Bachal Samaho v. Emperor. **A I R 1942 Sind 77 : I L R (1942) Kar 9 : 43 Cr L J 692 : 14 R S 212 : 200 I C 334.**

10. Final order under S. 118.

——Ss. 112, 118 and 120 — Preliminary order not specifying date from which period mentioned in order is to commence— Expiry of period—Magistrate has still jurisdiction to pass final order.

Where a Magistrate initiates proceedings under S. 107 by drawing up a preliminary order directing the party concerned to show cause why he should not be bound down to keep the peace for a specified period but neither the preliminary order nor the notice issued to the party specifies the date from which the specified period is to commence, and the enquiry becomes protracted for some reason or other with the result that the period specified in the preliminary order expires, the Magistrate would, nevertheless, have jurisdiction to proceed with the enquiry and pass the final order. S. 120 (2) makes it clear that the period for which security is to be given shall commence from the date of final order under S. 118 and not from the date of the preliminary order under S. 112 unless the Magistrate otherwise directs. If the preliminary order is silent as to the date of commencement of the period the Court is

CRIMINAL P. C. (V of 1898), S. 112—10. Final order under S. 118

bound to give effect to this statutory provision. (Koshi C. J. and Govinda Pillai J.) Govind Nair Balkrishnan v. State. **A I R 1952 Trav Co 433 : I L R (1952) T C 336 : 1952 Cr L J 1523.**

——Forfeiture.

The bond that Ss. 112 and 118 have in contemplation is one bond for one amount and on forfeiture is discharged by the payment of the amount either by the principal or the surety. (26 P. R. Cr. 1894 and 12 Cr. L. J. 404, Foll. 36 Cal. 562, Not Foll) (Scott-Smith, Offg. C. J.) Harnam v. King-Emperor. **5 Lah 448 : 26 Cr L J 322 : 84 I C 546 : A I R 1925 Lah 228.**

Overruled in **AIR 1937 Lah 133 : 38 Cr L J 420.**

——Security for good behaviour—Final order under S. 118— Terms of security to correspond with order under S. 112.

See ibid S. 118. **4 Cr L J 405 (All).**

—S. 113.

—Scope—Order passed under S. 112 not on record nor any compliance made with S. 113—Proceedings culminating in order under S. 118 read with S 107 is completely irregular. See ibid, S. 107. **A I R 1951 Raj 156 : 52 Cr L J 1209.**

——An order under S. 117 (3), Cr. P. C., shall be passed after the order under S. 112 has been made and read out or explained to the accused under S. 113 of the Code. (Davis, C. J., and Weston J.) Emperor v. Sidik Ghulam. **A I R 1943 Sind 163 : 44 Cr L J 815 : I L R (1943) Kar 513 : 16 R S 88 : 209 I C 49.**

——Person brought into Court.

The Magistrate was justified in treating him as a person present in Court whether brought legally or illegally and whether under arrest or not, and must be taken to have acted under S. 113. (Chandavarkar and Heaton, JJ.) Emperor v. Gulam Hussain. **12 I C 301 : 12 Cr L J 533 (Bom.)**

—S. 114.

——Issue of warrant without passing order under S. 112.

A Magistrate has no jurisdiction to issue a warrant under S. 114, Criminal P. C., unless he complies with the terms of S. 112 and passes an order under that section. The failure of the Magistrate to pass such an order is not a mere irregularity, but constitutes an illegality. There is an express breach of a mandatory provision of law if a warrant is issued without making an order in writing under S. 112, and it renders the warrant of arrest invalid. (Sen J.) Narsayya Lachmayya v. State. **A I R 1953 Nag 292 : 1953 Nag L J 351 : 1953 Cr L J 1569.**

——Danger of breach of peace— Magistrate present on spot empowered to proceed under S. 107—Magistrate has no power to order arrest first and then proceed under S. 107—Proper course for him is to serve order under S. 107 read with S. 112 and then if necessary to order arrest under S. 114: See ibid, Ss. 107, 114. **A I R 1949 All 21 : 50 Cr L J 78.**

CRIMINAL P. C. (V of 1898), S. 114

——Scope — Counter-petitioners, appearance of—Procedure.

Section 114 is applicable only to the stage prior to the service of the preliminary order under S. 112 and it can have no application as a preventive measure after the counter-petitioners have appeared in order to show cause. If speedy remedy is considered desirable after the appearance has been entered, there is S. 117 (3) under which preliminary bonds can be taken and pending their completion, the counter-petitioners can be held in custody or in default of execution, they can be kept in custody until the inquiry is completed. (Byers J.) In re Kontam Hampaiah. **A I R 1944 Mad 575 (2) : (1944) 2 M L J 120 : 1944 M W N 557 : 216 Ind. Cas. 308 : 46 Cr L J 172.**

——Cross-examination of witness already cross-examined. (Quaere).—It is doubtful whether a person whose conduct is under enquiry under S. 117, Cr. P. C., is entitled at any stage of the proceedings to demand that witnesses who have been cross-examined should be re-called for further cross-examination. (Allsop J.) Lachman Prasad v. Emperor. **A I R 1943 All 23 : 1942 A L J 557 : 1942 A W R (H C) 326 : I L R (1942) All 945 : 44 Cr L J 187 : 15 R A 329 : 204 I C 274.**

——Re-arrest after execution of bond.

Proviso to S. 114 is a proviso to the section which relates to the circumstances set out in S. 114 and not a substantive provision standing by itself and it does not empower the Magistrate to re-arrest a person who has been discharged after executing surety bond. 32 Cal. 80, Dist. (Wort, J.) Nathan Gopi v. Emperor. **1929 Cr C 382 : 117 I C 628 : 30 Cr L J 809 : 10 P L T 801 : A I R 1929 Pat 654.**

——Bail.

Refusal of bail is contrary to the spirit of the provision of Ch. 8. The object of this chapter is to prevent a suspect from committing offence and to allay public apprehensions, and that object is sufficiently attained by requiring him to find sureties. (Rupchand Bilaram, A.J.C.) Jatoi v. Emperor. **96 I C 391 : 20 S L R 122 : 27 Cr L J 935 : A I R 1926 Sind 288.**

——Arrest.

The police can arrest a suspected criminal and then proceed against him either for substantive offence or under Chap. 8, and it is for that reason that S. 114 contemplates the serving of notice on the suspect while in custody. (Kincaid, J. C. and Kennedy, A. J. C.) Hardayal Singh v. Emperor. **20 S L R 85 : 27 Cr L J 628 : 94 I C 404 : A I R 1926 Sind 190.**

——Substance of information.

The Magistrate must be convinced that the only way of preventing an imminent breach of the peace is to commit the persons concerned to

CRIMINAL P. C. (V of 1898), S. 114

custody and must put on record the substance of the Police or other report, by which he is influenced before taking action, otherwise the order is illegal. (Foster, J.) Maniruddin v. Emperor. **74 I C 861 : 5 P L T 93 : 2 Pat L R Cr 45 : 24 Cr L J 829 : A I R 1924 Pat 320.**

——Arrest when justified—Order what to contain.

S. 114, Cr. P. Code, contains two stringent elements obviously directed against any ill-considered precipitancy on the part of the magistrate. He must be of opinion that the only way of preventing a breach of the peace is to commit the person to custody, and he must put on record the substance of the Police or other report by which he is influenced. (Foster, J.) Maniruddin v. Emperor **74 I C 861 : 24 Cr L J 829 : AIR 1924. Pat 320 : 2 Pat L R Cr 45 : 5 Pat L T 93.**

(Note—A new sub-section (3) has now been added to the section, which enables a Magistrate to pass an interim order for security pending inquiry.)

——Orders under—Temporary injunction of Civil Court—Effect of.

Successive extensions of an order under S. 144, Cr. P. Code are invalid but they can be supported as fresh orders. Such successive orders may amount to an abuse of the process of court especially when the civil court has passed an order of temporary injunction against one party. It is the duty of the criminal courts to respect the opinions of civil courts and in taking steps to preserve peace, to take action only against those who are infringing the right of others and protect those who wish to exercise their right and not prohibit the latter's lawful enjoyment of rights. 27 M. L. J. 628, 22 M. L. J. 251, 20 C. W. N. 758 Ref. (Ramesam, J.) Murari Naicken v. Aiyasami Naicken. **69 I C 369 : 16 L W 452 : 1922 M W N 612 : 23 Cr L J 689 : A I R 1923 Mad 15.**

——Scope of—Arrest without jurisdiction.

S. 114, Cr. P. C. is not limited to arrests within jurisdiction. (Sanderson, C. J. and Beachcroft, J.) Monindra Mohan v. Emperor. **46 Cal 215 : 28 C L J 25 : 23 C W N 193 : 46 I C 152 : 19 Cr L J 696 : A I R 1919 Cal 702.**

——Warrant of arrest of accused when not justified.

In a case where the accused had reasonable excuse for not attending in obedience to the notice the Court has no justification for issuing warrant for arrest of the accused on excessive security. (Scott Smith, J.) Natha Singh v. Crown. **6 Ind Cas 624 : 1910 P W R 17 (Cr) : 11 Cr L J 387.**

——Order of District Magistrate detaining person not sent to him under S. 107 (3).

See Cr. P. C. Ss. 36, 107, 114. **7 Cr L J 360 (Mad).**

——Accused suspected of gambling—Arrest under S. 55—Legality—Proper procedure.

See Cr. P. C. (5 of 1898), S. 55. **3 Cr L J 20 (Low Bur).**

CRIMINAL P. C. (V of 1898)

—S. 115.

——Order of restoration without notice to custodian and without enquiry as to his title is bad.

Four men were charged a long time ago with stealing 59 bags of mustard seed from the grain market. The thieves dealt with the seed by selling 113 maunds of it to the petitioner. This transaction by the present petitioner took place at a considerable distance, i. e. 30 or 40 miles from the scene of the crime. No charge was made against them for receiving stolen property. After one trial of three of the thieves had taken place in the year 1921 and after a second trial of the fourth thief had taken place in the midsummer 1922 on the 17th of February 1923 a first class Magistrate issued an order attaching other property of the applicants as security or by way of satisfaction for an assumed liability of the value of the grain which they had purchased two years before in the ordinary course of their business.

Held, that proceeding was absolutely unintelligible and had no reasonable basis. (Walsh, J.) Nainimal v. The Crown. **74 I C 708 : 24 Cr L J 804 : A I R 1924 All 189.**

——Order to prosecute for offence not committed —Material irregularity.

Where a Court directs the prosecution of a person for an offence, which clearly, on the facts before it, has not been committed, the Court acts with material irregularity, and the order may be set aside in revision. (Tudball, J.) Balbhadar Das v. King-Emperor. **8 A L J 537 : 12 Cr L J 432 : 11 Ind Cas 616.**

——Ss. 115, 406 and 537—Non-compliance of S. 115 —Effect.

The omission of a Magistrate to send a copy of the order under S. 112, with the summons issued under S. 114 as required by S. 115 is an irregularity curable under S. 537 of the Code. Where the Legislature has directed certain procedure to be followed and certain forms to be adopted in a criminal case, the Magistrate ought to adhere to the law and see that no prejudice is created so far as the accused is concerned. The Code of Criminal Procedure, 1898, makes a careful distinction between an order directing security to be given for keeping the peace and an order directing security to be given for good behaviour. S. 406 allows an appeal in the latter case only. (Chandavarkar, Acting C. J. and Heaton,J.) Emperor v. Suleman. **11 Bom L R 740 : 3 Ind Cas 774 : 10 Cr L J 375.**

——Bond under S. 107—Procedure prescribed under Chap. VIII and S. 112 not followed—Effect.

See Cr. P. C. S. 107. **9 Cr L J 179 (All).**

——S. 112—Notice under the section without copy of the order.

The proceedings in which the requirements of the section, with reference to a notice being accompanied by a copy of the order, has not been complied with, are invalid. (Subrahmanya Aiyar,

CRIMINAL P. C. (V of 1898), S. 115

J.) In re Subba Naicken. **17 M L J 438 : 6 Cr L J 332.**

——Accused suspected of gambling—Arrest under S. 55 — Legality—Proper procedure.

See Cr. P. C. (5 of 1898). S. 55. **3 Cr L J 20 (Low Bur).**

——S. 622 of Code of 1882 — Sanction by Civil Court for prosecution of persons under S. 192 — Order upheld by District Judge — Revision under S. 622 of Cr. P. C., of 1882. (Burkitt, J.) Ranjit Singh v. Shibba Mal. **1905 A W N 85 : 2 Cr L J 225.**

—S. 117.

SYNOPSIS.

1. **Appeal.**
2. **Bail.**
3. **Consent to give security.**
4. **Evidence.**
5. **Evidence of general repute.**
6. **Evidence of previous convictions.**
7. **Forfeiture of bond—Liability of Surety.** See also Criminal P. C., S. 514.
8. **Interim security—Sub-Sec. (3).**
9. **Joint inquiry—Sub-Sec. (5).**
10. **Joint inquiry of rival factions.**
11. **Mode of inquiry—Sub-sec. (2).**
12. **Revision.**
13. **Scope of inquiry.**

1. Appeal.

——Ss. 117 and 118—Order of single Judge in revision—Appeal—Letters Patent Cl. 15.

Orders passed in revision by a single Judge of a High Court dealing with proceedings under the section cannot be appealed against under the Letters Patent. (Spencer and Seshagiri Iyer, JJ.) Adur Desikachari v. Emperor. **39 Mad 539 : 28 M L J 307 : (1915) M W N 224 : 28 I C 527 : 16 Cr L J 303 : A I R 1915 Mad 831.**

2. Bail.

The provisions of Ch. 39 relating to bail do not apply to an order made under S. 117 (3). (Tapp, J.) Jagir Singh v. Emperor. **I R 1930 Lah 594 (2) : 125 I C 322 : 1930 Cr C 677 : 31 Cr L J 812 : A I R 1930 Lah 529.**

3. Consent to give security.

——Effect of consent to give security.

See Criminal P. C. (1898), S. 110. **1953 R L W 205.**

——Effect of consent to give security.

The mere consent or willingness of the applicants to furnish security does not amount to a plea of guilty. Whether the willingness amounts to such plea depends upon the facts and circumstances of each case. (Sathey, J. C.) Abdul Naim Khan v. State. **A I R 1952 Bhopal 45 : 1952 Cr L J 1758**

——Ss. 117 (2), 107—Consent to give security—Whether amounts to plea of guilty.

It depends upon the facts and circumstances of each case as to whether a consent to give security amounts to a plea of guilty. When an accused called upon to give security for keeping the peace says in terms that no prosecution evidence may be recorded and is willing to give security, it is sufficient proof that it is necessary for keeping the peace that he should execute a bond.

CRIMINAL P. C. (V of 1898), S. 117—3. Consent to give security

Where the applicants, in their written statement admitted that the complainant had apprehension that the applicants would commit a breach of the peace and that they were willing to give security and the Magistrate examined each accused separately and asked him if the allegations made by the complainant against him were correct and each accused admitted his guilt and said he was willing to give security ;

Held, this was itself evidence on which a Magistrate could convict and there was a full enquiry as laid down in S. 117 (2), Cr. P. C. (Thomas, J.) Dukhi v. Emperor. **A I R 1937 Oudh 289 : 38 Cr L J 302 : 1937 O W N 133 : 9 R O 341 : 166 I C 850.**

——Ss. 117, 107—Duty of Magistrate to enquire if information which prompted him to issue notice is correct—Statement of accused, when amounts to plea of guilty.

A plain reading of S. 117, Cr. P. C., leaves no room for doubt that the Magistrate is bound to inquire whether the information, which prompted him to issue notice, was correct. One of the ways of obtaining the necessary material is to question the accused . It is open to the accused to say that the information conveyed to the Magistrate is correct and that he is prepared to break the peace or to do an act which is likely to lead to breach of the peace. It would be tantamount to a plea of guilty and there would be no objection to the Magistrate proceeding to make the rule absolute on the basis of it. Consequently, it cannot be said that on no account is the plea of the accused sufficient to warrant an order under S. 107 read with S. 117, Cr. P. C. (Middleton J. C. & Mir Ahmed, A. J. C.) Sadhu Singh v. Emperor. **A I R 1935 Pesh 116 : 8 R Pesh 33 : 36 Cr L J 1212 : 157 I C 755.**

——Admission—Enquiry.

Even where the accused persons do admit that they fall under the categories given in S. 112, enquiry should be made. (Kennedy, A. J. C.) Allah Ditta v. Emperor. **87 I C 961 : 19 S L R 101 : 26 Cr L J 1041 : A I R 1925 Sind 321.**

4. Evidence.

——Proceedings under — Accused's right to have witnesses examined at Government expense.

Ordinarily a person proceeded against under Chap. VIII, Cr. P. C., and ordered to give security for good behaviour is entitled to have his witnesses summoned at Government expense as in warrant cases and though a Magistrate has power to depart from the usual practice he should do so only when there are strong and cogent reasons

CRIMINAL P. C. (V of 1898), S. 117—4. Evidence

for making the departure from the usual rule. (Jailal, J.) Pahlwan v. Emperor. **A I R 1932 Lah 577 : 33 Cr L J 679 : Ind Rul (1932) Lah 529 : 33 P L R 742 : 138 I C 765.**

——Evidence.

Inquiries under Chap. 8 are governed by the ordinary rules of evidence, and evidence which is not admissible under the Evidence Act cannot be admitted in proceedings under S. 110. 12 A. L. J. 937, Foll. (Banerji, J.) Raj Narayan Pandey v. Emperor. **101 I C 886 : 25 A L J 393 : 8 L R A Cr 53 : 7 A I Cr A 353 : 28 Cr L J 502 : AIR 1927 All 384.**

——"Or otherwise"—Habitual offenders —Accused associated together — Statement by some incriminating others—Admissibility—Evidence Act, S. 30.

Persons against whom proceedings are being jointly taken under S. 117 of the Cr. P. C. in the same enquiry cannot be said to be on their joint trial for the same offence within S. 30 of the Evidence Act but under S. 117 of the Cr. P. C. when once the prosecution has made out a reasonable case for dealing with two or more persons in the same enquiry, evidence which would be relevant if the accused persons were being tried on a charge of being habitual offenders, would be admissible. The use of the expression 'or otherwise' in Cl. (3) of S. 117 sufficiently indicates this. (Piggott, J.) Sarju v. Emperor. **41 All 231 : 17 A L J 147 : 20 Cr L J 206 : 49 I C 654 : 1 U P L R (H.C.) 89 : A I R 1919 All 220.**

——Evidence.

Evidence which would be inadmissible at an ordinary trial should not be admitted at a trial under S. 117. (Chamier, J.) Bechi v. Emperor. **12 A L J 937 : 26 I C 153 : 15 Cr L J 705 : A I R 1914 All 280.**

——Duty of Magistrate

In dealing with cases under Chapter VIII Magistrates ought, especially where no conviction is proved, to take great care to test the evidence for the prosecution. (Rampini and Sharfuddin JJ.) Chintamon Singh v. Emperor. **35 Cal 243 : 12 Cal W N 299 : 7 Cal L J 177 : 7 Cr L J 146.**

——S. 117—Ch. VIII—Proceedings under

Provisions of Ch. VIII of the Code should not be abused and there must be reliable evidence before a person can be called to give security. (Chitty, J.) Kasim Shah v. Crown. **23 P L R 1907 : 1906 P W R Cr 44 : 5 Cr L J 24**

——S. 117 (4)—Security for good behaviour—"General repute or otherwise"—Nature of evidence necessary.

A Magistrate has a very wide discretion in relation to the admission of evidence as to "general repute or otherwise" as described in S. 117. The word "otherwise" should be read as meaning something ejusdem generis with the particular or particulars alleged about it. (Blair, J.) Emperor v. Kallu Mal. **1904 A W N 140 : 1 Cr L J 534.**

CRIMINAL P. C. (V of 1898), S. 117

5. Evidence of general repute.

——General repute—Mode of proof.

See Assam Opium Prohibition Act (XXIII (23) of 1947). S.11. **A I R 1951 Assam 106 : 52 Cr L J 966.**

S. 117 (4) —When the prosecution relies mainly on the evidence of general repute to establish the case that a person is a habitual thief or robber, it is absolutely necessary for the Magistrate and the Judge to consider how far the general repute is justified on good grounds as also to examine the circumstances under which the accused acquired the general repute. (Harries, C .J. and Das Gupta, J.) Ohid Sk. v. Crown. **51 Cr L J 856 : A I R 1950 Cal 177.**

——S. 117 (4) — General repute—Evidence of credibility.

Though the fact that a certain person is a relation is a circumstance which may be taken into consideration against his evidence the fact that he belongs to the same caste and walk of life is, far from being a circumstance against the credibility of the witness in a matter of general repute, a circumstance in favour of his opinion. (Harries C. J. and Das Gupta, J.) Ohid Sk. v. Crown. **51 Cr L J 856 : A I R 1950 Cal 177.**

Evidence Act, S. 60 — Reputation and hearsay —Evidence of person not knowing another but only hearing of his reputation is hearsay — See Evidence Act (1872), S. 60 : **A I R 1948 Pat 84 : 48 Cr L J 409.**

——Ss. 117 (4), 110 and 439—Whether evidence is sufficient to give bad character to accused is pure question of fact—No hard and fast rule can be laid down as to quantum of evidence to establish bad repute—Suspicion against accused need not be embodied in document. (Walford, J.) Ram Din v. Emperor. **AIR 1946 Oudh 50 : 1945 OWN 361.**

——Order under, if can be based on opinion of Sub-Inspector—Duty of Sub-Inspector.

There is no sanction in law for basing an order under S. 110, Cr. P. C., on the opinion of the Sub-Inspector. The Sub-Inspector no doubt is a competent witness. But the Sub-Inspector must place facts before the Court to prove that his allegations against the accused are correct. It would be very dangerous to base an order under S. 110 on the bare ipse dixit of the Sub-Inspector. Mode of proof by Sub-Inspector indicated. (Almond J. C. and Mir Ahmad, J.) Muzaffar Motabar v. Emperor. **A I R 1942 Pesh 84 : 15 R Pesh 64 : 203 I C 458 : 44 Cr LJ 6**

——In one sense the evidence of a general repute is, of course, hearsay, but it is hearsay of a particular kind which is made admissible in cases under S. 110 by S. 117, Cr. P. C. (Burn and Venkataramana Rao, JJ.) In re Perne Maila Raj. **A I R 1938 Mad 591 : 47 M L W 428 : 1938 M W N 313 : 11 R M 351 : I L R (1938) Mad 720 : 39 Cr L J 898 : 177 I C 586.**

CRIMINAL P. C. (V of 1898), S. 117—5. Evidence of general repute

——Conviction by public opinion, when proper—Presumption as to criminality of person.

Section 117 (4), Cr. P. C., is an exception to the general rule of evidence and like all exceptions should be sparingly used and only in exceptional circumstances. The general rule of law, of course, is that every man is presumed not to be a criminal or an offender until he has been found guilty by a competent Court. Conviction by public opinion should only be permitted to take the place of conviction by a Court in rare and exceptional circumstances, as for example, where the advent of a suspicious stranger in a village coincides with a series of crimes and suspicion waxes so strong and is so well justified that it may fairly be allowed to take the place of proof, and in such unusual circumstances, the section sanctions an experimental use of the security sections. But where a person has lived all his life in a locality and has never even been accused before a Court of law for any crime, far less convicted, there is absolutely no justification for any such experiment or for making any presumption that he is a criminal not to say a habitual criminal. (Newsam J.) In re Rathinam Pillai. **A I R 1938 Mad 35 : 1937 M W N 1065 : (1937) 2 M L J 749 : 10 R M 498 : 46 M L W 858 : 39 Cr L J 230 : 172 I C 866.**

——In proceedings under S. 110, Cr P. C., if the witnesses have clearly deposed that the accused has the general repute of being a habitual offender, such evidence is admissible under sub-s. (4) of S. 117 of the said Code. (Srivastava and Nanavutty, JJ.) Emperor v. Bachchu. **A I R 1936 Oudh 238 : 1936 O W N 247 : 8 R O 297 : 37 Cr L J 390 : 12 Luck 36 : 160 I C 1039.**

——General repute— Police Officials, evidence of —Value of.

The Police Officials very often are in a far better position to depose about the character of a man than witnesses who may be living in different villages and who may have been examined in defence by the accused. The right way of judging the evidence of Police Officials is to consider their statements on merits and then to determine whether they have given true evidence or otherwise. There is no justification whatsoever for discarding the evidence of a Police Official simply on the ground that he belongs to the Police; it is the duty of the Police Officials to keep under surveillance suspected persons and in many cases they can give evidence as regards the character of an accused person, which may be found to be far more satisfactory than the evidence of witnesses who do not belong to the Police department. (Bennet and Rachhpal Singh, JJ.) Emperor v. Dipu. **A I R 1935 All 850 : 8 R A 298 : 36 Cr L J 1362 : 1935 A W R 1089 : 158 I C 424.**

——Evidence of respectable persons on side of accused.

An accused person should not be bound over on evidence of bad repute where there are respectable persons on his side to clear him of the charge. (Mir Ahmad, A. J. C.) Tor Gul v. Emperor. **A I R 1935 Pesh 158 : 8 R Pesh 77 : 159 I C 97.**

——S. 117 (4)—Evidence of general repute—Admissibility— Weight of such evidence— Evidence Act (I of 1872), S. 60.

The fact that a person is a habitual offender may, in view of the provisions of S. 117 (4), Cr. P. C., be proved by evidence of general repute or otherwise; such evidence of general repute does not offend against the rule against reception of hearsay evidence or the provisions of S. 60, Evidence Act, by which it is provided that oral evidence must, in all cases whatever, be direct. What weight is to be attached to such evidence of a particular witness must necessarily depend on the fact whether the witness is independent and impartial, whether he is in a position to disclose the source of his knowledge and whether the source of his knowledge is such as to inspire confidence. If the witness merely states that a man is reputed to be a habitual offender and is unable to disclose the source of his knowledge, his evidence is entitled to no weight whatsoever. (Iqbal Ahmad, J.) Raghubar Dayal v. Emperor. **A I R 1934 All 735 : 7 R A 261 : 36 Cr L J 33 : 3 A W R 655 : 152 I C 120.**

——Evidence showing clearly that the person sought to be proceeded against under S. 110, Cr. P. C., has the general reputation of being a habitual thief and burglar, is admissible under sub-s. (4) of S. 117, Cr. P. C. (Nanavutty, J.) Likha Singh v. Emperor. **A I R 1934 Oudh 49 : 6 R O 264 : 11 O W N 84 : 35 Cr L J 403 : 147 I C 388.**

——S. 117 (4)—Security proceedings—Evidence of repute—'Reputation', meaning of —'Rumour' and 'reputation', distinguished—Evidence of similar acts, value of—Evidence of accused's enemies, value of—Evidence of habit.

Isolated cases are not sufficient to prove habit and character. One or two cases may not be sufficient but a number of similar incidents cease to be isolated facts and become evidence of habit and character. How many facts must be proved to enable the Court to draw a reasonable inference of habit of an accused cannot be laid down by any hard and fast rule; it depends upon the circumstances of each case.

Evidence of general repute and character, which is not admissible when an accused is being tried for the commission of a specific offence, is admissible in a case of this kind and specific instances where reasonable suspicion fell upon the accused are good evidence to show the basis of bad reputation. Whether from these instances habit and character can be inferred is a matter to be decided on the facts of the particular case.

Reputation is the sum total of the rumours and talks about a man accepted and believed by those who know him well. The evidence of reputation is made up partly of the belief of the deponent

CRIMINAL P. C. (V of 1898), S. 117—5. Evidence of general repute

and partly of what he heard from others of their beliefs. Distinction between reputation and rumour is well marked, though it may be difficult to say generally where a rumour ends and reputation begins. How many instances build up a reputation and how long it takes for rumours to ripen into reputation cannot be laid down by any hard and fast rule.

The distinction between admissible evidence of reputation and inadmissible hearsay evidence can be stated thus. If the evidence is of those persons who are living in the locality where the reputation is prevailing and where people talk of their beliefs about him and who themselves believe it, it is admissible. But if the evidence is of a man who does not know about the reputation himself but has heard it from others, it will be hearsay. In other words, the evidence of those who know the man and his reputation is admissible. Evidence of those who do not know the man, but have heard of the reputation is not admissible.

It is the duty of the Court to judge whether a man deserves a particular reputation and, in order to judge this, enumeration of specific cases will serve as a valuable guide.

A man who is proceeded against under the preventive sections of the Cr. P. C., must have some enemies whom he has hurt and these persons are bound to help the prosecution in getting the man bound down. Evidence of witnesses cannot be discarded on this ground. The only thing required is that the Court should be cautious in accepting the evidence of witnesses who come from such quarters. (Mohammad Noor, J.) Firangi Rai v. Emperor. **A I R 1933 Pat 189 : 14 P L T 482 : Ind. Rul. (1933) Pat 209 : 34 Cr L J 643 : 143 I C 687.**

——Evidence as to the general repute of the accused as being a habitual offender, when clearly deposed in proceedings under S. 110, Cr. P. C., is admissible under the provisions of S. 117, sub-s. (4) and is sufficient ground for requiring the accused to give security. (Srivastava and Kisch, JJ.) Emperor v. Gajadhar. **A I R 1933 Oudh 58 : 9 O W N 1012 : 34 Cr L J 160 : Ind. Rul. (1933) Oudh 48 : 141 I C 251.**

——Suspicion—Opinion of witness.

It is open to question, whether evidence that the accused has been suspected by persons other than the witness is inadmissible for all purposes in an inquiry under S. 117. It has no doubt been held in several cases that evidence of cases in which the accused is suspected is not evidence of general repute within the meaning of S. 117, but it does not necessarily follow that such evidence is not admissible for other purposes. When a witness gives evidence of general repute he is undoubtedly entitled to give his personal opinion of the person concerned. As his opinion is undoubtedly relevant then the grounds of his opinion must also be relevant. The value to be attached

CRIMINAL P. C. (V of 1898), S. 117—5. Evidence of general repute

to such evidence is another matter. (Ashworth and King JJ.) Emperor v. Kumera. **125 I C 9 : 31 Cr L J 755 : 51 All 275 : 1929 Cr C 346 : A I R 1929 All 650.**

——Hearsay.

The fact that a person is a habitual offender may be proved by evidence of general repute or otherwise. That evidence of general repute must necessarily consist largely of "hearsay" evidence. The reputation of a person means what is generally said or believed about his character. A witness may depose "I believe the accused to be a habitual thief, and that is what persons of the neighbourhood generally say about him." Such evidence is admissible as evidence of general repute. So far as the witness gives the opinions or the statements of other persons his evidence must, in a sense, be "hearsay." (Ashworth and King, JJ.) Emperor v. Kumera. **125 I C 19 : 31 Cr L J 755 : 51 All 275 : 1929 Cr C 346 : A I R 1929 All 650.**

——Witness can depose that the accused has a general reputation as an habitual thief or robber as the case may be, but he should not be allowed to state that the accused is a bad character or has the reputation of being a bad character. (Boys and Weir, JJ.) Emperor v. Kurwa. **26 A L J 519 : 9 L R A Cr 75 : 9 A I Cr R 467 : 30 Cr L J 122 : 113 I C 282 : A I R 1928 All 357.**

——Direct knowledge essential to prove repute

Prosecution must produce evidence of persons living in the neighbourhood provided they are acquainted with the accused and are aware of the accused's reputation. The basis of the knowledge of a witness cannot be a rumour heard in the village without specifying any particular person. Such evidence is inadmissible. Witnesses must be able to testify from specific cases coming to their knowledge. (Kulwant Sahay, J.) Ramalagan v. Emperor. **81 I C 633 : 5 P L T 166 : 2 Pat L R (Cr) 98 : 25 Cr L J 985 : A I R 1924 Pat 500.**

——Evidence as to cases in which the applicant was suspected cannot be said to fall within the meaning of general repute under S. 117. 20 I. C. 231, Foll. (Kulwant sahay, J.) Shaikh Amjad Ali v. King-Emperor. **75 I C 723 : 5 P L T 129 : 2 Pat L R Cr 79 : 25 Cr L J 35 : A I R 1924 Pat 498.**

——General repute and character—Evidence of.

Evidence disclosing the collective opinions of persons in a circle about the character of a man, of which the man is conscious, is the evidence in proof of his general reputation and character. Evidence of personal opinions of accused's character is not admissible. The evidence of those persons only who hear the general repute of a person is admissible and the evidence which merely repeats what witnesses heard from specified individuals, is purely hearsay and inadmissible. (Wazir Hasan, A J.C.) Ashiq Ali v. Emperor.

CRIMINAL P. C. (V of 1898), S. 117—5. Evidence of general repute

23 O C 229 : 2 U P L R (J.C.) 147 : 7 O L J 612 : 58 I C 682 : 21 Cr L J 810 : A I R 1920 Oudh 255.

——Instances of mere suspicion is no evidence of general repute.

Specific instances of crime in which the accused was suspected are not instances of 'general repute' within S. 117; 11 A. L. J. 461 foll. (Wallach, J.) Jabar-uddin v. Emperor. **L R 1 A Cr 4.**

——Enquiries under Chap. VIII of the Code are governed by the ordinary rules of evidence. The test of the admissibility of evidence of general opinion is whether it is the general opinion of a considerable number of persons and not merely the repetition of what one or two persons said to the witness. Evidence of general repute may be either evidence as to the general opinion of the neighbourhood or community to which the witness belongs or his personal opinion. A witness may be examined and cross-examined and if he gives his own opinion he may be asked about the grounds of his opinion and also the names of persons who have spoken against his character. (Chamier, J.) Bechai v. Emperor. **12 A L J 937 : 26 I C 153 : 15 Cr L J 705 : A I R 1914 All 280.**

——Ss. 117, 110 and 337 — Evidence of general repute—Approver's evidence in previous case—Admissibility. See ibid, S. 110. **10 Cr L J 355 (Low. Bur.)**

——Evidence of general repute.

Where the evidence of general reputation comes from the people of villages where several dacoities had taken place, this evidence is certainly to be treated as evidence of general repute though the accused did not live amidst the people. (Rampini and Sharfuddin, JJ.) Chintaman Singh v. Emperor. **35 C 243 : 12 C W N 299 : 7 C L J 177 : 7 Cr L J 146.**

——Evidence of general repute—Admissibility where a person has been called on to give security for good behaviour.

In cases where security is demanded for good behaviour the Code provides that it can be proved by evidence of general repute or otherwise that the person in question is a person of bad repute (i.e. reputation of being a habitual offender in this instant case). The usual way of examining a witness about the reputation is to ask the witness whether he knows the general reputation of the person in question and the witness's answer would not be necessarily inadmissible because he states what is generally said of that person. To admit evidence of that kind is not contrary to Evidence Act. The real test of admissibility of the evidence is as to whether the answer shows what is the general reputation of the man. The answer need not purport to show the opinion of the entire community but it must at least give the opinion of considerable number of persons and not merely that of one or two

CRIMINAL P. C. (V of 1898), S. 117—5. Evidence of general repute

persons. (Mr. Chamier, J.) Gokul v. King-Emperor. **10 O C 132 : 6 Cr L J 97.**

——Evidence of general repute.

S. 117 provides that for purposes of such section, the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise, but it is only in the case of a person, who is habitual offender and is called upon to furnish security for good behaviour. (Bigge, J.) Nga Po Aung v. Emperor. **13 Bur L R 91 : 5 Cr L J 377.**

——Evidence of general repute—Admissibility—Joint trial of master and servant—Legality.

See Cr. P. C. (5 of 1898). S. 110. **3 Cr L J 290 (Oudh).**

——Ss. 117, 110 and 118—Evidence of general repute.

The fact that certain persons belonged to a class of Mewatis of a particular place generally regarded by the other inhabitants of the neighbourhood as bad characters and dangerous persons, is not sufficient evidence for an order under S. 118 in the absence of specific evidence against each of the accused. Their arrest on the only ground that they were Mewatis, and that they had come to give evidence on behalf of others of their class, is improper. (Knox, J.) Emperor v. Hurmat Khan. **1905 A W N 41 : 2 A L J 174 : 2 Cr L J 88.**

——Evidence of general repute.

S. 117 is one the powers conferred by which should be exercised with judgment and discretion. Vague and general statement that a man is a habitual offender cannot be considered as sufficient evidence. Evidence of the repute of an accused person must be the evidence of persons who are speaking to matters within their personal knowledge. (Held that prosecution evidence fell far short of establishing a case under S. 110 Cr. P. C. (Stanley, C. J.) Rup Singh v. King Emperor. **1 Cr L J 988 (All).**

——Ss. 117, 110—Habitual offender— Evidence of general repute—Duty of magistrate—Nature of evidence required.

See ibid, S. 110. **2 L B R 166.**

6. Evidence of previous convictions.

——A previous conviction is not necessary for proceedings under S. 110, Cr. P. C. There is no such provision in the law itself which on the other hand lays down in S. 117 (4) that the fact that the man is habitual offender can be proved by evidence of general repute or otherwise. (Blacker, J.) Emperor v. Khuda Bakhsh. **A I R 1938 Lah 428 : 10 R L 732 : 40 P L R 222 : 39 Cr L J 599 : 175 I C 522.**

——Proceedings under S. 110—Previous conviction—Proof of, if necessary.

In proceedings under S. 110 of the Cr. P. C., it is not necessary for the prosecution to prove a previous conviction of any person in the same

CRIMINAL P. C. (V of 1898), S. 117—6. Evidence of previous convictions

formal manner as that required by the provisions of Ss. 310 and 311 of the Cr. P. C., in respect of offences tried in the Court of Session. (Srivastava and Nanavutty, JJ.) Emperor v. Bachchu. **A I R 1936 Oudh 238 : 1936 O W N 247 : 8 R O 297 : 37 Cr L J 390 : 12 Luck 36 : 160 I C 1039.**

——Previous conviction 12 years before, if a justification for binding over.

In the absence of cogent and convincing evidence in proof of the fact that the applicant is by habit a thief or a house-breaker, his previous conviction 12 years before cannot by itself be a justification for binding him over under S. 110. (Iqbal Ahmad, J.) Raghubar Dayal v. Emperor. **A I R 1934 All 735 : 7 R A 261 : 36 Cr L J 33 : 3 A W R 655 : 152 I C 120.**

——Evidence of general repute.

The previous convictions of a person who is before the Court under S. 110 (c), on a charge of harbouring thieves and bad characters cannot be fairly raked up against him where none of those convictions had anything to do with property. Further the evidence of a large body of respectable witnesses in favour of the accused cannot be ignored where the only evidence against him consists of the testimony of police officials and of two other persons. (Ryves, J.) Soman v. Crown. **37 P W R 1910, Cr : 8 Ind Cas 249 : 11 Cr L J 603.**

——Ss. 117 and 110—Admissibility of evidence of commission of substantive offence in S. 110 proceedings.

A finding, that an accused person is, by general repute, a habitual offender committing mischief, and that he protects thieves, is sufficient to warrant action under S. 110 of the Cr. P. C. It is not necessary, for the purposes of the section, that specific instances should be given. (Batty and Heaton JJ.) Emperor v. Shahukha. **9 Bom L R 164 : 5 Cr L J 178.**

——Discharge from previous order under S. 110—Subsequent proceedings under S. 110 without fresh facts.

See ibid S. 110. **4 Cr L J 486 (Lah).**

7. Forfeiture of bond—Liability of surety.

See also Cr. P. C. S. 514.

——S. 117 (3)—Person executing bond for certain amount under S. 117 (3) with two sureties for like amount—Bond forfeited—Sureties, if can be ordered to pay amount each more than original.

T executed a bond for Rs. 2,000 under S. 117 (3), Cr. P. C. N and K were her two sureties and each signed a bond for a like amount. Proceedings under S. 514, Cr. P. C., were taken against them and they were ordered to pay a sum of Rs. 1,500 each:

Held that the two sureties were jointly and severally liable and therefore more than a total sum of Rs. 2,000 could not be recovered from them. (Gruer J.) Namdeo Chimnaji v. Emperor. **A I R 1938 Nag 275 : 1938 N L J 79 : 11 R N 210 : 40 Cr L J 23 : 178 I C 207.**

CRIMINAL P. C (V of 1898), S. 117

8. Interim security—Sub-s. (3)

——Magistrate has to consider the prayer for demanding the bond with care and circumspection, give careful consideration to the separate case of emergency as contemplated by S. 117 (3) and must be satisfied that immediate measures are necessary.

Suspicion of the police alone was not a good reason for demanding an interim bond. (Narayan, J.) Hormat v. State. **A I R 1953 Pat 132 : 1953 Cr L J 916.**

——Order for, before recording evidence — Competency.

Reading the two sub-sections namely, sub-s. (1) and sub-s. (3) together it is open to the Magistrate in a suitable case to take action under sub-s. (3) against a particular person even before any evidence has been recorded. The enquiry does not commence only after the Magistrate has started taking down evidence. Consideration of the police papers or hearing learned advocates of the parties regarding the case may also be treated to be a stage—a preliminary stage—in the enquiry contemplated under sub-s. (3) even before any evidence has been recorded or any witness examined. All that sub-s. (3) says is that pending the completion of the enquiry under sub-s. (1) the Magistrate may direct the person in respect of whom the order under S. 112 has been made, to execute a bond. (Guha and Lahiri, JJ.) Dulal Chandra Mondal v. State. **A I R 1953 Cal 238 : 1953 Cr L J 574.**

——Order in absence of accused.

Under S. 117 (1) the enquiry begins only after the order under S. 112 has been read over to the person against whom the notice has been issued. An order under S. 117 (3) in the absence of the accused is not contemplated. (Bapna, J.) Bhuriya v. State. **1953 R L W 527.**

——Form of order.

An order for interim security under S. 117 (3), Criminal P. C., merely stating that 'for reasons stated in the police report the counter petitioners shall execute bonds etc." is unsatisfactory and is hardly likely to inspire confidence in the parties or the public. The order must clearly show that the emergent action under S. 117 (3) was called for and that the requirements of the section are fulfilled. (Koshi and Govinda Pillai, JJ.) Jallaludin Kanju v. State. **A I R 1952 Trav-Co 262 : 1951 Ker L T 696 : I L R (1951) T C 302 : 1952 Cr L J 1111.**

——S. 117 (3)—Travancore Criminal P. C., S. 113 (3)—Interim security—Order for, when to be passed—Inquiry under S. 117 (1), when commences.

An order for interim security under S. 117 (3), Criminal P. C. (corresponding to S. 113 (3), Travancore Criminal P. C.) cannot be passed by a Magistrate unless and until the enquiry referred to in S. 117 (1) is commenced. An enquiry under

CRIMINAL P. C. (V of 1898), S. 117 — 8. Interim security—Sub-s. (3)

S. 117 (1) can be said to commence when the persons sought to be proceeded against are brought or appear before the Court to answer the charge against them. The mere fact that due to the exigencies of the work of the Court the case has to be adjourned from time to time would not mean that the enquiry has not become yet one pending before the Court.

Hence, an order for interim security cannot be said to be premature when it is passed after hearing the persons proceeded against who appear before the Court in pursuance of the preliminary order and file documents in support of the objection against furnishing interim security. (Koshi and Govinda Pillai, JJ.) Jallaludin Khanju v. State. **A I R 1952 Trav-Co 262 : 1951 Ker L T 696 : I L R (1951) T C 302 : 1952 Cr L J 1111.**

——Order for keeping peace pending inquiry. See—Criminal, P. C. S. 112. **A I R 1951 Raj 116.**

——S. 117 (3)—Non-compliance—Effect.

When the person proceeded against under S. 107, Cr. P. C., is present in court an order under S. 117 (3) can be made only after the order made under S. 112, Cr. P. C., has been read out or explained under S. 113 to such person. When such an order is passed the Magistrate is bound to record reasons for taking interim security. Orders under S. 117 (3) are not mere routine orders. It must appear from the record that the Magistrate has considered first that it was necessary to pass an order under S. 112 and then he has considered the case under S. 117 (3) and considered it necessary to pass an order under that sub-clause. The mere fact that the same information supports and the same statements are the basis of both orders does not offend either against the provisions of the Cr. P. C., or against the interpretation of those provisions. An order passed under S. 117 (3) without complying with this procedure is premature and illegal. A I R 1943 Sind 163; A I R 1937 Sind 148, Rel on. (Mehta, J.) Nathu v. State. **1951 R L W 176.**

——Ss. 117, 112 — Order under S. 112 not read out nor substance explained— Order under S. 117 (3) is vitiated.

The error on the part of the Magistrate in failing to read out the order under S. 112 to the accused or to explain its substance to them vitiates the order under S. 117 (3), Cr. P. C. The failure to comply with the provisions of S. 117 (1) is not a mere irregularity but is an illegality which goes to the root of the proceedings. (Davis C. J. and Tyabji, J.) Emperor v. Yusif Jumo. **A I R 1943 Sind 175 : 45 CrLJ 164 : 16 R S 146 : 209 I C 614.**

——Ss. 117 (3), 112, 110 — "Any offence" in S. 117 (3), meaning of — Habitual offenders — Wave of lawlessness passing over province and martial law declared — Bail granted — Immediate measures become necessary for preventing crime.

No one is more likely to commit an offence than one who is an habitual offender and the words "any offence" in S. 117 (3) do not mean a particular offence. Where Sub-S. (3) in S. 117 refers to the commission of an offence, it means an offence of the nature set out in S. 110, Cr. P. C. An order under S. 117 (3) must have reference to the information under S. 110 and the order under S. 112 which follows it. It is not unreasonable to say that immediate measures are necessary to prevent the commission of offences by certain accused or suspected persons, when those persons have been granted bail, which measures would not be necessary if that bail has been refused, particularly when the wave of lawlessness has been passing over the District of the Magistrate at the time. The existence of a state of martial law is very strong evidence that an emergency exists, particularly when the proclamation of martial law is due to a wave of crime sweeping over large areas of the Province. (Davis, C. J. and Lobo, J.) Emperor v. Mahammad Rahim. **A I R 1943 Sind 173 : I L R (1943) Kar 275 : 45 Cr L J 147 : 16 R S 130 : 209 I C 477.**

——S. 117 (3)—Where sub-s. (3) of S. 117 refers to the commission of an offence, it means an offence of the nature set out in S. 110, Cr. P. C. (Davis, C. J. and Lobo, J.) Emperor v. Mahammad Rahim. **A I R 1943 Sind 173 : I L R (1943) Kar 275 : 16 R S 130 : 45 Cr L J 147 : 209 I C 477.**

——Ss. 117, 112—Order under S. 117 (3) without reading order under S. 112 is premature.

S. 117, Cr. P. C., clearly contemplates that the order under S. 117 (3) shall be passed after the order under S. 112 has been made and read out or explained to the accused under S. 113. An order under S. 117 (3) passed before such reading is passed prematurely. (Davis, C. J. and Weston, J.) Emperor v. Sidik Ghulam. **A I R 1943 Sind 163 : 44 Cr L J 815 : I L R (1943) Kar 513 : 16 R S 88 : 209 I C 49.**

——Ss. 117 (3), 112 and 110—Orders under S. 117 (3) and 112 based on same information and same statements — Question of emergency separately considered—Order under S. 117 (3), if wrong.

Where the Magistrate while passing an order under S. 117 (3), Cr. P. C., has clearly considered the question of emergency as a separate question, but has related it to his order under S. 112 of the Code and has acted on the same information which justified his order under S. 112 there is nothing wrong in this. The Magistrate has considered first that it is necessary to pass an order under S. 112, he has then considered the case under S. 117 (3) and considered it necessary to pass an order under S. 117 (3) of the Code. The fact that the same information supports and the same statements are the basis of both orders, does not offend either against the provisions of the Cr. P. C., or against the interpretation of those provisions. (Davis, C. J. and Lobo, J.) Emperor v. Ghulam Muhammad **A I R 1943 Sind 122 : I L R (1943) Kar 279 : 44 Cr L J 779 : 16 R S 75 : 208 I C 338.**

CRIMINAL P. C. (V of 1898), S. 117 — 8. Interim security—Sub-s. (3)

——S. 117 (3)—Orders under—Object of.

Orders under S. 117 (3), Cr. P. C., are not mere routine orders to be appended to an order under S. 112 nor are orders under S. 117 (3) meant merely to anticipate final orders that may be made under S. 118. The orders contemplated by S. 117 (3) are orders designed to meet emergencies. An order under S. 117 (3) passed more than two months after proceedings under S. 112 are initiated is not justified. (Davis C. J. and Weston, J.) Emperor v. Nabibux. **A I R 1942 Sind 86 : ILR (1942) Kar 189 : 43 Cr L J 788 : 15 R S 28 : 202 I C 43 (DB).**

——S. 117 (3)—Evidence on oath and cross-examination, if necessary for order under S. 117 (3) — Emergency existing—Testimony of Police Officer in form of affidavit is sufficient.

Section 117 (3) contemplates the taking of evidence on oath and the cross-examination of witnesses in the usual manner. The Magistrate must record his reasons; he must deal with application under S. 117 (3) with care and prudence, realising that they are not mere routine orders nor orders designed to anticipate final orders that may be made, but that they are urgent orders, arising out of emergency and can only be justified in the exceptional circumstances of an emergency.

If the Magistrate is satisfied that such an emergency exists and that urgent orders are necessary, he can act upon the application of a Police Officer or upon the sworn testimony of a Police prosecutor given in the witness box or in the form of affidavits. (Davis, C. J. and Weston, J.) Emperor v. Nabibux. **A I R 1942 Sind 86 : I L R (1942) Kar 189 : 43 Cr L J 788 : 15 R S 28 : 202 I C 43.**

——Ss. 117 (3), 110 (a) (b) and (c) and 112—Order under S. 117 (3), if a routine order appended to order under S. 112 passed on application under S. 110—Charges under S. 110 (a) (b) and (c), when fall under S. 117 (3) — Order under S. 117 (3)—Matters to be considered—Duty of Magistrate.

The orders under S. 117 (3), Cr. P. C., are not mere matters of routine orders, appended as it were to orders passed by a Magistrate under S. 112, Cr. P. C., on an application made under S. 110, Cr. P. C.

Before passing an order under S. 117 (3), the Magistrate must direct his consideration particularly to the question of emergency and the necessity of immediate measures. Charges falling under cls. (a), (b) and (c) of S. 110 do not, perhaps, with one exception, bring the case under S. 117, sub-s. (3). The words "commission of any offence" in sub-s. (3) cover cases falling under cls. (a), (b) and (c) of S. 110, but only when the Magistrate considers that immediate measures are necessary to prevent the commission of any offence. The Magistrate must give a careful consideration to the separate case of an emergency under S. 117 (3) and the necessary immediate measure; and it

CRIMINAL P. C. (V of 1898), S. 117 — 8. Interim security—Sub-s. (3)

cannot be said that the Magistrate has done this when merely on a Police report, without even calling the Police Officer in the witness box, without making any further enquiry in the general and vague allegations such as that the persons complained against were "dangerous badmashs" and the public was in fear of them," he passes an order under S. 117 (3), Cr. P. C. A mere report by Police Officer of this nature should not satisfy a Magistrate. He should make some further inquiry either from the Inspector himself or from some other source before he is satisfied that an emergency justifying immediate measures under S. 117 (3) exist. (Davis C. J. and Weston, J.) Bachal Samaho v. Emperor. **A I R 1942 Sind 77 : I L R (1942) Kar 9 : 43 Cr L J 692 : 14 R S 212 : 200 I C 334.**

——S. 117 (3)—Revision — Emergency order under S. 117 (3).

In a case of emergency order under S. 117 (3), Cr. P. C., although a Court in revision is not in a position, as is the Magistrate, to understand the emergency and the necessity for the order and will not substitute its own opinion for that of the Magistrate, yet the order of the Magistrate must have a legal basis though proceedings under Chap. VIII are only of a quasi judicial nature. The High Court can interfere with the order in revision where the order is without legal basis. (Davis C. J. and Weston, J.) Emperor v. Sumar. **A I R 1940 Sind 175 : 41 Cr L J 937 : 13 R S 91 : I L R (1940) Kar 494 : 190 I C 532.**

——Ss. 117, 117 (3), Chap. VIII — Applicability—Nature of order under S. 117—S. 117, if applies to offence of perjury.

An order under S. 117, Cr. P. C., is in the nature of an interim order and must be of a kind which could be made in a permanent order in the proceedings. The temporary order under S. 117 must be capable of direct relation to the application under Ss. 107, 108, 109 and 110 on which the proceedings are based and it is not intended to apply to an offence that has no relation whatever to the object of the proceedings under the Cr. P. C., no relation whatever to proceedings under Chap. VIII. Section 117 could not, therefore, be said to apply to an offence of perjury. (Davis C. J. and Weston J.) Emperor v. Sumar. **A I R 1940 Sind 175 : 41 Cr L J 937 : 13 R S 91 : I L R (1940) Kar 494 : 190 I C 532.**

——S. 117 (3)—Ex parte order before enquiry and without hearing petitioners is bad. (Burn, J.) Ranganadha Mudaliar v. Emperor. **1934 M W N 1353.**

——Ss. 117, 118—Security for keeping peace—Nature of surety required — Surety in movable property.

In making an order under S. 117, Cr. P. C. calling upon a person to give security for keeping the peace, there should be no restriction in the

CRIMINAL P. C. (V of 1898), S. 117 — 8. Interim security—Sub-s. (3)

order itself that the accused should produce sureties in movable property. So far as the order goes, the Magistrate should follow the words of S. 117 and the bond executed by the sureties should be in the form given in the schedule.

Obiter.—If the Magistrate has any apprehension that the sureties may part with their properties and be unable to fulfil the undertaking, he may, by way of precaution, accept a hypothecation bond from them as a condition precedent to their being accepted as reliable sureties. (Sulaiman, J.) Emperor v. Harihar Kalwar. **A I R 1932 All 122 : Ind. Rul. (1932) All 113 : 1932 A L J 157 : 33 Cr L J 229 : 136 I C 65.**

——Contents of order.

Barlee, A. J. C.—It is incumbent on a Court to state reasons in writing for an order under S. 117 (3). Merely stating that it is passed "on account of emergency" is not sufficient. (Kincaid, J. C. and Barlee, A. J. C.) Sahib Dino v. Emperor. **21 S L R 93 : 28 Cr L J 173 : 99 I C 605 : 7 A I Cr R 326 : A I R 1927 Sind 148.**

——Application under S. 526—Power of Court to act under S. 117 (3).

After an application is made to a Court under S. 526 for adjournment to enable an accused person to apply for transfer of the case, the Court does not become incompetent to make ancillary orders not affecting the merits of the case, such as requiring an accused to execute a bond under S. 117 (3). 3 S. L. R. 155 and 1 S. L. R. Cr. 35, Diss. from; 31 Cal. 715, Rel. on. (Kincaid, J. C. and Barlee, A. J. C.) Sahib Dino v. Emperor. **99 I C 605 : 28 Cr L J 173 : 7 A I Cr R 326 : 21 S L R 93 : A I R 1927 Sind 148.**

——Interim order.

Where a Court passes an interim order of security, that order should not be more onerous than the one issued under S. 112. (Kincaid, J. C. and Tyabji, A. J. C.) Pir Shah Murad v. Emperor. **96 I C 982 : 20 S L R 358 : 27 Cr L J 1030 : A I R 1926 Sind 276.**

——Further evidence.

It is not necessary for the Magistrate for passing an order under S. 117 (3) to take further evidence. The only condition precedent laid down is that he must record his reasons in writing. (Kincaid, J. C. and Tyabji, A. J. C.) Pir Shaw Murad Shah v. Emperor. **20 S L R 358 : 27 Cr L J 1030 : 96 I C 982 : A I R 1926 Sind 276.**

9. Joint inquiry—Sub-Sec. (5).

——S. 117 (5)—Enquiry against accused under S. 110—Joint trial is allowed.

A joint trial provided in S. 117 (5) in a case under S. 110 is always permissible where there is evidence in the nature of a conspiracy or acting in concert. To hold that there can never be a joint trial when clause (f) of S. 110 is applied would be going against the statute. Sub-S. (5)

CRIMINAL P. C. (V of 1898), S. 117—9. Joint inquiry —Sub-s. (5)

of S. 117, under which a Magistrate is empowered to order a joint trial, does not exclude clause (f) of S. 110. It is equally applicable to all the clauses of S. 110. (Jamuar and Ahmad JJ.) Raghunath Singh v. State. **A I R 1953 Pat 1 : 31 Pat 902 : 1953 Cr L J 110.**

——S. 117 (5)—Joint enquiry against several persons— Whether such inquisition can be held where one charge at least against them is that they are so dangerous and desperate that their being at large is hazardous to the community.

See ibid, S. 110. **A I R 1951 Orissa 277 : 52 Cr L J 848.**

——S. 117 (2) and (5)— Joint inquiry— Enquiry under S. 110—There should be accusation justifying joint inquiry.

See ibid, S. 110. **A I R 1950 Cal 177 : 51 Cr L J 856.**

——S. 117 (5)—Joint inquiry of persons who have been associated together in matter under inquiry is permissible.

Where the facts alleged are that the several accused were constantly associated in their criminal activities or at least had the reputation of being associates in various crimes a joint inquiry against them is permissible under S. 117 (5): 33 A I R 1946 Oudh 50, Foll. (Walford, J.) Ram Lakhan v. Emperor. **A I R 1947 Oudh 86 : 1946 O A C C 227 : 1946 O W N 316 : 1946 A W R C C 227 : 227 I C 204 : 47 Cr L J 1019.**

——S. 117 (5)—Joint inquiry against several accused—Evidence identical—Finding that evidence established prosecution case against all accused is valid—Finding against each accused is not necessary.

Where a joint inquiry under S. 117 (5) is held against several accused persons and the evidence against them is identical there is no irregularity or illegality in the Magistrate holding that the allegations of the prosecution were established against all the accused persons. It is not necessary for him to record a distinct finding against each accused. (Walford, J.) Ram Din v. Emperor. **A I R 1946 Oudh 50 : 1945 O W N 361.**

——Ss. 117 (5) and 110— A and B charged under S. 110 for being habitual thieves and forming gang for that purpose—Case comes under S. 117 (5)—Joint inquiry is not illegal.

Where A and his co-accused B are charged under S. 110 for being habitual thieves and for forming a gang for the purposes of their criminal activities, the case falls under S. 117 (5) and therefore a joint inquiry by the Magistrate against A and his co-accused B is not illegal. (Walford, J.) Ram Din v. Emperor. **A I R 1946 Oudh 50 1945 O W N 361.**

——Charge against two persons that they are desperate and dangerous—Joint enquiry.

CRIMINAL P. C. (V of 1898), S. 117 — 9. Joint inquiry—Sub-s. (5)

A joint inquiry under S. 117 (5), Cr. P. C., is out of the question when one charge at least is that two persons are so desperate and dangerous as to render their being at large without security hazardous to the community. There certainly can be no such intimate connection between two individuals in regard to their characters as to render them liable to a joint inquisition. (Newsam J.) In re Rathinam Pillai. **A I R 1938 Mad 35 : 1937 M W N 1065 : (1937) 2 M L J 749 : 10 R M 498 : 46 M L W 858 : 39 Cr L J 230 : 172 I C 866.**

——Ss. 117 (5), 110— Persons alleged to be members of association committing theft— Same enquiry under S. 117 (5) in respect of all—Legality of.

When it is alleged that a person is in the habit of committing theft in association with other persons as members of a gang of thieves, the Magistrate is at liberty in his discretion to deal with the case of all such persons in the same enquiry. Of course in deciding whether an order under S. 117 (5) should be made or not the Magistrate must consider whether, if the order is made, one or more of the persons concerned might be prejudiced in his defence. (Page, C. J. and Das, J.) Rangoo Mean v. Emperor. **A I R 1934 Rang 121 : 12 Rang 169 : 35 Cr L J 1257 : 7 R Rang 49 : 151 I C 205.**

——Security proceedings against two persons—No joint trial— Evidence against both— Using it against one—Procedure if irregular.

See ibid, S. 537. **A I R 1930 Lah 345 : 32 Cr L J 62.**

——S. 117, Cl. (5) does not make it a condition of such joint trial that the suspects shall be shown to be associated together in the order itself. It is a permissive clause which permits an enquiry being held where such persons are, as a matter of fact, associated together. 25 Mad. 61 (P.C.), Dist.; AIR 1921 Cal 625, Foll. (Kennedy, J. C. and Rupchand Bilaram, A. J. C.) Thanwor v. Emperor. **89 I C 710 : 19 S L R 196 : 26 Cr L J 1398 : A I R 1926 Sind 69.**

——Association must be proved.

Under clause (4), S. 117, two or more persons may be jointly tried where they have been associated together in the matter under inquiry, but there must be clear evidence to prove the association. (Jwala Prasad, J.) Deodhari Pandey v. Emperor. **86 I C 274 : 6 P L T 810 : 1925 P H C C 6 : 26 Cr L J 738 : A I R 1925 Pat 131.**

——Individual finding against accused.

The Magistrate is bound to consider the case of each suspect separately and individually on its own merits and to come to a separate finding in respect of each of the suspects, notwithstanding that under S. 117 (4) it is permitted to a Magistrate to hold a joint enquiry against several suspects associated together in the matter under enquiry. (Rupchand Bilaram, A. J. C.) Khairo v. Emperor. **83 I C 337 : 19 S L R 96 : 25 Cr L J 1377 : A I R 1925 Sind 204.**

——Joint trial—Contending parties.

It is not illegal to hold a joint trial under S. 117, Cr. P. Code, ot two persons who were not contending parties, but were on the same side. (Stuart, J.) Ganga Prasad v. Emperor. **76 I C 568 : 25 Cr L J 200 : A I R 1923 All 476.**

——Ss. 117 (4) and 110 (f)— Security proceedings —Joint trial—Legality of.

The joint trial of persons under S. 110 (f) of the Code, is not bad, where there is evidence of a conspiracy or of acting in concert. But its legality must depend upon what is alleged by the prosecution and not what is subsequently found to be true. (Beachcroft and Ghose, JJ.) Jogendra Kumar Nag v. Emperor. **22 Cr L J 377 : 61 I C 233 : 25 C W N 334 : A I R 1921 Cal 625.**

——S. 117 (4)—Associated together.

A remark by Court in a proceeding under S. 110 that the association of the accused is established, that they are close neighbours and are found implicated together in many cases, does not satisfy the requirements of S. 117 (4). (Walmsley and Greaves, JJ.) Jogendra Kumar Nag v. Emperor. **57 I C 940 : 21 Cr L J 700 : A I R 1920 Cal 556.**

——S. 117 (4)—Joint inquiry.

Although in cases of joint inquiries there is a danger of one accused being prejudiced through the evidence against another, which does not directly affect him, being on the record, the law however allows joint inquiries under S. 117, Cl. (4) of the Cr. P. Code. (Wallach, J.) Sheo Sahai v. Emperor. **53 I C 153 : 20 Cr L J 750 : A I R 1919 All 376.**

——Ss. 117 (4) and 110—Scope of.

Under S. 117 (4) a joint proceeding is competent where two or more persons have been associated together in the matter under enquiry but the section does not apply to proceedings under S. 110, where the evidence to the effect that the accused are persons of bad livelihood who associate with other Badmashas and evidence is also given of specific act against individual accused. (Scott-Smith, J.) Luqman v. Emperor. **3 P W R Cr 1917 : 39 I C 985 : 18 Cr L J 617 : A I R 1917 Lah 207.**

——Ss. 117 (4), 537— Joinder of persons under S. 117 (4)—Illegality.

See Cr. P. Code (1898) Ss. 117 (4), 537. **8 Cr L J 154 (Mad).**

——Applicability.

The question whether a person is by habit a thief or not is personal to himself and forms a matter separate by itself. S. 117 (4), Cr. P. Code, refers to cases where several persons are charged with being concerned in a wrongful act that may

CRIMINAL P. C. (V of 1898), S. 117 — 9. Joint inquiry—Sub-s. (5)

occasion a breach of the peace (S. 107, Cr. P. Code), or in an act regarding the dissemination of seditious matter (S. 180, Cr. P. Code), not to proceedings under S. 110. Therefore to try a number of persons on the charge of their being thieves by habit together for the purpose of binding them for good behaviour under S. 110 erroneous. (Hartnoll, J.) King-Emperor v. Po Twe. **4 L B R 46 : 6 Cr L J 284.**

——S. 117 (4)—"Associated together"—Servants acting on orders of master—Joint enquiry.

See Cr. P. Code S. 107. **2 Cr L J 554 (Cal).**

——Ss. 117, 109, 110 and 112—Joint inquiry of persons ordered to give security under S. 109 and S. 110—Under S. 117, a person ordered to give security under S. 109, and another ordered to give security under S. 110, cannot be dealt with together in one and the same enquiry. Each section deals with different matters. Proceedings under Ss. 109 and 112 against the same person cannot be amalgamated with proceedings under Ss. 110 and 112 against another. The scope of the two proceedings are essentially different. (Mr. Chamier) King-Emperor v. Mohen alias Bhagwan Das. **8 O C 91 : 2 Cr L J 224.**

10. Joint inquiry of rival factions—Legality.

——S. 117 (5)—Two parties opposed to each other —Joint enquiry—Legality.

Where two contending parties are opposed to one another and inclined to commit an offence involving a breach of the peace, they cannot be said to have associated together in the manner contemplated by S. 117 (5) and the joint trial of such contending parties is illegal. Where two opposing parties are proceeded against in one proceeding prejudice must almost inevitably be the result, inasmuch as the persons proceeded against and, as it were, in the position of accused persons, are put into the witness box and cross-examined. (Hemeon, J.) Crown v. Laxminarayanlala. **A I R 1951 Nag 306 : 52 Cr L J 181 : I L R (1950) Nag 859 : 1951 N L J 246 : 1951 A W R (Sup) 73.**

——Joint inquiry.

It is not for the Magistrate to hold a joint inquiry under S. 117 in respect of two contending parties who have nothing in common between them in respect of the matter under inquiry. (Mehta, J.) Nathu v. State. **1951 R L W 176.**

——Ss. 117 (4) and 107—Proceedings under S. 107—Joint complaint—Joint trial.

S. 107, Cr. P. Code forbids joint trial of parties ranged on opposite sides. But if they are of the same side the trial is legal. (Stuart, J.) Ranga Prasad v. Emperor. **L R 3 A 181 (Cr).**

——Ss. 117 (4), 537—Joint enquiry against two rival factions, bad.

Holding of a joint enquiry against members of two rival factions and binding them down to keep peace, is bad. The defect cannot be cured by

CRIMINAL P. C. (V of 1898), S. 117 — 10. Joint inquiry of rival factions—Legality

S. 537. Persons belonging to contending factions are not "associated together in the matter under enquiry" within the meaning of S. 117 (4). (Mr. Drake-Brockman) Ganpat v. Emperor. **5 N L R 65 : 9 Cr L J 560 : 2 Ind. Cas. 240.**

——Ss. 117 (4), 537—Joinder of persons.

Where the parties have been in conflict with one another, the joinder of such persons together in the same inquiry is an illegality. (Wallis, J.) In re Ganapathi Bhatta. **3 M L T 408 : 31 M 276 : 8 Cr L J 154.**

——Ss. 107 and 117 — Joint enquiry against two opposite parties—Legality.

Two opposing parties to a proceeding under S. 107 cannot be proceeded against and bound over to keep the peace in one proceeding. (Brett and Gupta, JJ.) Kamal Narain Chowdhry v. Emperor. **5 C L J 231 : 11 C W N 472 : 5 Cr L J 197.**

11. Mode of inquiry—Sub-sec. (2).

——Enquiry under S. 110 — Procedure as in warrant case—Opportunity to cross-examine prosecution witnesses.

Where in an enquiry started under S. 110 which is to be made "as nearly as may be practicable" in the manner prescribed for conducting trials in warrant-cases, the accused cross-examined each of the prosecution witnesses as they were examined in chief and instead of taking advantage of the provisions of S. 256 which is one of the provisions for the trial of warrant cases, they remain silent, they cannot later on be heard to say that they have been prejudiced because the opportunity of cross-examining the witnesses as required under S. 256 was denied to them. (Jamuar and Ahmad, JJ.) Raghunath Singh v. State. **A I R 1953 Pat 1 : 31 Pat 902 : 1953 Cr L J 119.**

——S. 117 (2)—Case under S. 109—Accused has no right to cross-examine prosecution witnesses for second time : See ibid, S. 256. **A I R 1948 All 227 : 49 Cr L J 259.**

——Ss. 117 (2), 350 (1) (a)—Scope of S. 117 (2)—Expression "the manner hereinafter....in warrant cases."

The words "the manner hereinafter prescribed for conducting trials and recording evidence in warrant cases" in cl. (2), S. 117, Cr. P. C., are wide enough to cover the special procedure laid down for the trials of summons or warrant cases in Chaps XX and XXI, as well as the general provisions as to inquiries and trials contained in Chap. XXIV. (Ganganath, J.) Mahtab Singh v. Emperor. **A I R 1937 All 438 : 1937 A L J 373 : 10 R A 71 : 38 Cr L J 804 : 1937 A W R 382 : 169 I C 833.**

——Ss. 256 and 254, Cr. P. C

An accused person, who has been called upon to give security for good behaviour, has no absolute right to recall prosecution witnesses for cross-ex-

CRIMINAL P. C. (V of 1898), S. 117 — 11. Mode of inquiry—Sub-s. (2)

amination under S. 256, but he has a right under S. 257. Case-law discussed. (Kumaraswamy Sastri, Curgenven and Walsh, JJ.) Karuthaswami Servai, In re. **31 M L W 243 : 3 M Cr C 34 : 53 Mad 173 : 124 I C 1 : 31 Cr L J 618 : 1930 M W N 178 : A I R 1930 Mad 331 : 58 M L J 229.**

——"No charge need be framed."

The words "no charge need be framed" in S. 117 (2) can only mean that no occasion can arise for framing a charge because under S. 221 (1) every charge shall state the offence with which the accused is charged. In security proceedings the place of charge is taken by the "order in writing setting forth the substance of the information received" prescribed by S. 112. This order has to be read over to the person in respect of whom it is made, and although the Code does not provide that he should plead to it, it resembles a charge in that it must contain a statement in abstract of the prosecution case. (Kumaraswami Sastri, Curgenven and Walsh, JJ.) Karuthaswami Servai, In re. **124 I C 1 : 31 M L W 243 : 3 M Cr C 34 : 1930 M W N 178 : 53 Mad 173 : 31 Cr L J 618 : A I R 1930 Mad 331 : 58 M L J 229.**

——Procedure.

S. 247 is not applicable to proceedings under S. 117 (2). (Suhurawardy and Cammiade, JJ.) Asrafali Saiyal v. Nasur Sarkar. **101 I C 607 : 45 C L J 211 : 31 C W N 388 : 28 Cr L J 479 : A I R 1927 Cal 343.**

——The provisions of S. 360, Cr. P. C. are applicable to proceedings under S. 117 when a person is called upon to show cause why he should not furnish security for good behaviour and failure to comply with the provisions of that section would vitiate the enquiry or trial which has resulted in an order under S. 118 of the Code.

Per B. B. Ghose, J.—There is considerable doubt whether S. 360, Cr. P. Code, applies to proceedings under Chap. VIII of that Code. (Newbould and B. B. Ghose, JJ.) Sanatan Bhattacharya v. Emperor. **88 I C 856 : 41 C L J 352 : 52 Cal 632 : 26 Cr L J 1240 : A I R 1925 Cal 720.**

——Procedure in a security case.

S. 117 requires the whole of the procedure in a summons or warrant case respectively to be adopted by the tribunal enquiring into a security case. The right of the accused to have the witnesses recalled is not a substantive right but procedural, and the accused has that right in a security as in a summons or warrant case. (Wallis, C. J., Alying and Coutts Trotter, JJ.) Yelluchuri Venkatachennaya v. Emperor. **43 Mad 511 : (1920) M W N 280 : 21 Cr L J 402 : 38 M L J 370 : 11 L W 435 : 56 I C 50 : 27 M L T 178 : A I R 1920 Mad 337.**

——Applicability of S. 256.

The Magistrate's inquiry in cases of good behaviour should accord with the procedure in warrant

CRIMINAL P. C. (V of 1898), S. 117 — 11. Mode of inquiry—Sub-s. (2)

cases and S. 256 is applicable. (Twomey, J.) Emperor v. Lansha. **4 Bur L T 24 : 12 Cr L J 89 : 9 I C 468.**

12. Revision.

——Ss. 117, 110, 118 and 439—Appraisal of evidence—Interference in revision.

Where the appraisal of evidence by the lower Courts in a case under S. 110 is so wrong as to border on perversity the High Court should interfere to rectify the error.

Thus, where the defence evidence is far superior to that of the prosecution both in quality as well as in quantity, the order binding down the applicant is unjustifiable and will be set aside by the High Court in revision. (Beg, J.) Gauri Shankar v. State. **A I R 1952 All 927 : 1952 All W R (HC) 219 : 1952 All Cr R 74 : 1952 Cr L J 1692.**

——S. 117 (3)—Order under S. 107 read with S. 112 for showing cause why accused should not be bound down to maintain peace for particular period—Order for interim security for some period also passed under S. 117 (3)—Revision—Period for which security demanded long expiring before revision—Proceedings must be quashed.

See ibid, S. 107. **A I R 1949 All 21 : 50 Cr L J 78.**

——When High Court interferes with order for interim security.

S. 117 (3) has apparently been introduced for the purpose of preventing a breach of peace or disturbance of the public tranquillity or the commission of any offence or in the interest of public safety pending an enquiry under Ss. 108, 109 and 110. It is not therefore open to High Court under provisions of S. 498 to reduce the security which the Magistrate orders to be furnished. But there is nothing to prevent the High Court in exercise of its inherent powers from considering whether the interim security which is ordered to be furnished is not too high. The order of the High Court, reducing interim security does not, however, fetter the discretion of the Magistrate as to the amount of security which may ultimately be demanded. (Tapp, J.) Jagir Singh v. Emperor. **I R 1930 Lah 594 (2) : 125 I C 322 : 1930 Cr C 677 : 31 Cr L J 812 : A I R 1930 Lah 529.**

——Object of Chap. VIII—Good behaviour—Security for—Evidence of general repute.

The object of Ch. VIII of the Cr. P. Code is the prevention, not the punishment, of offences. The chapter gives a certain amount of discretion to Magistrates; and the High Court must be always slow to interfere with that discretion unless there is an error of law. For the purposes of Chap. VIII, hearsay evidence amounting to evidence of general repute is admissible. (Chandavarkar and Aston, JJ.) Emperor v. Raoji Fulchand. **6 Bom L R 34 : 1 Cr L J 3.**

CRIMINAL P. C. (V of 1898), S. 117

13. Scope of inquiry.

——Hindu woman recovered from house of Muhammadan— Excitement among Hindus— Police apprehending breach of the peace—Magistrate ordering the Muhammadans to furnish security to keep peace—No opportunity to show cause against order—Formalities not observed. Order is unjustified.

See ibid, Ss. 107 and 117. **A I R 1949 Oudh 83 : 51 Cr L J 89.**

——A proceeding under S. 117 is an enquiry within S. 517. (Gruer, J.) Emperor v. Beni Madhao. **A I R 1936 Nag 143 : I L R (1936) Nag 150 :9 R N 118 : 38 Cr L J 175 : 166 I C 271.**

——Inquiries and not trials.

A proceeding in which a person is called on to give security is not a trial but an "inquiry" which includes every inquiry other than a trial conducted by a Magistrate or Court under the Cr. P. Code. Proceedings under Chap. VIII are "inquiries" and not "trials". The person called on to give securities is not an accused person. The expression "accused" is nowhere defined in the Code, and nowhere in Chap. VIII is the person called on to give securities either under Ss. 106—110, referred to as an accused person. 16 Bom. 661, Dissented from. (C. C. Ghose and Cuming, JJ.) Binode Behari Nath v. Emperor. **81 I C 909 : 50 Cal 985 : 25 Cr L J 1085 : A I R 1924 Cal 392.**

——"Further evidence"—Evidence Act, S. 151.

Such further evidence in S. 117 means evidence of ejusdem generis with the evidence already described. The accused first gave a list of 20 witnesses, and again gave an additional list of 200 witnesses. The Magistrate thinking that it would delay the proceedings refused to summon the additional witnesses. He also stopped the Counsel putting insulting questions. Held, that the Magistrate acted rightly in both cases. (Knox, J.) Jaggan v. Emperor. **36 All 239 : 12 A L J 399 : 22 I C 996 : 15 Cr L J 212 : A I R 1914 All 382.**

——Ss. 117 and 118—Scope of inquiry.

The inquiry under Ss. 117 and 118 is not restricted by the precise terms of S. 112. (Carnduff and Imam, JJ.) Deputy Legal Remembrancer v. Kadir Mirza. **17 C W N 331 : 17 I C 416 : 13 Cr L J 784.**

——Ss. 117 and 242— Proceedings under S. 117— Effect of non-compliance with provisions of S. 242.

A Sub-Divisional Magistrate proceeding under S. 117 as nearly as practicable in the same way as under S. 242, Cr. P. Code, has to state to the accused the particulars of the matter against them, and ask them if they could show cause why they should not be required to execute bonds. The failure to do so is irregular and his order

CRIMINAL P. C. (V of 1898), S. 117 — 13. Scope of inquiry

under S. 117 should be set aside. (Miller, J.) In re Palaniappa Asary. 7 M L T 304 : 6 Ind. Cas. 682 : 34 Mad 139 : 11 Cr L J 393 : 1910 M W N 228.

——Security proceeding— Nature of— Personal knowledge of Magistrate—Jurisdiction to enquire.

See Cr. P. C. S. 110. **1 Cr L J 99 (Lah).**

——S. 118.

See also (1) Burma Gambling Act (1 of 1899), S. 17.
(2) Cr. P. C., Ss. 106 and 110.

SYNOPSIS

1. Appeal.
2. Cancellation of surety bond.
3. Final order for security.
4. Fitness of surety.
5. Imprisonment.
6. Nature of proceedings.
7. Period of security.
8. Power of Court to review final order.
9. Proviso 1.
10. Proviso 2—Amount of security.
11. Proviso 3.
12. Revision.

1. Appeal.

——Ss. 118, 406—Order of Additional District Magistrate under S. 118— Appeal, whether lies to District Magistrate or Sessions Judge.

In the case of districts in respect of which a notification has been issued by the Local Government under the proviso to S. 406, Cr. P. C., appeals under that section from orders made by an Additional District Magistrate under S. 118 lie to the District Magistrate and not to the Sessions Judge. (Johnstone, J.) Emperor v. Jahangir Chand. **A I R 1932 Lah 463 (1) : 13 Lah 254 : 32 P L R 453 : 32 Cr L J 849 : 132 I C 206.**

——High Court can interfere on merits of orders under S. 118, if the lower Court under S. 406 has not really gone through evidence on record.

It is true that the High Court will not ordinarily interfere on the merits of orders passed under S. 118 except in very exceptional circumstances provided that the Court under S. 406, shows in its judgment that it has really, and not merely nominally, gone through the evidence on the record, which it can do by stating clearly what it believes the evidence proves giving a short summary of that evidence, and making such criticisms as go to show that the evidence is reliable; but if the judgment does not satisfy these requirements and also fails to come up to the required standard of a legal judgment, and there is a clear misconception of such evidence as is considered, it is not only just but imperative on the High Court to see how far the judgment in appeal is correct even on matters which it purports to decide expressly. 6 A. L. J. 487, Rel. on.; 8 N. L. R. 84, Ref. (Subhedar, A. J. C.) Kashiram Hazari v.

CRIMINAL P. C. (V of 1898), S. 118—1. Appeal

Asaram. 120 I C 215 : 1929 Cr C 532 : 31 Cr L J 20 : A I R 1929 Nag 328.

——Order under S. 118 is not a "conviction" or "acquittal".

The terms "conviction" and "acquittal" are nowhere applied throughout the Code to an order under S. 118 and they are, in fact, wholly inapplicable to the same. (1898) A. W. N. 127; 13 C. W. N. 420, and 9 Cal. 878. Rel. on. Therefore, no appeal lies on behalf of Government against an order of a Sessions Judge setting aside the order of a Magistrate calling upon a person to furnish security for good behaviour. (Boys and Iqbal Ahmad, JJ.) Emperor v. Babu Ram. **106 I C 684 : 8 L R A Cr 163 : 8 A I Cr R 557 : 26 A L J 99 : 29 Cr L J 92 : A I R 1928 All 1.**

——Ss. 118, 110 and 406—Order under S. 118—Appeal.

An order by an Additional District Magistrate under S. 118 in a proceeding under S. 110, is appealable to the District Magistrate. (Beachcroft and Ghose, JJ.) Mahendra Bhumij v. Emperor. **48 Cal 874 : 66 I C 69 : 25 C W N 383 : 23 Cr L J 229 : A I R 1921 Cal 347.**

——Ss. 110, 118 and 406—Security under S. 17 Burma Gambling Act—Appeal.

See Burma Gambling Act (1 of 1899) S. 17. **2 Cr L J 378 (Low. Bur).**

——Ss. 118, 406, 107 and 404—Appeal from an order to give security to keep the peace.

S. 406 gives a right of appeal to the District Magistrate from an order to give security for good behaviour. There is, however, no right of appeal from an order to give security to keep the peace. (Aikman, J.) In the matter of the petition of Chet Ram. **27 A 623 : A W N 1905, 135 : 2 A L J 716 : 2 Cr L J 329.**

——Order under S. 17, Burma Gambling Act—Appeal.

See Burma Gambling Act (1 of 1899) S. 17. **2 Cr L J 317 (Burma).**

2. Cancellation of surety bond.

——Cancellation of surety bond given for keeping peace.

See Cr. P. C. S. 125. **12 Cr L J 480 (2) (All).**

3. Final order for security.

——Ss. 110, 118 and 123—Order under—Validity—Applicability of Art. 22, Constitution of India.

See ibid, S. 110. **A I R 1953 All 753 : 1953 Cr L J 1759.**

——Ss. 118 and 123—Magistrate ordering that person concerned should furnish security and execute bond or, in alternative, go to jail for one year.

Order is not bad in law. (Malik, C. J. and Agarwala, J.) Jit Bahadur Singh v. State. **A I R 1953 All 753 : 1953 All L J 438 : 1953 All W R (H.C.) 429 : 1953 Cr L J 1759.**

——Preliminary order not specifying date from which period mentioned in order is to commence —Expiry of period— Magistrate has still jurisdiction to pass final order.

CRIMINAL P. C. (V of 1898), S. 118 — 3. Final order for security

See ibid, S. 112. **A I R 1952 Trav. Co. 433 : 1952 Cr L J 1523.**

——Scope—Order passed under S. 112 not on record, nor any compliance made with S. 113—Proceedings culminating in order under S. 118 read with S. 107 is completely irregular.

See ibid, S. 107. **A I R 1951 Raj 156 : 52 Cr L J 1209.**

——Prosecution story disbelieved as to most of the accused—Conviction of remaining accused on the same evidence cannot stand. (Kaul, J.) Heersingh v. Rajasthan State. **A I R 1951 Raj 135 : 52 Cr L J 1024.**

——An order under S. 110, read with S. 118, Cr. P. C., cannot be made on vauge allegations that person proceeded against was suspected in several cases of having committed offences against property. (Din Muhammad, J.) Islam-ud-din v. Emperor. **A I R 1939 Lah 269 : 41 P L R 431 : I L R (1939) Lah 53 : 12 R L 105 (2) : 40 Cr L J 753 : 183 I C 269.**

——Ss. 118, 367 (6)—Several accused—Order under S. 118—Nature of.

Proceedings in which suspected persons can be sent to prison on evidence on which they would not ordinarily be convicted if charged with a substantive offence in a Criminal Court are serious proceedings and require to be dealt with quite as carefully as cases where accused persons are charged in the ordinary way with substantive offences in the Criminal Courts, and where in many cases, the consequences are not so serious to the persons charged. An order passed under S 118 or S. 123 (3), Cr. P. C., must be self-contained; it must show that the Court has considered the evidence against each of the suspected persons and has found that the evidence proves the case against each of the suspected persons individually. But there is nothing to exclude the application of S. 11, Evidence Act.

The Appellate Court's judgment cannot be read in connection with and as supplementary to the judgment of the Court of first instance but must be quite independent and stand by itself. In proceedings against several suspected persons, where they can be dealt with in one inquiry under the law, the appellate judgment must show that the case against each has been considered separately and that the case against each of them individually is proved by evidence. (Davis, J. C. and Dadiba C. Mehta, A. J. C.) Ghousbux v. Emperor. **A I R 1937 Sind 26 : 9 R S 173 : 38 Cr L J 363 : 30 Sind L R 382 : 167 I C 227.**

——A person cannot be bound over for prospective breach of peace on hypothetical contingencies. (Jackson, J.) Narayan Das Bairagi v. Emperor. **1931 M W N 402.**

CRIMINAL P. C. (V of 1898), S. 118—3. Final order for security
——Legality.

A and B were given notice under S. 112, Cr. P. Code, to show cause as to why they were not to be bound down with bonds and securities. There was no joint trial nor was there any intention of having a joint trial. The Magistrate recorded the evidence against both in one case and then proceeded to consider it as evidence in the case against B.

Held, that the procedure in recording the evidence was illegal. B's case was never tried at all and the orders passed against him under S. 189, Cr. P. Code and S. 7, Habitual Offenders Act, should be set aside. (Dalip Singh, J.) Lilu v. Emperor. **I R 1930 Lah 893 : 32 Cr L J 62 : 127 I C 861 : 1930 Cr C 393 : A I R 1930 Lah 345.**

——Order without enquiry is illegal.

It is the duty of the Magistrate to proceed to enquire into the truth of the information on which he takes action, and it is only if upon such enquiry it is proved that it is necessary to take the bond from the person in respect of whom the enquiry has been made, he can be ordered to execute a bond. Mere fact that the person was prepared to execute the bond does not make the order legal if it is made without any enquiry. 24 AIR 1915 Lah 82 and AIR 1917 Lah 301, Rel. on. (Addison, J.) Ujagar Singh v. Emperor. **117 I C 807 : 10 Lah 125 : 30 Cr L J 839 : 30 P L R 694 : 1929 Cr C 61 : A I R 1929 Lah 504.**

——A report of a Police Officer and the evidence given by the same officer are not sufficient to justify an order binding down a person to keep the peace. 10 W. R. 55, Ref. (Addison, J.) Ujagar Singh v. Emperor. **117 I C 807 : 10 Lah 155 : 30 Cr L J 839 : 30 P L R 694 : 1929 Cr C 61 : A I R 1929 Lah 504.**

——Magistrate can accept security even after the accused has been sent to jail.

A man was ordered by a Magistrate of the first class under S. 118 to give security for his good behaviour under S. 110 for a period of three years. He failed to furnish security then and there and he accordingly was ordered to be detained in prison pending the orders of the Sessions Judge. A day or so later he offered security to the Magistrate who accepted it and he was released from jail.

Held, that the Magistrate can accept security. A reasonable view of the matter should be taken as there is nothing in the Act clearly indicating what should be done if security is offered to the Magistrate after he has referred the matter to the Sessions Judge and before the latter has heard the reference. The purpose of the security sections is not that the persons proceeded against should be sent to or kept in jail but that should only be done when they are unable to give security.

CIRMINAL P. C. (V of 1898), S. 118—3. Final order for security

Held, further, that reference to the Sessions Judge automatically ends with the acceptance of security by the Magistrate. (Addison, J.) Emperor v. Muhammad Akbar. **107 I C 286 : 29 Cr L J 236 : 9 A I Cr R 490 : A I R 1928 Lah 64.**

——It is not competent to a Magistrate who has passed an order under S. 118 to delegate to another, e.g., the Superintendent of Police, the duty of the enquiry into the sufficiency of the security tendered, but should make such inquiry himself. 18 P. R. 1906, Ref. (Moti Sagar, J.) Kanwal Nabh v. Crown. **76 I C 27 : 25 Cr L J 91 : A I R 1924 Lah 672.**

——Security for good behaviour—Forfeiture—Commission of offence—Proof of.

When security is given for good behaviour, neither the principal nor surety can be made liable for an offence which occurred before the security was given. (Pipon, J. C.) Mansur v. Emperor. **73 I C 332: 24 Cr L J 588 (Pesh).**

——Entries in the Thana Village Crime Note Book are not sufficient evidence to support an order under S. 118. (Teunon and Ghosh, JJ.) Pochai Rai v. Emperor. **62 I C 182 : 22 Cr L J 486 (Cal.).**

——Security for good behaviour—Order under Punjab Act (V of 1918).

If a person is required to furnish security for good behaviour under S. 118, Cr. P. Code an order at the same time under S. 7 of the Punjab Restriction of Habitual Offenders Act restricting his movements cannot be made. (Rattigan, C. J.) Kabir Bakhsh v. Emperor. **1 Lah 100 : 21 Cr L J 385 : 55 I C 993 : 95 P L R 1920 : A I R 1920 Lah 330.**

——Magistrate's action.

In a pending proceeding some defence witnesses were called upon to show cause why they should not be prosecuted under S. 193, I. P. C. It was held that the Judge's action was injudicious and prejudiced the accused. The order could not be sustained. (Sharfuddin and Teunon, JJ.) Kedar Mullick v. Emperor. **27 I C 178 : 16 Cr L J 114 : A I R 1915 Cal 368.**

——Variation of conditional order under S. 112.

See Cr. P. C. (1898) Ss. 112 and 118. **8 Cr L J 344 (Oudh).**

——Order binding down without separate finding in regard to individual member of party.

See Cr. P. C., (1898) Ss. 107, 118. **8 Cr L J 207 (Cal).**

——Ss. 118 and 112—Failure to record order under S. 112.

A Magistrate, in framing his order under Ss. 112 and 118 would be well advised in having somewhat closer regard to the precise requirements of these provisions. At the same time it should be noticed that the provisions of S. 112 are purely directory, and even the failure to record order,

CRIMINAL P. C. (V of 1898), S. 118—3. Final order for security

under the section, is a mere irregularity. (Greeves, J. C.) Pragi v. King-Emperor. **10 O C 365 : 7 Cr L J 94.**

——Applicability—Addressing audience to exert for attainment of "swaraj".

See ibid, S. 108. **6 Cr L J 297 (Cal).**

——Order demanding security—Enquiry into sufficiency of surety—Delegation of.

Where a Magistrate passes an order under S. 118, requiring from a person security for good behaviour he should satisfy himself as to the sufficiency of the security tendered. He cannot delegate his functions to a subordinate to enquire into the sufficiency or otherwise of the security tendered and decide the question on the report of the subordinate. (Banerji, J.) Emperor v. Balwant. **27 A 293 : 1 A L J 601 : A W N 1904 231 : 1 Cr L J 912.**

4. Fitness of surety.

——The fact that the sureties reside at a distance where they cannot reasonably be expected to exercise control over the accused becomes of less importance when the sureties are themselves relations and presumably persons of some standing and they offer to keep control over the accused. AIR 1917 Cal 378, Rel. on. 20 All. 203, Dist. (Allanson, J.) Jugal Singh v. Emperor. **112 I C 909 : 30 Cr L J 45 : 10 P L T 213 : A I R 1928 Pat 374.**

——In the proceedings taken after the order for securities is made and after the accused persons bring certain sureties the Magistrate cannot introduce any new qualifications while deciding on the suitability of the sureties. (Kennedy, A. J. C.) Allahditto v. Emperor. **87 I C 961 : 19 S L R 101 : 26 Cr L J 1041 : A I R 1925 Sind 321**

——Distant residence by itself is no ground for rejection unless that indicates absence of control.

Sureties should not be rejected merely because they are not close neighbours of the persons called upon to execute the bond, but this does not mean that sureties cannot be rejected when in the particular case the Magistrate finds that they live too far away to be able to exercise any control over the conduct of the person called upon to execute the bond. Inability to control, whether owing to distance or any other reason, is a good reason for rejection, though mere distance is not. In the case of a bond for good behaviour and a bond to keep the peace, personal security is necessary. (Ashworth, J.) King-Emperor v. Mohammad Bakhsh. **81 I C 316 : 26 O C 284 : 25 Cr L J 796 : A I R 1924 Oudh 80.**

——Fitness of surety—Surety a previous convict is not necessarily unfit.

Though the proposed surety is one, who is previously punished for an offence under the Penal Code, he does not for ever become unfit to be a surety for a party required to give security for good behaviour. (Richardson and Ryves. JJ.)

CRIMINAL P. C. (V of 1898), S. 118 — 4. Fitness of surety

Budhu Ahir v. Emperor. **25 C W N 140 : 62 I C 179 : 22 Cr L J 483 : A I R 1921 Cal 356.**

——Surety offering house property as security—Acceptance of.

A security of immoveable property can be accepted under S. 118, Cr. P. Code though during the lifetime of the surety, only moveable property could for default be attached and sold for recovery of the penalty. (Knox, J.) Nanhe v. Emperor. **16 A L J 503 : 46 I C 295 : 19 Cr L J 711 : A I R 1918 All 182.**

——Ss. 118 and 122—Fitness of surety.

Sureties for good behaviour should not be rejected before judicial inquiry, held by the Magistrate himself. He cannot delegate the function of others. The fitness of each surety should be separately determined if each of the accused offer two sureties each. A general order without investigation of the circumstances of each of the sureties should not be passed. (Mookerjee and Sheepshanks, JJ.) Rayan Khan v. Emperor. **24 C L J 51 : 20 C W N 1133 : 18 Cr L J 408 : 38 I C 968 : 43 Cal 1024 : A I R 1917 Cal 378.**

——Fitness of surety.

A person, asked to furnish security for good behaviour, gave two sureties, but both were rejected on the ground that they did not live within a radius of 5 miles from the residence of the accused. Held, that there was no ground for rejecting the securities and the order rejecting the securities was bad. (Tudball, J.) Hasin-ud-din v. Emperor. **13 Cr L J 831: 17 I C 575 : 10 A L J 354.**

——Ss. 118 and 110—Fitness of sureties—Tests to be applied.

In deciding whether sureties tendered are to be accepted or refused, the first matter to be inquired into is the ability of the sureties to pay the sums for which they become bound, in case of default of the persons who are bound down. There may be other objections to be considered although a person may be pecuniarily fit but any such objection must be dealt with in each case as it arises. Where the sureties are found to be competent from the pecuniary point of view, and no other cause of unfitness is made out, the sureties ought to be accepted. (Stephen and Carnduff, JJ.) Jafar Ali Panjalia v. Emperor. **37 C 446 : 14 C W N 666 : 6 Ind. Cas. 668 : 11 Cr L J 392.**

——Rejection of sureties — Procedure to be followed.

See ibid S. 122. **11 Cr L J 243 (Cal).**

——Rejection of surety.

See Cr. P. C. (1898), Ss. 112, 118. **8 Cr L J 344 (Oudh).**

5. Imprisonment.

——Imprisonment for default of security under S. 118 stands on quite a different footing from a

CRIMINAL P. C. (V of 1898), S. 118 — 5. Imprisonment

sentence of imprisonment passed on a conviction in respect of an offence. 1 Pat L J 212, Rel. on. (Macpherson and Dhavle, JJ.) Charan Matho v. Emperor. **125 I C 792 : 31 Cr L J 958 : 9 Pat 131 : 1930 Cr C 455 : 11 P L T 261 : A I R 1930 Pat 274.**

——Suspect in jail.

When the suspect is in jail when the order under S. 123 is made, that order is not to be enforced after his release.

Order under S. 118 was made on 20th October and the order of imprisonment for one year in consequence of the failure of the accused to give security in pursuance of the order under S. 118 was made under S. 123 on 29th October. Between 20th October and 29th, the accused was convicted and sentenced to seven years' rigorous imprisonment and that sentence commenced between these two dates.

Held, that it was clear that on the expiry of the above sentence the accused was entitled to be set at liberty. (Shah and Fawcett, JJ.) Emperor v. Aba Farid. **103 I C 108 : 29 Bom L R 700 : 28 Cr L J 652 : A I R 1927 Bom 657.**

——Ss. 118, 120 and 123—Security—Default—Imprisonment to run concurrently with sentence.

Under S. 120 (1) read with S. 123 (1) of the Code, a sentence of imprisonment under S. 118 cannot be made to run concurrently with some other sentence which the accused is already undergoing. (Hannay, J.) Chinnaswami In re. **AIR 1916 Mad 534 (1) : 28 IC 160 : 16 Cr LJ 272.**

——Imprisonment in default of security.

See Cr. P. Code, Ss. 123, 118. **7 Cr L J 412 (Low Bur.).**

6. Nature of proceedings.

——Inquiry under Chap. 8 is not trial—Person called upon to furnish security is not deemed to be convicted.

A proceeding under Chap. 8 is an "inquiry" which under the definition of the term excludes the trial. No doubt S. 117 applies to such inquiry the procedure prescribed for conducting trials and the terms and expressions which occur in a trial come to be loosely applied in an inquiry also for the sake of convenience. But actually the person in respect of whom the inquiry is held is not an accused but a quasi-accused, and he is not "deemed" to be an accused nor when an order under S. 118 is passed against him "deemed" to be convicted within the meaning of S. 426. A. I. R. 1924 Cal. 392; A. I. R. 1926 All. 403. Foll. (Macpherson and Dhavle, JJ.) Charan Matho v. Emperor. **125 I C 792 : 31 Cr L J 958 : 9 Pat 131 : 1930 Cr C 455 : 11 P L T 261 : A I R 1930 Pat 274.**

7. Period of security.

——Where the accused person is already undergoing imprisonment at the time an order under S. 118 has to be passed, the proper order is to direct that the period for which the suspect is required to give security shall commence from the date of the expiration of the sentence of imprisonment he is then undergoing. (Davis, J. C. and Dadiba C. Mehta, A. J. C.) Emperor v. Hussein Allahadino. **A I R 1937 Sind 204 : 10 R S 86 : 38 Cr L J 1014 : 31 Sind L R 412 : 171 I C 61.**

——Order under S. 118 against suspected person undergoing imprisonment for substantive offence—Period of security, when commences.

Where a suspected person against whom an order under S. 118, Cr. P. C.. is passed, is undergoing imprisonment for a substantive offence under the provisions of S. 120 (1), Cr. P. C., the period for which security is required should commence not from the date of order but from the date of the expiration of the sentence which the suspect was undergoing for the substantive offence of which he had been convicted. (Davis, J. C. and Dadiba C. Mehta, A. J. C.) Emperor v. Lashkarao. **A I R 1937 Sind 203 : 10 R S 71 : 38 Cr L J 961 : 31 Sind L R 409 : 170 I C 676.**

——Order, if suspended during time spent in prison.

An order under S. 118 is not suspended during the time spent in prison if the suspect is not on bail. (Davis. J. C. and Dadiba C. Mehta, A. J. C.) Ghousbux v. Emperor. **A I R 1937 Sind 26 : 9 R S 173 : 38 Cr L J 363 : 30 Sind L R 382 : 167 I C 227.**

——Person bound over under S. 118—Whether an accused person or convicted person—Power of Sessions Judge to enlarge such person on bail—Order under S. 426 suspending execution of order—Whether can be passed—Period during which he is released on bail—Exclusion of.

Persons against whom proceedings are taken under Chap. VIII, Cr. P. C., are not accused persons nor can they be called convicted persons when an order is passed against them adversely. The word "convicted" has been used in the Code as meaning "convicted of an offence", and, would therefore be inapplicable to the case of persons who are bound over.

There is no reason for limiting the scope of S. 426 so as to narrow it down to cases where persons have been convicted of offences and have preferred appeals under S. 407 and the following sections. Although the Sessions Judge has power under S. 498 to admit a person bound over under S. 118 to bail, it does not empower him to pass an order under S. 426, suspending execution of that order.

In cases where a person has been convicted of an offence and the Sessions Court on appeal admits him to bail, the Court may not necessarily pass a separate order suspending the execution of the sentence or pass an order releasing him on bail under S. 426. It may simply pass an order under S. 498 admitting him to bail. The necessary result

CRIMINAL P. C. (V of 1898), S. 118—7. Period of security

of the release on bail is that the person does not serve out his sentence of imprisonment during the period that he is released on bail. When, therefore, his appeal is dismissed and he surrenders to his bail, he must serve out the remaining portion of his sentence so as to complete the full period of imprisonment passed against him. The same principle should apply to cases where a person has been bound over for a particular period and is released on bail by the Sessions Judge and has to surrender after the dismissal of his appeal. The necessary result of his being allowed to be at large is that he has for that period neither furnished any security as required by the order of the Magistrate nor been detained in jail, but has been set free by the order of the Appellate Court. It cannot, therefore, be said that during this period, the order of the Magistrate has been carried out and has, therefore, partially exhausted itself. Consequently the period during which the person bound over is released on bail by an order of the Appellate Court should be excluded from the term prescribed under the order of the Magistrate who bound him over. (Sulaiman, C. J. and Bennet, J.) Emperor v. Masuria. **A I R 1936 All 107 : 8 R A 518 : 37 Cr L J 155 : 1935 A W R 1401 : 1935 A L J 1337 : 58 All 589 : 159 I C 804 (2).**

——When suspect is in jail, when the order under S. 123 is passed, detention runs concurrently with imprisonment for substantive offence.

If on the date of the order passed under S. 118 the suspect is undergoing imprisonment for a substantive offence, the provisions of cl. (1) of S. 120 come into operation and the period of security does not commence till the suspect has served out his substantive sentence of imprisonment. The proper procedure under the circumstances would be not to pass the order of detention of the suspect under S. 123 at once but postpone further proceedings under that section till the suspect has served out the period of sentence for the substantive offence. AIR 1926 Bom. 545, Rel. on. If on the date of order under S. 118 the suspect is not undergoing imprisonment for substantive offence his case does not fall within the purview of cl. (1) of S. 120. If on that date the suspect asks for time to furnish the required security, it is open to the Magistrate to inquire whether the suspect is undergoing a trial for a substantive offence, and, if so, it is open to him to refuse to grant any time for furnishing the required security and to take immediate action under S. 123. If, however, the Magistrate does not make the necessary enquiry, or on making the necessary enquiry he does not get any definite information, and, in the exercise of his discretion, he grants time to the suspect to furnish security, and before the expiry of that time the suspect is convicted of a substantive offence and sentenced to imprisonment, then neither cl. (1) nor cl. (2) of S. 120 applies. In that case, the Magistrate should proceed to pass an order under S. 123 which provides for immediate detention in prison of the suspect till he furnishes the required security. This detention would ipso facto run concurrently with the substantive sentences which the suspect is undergoing. A. I. R. 1926 Sind 273, Foll. (Rupchand Bilaram and Lobo, A. J. Cs.) Emperor v. Saidu. **101 I C 463 : 28 Cr L J 431 : 8 A I Cr R 31 : A I R 1927 Sind 166.**

CRIMINAL P. C. (V of 1898), S. 118 — 7. Period of security

——Ss. 118 and 112—Character and class of sureties—Period of bond—Commencement of.

Before any person is accepted as a surety for good behaviour, the Magistrate should satisfy himself that that person is of good character, is able to pay the penalty in the bond, and is living in a place where he is likely to be able to exercise some supervision over the conduct of the suspect. The character and class of sureties should be specified both in the preliminary order under S. 112 and in the order under S. 118, Cr. P. Code. A bond taken on a day subsequent to the day fixed for commencement of security must be limited to the period, counted from the day fixed, in the order under S. 118. (Irwin, J.) King-Emperor v. Nya Po Saung. **2 L B R 40.**

8. Power of Court to review final order.

——Omission to specify date by which security is to be furnished whether repairable.

A Magistrate in his original order failed to specify the date by which the security was to be furnished; but, when this error was pointed out, he passed an order requiring the person to furnish security by a certain date: Held that as he had omitted to give any such direction in his original order he could repair that omission by his later order. (Beevor, J.) Baso Rai v. Emperor. **A I R 1948 Pat 84 : 229 I C 474 : 48 Cr L J 409 : 13 B R 381.**

——Ss. 118, 125—Security for keeping peace—Power of District Magistrate to cancel bond and to send accused to jail.

A District Magistrate can cancel a bond given by an accused to keep peace, but cannot cancel the bond of surety and send the accused so bound to jail. (Tudball, J.) Fakhur-ud-din Khan v. Emperor. **8 A L J 658 : 12 I C 88 : 33 All 624.**

9. Proviso 1.

——Where a person, being aware that violence is the inevitable outcome of the doctrine he preaches, conducts a propaganda against the forces of law and order and instigates breaches of the peace, he must be treated as an abettor of such breaches of the peace and may be ordered to give security under S. 118, Cr. P. C. The security demanded under S. 118 should not be more than the accused may reasonably be expected to furnish. (Jack and Panckridge, JJ.) Sateindra Nath v. Emperor. **A I R 1931 Cal 18 : 52 C L J 405 : 32 Cr L J 593 : Ind. Rul. (1931) Cal 490 : 130 I C 880.**

CRIMINAL P. C. (V of 1898), S. 118—9. Proviso 1

——Ss. 110, 112 and 118—Proviso 1—Security for good behaviour—Terms of security to correspond with order under S. 112.

A final order to furnish security for good behaviour, under S. 118 of the Code must correspond with the notice to show cause issued under S. 112. A Magistrate cannot in the final order impose conditions as to the nature of the security required which were not in the notice. (Aikman, J.) Emperor v. Jangi Singh. **1906 A W N 276 : 4 Cr L J 405.**

10. Proviso 2—Amount of security.

——S. 118 (2)—Essentials.

The character and reputation of suspect are not the sole consideration on which to fix the amount of security. The amount should not be excessive or prohibitive and it should be fixed after considering the status in life of the accused. **16 B. 372. F.** (Pratt, J. C., and Crouch A. J. C.) Piral v. Emperor. **5 S L R 10: 9 I C 651 : 12 Cr L J 110.**

——Ss. 118, 112 and 439—Amount of security.

Where a Magistrate demands security for a larger amount than what has been communicated by him under S. 112 of the Code to the accused the order is justified by the terms of S. 118 and must be set aside. (Chitty, J.) Kishen Singh v. Crown. **11 P W R 1907 Cr : 5 Cr L J 219.**

11. Proviso 3.

——Ss. 118, Prov. (3), 562—First offender, release of—Execution of bond for appearance and receiving sentence if called upon. 2 L. B. R. 137, overruled.

S. 562 was enacted chiefly for the benefit of youthful offenders. There is no provision similar to the third proviso to S. 118 therein and it must be presumed that the omission was intentional. Therefore, the third proviso to S. 118 which requires that the bond in respect of a minor shall be executed only by his sureties does not apply to bonds of first offenders released under S. 562. 2 L. B. R. 137 overruled. (Irwin and Hartnoll, JJ.) King-Emperor v. Mipyu. **4 L B R 12 : 6 Cr L J 123.**

——Ss. 562, 118—Record of previous conviction is essential under S. 562— Signature of minor on bond not necessary.

See ibid, S. 562. **2 L B R 137.**

(Overruled in 4 L. B. R. 12 : 6 Cr. L. J. 123.)

12. Revision.

——Case under S. 110—Defence evidence far superior to that of prosecution both in quality and quantity—Order binding down applicant is unjustifiable and will be set aside in revision.

See ibid, S. 117. **A I R 1952 All 927 : 1952 Cr L J 1692.**

——S. 537—Alteration of charge— Accused bound over under S. 110 (f)—Appeal— Finding altered into S. 110 (e)—Effect of.

The accused was bound over under S. 110 (f), Cr. P. Code. On appeal the District Magistrate found S. 110 (e) was more appropriate and reduced the period and the amount of the security. Held, that inasmuch as cl. (f) of the section described the offence in cl. (e) in an aggravated form and the accused was not prejudiced, there was no ground for interference in revision. (Mittra, J. C.) Azizul Jabarkhan v. Emperor. **21 Cr L J 352 : 55 I C 688 : A I R 1920 Nag 67.**

CRIMINAL P. C. (V of 1898), S. 118—12. Revision

——Ss. 118, 122, and 123—Surety for good behaviour—Rejection of, sufficiency of reason—Revisional power of High Court.

Pecuniary sufficiency alone of the surety offered is not the criterion. The question is one of discretion and the High Court has to see whether the order of the Magistrate in not accepting the surety offered, is reasonable and proper. Where a Magistrate rejected the surety of a pleader for the good behaviour of a certain person alleged to belong to a gang of swindlers on the ground that the pleader had no sort of control over him, the order is reasonable and proper and the High Court will not in revision interfere with the Magistrate's discretion in such a case. (Teunon and Beachcroft, JJ.) Abdul Karim v. Emperor. **21 C W N 925 : 18 Cr L J 453 : 39 I C 293 : 44 Cal 737 : A I R 1917 Cal 209.**

——S. 119.

See also ibid, S. 437.

——"On an inquiry under S. 117".

When the section states "on an inquiry under S. 117" what it means is a full or complete enquiry. The question whether it is necessary to make the person in respect of whom the enquiry is made to execute a bond or not has to be decided on the evidence and not on considerations de hors the record. (Koshi, C. J. and Kumara Pillai, J.) State v. Kesava Kurup Rama Kurup. **A I R 1953 Trav. Co. 231 : 1953 Ker L T 166 : I L R (1953) T C 253 : 1953 Cr L J 1246.**

——Ss. 107, 119 and 439—Initiation of proceedings under S. 107 at instance of private person—Order of discharge under S. 119—Private person has no locus standi to apply in revision—Powers of High Court under S. 439.

See ibid, S. 107. **A I R 1953 Trav. Co. 24 : 1953 Cr L J 244.**

——Preliminary order under S. 107—Magistrate's power to drop proceedings and discharge person proceeded against.

Proceedings under S. 107, Criminal P. C. are only intended for the security of the public peace and the person most responsible for maintaining peace in a particular locality is the Magistrate of the District. When on cogent grounds he is satisfied that there is no likelihood of a breach of peace arising on account of all or any of the persons against whom a preliminary order under S. 107 is drawn up there is nothing in the Code which prevents him from dropping that enquiry in whole or in part and discharge the persons con-

CRIMINAL P. C. (V of 1898), S. 119

cerned. (Koshi, C. J.) Chatha Ittaman v. State. **A I R 1953 Trav. Co. 24 : 1953 Cr L J 244.**

——Initiation of proceedings under S. 103, Travancore Cr. P. Code on complaints—Complainants and other witnesses not appearing on several hearings —Magistrate should proceed under S. 115, Tr. Cr. P. Code and terminate proceedings and discharge the persons proceeded against —He cannot acquit them under S. 244, Tr. Cr. P. C.

See ibid, S. 107. **A I R 1952 Trav. Co. 268 : 1952 Cr L J 1271.**

——Inquiry under S. 119 —Binding order found unnecessary—Person, if should be "discharged" or "acquitted".

Where under the provisions of S. 119, Cr. P. C., after an inquiry has been made as to whether an order binding a person over to keep the peace should be passed and it has been found that no such order is necessary, the proper course is to discharge the person concerned. The use of the term "acquitted" is quite inappropriate to a proceeding of this nature. (Niamatullah and Allsop, JJ.) Bhagat Raj v. Mt. Gurai Dulaiya. **A I R 1938 All 49 : 10 R A 491 : 1937 A L J 1281 : I L R (1938) All 89 : 1937 A W R 1113 : 173 I C 669.**

——Ss. 119, 438—Reference by District Magistrate in respect of order of discharge.

When a District Magistrate makes a reference in respect of an order of discharge passed by a Subordinate Magistrate, he should not permit himself to be associated with criticism by a Police Officer of the order. He should himself consider the case with greater care before he commits himself to the reference. (Davis, J. C. and Dadiba C. Mehta, A. J. C.) Emperor v. Ali Muhammad. **A I R 1936 Sind 243 : 9 R S 114 : 38 Cr L J 117 : 30 Sind L R 368 : 165 I C 950.**

——Revision.

——Under S. 436 as amended in 1923 a District Magistrate has no jurisdiction to revise the case of a person who has been called upon to give security and is discharged. 24 All. 148 held no good law; 33 Mad 85, Appr., A I R 1924 All 592, Ref (Dalal, J.) Neur Ahir v. Emperor. **113 I C 79 : 9 L R A Cr 146 : 10 A I Cr R 488 : 30 Cr L J 63 : 51 All 408 : 1929 A L J 146 : A I R 1928 All 755.**

——Validity.

Where in proceedings under S. 107 the Magistrate proceeds to enquire into the truth of the information under S. 117 (1) but the complainant and prosecution witnesses are found absent, it is proper for the Magistrate to pass an order under S. 119 discharging the person proceeded against. (Suhrawardy and Cammiade, JJ.) Assafali Saiyal v. Nasur Sarkar. **101 I C 607 : 45 C L J 211 : 31 C W N 388 : 28 Cr L J 479 : A I R 1927 Cal 343.**

CRIMINAL P. C. (V of 1898), S. 119

——Re-enquiry.

A further enquiry after discharge under **S. 119** is improper unless the order of discharge is manifestly perverse or foolish or is based on a record of evidence which was obviously incomplete. (Wazir Hasan, J. C.) Emperor v. Jagdamba Singh **11 O L J 334 : 25 Cr L J 1026 : 81 I C 802 : A I R 1924 Oudh 368.**

——Discharge on ground of non-existence of police report—Subsequent proceedings on police report of correct date.

A previous order of discharge under S. 119 of the Cr. P. C. on the ground of the non-existence of the police report, upon which the proceedings purported to be based, is no bar to subsequent proceedings being initiated upon a police report which was not the foundation of the former proceedings. (Coxe and Chatterjee, JJ.) Chandan Sahu v. Bhadai Rai. **19 I C 189 : 14 Cr L J 189 (Cal).**

——Ss. 119, 209,253, 259, 437—Discharge under S. 119—Jurisdiction of District Magistrate to direct 'further inquiry' under S. 437.

S. 437, Cr. P. C., undoubtedly applies to disposals under Ss. 253 and 259 and possibly to a disposal under S. 209 also. But the discharge under S. 119 is a different matter. The jurisdiction given by S. 437 should not be applied to cases under ch. VIII, at any rate, to cases where before making an order under S. 119, the Magistrate has called on the person, into whose conduct the inquiry is made, to establish his defence. (Miller, J.) Velu Tayi Ammal v. B. Chidambara Velu Pillai. **6 M L T 133 : 33 M 85 : 20 M L J 137 : 4 Ind Cas 1057 : 11 Cr L J 162.**

——Ss. 107, 119 and 437—Person discharged under S. 119, whether accused—Further enquiry.

See Cr. P. S. 437. **2 Cr L J 716 (Lah).**

——Person discharged under S. 119—Further inquiry under S. 437, if can be ordered.

See Cr. P. C. S. 437. **2 Cr L J 697 (Lah).**

——Ss. 436, 119—Discharge under S. 119—Power of District Magistrate to order further inquiry.

See ibid, S. 433. **2 L B R 80.**

——S. 120.

——Preliminary order not specifying date from which period mentioned in order is to commence —Expiry of period—Magistrate has still jurisdiction to pass final order.

See ibid, S. 112. **A I R 1952 Trav. Co. 433 : 1952 Cr L J 1523.**

——S. 120 (2)—When an order under S. 118 comes into effect.

An order passed under S. 118 takes effect from the date on which it is made unless the Magistrate for sufficient reason fixes a later date but never earlier to it. It does not take effect from the date on which notice to show cause under S. 112 is given. AIR 1927 Mad 542 and AIR 1937 Sind 26, Foll.; 1945 J L J 58, Disting. (Mirza and

CRIMINAL P. C. (V of 1898), S. 120

Sharma JJ.) Raghunath v. State. **1946 J L R 436 (FB).**

——Order to execute bond to keep peace for one year—Appeal from and stay of, during its pendency.

Where an accused is ordered to execute a bond with sureties for keeping peace for one year and an appeal is lodged from such order together with an application for stay of the order and the Appellate Court suspends the order until the decision of the appeal, the time from which the period of one year begins to run is the date of the order of the Appellate Court possibly after deduction of the time between the original order of the Magistrate and the order of the Appellate Court staying such order. (Hamilton, J.) Abdul Sattar v. Emperor. **A I R 1938 Oudh 195 : 1938 O W N 676 : 11 R O 7 : 39 Cr L J 831 : 176 I C 948.**

——Bond executed for keeping peace by accused —Accused committing offence under S. 323. Penal Code.

When an accused has been ordered to execute a bond with sureties for keeping peace and the bond is so executed and the accused subsequently commits an offence under S. 323, I. P. C., there is a breach of peace which entitles the Magistrate to forfeit the bond and the sureties. (Hamilton, J.) Abdul Sattar v. King-Emperor. **A I R 1938 Oudh 195 : 1938 O W N 676 : 11 R O 7 : 39 Cr L J 831 : 176 I C 948.**

No person committed to prison under S. 120 (1), can be detained there if he furnishes the security required of him after his commitment. Consequently, an order stating that he should suffer a period of imprisonment in default is illegal. (Vivian Bose, J.) In re Rangi. **A I R 1936 Nag 265 : 9 R N 185 : 38 Cr L J 388 : I L R (1937) Nag 173 : 167 I C 403.**

——Judge directing security to be furnished in appeal—Persons ordered to give security, out on bail.

In certain cases, a Judge has in appeal power to extend the period during which security is required to be furnished and thereby extend the period of imprisonment to be suffered in default, but this power should be exercised only in exceptional circumstances. Ordinarily, the period for which persons are ordered to give security, when they are out on bail, should be excluded from the period for which they are finally ordered to give security in appeal. (Davis, J. C. and Dadiba C. Mehta, A. J. C.) Emperor v. Kadu. **A I R 1936 Sind 125 : 29 S L R 353 : 9 R S 49 : 37 Cr L J 1003 : 164 I C 576.**

——Order of imprisonment under S. 120—Release on bail by Appellate Court:

Held, that the period during which the applicant was released on bail must be excluded from the

CRIMINAL P. C. (V of 1898), S. 120

period for which he was required to undergo imprisonment failing the giving of security. (Bennet, J.) Darsu v. Emperor. **A I R 1934 All 845 : 7 R A 392 : 36 Cr L J 177 : 4 A W R 76 : 57 All 264 : 152 I C 785.**

——When the accused is sentenced to 2 years of imprisonment and at the same time he is ordered to execute a bond to keep peace for 3 years from that day, the order is against the provisions of S. 120, Cr. P. C. (Pandrang Row, J.) Public Prosecutor v. Padmanabham. **1934 M W N 1362.**

——Security cannot be ordered to be effective from the date of judgment. (Bardswell, J.) Emperor v. Subbana Goundan. **1934 M W N 483 (1).**

——When suspect is in jail S. 120 applies.

A person was sentenced by a Magistrate to 12 months' rigorous imprisonment on proceedings initiated under S. 109 on 8th August, 1927; and while undergoing that sentence he was sentenced to three years' rigorous imprisonment from 21st December, 1927, on proceedings instituted under S. 110.

Held, that in view of S. 120 the person should have been required to give security from 8th August, 1928 and as according to S. 123 the maximum punishment for failure to give security was three years, the person should be sentenced to two years' rigorous imprisonment from 8th August, 1928. (Barlee, J. C. and Aston, A. J. C.) Emperor v. Fateh. **23 S L R 438 : 117 I C 777 : 1929 Cr C 335 : 30 Cr L J 849 : A I R 1929 Sind 166.**

——The period of security is to be calculated from the date of final order and from the date of preliminary order. (Wallace, J.) Taranagowd v. Emperor. **1927 M W N 185 : 106 I C 589 : 29 Cr L J 77 : A I R 1927 Mad 542.**

——Where during the time allowed to a suspect to furnish the security as required by the order passed under S. 118 of the Code, he is sentenced to imprisonment for an offence committed by him prior to the date of such order, it is not competent to the Magistrate to fix the date of the expiry of such sentence as the date for computing the period from which such security is to be furnished. (Kennedy, Rupchand Bilaram and Lobo, A. J. Cs.) Emperor v. Ahmad. **20 S L R 163 : 27 Cr L J 865 : 96 I C 113 : A I R 1926 Sind 273 (F. B.).**

——Period starts from binding over.

The period for which a person is bound over to be of good behaviour begins from the date on which he was bound over. (Pipon, J. C.) Mansur v. Emperor. **71 I C 332 : 24 Cr L J 588 (Pesh.).**

——S. 120 (1)—Person sentenced to imprisonment at the time of order for security— Period cannot run before the expiry of the sentence.

CRIMINAL P. C. (V of 1898), S. 120

The accused was released on bail, pending appeal from his conviction under S. 147, I. P. C. During this term he was awarded rigorous imprisonment for failure to give security under S. 110, Cr. P. C. and was directed to undergo his remaining sentence under S. 147, I. P. C. after the latter. Held the order was illegal. (Gokul Prasad, J.) Jhabdey v. Emperor. **22 Cr L J 95 : 59 I C 383 : L R 2 A (Cr) 36 : A I R 1920 All 286.**

——Ss. 106, 120 (1) and 123 (2) (3)—Sentence of transportation—Security to keep peace after release to be furnished within one month of date of sentence—Legality.

See Cr. P. C. S. 106. **10 Cr L J 69 (Low Bur.)**

——Ss. 120 and 123— Order for imprisonment in default of further security.

The accused was sentenced to three months' imprisonment and ordered to execute a bond with sureties to keep the peace for six months, and in default of furnishing the security, he had been further sentenced to simple imprisonment for six months to commence at the expiry of the substantive sentence. Held per majority (Irwin J Contra) that though the last portion of the Magistrate's order was not correct and was superfluous, it did not call for interference. (Fox, C. J., Irwin and Hartnoll, JJ.) King-Emperor v. Tha Hlaing. **4 L B R 205 : 7 Cr L J 472 F B.**

——S. 121.

——Ss. 121, 514—Jurisdiction of the Magistrate to forfeit bond.

In cases where security is taken and bonds are executed under S. 107 to ensure that a particular person shall keep the peace the bond cannot be forfeited on the commission of an act involving a breach of the peace beyond the jurisdiction of the Magistrate taking the bond, and no Magistrate other than the one who passed the order under S. 107 can act under S. 514 in order to effect a forfeiture. (Misra, J.) State v. Raja Ram. **A I R 1953 All 619 : 1951 A L J 476 : 1951 All W R (HC) 470 : 1951 All Cr C 113 : 1952 R D (H C) 74 : 1953 Cr L J 1392.**

——Ss. 121 and 125—"Cancel any bond".

A person who has been bound down for keeping the peace under S. 107 and has furnished security cannot be sent to jail for the unexpired period, if he has committed or attempted to commit or abetted any offence during the period. If such a case is made out, all that can be done is that the bond shall be forfeited. 28 All 629, Foll. (Sharma, J.) Ratan Lal v. State. **1953 RLW 44.**

——Ss. 121, 110—Bond for good behaviour—Reasons leading up to taking of security—Whether relevant on breach of bond.

Once a bond has been taken for good behaviour, the reasons leading up thereto are no longer relevant when there is a breach of the bond, while what amounts to a breach of the bond is laid

CRIMINAL P. C. (V of 1898), S. 121

down in S. 121, Cr. P. C., without any ambiguity. (Middleton, J. C. and Almond, A. J. C.) Ghulam Hussain v. Emperor. **A I R 1936 Pesh. 16 : 8 R Pesh 122 : 37 Cr L J 342 : 160 I C 631.**

——The mere fact that a person bound down under S. 109, Cr. P. C., is again found in suspicious circumstances without any means of livelihood or is unable to give a satisfactory explanation of himself which may justify fresh proceedings against him under S. 109, Cr. P. C., would not result in the forfeiture of first bond because that does not amount to the commission of or attempt to commit, or abetment of an offence punishable with imprisonment. (Sulaiman and Niamatullah, JJ.) Emperor v. Bahadur Singh. **A I R 1932 All 58 (1) : 1932 A L J 112 : 33 Cr L J 281 : Ind. Rul. (1932) All 197 : 54 All 335 : 136 I C 373.**

——Subsequent conviction need not be for the same kind of offence for which the person is bound over. S. 121 makes no such reservation but lays down that a breach of the bond is committed as soon as a person bound over commits any offence punishable with imprisonment. 15 P. R. 48, Diss. from. (Dalal, J.) Sheo Jangal Prasad v. Emperor. **50 All 666 : 9 A I Cr R 443 : 26 A L J 443 : 113 I C 740 : 30 Cr L J 203 : 9 L R A Cr 68 : A I R 1928 All 232.**

——For forfeiture of surety bond a person bound need not be actually convicted.

The contention that the provisions of S. 121 are not exhaustive cannot be supported. When the law definitely lays down what would constitute a breach of the bond given under an order passed under S. 118, the breach must be confined to those acts and cannot be extended to the commission of any other acts, but at the same time it is nowhere laid down in the Code that the persons giving the bond should actually be convicted before proceedings are taken against his surety. (Dalal, J.) Sheo Jangal v. Emperor. **113 I C 740 : 30 Cr L J 203 : 9 A I Cr R 443 : 50 All 666 : 9 L R A Cr 68 : 26 A L J 443 : A I R 1928 All 232.**

——Breach of bond—Forfeiture—'Commission' does not necessarily imply conviction.

The conditions under which a security bond taken under Chapter VIII, Cr. P. Code, may be forfeited are given in S. 121. In the case of a bond for good behaviour taken under the provisions of S. 110, Cr. P. Code the commission or attempt to commit, or the abetment of any offence punishable with imprisonment wherever it may be committed, is a breach of the bond. The word 'commission' in this section does not necessarily imply a conviction. It is true that the conviction is ordinarily considered necessary to establish that an offence has been committed.

At the same time there is no authority for the extreme view that the commission of an offence

cannot be, proved otherwise than by a conviction. The flight of a person accused of dacoity to the independent Afridi territory raises the strongest possible presumption of the absconder to join a band of dacoits. In such cases, a bond for good behaviour given under S. 118, Cr. P. Code, on proceedings taken under S. 110 of the same is clearly liable to forfeiture, provided that the evidence is produced to show either that the person bound committed an offence in British India prior to his absconding and during the currency of the bond, or that during the currency of the same he committed any offence during his outlawry punishable with imprisonment. (Pipon, J. C.) Mansur v. Emperor. **73 I C 332 : 24 Cr L J 588 (Pesh.).**

——Security for good behaviour—Subsequent conviction under S. 325, I. P. C.—Forfeiture of surety bonds.

Where a man was placed on security under S. 110, Cr. P. C., not merely as a receiver of stolen goods but also as being a dangerous man and was subsequently convicted under S. 325, I. P. C., held, that there was nothing in law to prevent the forfeiture of the bond of sureties. 21 I. C. 175, Expl. and Dist. (Kensington, C. J. and Rattigan, J.) Emperor v. Sher Singh. **21 P L R 1916 : 10 P R 1915 (Cr) : 29 I C 821 : A I R 1914 Lah 563 : 16 Cr L J 549.**

——Ss. 121 and 514—Forfeiture of security in separate proceeding.

If a Criminal Court, knowing that the person charged before it is under security to be of good behaviour, in sentencing that person in the case before it makes no reference to any confiscation of security and takes no step towards its confiscation, it is not competent for that court or any court in a subsequent and separate proceedings to take such steps. 18 I. C. 403 (F.B.) F. (Johnston, J.) Bega Singh v. Emperor. **6 P W R Cr 1915 : 95 P L R 1915 : 27 I C 754 : 16 Cr L J 194 : A I R 1915 Lah 387.**

——Scope of.

The provisions of the section have not been overlooked in 13 P. R. 1913 Cr. and that decision has not laid down any hard and fast rule prohibiting the forfeiture of security under certain circumstances. The head note of the decision is misleading. (Kensington and Rattigan, JJ.) Bega Singh v. Emperor. **7 P W R Cr 1914 : 62 P L R 1914 : 24 I C 573 : 15 Cr L J 485 : A I R 1914 Lah 266.**

——"Offence punishable with imprisonment"—Offence committed in Native State.

The phrase "offence punishable with imprisonment, wherever it may be committed" found in S. 121, Cr. P. Code, must cover the dishonest receipt of stolen property (S. 411, Penal Code) in a Native State; (Arthur Reid, C. J. and

Johnstone, J.) Crown v. Dewa Singh. **28 P R 1910 Cr : 199 P L R 1910 : 45 P W R 1910 Cr : 8 Ind Cas 383 : 11 Cr L J 635.**

——Grounds of forfeiture—Section exhaustive.

S. 121, Cr. P. Code, is explicit, and, so far as bonds for good behaviour are concerned, is exhaustive, though it might not be so as regards bonds for keeping the peace. A bond for good behaviour cannot be forfeited for any breach of good behaviour outside what is mentioned in the section. (Johnstone, J.) Crown v. Jalal Shah. **5 P R 1910 Cr : 169 P L R 1910 : 8 P W R 1910 Cr : 5 Ind Cas 827 : 11 Cr L J 252.**

——Surety—Police report—Rejection of surety on.

A Magistrate should not refuse to accept sureties when offered simply on an unfavourable report by the police, without giving notice to the person, who has tendered them, and giving both him and the police an opportunity of adducing evidence. A Magistrate should not reject sureties except for definite and good reasons and unnecessary difficulties should not be thrown in the way of persons ordered to give sureties for good behaviour. (Scott and Chamier, JJ.) King-Emperor v. Parmeshur. **7 O C 113 : 1 Cr L J 459.**

——Ss. 121 and 514—Construction of bond—Forfeiture.

A bond executed under the Code must be strictly construed; the error of taking the bond under S. 107 instead of under S. 110 is not cured by S. 537, Cr. P. Code, and the bond being bad, by reason of no order for such bond being executed having been passed, the offender is not liable to forfeiture. (Reid, J.) Wadhwa Singh v. Emperor. **32 P R 1903 Cr : 15 P L R 1904 : 1 Cr L J 90.**

——S. 122.

SYNOPSIS.

1. Acceptance of surety.
2. Appeal.
3. Consideration of evidence.
4. Delegation of power to enquire.
See also Note 3. Consideration of evidence.
5. Discretion of Court.
6. Enquiry on oath.
7. Grounds for rejection of surety.
8. Magistrate.
9. Police report.
See Note 3. Consideration of evidence.
10. Procedure at enquiry.
11. Recording reasons.
12. Rejection of surety previously accepted.
13. Revision.
14. Sessions Judge, powers of.

1. Acceptance of surety.

——Ss. 122, 123—Acceptance of surety.

There is a procedure laid down which is to be followed by the Magistrate in rejecting a surety.

CRIMINAL P. C. (V of 1898), S. 122 — 1. Acceptance of surety

But there is nothing to prevent him from accepting persons, with whom he is satisfied, as sureties without any sort of inquiry or examination of witnesses on oath. (Cunliffe and Henderson, JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Azizar Rahaman. **A I R 1937 Cal 233 : 41 C W N 415 : 9 R C 873 : 38 Cr L J 635 : 168 I C 716.**

2. Appeal.

Under Ss. 122, 123 and 406A, Cr. P. C., the power to reject sureties is given to the Magistrate and there is a right of appeal from an order passed by the Magistrate refusing to accept or rejecting a surety under S. 122, to the Sessions Judge. (Patterson and Guha, JJ.) Parbati Charan v. Emperor. **A I R 1934 Cal 482 : 61 Cal 588 : 149 I C 460 : 35 Cr L J 952.**

3. Consideration of evidence.

——In case under S. 110, Cr. P. C., the Magistrate cannot reject the sureties merely on the Police report unless he enquires himself or orders an inquiry by another Magistrate. (Wort, J.) Ramdhani Mahto v. Emperor. **A I R 1935 Pat 421 : 16 P L T 478 : 8 R P 224 : 2 B R 32 (1) : 36 Cr L J 1473 : 158 I C 948.**

——Sureties, if can be rejected on Police report—Rejection illegal—Transfer.

When sureties are offered, it is the duty of the Court to accept them unless it is satisfied that they are not proper persons. It should not reject them on Police report. Before refusing to accept or rejecting any surety, the Magistrate should either himself hold an enquiry on oath into the evidence of the surety or cause such enquiry to be held. (Ganga Nath, J.) Sukhai v. Emperor. **A I R 1935 All 517 : 1935 A W R 300 : 8 R A 257 : 36 Cr L J 1285 : 157 I C 1049.**

——Pleader certifying sufficiency of surety—Court, if should admit such certificate.

In criminal proceedings, the Courts should not accept the certificates given by Pleaders as to the solvency or fitness of sureties proposed by their clients as sufficient without further inquiry. (Ferrers, J. C. and Dadiba C. Menta, A. J. C.) P., a Pleader, in the matter of. **A I R 1934 Sind 142 : 7 R S 64 (2) : 35 Cr L J 1455 : 28 Sind L R 293 : 151 I C 747.**

——Ss. 122 and 498—Sureties cannot be rejected on police report.

When sureties are offered it is the duty of the Court to accept them unless it is satisfied that they are not proper persons. They should not be rejected on police report. (Ryves, J.) Gopi Khatik v. Emperor. **20 A L J 760 : 23 Cr L J 499 : L R 8 A 140 Cr : 68 I C 35 : A I R 1922 All 541.**

——Sureties—Report by police as to their fitness—Admissibility.

Where a Magistrate called for a report one from the Tahsildar and another from the Police as to the fitness of sureties in a particular case and

CRIMINAL P. C. (V of 1898), S. 122 — 3. Consideration of evidence

the Tahsildar answered in the affirmative but the Police reported in the negative and the Magistrate declined to accept the sureties held that the report by the Police was not admissible in evidence. It was the duty of the Magistrate to have taken evidence as to the basis of the report and he should have come to a decision himself. (Tudball, J.) Zorawar v. Emperor. **13 A L J 469 : 29 I C 77 : 16 Cr L J 445 : A I R 1915 All 127.**

——Rejection of surety.

The discretion given to Magistrate under S. 122 is a wide one. There must however be a judicial inquiry showing that a judicial discretion was exercised. A Magistrate's order rejecting a surety merely on the police report and without independent inquiry is bad. 27 A 293, Foll. (Piggott, J.) Bhawani Singh v. Emperor. **12 A L J 1004 : 16 Cr L J 54 : 26 I C 646 : A I R 1915 All 93.**

——Inquiry—Judicial — Importation of personal knowledge by Magistrate is not desirable. (Pratt, J. C. and Hayward, A. J. C.) Piru Abdulla v. Emperor. **7 S L R 94 : 23 I C 746 : 15 Cr L J 378 : A I R 1914 Sind 108.**

——Sureties—Sufficiency of.

Magistrates have no authority to reject sureties merely on an unfavourable report of the police. (Lindsay, A. J. C.) Jai Govind v. Emperor. **15 O C 263 : 17 I C 72 : 13 Cr L J 760.**

——Fitness of surety—Onus.

A person required to furnish security is bound to prove to the satisfaction of the Magistrate that the surety he offers is a fit person. (Pratt, J. C. and Crouch, A. J. C.) Imperator v. Allahdin. **5 S L R 87 : 11 I C 594 : 12 Cr L J 410.**

——S. 122—Chap. 8—Division B—Proceeding under—Admissible evidence.

Reports of police Inspectors or Muktyarkars are not admissible evidence in proceedings under division B or C of chapter 8 of the Code. (Hayward J. C. and Leggat, A. J. C.) Imperator v Haji Usman. **7 Ind Cas 592 : 4 S L R 18 : 11 Cr L J 497.**

——Rejection of sureties merely on police report—Legality.

An order rejecting the sureties merely on the basis of police report and without examining the sureties is bad. (Pratt Esq. and Crouch Esq.) Crown v. Kamal. **2 S L R 15 Cr : 10 Cr L J 230.**

——Police Report.

When the Magistrate bases his order on a police report, he abrogates the functions imposed on him by law and allows the decision of the case to rest with the Police. In all cases, under S. 122, it is the duty of the Magistrate to examine the sureties offered as to their fitness and to take such other evidence as the accused may call on the same point. If he asks the Police to report, it should be with a view merely of enabling them to collect and call evidence. But in every such case, his order must proceed on a consideration of the evidence, and not

CRIMINAL P. C. (V of 1898), S. 122 — 3. Consideration of evidence

of the Police report. (Pratt Esqr. and Hayward Esqr.) Imperator v. Mahro. **10 Cr L J 225 : 2 S L R 11 (Cr.)**

——Enquiry—Nature of—Procedure.

The party called on to furnish security should appear in Court with evidence of the adequacy of the security tendered, and evidence to the contrary should be tendered at the same time, or as soon afterwards as possible, if the adequacy is contested. The Tahsildar, if his evidence is necessary, should be examined, and the Magistrate should call for a report in those cases only, in which extracts from revenue records, etc., will supply the necessary information. The practice of calling in a Police Officer for a report on the character of the surety, his relationship to the principal, etc., is illegal and the Police Officer should, if his evidence is necessary, be examined as a witness.

The exclusion of immoveable property from the security to be furnished is illegal. The practice of sending a person to jail against whom an order under Ss. 110—118 has been passed, pending the receipt of the report from the Revenue and Police Officers, is illegal. Imprisonment should follow failure to furnish adequate security, and should not precede a finding that the security is inadequate. (Reid, C. J.) King-Emperor v. Kaim Khan. **18 P R 1906 Cr : 14 P L R 1907 : 5 Cr L J 148 : 5 P W R 1907 Cr.**

——Magistrate should form his independent judgment.

The Magistrate should exercise his independent judgment and should not implicitly accept the opinions expressed in police reports without considering the facts on which such opinions are based. (Ormond and Gupta, JJ.) In re Abdul Khan. **10 C W N 1027 : 4 Cr L J 169.**

The Magistrate should not reject the surety on the police report. He must himself hold an enquiry in respect thereto. (Geidt and Mookerjee JJ.) Suresh Chandra Basu v. Emperor. **3 Cr L J 468 : 3 C L J 575.**

4. Delegation of power to enquire.

See also Note 3. Consideration of evidence.

—Before rejecting any surety the Magistrate should either himself hold an enquiry on oath into the evidence of the surety or cause such enquiry to be held. (Ganganath, J.) Sukhai v. Emperor. **A I R 1935 All 517 : 1935 All W R 300 : 8 R A 257 : 157 I C 1049 : 36 Cr L J 1285.**

——Ss. 122 and 439 (Case before 1923 Amendment) —Enquiry as to sufficiency—Proper procedure.

Where the accused's security-bond was forwarded to the Tahsildar and the Sub-Inspector of Police for attestation held, that the procedure adopted was illegal and the Magistrate was directed to make the inquiry himself. (Chatterji, J.) Mithoo v. Crown. **7 P W R 1907 Cr : 57 P L R 1907 : 5 Cr L J 181.**

CRIMINAL P. C. (V of 1898), S. 122 — 4. Delegation of power to enquire

——Ss. 122 and 439—(Case before 1923 Amendment) —Security for good behaviour—Sufficiency of security—Inquiry—Procedure.

A Magistrate sent a security to the Tahsildar for inquiry as to its sufficiency. On report of the Tahsildar and the Sub-Inspector, which was to the effect that the surety was a man of property, but was objectionable on other grounds, the Magistrate rejected the security. Held, that the order was illegal. The Magistrate was directed to accept the security offered, unless he was satisfied, by personal inquiry, that it was inadequate in value. 1907 P. W. R. Cr. No. 5 Foll. (Reid, C. J.) Jawahira v. Crown. **6 P W R 1907 Cr : 56 P L R 1907 : 5 Cr L J 179.**

——A Magistrate, passing an order under S. 118 cannot delegate to another the duty of enquiring into the sufficiency of the security rendered, but such enquiry must be made by himself. (Case before 1923 Amendment). (Reid, C. J.) King-Emperor v. Kaim Khan. **5 Cr L J 148 : 1907 P L R 14 : 1907 P W R Cr 5 : 18 P R 1906 (Cr.).**

5. Discretion of Court.

——Sureties—Limitations on—Reasonable.

In imposing restrictions and limitations on sureties, Magistrates must be reasonable and must not act arbitrarily. (Shaw, J. C.) Nga Shwe Myo v. King Emperor. **(1914) 2 U B R 44 : 28 I C 998 : 16 Cr L J 422 : A I R 1914 Upp. Bur 33..**

——Sureties—Rejection of—Judicial inquiry.

Sureties offered should not be refused except after judicial inquiry by the Magistrate who made the order under S. 110; such enquiry is to be made under S. 122 of the Cr. P. Code. (Jenkins, C. J. and Teunon, J.) Hiran alias Akbar Ali Mahomed v. Emperor. **42 Cal 766 : 19 C W N 220 : 28 I C 663 : 16 Cr L J 327 : A I R 1915 Cal 744.**

——Discretion as to refusal to accept sureties how to be exercised.

S. 122 confers upon the Magistrate the power to refuse a surety and the discretion to exercise that power. This discretion is not absolute or arbitrary, inasmuch as the section requires the Magistrate to state reasons. When a power is coupled with a discretion as to its exercise, the rule is that the discretion is not that of exercising the power or not at pleasure, but only of determining whether the occasion for its exercise has arisen in the particular case. This determination can only be made on legal evidence, and the proceeding in which the Magistrate comes to his determination is a judicial proceeding. When a Magistrate bases his order on a Police report, he abrogates the functions imposed on him by law, and allows the decision of the case to rest with the Police. (Pratt Esq., and Hayward, Esq.) Imperator v. Mahro. **2 S L R 11 Cr : 10 Cr L J 225.**

——The Magistrate must exercise proper judicial discretion in arriving at any decision regarding the fitness or otherwise of the sureties offered. **(H. N.**

CRIMINAL P. C. (V of 1898), S. 122 — 5. Discretion of Court

Crouch, Esqr. and R. Knight, Esqr.) Emperor v. Miro. **9 Cr L J 247 : 1 S L R 3 (Cr.).**

——Ss. 122, 439—Question whether person is fit as surety.

The question as to whether a particular person is fit as a surety is for the Magistrate to decide. The discretion in the matter is not fettered in any way. (Geidt and Woodroffe, JJ.) In re Jalil. **8 C L J 243 : 13 C W N 80 : 4 Ind Cas 560 : 8 Cr L J 388.**

——Powers of Magistrate.

A Magistrate has no power to order that security be given by any particular person or class of person. Hence, an order prohibiting the acceptance of security from lambardars, inamkhars, and Choukidars is illegal. (Reid, C. J.) King-Emperor v. Kaim Khan. **5 Cr L J 148 : 18 P R 1906 (Cr) : 1907 P L R 14 : 1907 P W R 5.**

6. Enquiry on Oath.

——Enquiry on oath.

In inquiring into the fitness of a surety, a Magistrate can record evidence on oath in the exercise of the power and duty conferred and imposed on him by Section 122. (Knox and Aikman, JJ.) Emperor v. Ghulam Mustafa. **1 Cr L J 190 : 1904 A W N 52 : 26 All 371.**

7. Grounds for rejection of surety.

——Persons living at considerable distance from accused's residence.

Sureties offered by the accused, living at a considerable distance from his residence, are liable to be rejected on the ground that they would not be able to exercise proper control over him. (Guha and Lahiri, JJ.) Dulal Chandra Mondal v. State. **A I R 1953 Cal 238 : 1953 Cr L J 574.**

——Fitness of surety residing at a distance of 18 miles.

The mere solvency of a surety may not invariably be sufficient to ensure the good conduct of the accused any more than the mere fact of his residing at a distant place may be a sufficient ground for rejecting him as such. The sureties to be tendered should not be sureties from such a distance, as would make it unlikely that they could exercise any control over the man for whom they are willing to stand sureties. If the sureties undertake to keep the accused within the area of their observation or adopt other suitable measures for securing the supervision and control needed to keep him in good behaviour, there can be no inherent objection to their being accepted as sufficient. Sureties residing at such a distance as 18 miles from the residence of the accused, may be accepted if the person concerned undertakes to live with them in their village and the sureties concerned are otherwise suitable. 6 O. C. 199 Foll. (Kanhaiya Lal, J. C. and Dalal, A. J. C.) Emperor v. Rameshar Tewari. **9 O and A L R 526 : 10 O L J 299 : 74 I C 539 : 24 Cr L J 795 : A I R 1923 Oudh 165.**

CRIMINAL P. C. (V of 1898), S. 122 — 7. Grounds for rejection of surety

——Surety for good behaviour—Rejection of—Grounds for.

The applicant was bound over to be of good behaviour for a period of one year. He furnished two sureties, one of whom was accepted by the trying Magistrate and the other was not accepted on the ground that he had already stood surety for some other man. Held that that ground was clearly insufficient. (Kanhaiya Lal, J. C.) Ghisa v. Emperor. **73 I C 53 (1) : 24 Cr L J 517 (1) : 9 O and A L R 40 : A I R 1924 Oudh 132.**

——Rejection of surety—Previous conviction.

A Magistrate acts unreasonably in rejecting a surety merely on the ground that he had once been convicted of an offence under S. 223, I. P. C. 26 All. 189 Ref. (Richardson and Greaves, JJ.) Budhu Ahir v. Emperor. **25 C W N 140 : 62 I C 179 : 22 Cr L J 483 : A I R 1921 Cal 356.**

——Security for good behaviour—Refusal to accept—Grounds for.

The sureties offered though solvent and respectable were not accepted on the grounds that they lived at some distance from the persons bound over and were not in a position to exercise control over the persons bound over. Held, that the sureties offered having been solvent and respectable, the grounds of refusal stated were not sufficient for their non-acceptance as sureties. (Shah and Hayward, JJ.) In re Jesh Bhatha. **44 Bom 385 : 22 Bom L R 190 : 55 I C 857 : 21 Cr L J 377 : A I R 1920 Bom 292.**

——Surety—Rejection of—Grounds for.

When an accused person is called upon to produce a surety the surety must be accepted or if rejected he must be rejected upon tangible evidence recorded and considered by the Magistrate who ordered him to find security. It does not follow that a person who had once been challaned for theft was not a reliable person and it was for the surety to prove that he was of good character but it is for the Magistrate if he doubts the reliability to decide the matter upon evidence. (Knox, J.) Munshi Singh v. Emperor. **18 All L J 324 : 55 I C 733 : 21 Cr L J 365 : A I R 1920 All 170.**

——Grounds for rejecting sureties.

The failure of surety to show that he has sufficient control over the accused is not a valid ground for rejection of the surety. (Mookerjee and Sheepshanks, JJ.) Rayan Khan v. Emperor. **43 Cal 1024 : 24 C L J 51 : 20 C W N 1133 :38 I C 968 : 18 Cr L J 408 : A I R 1917 Cal 378.**

——Surety—Rejection of—Grounds.

The power of rejection of sureties conferred on Magistrates by S. 122, Cr. P. C. should not be used merely to prevent a 'Badmash' from giving security. The section recognises only one ground of rejection of the surety and the reason given by the Magistrate must be a positive reason for believing the surety to be unfit. The burden of proving the fitness of the surety is ordinarily dis-

CRIMINAL P. C. (V of 1898), S. 122 — 7. Grounds for rejection of surety

charged by the evidence of the surety himself. (Pratt, J. C. and Crouch, A. J. C.) Mohomed Ibrahim v. Emperor. **8 S L R 322 : 29 I C 111 : 16 Cr L J 479 : A I R 1914 Sind 15.**

——Surety for good behaviour—Fitness of surety—Ground for refusal—Question of fact.

There should be a valid and reasonable ground for the refusal by a Magistrate to accept a surety for good behaviour under S. 122 of the Criminal Procedure Code, depending upon the circumstances of each particular case. Where a Magistrate refused to accept as sureties the brothers of the person bound down to be of good behaviour on the ground that the person bound down was a notorious dacoit, whom according to general consensus of opinion the brothers would not be able to control, the Magistrate had a valid reason for so refusing. (Halmwood and Sharfuddin, JJ.) Asiraddi Mandal v. Emperor. **41 Cal 764 : 15 Cr L J 169 : 22 I C 745 : A I R 1914 Cal 626.**

——Improper grounds for rejecting sureties.

Unnecessary difficulties should not be thrown in the way of people required to give security. Sureties should not be rejected merely on the ground that they lived ten miles away from the person who was ordered to give sureties and were on friendly terms with him. (Chamier, J.) Bhagwan Sahai v. King-Emperor. **7 A L J 993 : 11 Cr L J 536 : 7 Ind Cas 910.**

——Rejection of surety.

If sureties who have been called up to be examined fail to do so the Magistrate can refuse to accept them. But he cannot reject the security offered by them on the ground that they failed to state in writing, as required by him, as to what their influence was over the person bound down for good behaviour. (Coxe and Ryves, JJ.) Kalu Mirza v. Emperor. **5 Ind Cas 29 : 37 Cal 91 : 11 Cr L J 23 : 14 C W N 49.**

——Sureties, fitness of.

The most that a Magistrate can reasonably demand of the sureties is that they should be respectable men, neighbours of the bad character and solvent up to the amount of the security, required. They cannot be rejected on the ground that they will not be able to influence the bad character by their example and precept. (A. Lucas and R. Knight) Crown v. Ahmed walad Datoo. **9 Cr L J 256 : 1 S L R 14 Cr.**

——Refusing relations of accused as sureties.

That the sureties offered are related to the accused is no ground for their not being accepted. Proper judicial discretion should be exercised in arriving at any decision about their fitness or otherwise. (H. N. Crouch and R. Knight) Emperor v. Miro. **9 Cr L J 247 : 1 S L R 3 Cr.**

——"Unfit".

The 'unfitness' of a surety under S. 122, is not limited to pecuniary unfitness. (Geidt and Woodroffe, JJ.) In re Jalil. **8 C L J 243 : 13 C W N 80 : 4 Ind Cas 560 : 8 Cr L J 388.**

CRIMINAL P. C. (V of 1898), S. 122 — 7. Grounds for rejection of surety

——Fitness of surety—Mere solvency.

See Cr. P. C. (1898) Ss. 112, 122. **8 Cr L J 166 (Sind).**

——Reason for non-acceptance of surety—Relationship—Duty of Magistrate.

The ground on which a Magistrate has power to refuse to accept any surety must be a valid and reasonable ground. That the sureties are related to the prisoners is not necessarily a disqualification. (Ormond and Gupta, JJ.) In re Abdul Kahn. **10 C W N 1027 : 4 Cr L J 169.**

——Refusal to accept sureties— Acting on a Police report.

A Magistrate refused to accept sureties tendered by a person bound down under S. 110, upon the following grounds, (i) that three out of four sureties were not residents of the village where the defendants lived, (ii) that none of them had sufficient moveable property, (iii) that all of them were reported to be of bad character and (iv) that three of them were relations of a person who was suspected of receiving stolen property.

Held, that the first, second and fourth grounds were not sufficient; that the third ground might be sufficient, but the Magistrate, in determining that question could not act on a report submitted by the Police; he must hold an enquiry in respect thereto. (Geidt and Mookerjee, JJ.) Suresh Chandra Basu v. Emperor. **3 C L J 575 : 3 Cr L J 468.**

——Security for good behaviour—Ground for rejection of surety.

The fact that a proposed surety has on one occasion offended against the law and been punished for an offence under the Penal Code is not of itself a sufficient ground for his rejection as a surety. (John Stanley, C. J.) Emperor v. Raghunath Singh. **1 Cr L J 359 : 26 All 189.**

8. Magistrate.

——"Magistrate" in S. 122 includes also the successor in office of a Magistrate, who is properly seized of the inquiry. (Pratt, J. C. and Crouch A. J. C.) Imperator v. Allahdin. **12 Cr L J 410 : 5 S L R 87 : 11 I C 594.**

——Enquiry into fitness of sureties—Magistrate who has to hold the enquiry.

Ryves J. (Coxe J. Contra). The Magistrate who decides the case in which security is demanded should himself hold enquiry into the fitness of the proposed sureties. (Coxe and Ryves, JJ.) Kalu Mirza v. Emperor. **5 Ind Cas 29 : 14 C W N 49 : 37 Cal 91 : 11 Cr L J 23.**

9. Police report.

See Note 3. Consideration of evidence.

10. Procedure at enquiry.

——Proceedings under— Formal record of evidence if necessary.

CRIMINAL P. C. (V of 1898), S. 122—10. Procedure at enquiry

Though proceedings under S. 122, Cr. P. Code, are judicial proceedings as defined in S. 4 (1) (m), Cr. P. Code, and S. 5 of the Oaths Act (X of 1873), and are therefore proceedings governed by the regular rules as to admitted facts and legal evidence under the Indian Evidence Act or other law relating to evidence, nevertheless, they are not proceedings for which any formal procedure has been provided beyond the formal record in writing of the reasons for refusing to accept sureties offered under ch. VIII, Cr. P. Code. It is not necessary formally to record the evidence. (Hayward, J. C. and Leggat, A. J. C.) Imperator v. Haji Usman. **4 S L R 18 : 7 Ind Cas 592 : 11 Cr L J 497.**

11. Recording reasons.

——Ss. 122 and 118— Rejection of sureties— Procedure to be followed.

The Magistrate, in rejecting sureties under S. 122, Cr. P. Code, has to record his reasons for doing so. From this it follows that the reasons must have been carefully considered and tested which is best done by bringing them to the notice of the persons who are refused as sureties, and by their having an opportunity of controverting them. (Stephen and Carnduff, JJ.) Ela Buksh v. Emperor. **14 C W N 709 : 6 Ind Cas 124 : 11 Cr L J 243.**

12. Rejection of surety previously accepted.

——Fresh surety for good behaviour, after having once accepted the surety offered.

See Cr. P. C., S. 110. **2 Cr L J 278 (Lah).**

13. Revision.

——Interference by High Court.

A Magistrate's discretion under S. 122 is a wide one and the High Court should not lightly interfere with any reasonable exercise of it. (Piggott, J.) Bairagi v. Emperor. **26 I C 175 : 15 Cr L J 727 : A I R 1914 All 487.**

——Discretion of magistrate— Use of knowledge of generally bad reputation of inhabitants of village to reject an inhabitant's offer to stand surety— Revision.

See ibid, S. 112. **11 Cr L J 198 (Sind).**

14. Sessions Judge, powers of.

——Ss. 122, 113, 406-A—Magistrate's power to reject sureties—Sessions Judge acting under S. 123—Powers of.

The clear implication of the provisions of the law in Ss. 122, 123 and 406-A, Cr. P. C. taken together is that the Magistrate is vested with the authority either to accept or reject sureties demandable under S. 110 of the Code; it is not open to the Sessions Judge, exercising jurisdiction under S. 123 of the Code, to accept or reject the sureties offered. The course open to the Sessions Judge, under the law as it stands, is to send the proceedings back to the Magistrate, with his decision on the merits of the case, for taking action under S. 122 of the Code. (Patterson and Guha, JJ.) Par-

CRIMINAL P. C. (V of 1898), S. 122 — 14. Sessions Judge, powers of

bati Charan v. Emperor. **A I R 1934 Cal 482 :6 R C 593 : 35 Cr L J 952 : 61 Cal 588 : 149 I C 460.**

——Scope.

S. 122 prescribes the procedure for testing the fitness of the sureties by the Magistrate. There is no provision in the Code regulating the testing by a Sessions Judge and the fact that the order accepting or rejecting a surety is an appealable order indicates the Sessions Court has no such power (Adami and Scroope, JJ.) Emperor v. Beraik Narendra Nath Singh. **9 Pat 741 : 1930 Cr C 425 : 125 I C 156 : 31 Cr L J 802 : A I R 1930 Pat 217.**

——S. 123.

See also, Cr. P. Code, S. 122.

SYNOPSIS.

1. Appeal.
See also Cr. P. Code, S. 406.
2. Contents of order.
3. Detention pending orders on reference—Sub-Sec. (2).
4. Discretion of Court on reference.
5. 'Does not give security'.
6. Imprisonment in default of security.
7. Jurisdiction of Magistrate on reference.
8. Kind of imprisonment.
9. Nature of proceedings on reference.
10. Notice.
11. Order of imprisonment on reference—Commencement of.
12. Power of Additional Sessions Judge.
13. Power to order retrial.
14. Scope.
15. Subsequent sentence of imprisonment—Commencement of.
See also Cr. P. C., S. 397.
16. Term of imprisonment.

1. Appeal.

See also Cr. P. C., S. 406.

——Ss. 123, 106—Imprisonment in default of furnishing security under S. 123—Appeal— Order under S. 106 should not be passed with non-appealable sentence.

There is no general provision in the Cr. P. C., for allowing an appeal from an order of imprisonment in default of furnishing security passed under S. 123, Cr. P. C., and perhaps it was not contemplated that an order to furnish security under S. 106, Cr. P. C., would be coupled with a non-appealable sentence. It should rarely, if ever, be necessary to do this, and it should certainly not be done until it has been ascertained that the accused is able to furnish security. (Mosley, J.) Emperor v. Nga Tun Lu. **A I R 1935 Rang 363 : 13 Rang 287 : 8 R Rang 239 : 36 Cr L J 1510 : 158 I C 1115.**

——Ss. 123, 110—Security for more than a year— Procedure.

The provisions of S. 123 are clear on the point that if security is not furnished and security for a period of more than a year has been ordered, the

CRIMINAL P. C. (V of 1898), S. 123 — 1. Appeal

case must be referred to the Sessions Judge, who alone is empowered to pass orders under that section for the imprisonment of the person who has failed to furnish security and when such a case has been referred to the Sessions Judge under S. 123 it is hardly necessary that the case should go in appeal to the District Magistrate. (Abdul Qadir, J.) Qamardin v. Emperor. **66 P L R 1922 : 67 I C 726 : 23 Cr L J 454 : A I R 1922 Lah 475 (2).**

——Ss. 123, 406—Order for Security—Appeal.

A person ordered to give security by a Magistrate is entitled to appeal to the District Magistrate, notwithstanding that the proceedings may have been laid before the Sessions Judge under S. 123. But the right of appeal is gone as soon as the Sessions Judge has passed orders on the case under sub-s. (3) of S. 123. The Sessions Judge, on receiving a record under sub-s. (2) of s. 123, should at once give notice to the person ordered to give security of the date on which the case will be taken up. If before the last mentioned date the person ordered to give security does not object to the case being taken up by the Sessions Judge on the ground that he has appealed, or the Sessions Judge does not become aware that an appeal has been filed in the Court of the District Magistrate, the Sessions Judge should proceed to dispose of the case. But if on or before the date fixed by him the Sessions Judge is informed or becomes aware that an appeal has been filed, he should stay his hand until the appeal has been disposed of. Where the person ordered to give security presents an appeal to the Sessions Judge the Sessions Judge should return the memorandum of appeal to him informing him that the appeal should be presented to the District Magistrate. (Chamier. J. C.) Puttu alias Ghulam Husain v. King-Emperor. **13 O C 354 : 8 Ind Cas 879.**

2. Contents of order.

——Ss. 123, sub-s. (3), 367 and 424—Contents of order.

It is doubtful whether ss. 367, 424, Cr. P. Code, govern orders under S. 123, sub-s. (3). Even if they do not, the order under S. 123 (3), should show that the case of each individual prisoner had been considered by the Judge. Each prisoner has a right to have his case considered on its own merits, and the order should show that this has not been lost sight of even if it is not necessary that it should contain all the details asked for by S. 367. (Coxe and Ryves, JJ.) Kalu Mirza v. Emperor. **17 C 91 : 14 C W N 49 : 5 Ind Cas 29 : 11 Cr L J 23.**

3. Detention pending orders on reference— Sub-s. (2).

—S. 123 (2)—Question of reference to Sessions Judge arises only when there is default in giving security.

CRIMINAL P. C. (V of 1898), S. 123 — 3. Detention pending orders on reference — Sub-s. (2)

Sub-section (2) of S. 123 has no application where there is no failure in compliance with the Magistrate's order requiring security. If the direction regarding furnishing of security for three years is immediately complied with, there is no default and the question of detention of the defaulter in prison for any period cannot arise. No reference to the Sessions Judge in that case can at all be called for. (Passey, J.) Gurdial Singh v. State. **A I R 1953 Pepsu 25 : 1953 Cr L J 407.**

——Santhal Parganas Justice (Amendment) Regulation, 1940—Regulation whether affects S. 123.

There is nothing in the Regulation which affects S. 123, Cr. P. C., and therefore, the final reference to the Sessions Judge in Santhal Parganas is valid. (Beevor, J.) Baso Rai v. Emperor. **A I R 1948 Pat 84 : 229 I C 474 : 48 Cr L J 409 : 13 B R 381.**

——In a case submitted to Sessions Judge, order of imprisonment in default is to be passed by the Sessions Judge.

Under S. 118 the Magistrate is empowered to make an order requiring the accused to execute a bond with or without sureties to maintain good behaviour for such period as he thinks fit to fix. If the period for which security is demanded exceeds one year, then the Magistrate is required by S. 123 (2) to submit the record to the Sessions Judge, and it is for the Sessions Judge after examining the record to pass such orders as he thinks fit. In such cases the order fixing the term of imprisonment which the accused is to undergo on default of furnishing security is to be fixed by the Sessions Judge and not by the trial Magistrate. (Tek Chand, J.) Mangal Singh v. Crown. **103 I C 193 : 28 Cr L J 657 : A I R 1928 Lah 189.**

——S. 123 (x).

Until case is referred for final orders, proceedings in Magistrate's Court are not terminated so as to end the sureties' liability. (Daniels, J.) Mustaqimuddin v. Emperor. **92 I C 889 : 24 A L J 327 : 27 Cr L J 377 : 7 L R A Cr 78 : 7 L R A Cr 152 : A I R 1926 All 297.**

——Ss. 123 and 118— Imprisonment in default of security.

When a Magistrate makes an order requiring an accused to give security for over a year, the Magistrate is not himself empowered to pass an order for imprisonment in default of the security being given. All he is empowered to do is, to issue a warrant, directing that the accused be detained in prison, pending the orders of the Sessions Judge. It is for the Sessions Judge to pass an order under S. 123 but in the final order the period for which the accused is to be imprisoned in default of giving security should always coincide with the period for which security is demanded. Held that in the present case the Sessions Judge had confirmed an order of the Magistrate which was itself wrong. The case was not before the Sessions Judge for

CRIMINAL P. C. (V of 1898), S. 123 — 3. Detention pending orders on reference—Sub-s. (2)

confirmation of the order of the Magistrate. It was before him for the purpose of his passing an order under sub-s. (3) of S. 123. (Charles Fox, C. J.) King-Emperor v. Myat Aung. **4 L B R 135 : 7 Cr L J 412.**

4. Discretion of Court on reference.

——Finding—Sessions Judge must come to an independent finding.

Where a case is submitted to a Sessions Judge under S. 123 (2), the Sessions Judge is bound to examine the evidence himself and come to an independent finding as to the propriety of the order demanding security, the amount and the period for which it is to be demanded. 15 P. R. 1900 (Cr.) and 25 All. 275, Rel. Where he merely confirms the order passed by the trial Magistrate without notice to the petitioner and without examining the record, it is irregular and must be set aside. 35 Bom. 271 and A. I. R. 1925 Oudh 517, Rel. on. (Tek Chand, J.) Mangal Singh v. Crown. **103 I C 193 : 28 Cr L J 657 : A I R 1928 Lah 189.**

——S. 123 (3)—Security—Imprisonment.

A Magistrate cannot award imprisonment for default of furnishing security. The matter should be referred to the Sessions Judge who should not refuse to entertain the reference on the ground of delay. (Shadi Lal, C. J.) Sunder v. Emperor. **57 I C 287 (Lah) : 21 Cr L J 623 : A I R 1920 Lah 283.**

——S. 123 (3)—Scope of.

The words of S. 123 (3) of the Cr. P. C. are wide enough to give discretionary power to a Sessions Judge or High Court, to deal with the case on merits and pass any necessary order. (Chandavarkar and Heaton, JJ.) Emperor v. Amir Bala. **35 B 271 : 13 Bom L R 203 : 10 I C 802 : 12 Cr L J 257.**

——S. 123 (2) and (3)—Demand for security for period exceeding one year —Security not furnished —Procedure under S. 123 (2)—Duty of Sessions Judge in disposing of reference.

Where security for a period exceeding one year is demanded and is not furnished, then the Magistrate has, under S. 123 (2), to commit the person, from whom security has been demanded, to prison and send the proceedings to the Sessions Judge for disposal as he thinks fit. There is nothing in the section to support the procedure of Sessions Judge merely confirming the sentence imposed by the Magistrate in such a case.

In a reference under S. 123, it is the duty of the Sessions Judge to consider the evidence and pass an order after doing so. He should not, as a matter of course and without regard to the evidence, send the person to prison.

Where, on failure to furnish security by a person called upon by the District Magistrate to execute a bond under S. 110 for three years, the Magistrate sentenced him to three years' rigorous imprisonment subject to confirmation by the Sessions Judge,

CRIMINAL P. C. (V of 1898), S. 123 — 4. Discretion of Court on reference

and where the latter simply confirmed the District Magistrate's sentence, held, that the Magistrate's procedure was not according to S. 123, sub-ss. (2) and (3), Cr. P. C., and that he had no authority to pass the order which he did. (Scott-Smith, J.) Nanku alias Muhammad Din v. The Crown. **29 P R 1910 Cr : 196 P L R 1910 : 8 Ind Cas 385 : 11 Cr L J 637.**

——Expiry of first bond—Order for fresh security within a week—Validity.

A was under a bond for good behaviour for 3 years. Within a week of the expiry of the first bond new proceedings were instituted and order for fresh bond was made under S. 123 (3). There was no evidence showing any incident after the expiry of the first bond.

Held that it was not fair to run a man as badmash before he had an opportunity of showing that he was willing to adopt an honest livelihood.

(2) That evidence prior to expiry of first bond was inadmissible. (Order quashed.) (Aikman, J.) Ranjit v. Emperor. **A W N 1906, 30 : 3 A L J 29 : 1 M L T 58 : 28 A 306 : 3 Cr L J 96.**

——Discretion of Court on reference—Powers of Sessions Judge.

A Sessions Judge, to whom a case is referred under S. 123 (2) of the Cr. P. Code, may impose conditions under sub-section (3), regarding the character of the sureties who may be accepted. He has a very wide discretion, and is not even bound by the term for which security has been demanded by the Magistrate. But the conditions imposed must be reasonable and such as are capable of being fulfilled. In such a case, the Sessions Judge should himself pass orders regarding the acceptance of securities tendered and cannot subsequently cancel an order accepting a security. He has a general power of accepting or rejecting sureties for good cause shown, provided that the power is exercised with due and judicial care and discretion. The primary object of ch. VIII of the Cr. P. Code, is that persons of ill-repute should be placed on security as a preventive against possible hazard to the community, and not that they should be imprisoned as a punishment or as a safeguard. (Thirkell White, C. J. and Birks, J.) Nga Po Nyun v. King-Emperor. **2 L B R 76.**

5. 'Does not give security'.

——Combined order of security and imprisonment in default—Validity.

Where an order requires a person to furnish security and includes in the same order a direction that in default he should suffer rigorous imprisonment for two years, the order directing that the person should suffer rigorous imprisonment, is invalid; but that does not affect the order calling upon him to furnish security: A. I. R. 1927 Mad. 976 and A. I. R. 1936 Nag. 265, Foll. (Beevor, J.) Baso Rai v. Emperor **A I R 1948 Pat 84 : 229 I C 474 : 48 Cr L J 409 : 13 B R 381.**

CRIMINAL P. C. (V of 1898), S. 123 — 5. "Does not give security"

——Alternative imprisonment.

An order under S. 123 directing that petitioner should, in default of giving security, suffer simple imprisonment for one year, cannot be upheld. (Wallace, J.) Ibraya Rowthan v. King-Emperor. **39 M L T 658 : 26 M L W 537 : 1927 M W N 788 : 28 Cr L J 1034 : 106 I C 218 : 9 A I Cr R 186 : A I R 1927 Mad 976 : 53 M L J 762.**

6. Imprisonment in default of security.

——Committal to prison—Whether imprisonment.

The committal of a person to prison under S. 123, Cr. P. Code, amounts to a sentence of imprisonment. (Bardswell, J.) In re Mala Chengadu. **A I R 1934 Mad 457 : 1934 M W N 486 : 40 M L W 63 : 7 R M 48 (1) : 35 Cr L J 1153 : 67 M L J 300 : 57 Mad 928 : 150 I C 796.**

——Accused in jail—Accused asked to furnish security already in prison—Further orders should be postponed till expiry of imprisonment being undergone.

Where the accused ordered to furnish security is already undergoing imprisonment an order of imprisonment on his failure to furnish security will be premature. In such a case no further order is required except on the point whether the imprisonment on failure to furnish security should be rigorous or simple, and on any questions that may arise as to the security tendered. Proper course would be to adjourn the case till after the sentence the accused is undergoing has expired, for further orders. (Fawcett and Madgavkar, JJ.) Emperor v. Nana Ramiji. **28 Bom L R 1038 : 27 Cr L J 1163 : 97 I C 747 : A I R 1926 Bom 545.**

——Order for imprisonment for failure to furnish security passed after expiry of security period—Legality.

Where a person was ordered on 17-12-1907 to execute a bond with sureties to be of good behaviour for a period of one year, it was held that an order for imprisonment passed on 24-2-1909 for failure to find sureties was illegal as the period of one year for which security was to be furnished had already expired. (Munro and Abdur Rahim, JJ.) In re Muthu Gownden. **6 M L T 308 : 4 Ind Cas 36 : 10 Cr L J 481.**

——Ss. 106, 120 (1), 123 (2) (3)—Sentence of transportation—Security to keep peace after release to be furnished within one month of sentence—Legality.

See Cr. P. C., 106. **10 Cr L J 69 (Low. Bur.).**

——Order for imprisonment in default of furnishing security.

See Cr. P. C. Ss. 120, 123. **7 Cr L J 472 (Low. Bur.).**

7. Jurisdiction of Magistrate after reference.

——Reference under S. 123—Sessions Judge, if can decide who are fit persons to give security.

There is nothing in S. 123, Cr. P. C., which specifically confers a power on the Sessions Judge, while hearing an appeal to decide who are fit persons to give the security demanded. (Cunliffe and Henderson, JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Azizar Rahaman. **A I R 1937 Cal 233 : 41 C W N 415 : 9 R C 873 : 38 Cr L J 635 : 168 I C 716.**

——Sessions Court has no power to test sureties.

A Sessions Court before which proceedings are laid under S. 123 (2) has neither any duty cast upon it nor any power to test sureties offered by the person bound down. It is for the Magistrate to deal with the sureties under S. 122. 5 S. L. R. 87, not Foll. (Adami and Scroope, JJ.) Emperor v. Narendra Nath Singh. **1930 Cr C 425 : 125 I C 156 : 31 Cr L J 802 : 9 Pat 741 : A I R 1930 Pat 217.**

——Seisin of case.

——After a Magistrate has submitted the record to Sessions Court under S. 123 (2) the seisin of the case is thenceforward with that Court. (Tek Chand, J.) Mangal Singh v. Emperor. **103 I C 193 : 28 Cr L J 657 : A I R 1928 Lah 189.**

——S. 123 and S. 498—Order made under S. 118—Power of Sessions Judge to grant bail.

Bail can be allowed by the Sessions Judge in the case of a person against whom an order has been made under section 118 as the order is liable to be revised by a Sessions Judge under the provisions of section 123, sub-section (2) (C. C. Ghose and Cuming, JJ.) Ahmed Ali v. Emperor. **50 Cal 969 : 37 C L J 592 : 75 I C 537 : 24 Cr L J 953 : A I R 1923 Cal 723.**

——Ss. 123 and 122—Order passed by Sessions Court—Jurisdiction of Magistrate to decide fitness of surety.

A Magistrate has no jurisdiction to decide on the fitness of a surety on a bond ordered by the Sessions Court. (Pratt, J. C. and Crouch, A. J. C.) Imperator v. Allahdino **5 S L R 87 : 11 I C 594 : 12 Cr L J 410.**

——S. 123 (3) — Scope.

Sub-S. (3) of S. 123 contemplates a decision by the Court on the merits of the order demanding security for good behaviour. It does not authorize the Sessions Judge to consider the sufficiency of the security offered. (Caspersz and Chitty, JJ.) Gagan Chandra Das Chowdhury v. Emperor. **12 C W N 463 : 7 Cr L J 323.**

8. Kind of imprisonment.

——Imprisonment under S. 123 (6)—Order, how to be made.

Under S. 123 (6), Cr. P. C., imprisonment can be either rigorous or simple and ordinarily the order with respect to this should be made along with the order under S. 123 (1), Cr. P. C., for commitment to prison. (Vivian Bose, J.) In re Rangi. **A I R 1936 Nag 265 : 9 R N 185 : 38 Cr L J 388 : I L R (1937) Nag 173 : 167 I C 403.**

——Failure to give Security—Solitary Confinement.

A Magistrate has no power to order solitary con-

CRIMINAL P. C. (V of 1898), S. 123 — 8. Kind of imprisonment

finement while acting under S. 123 Cr. P. C., (Chamier, J.) Kundan v. Emperor. **36 All 495 : 12 A L J 823 : 25 I C 528 : 15 Cr L J 616 : A I R 1914 All 422.**

——Ss. 106 and 123 (5)—Imprisonment in default of security to be simple.

See ibid, S. 106. **2 L B R 53.**

9. Nature of proceedings on reference.

——Ss. 123, 118—Sessions Judge confirming order of Magistrate under S. 123 (3)—Order, if overrides Magistrate's order.

When an order has been passed by a Sessions Judge under S. 123 (3), Cr. P. C., the order that is then in force is the order of the Sessions Judge and not the order of the Magistrate. Though it is often the case that Sessions Judges in passing orders under S. 123 (3), Cr. P. C., confirm, for reasons given, the Magistrate's order and the use of the word "confirm" is misleading, nevertheless the order passed under S. 123 (3), Cr. P. C., must be deemed to be the order of the Sessions Judge, and the order in operation, overriding the order of the Magistrate. (Davis, J. C. and Dadiba C. Mehta, A. J. C.) Emperor v. Lashkaro **A I R 1937 Sind 203 : 31 Sind L R 409 : 10 R S 71 : 38 Cr L J 961 : 170 I C 676.**

——Proceedings, nature.

Proceedings under S. 123 are proceedings not in confirmation but for orders, and the Sessions Judge has to pass a definite order binding over and not confirm an order passed by a Magistrate. (Dalal, J. C.) Bahadur v. Emperor. **85 I C 944 : 26 Cr L J 656 : A I R 1925 Oudh 517**

——Procedure—Sessions Judge need not write full judgment in case under S. 123 (2).

S. 123 (2) seems to contemplate more of administrative than judicial functions to be exercised by the Sessions Judge when a case is submitted to him under the section. He should, however, hear both the accused persons and the Crown, and see at any rate whether there are substantial grounds for demanding security. It is not, however, necessary to deal with such matter as if it were an appeal nor it is necessary to write a judgment as if it were an appeal. (Kennedy, J. C. and Aston, A. J. C. Allahdad v. The Crown. **A I R 1924 Sind 120 : 83 I C 883 : 17 S L R 160 : 26 Cr L J 179.**

——Ss. 110, 123 and 362— Reference under S. 123 (2)—Applicability of S. 362.

See ibid, S. 110. **10 Cr L J 122 (Cal).**

10. Notice.

——Proceedings under—Notice to persons affected—Necessity of.

Proceedings under S. 123, Cr. P. C., should not be taken without notice to the persons affected by the order. (James and Dhavle, JJ.) Sitaram Ahir v. Emperor. **A I R 1933 Pat 276 (1) : 14 P L T 299 : 34 Cr L J 813 : 6 R P 2 (1) : 12 Pat 770 : 144 I C 447.**

——Security for good behaviour—Appeal to District Magistrate—Sessions Judge, submission of

CRIMINAL P. C. (V of 1898), S. 123 — 10. Notice

proceedings to —Procedure to be adopted by Sessions Judge.

Even when the proceedings are laid before the Sessions Judge under S. 123, a person ordered to give security for good behaviour by a Magistrate is entitled to appeal to the District Magistrate But the right of appeal is lost as soon as the Sessions Judge has passed orders on the case under sub-s. (3) of S. 123.

On receiving a record under sub-s. (2) of s. 123, the Sessions Judge should at once give notice to the person ordered to give security of the date on which the case will be taken up. If before the last mentioned date the person ordered to give security does not object to the case being taken up by the Sessions Judge on the ground that he has appealed, or the Sessions Judge does not become aware that an appeal has been filed in the Court of the District Magistrate, the Sessions Judge should proceed to dispose of the case. If, on the other hand, the Sessions Judge is informed or becomes aware that an appeal has been filed, he should stay his hand until the appeal has been disposed of. (Chamier, J. C.) Pattu alias Ghulam Husain v. King-Emperor. **13 O C 354 : 8 Ind Cas 879 : 11 Cr L J 725.**

——S. 123, sub-s. (2)—Disposal of reference by Sessions Judge without notice to accused.

When a reference is made under S. 123 (2) by the District Magistrate to the Sessions Judge, the latter is bound to fix a day for the hearing and to give reasonable notice to the accused and hear him either personally or by counsel, if he wished to be heard. Disposal of the reference without giving any notice to the accused is illegal. (Herbert Thirkell, White C. J.) Nga Hnaung v. King-Emperor. **3 L B R 43 : 2 Cr L J 736.**

11. Order of imprisonment on reference—Commencement of.

——Imprisonment for failure to give security—Term, whether commences from Magistrate's order or Sessions Judge's order.

Where a person is ordered by a Magistrate to be detained in prison pending the orders of the Sessions Judge under S. 123 of the Cr. P. C., such person must be considered as a person undergoing a sentence of imprisonment and not merely as an under-trial prisoner detained in custody. Therefore, if the Sessions Judge orders him to be imprisoned for failure to give security, the period of imprisonment should be taken to commence from the date of the Magistrate's order and not from the date of the Sessions Judge's order. (Raza, J.) Emperor v. Balak. **A I R 1931 Oudh 387 : 8 O W N 888 : Ind Rul (1931) Oudh 358 : 32 Cr L J 1186 : 7 Luck 219 : 134 I C 406.**

——Starting point — Period should ordinarily begin from date or Magistrate's order.

Where a Sessions Judge to whom a case was submitted under S. 123 (2) directed that the period

CRIMINAL P. C. (V of 1898), S. 123 — 11. Order of imprisonment on reference—Commencement of

for which the accused were to be bound should begin from the date of his order and not from the Magistrate's order.

Held, that the order in fact amounted to an enhancement of sentence, and that it was undesirable that the Court should do that even if it has the power without special reasons. (Kennedy, J. C. and Aston, A. J. C.) Allahdad v. The Crown **83 I C 883 : 17 S L R 160 : 26 Cr L J 179 :A I R 1924 Sind 120.**

12. Power of Additional Sessions Judge.

——S. 123 (2 and 3)—Power of Additional Sessions Judge to deal with a reference.

An Additional Sessions Judge has no power to deal with a reference under S. 123, sub-s. (2) and to pass order under sub-s. (3). The fact that in the Code of 1898 the Legislature has substituted the words "Sessions Judge" for the words "Court of Session" seems to make it clear that it was the intention to limit the power of dealing with references under the section to the Sessions Judge. (White, C. J.) King-Emperor v. Nga Ba Le. **2 L B R 16.**

13. Power to order retrial.

——S. 123 (2)—Re-trial—Powers of Sessions Judge.

A Sessions Judge can order a re-trial of proceedings under Chap. VIII, Criminal P. C., by directing the Magistrate who had disposed of the proceedings to issue a fresh order under S. 112, Criminal P. C. (Lobo C. J. and Thadani, J.) Emperor v. Ali Mohammad Saleh. **A I R 1945 Sind 55 : I L R (1944) Kar 440 : 18 R S 42 : 219 I C 273 : 46 Cr L J 553.**

——S. 123 (3), scope of.

Section 123 (3), Cr. P. C., is intended to meet a situation such as where irregularities have been caused which can be remedied by the re-summoning and re-cross-examination of certain prosecution witnesses and the summoning and examination of certain defence witnesses. (Lobo and Weston, JJ.) Emperor v. Rasul Bux. **A I R 1942 Sind 122 : 15 R S 136 : I L R (1942) Kar 252 : 44 Cr L J 367 : 205 I C 309.**

——Section 350, Cr. P. C., does not apply to a case when the Sessions Judge acts under S. 123 (3), Cr. P. C. (Lobo and Weston, JJ). Emperor v. Rasul Bux **A I R 1942 Sind 122 : I L R (1942) Kar 252 : 44 Cr L J 367 : 15 R S 136 : 205 I C 309.**

——In a submission under S. 123, Cr. P. C., the Sessions Judge has no jurisdiction to direct the Magistrate to pass a fresh order under S. 112, Cr. P. C., and to try the case de novo after complying with the provisions of S. 112. (Rupchand and Mehta, A. J. Cs.) Emperor v. Nim. **A I R 1932 Sind 88 : 26 S L R 200 : Ind Rul (1932) Sind 144 : 33 Cr L J 898 : 139 I C 783.**

——Re-hearing.

——S. 123 (3) does not empower Sessions Judge to order the re-hearing of a case, though the Judge can ask for further information or evidence. The

CRIMINAL P. C. (V of 1898), S. 123 — 13. Power to order retrial

Sessions Judge can consider the evidence on record and pass such orders as he thinks fit on the evidence without requiring further evidence. (Newbould and B. B. Ghose, JJ.) Narayan Singh v. Emperor. **81 I C 936 : 25 Cr L J 1112 : A I R 1925 Cal 191.**

14. Scope.

——Ss. 110, 118 and 123—Order under— Validity—Applicability of Art. 22, Constitution of India.

See ibid, S. 110. **A I R 1953 All 753 : 1953 Cr L J 1759.**

——Object.

Object of Chapter VIII is partially served even when an accused is on bail for a long time. (Kennedy, J. C. and Aston, A. J. C.) Allah Dad v. The Crown. **83 I C 883 : 17 S L R 160 : 26 Cr L J 179 : A I R 1924 Sind 120.**

——Measure.

The provisions of Chapter VIII are not intended to punish but to prevent crime and it is not permissible to limit the security or the amount of security to such description that it is perfectly impossible for the accused to furnish them, thus rendering it certain that they will be committed to jail. Demanding security having a certain pecuniary status is not unreasonable. (Kennedy, J. C. and Aston, A. J. C.) Allah Dad v. The Crown. **83 I C 883 : 17 S L R 160 : 26 Cr L J 179 : A I R 1924 Sind 120.**

——Order under Punjab Restriction of Habitual Offenders Act, whether requires confirmation of Sessions Judge.

An order of restriction for a period exceeding one year passed by the Magistrate under the Act does not require confirmation by the Sessions Judge. There is nothing in the Punjab Restriction of Habitual Offenders Act (5 of 1918) which makes the provisions of S. 123 Cr. P. C., applicable to proceedings under the Act. S. 8 (1) of the Act merely empowers a Sessions Judge in a case referred under S. 123 of the Code, to substitute an order of restriction for one requiring the accused to furnish security. (Shadi Lal, C. J.) Emperor v. Suhela. **1 Lah 614 : 59 I C 412 : 22 Cr L J 108 : 17 P L R 1921 : 5 P W R 1921 (Cr.) : A I R 1921 Lah 380.**

15. Subsequent sentence of imprisonment— Commencement of.

See also Cr. P. Code, S. 397.

——Under S. 397, Proviso 2 an order directing the substantive sentences of imprisonment to take effect on the expiry of the periods of imprisonment imposed under S. 123, Cr. P. C., is illegal. (Burn, J.) In re Kora Vathan. **197 I C 867 : (1941) 2 M L J 694 : 1941 M W N 1031 : 14 R M 404 : 43 Cr L J 303.**

——Ss. 123 (1), 120 (1), 118—S. 123 (1), scope of—Suspected person in prison when order under S. 118 is passed—Proper order to be passed—Period of security, when to commence.

Section 123 (1), Cr. P. C. does not contemplate, that when a suspected person was in prison when

CRIMINAL P. C. (V of 1898), S. 123—15. Subsequent sentence of imprisonment—Commencement of

the order under S. 118, Cr. P. C. against him is passed, he should be released from prison on the expiration of the sentence in order that he might find his sureties. He can, if it is possible for him to do so, furnish security while he is in prison undergoing his sentence of imprisonment: and he can, if he cannot furnish security before the expiration of his sentence, furnish security on the expiration of that sentence or at any time during the period for which he is committed to prison, in default, and his sureties will be accepted or rejected according to the provisions of S. 122, Cr. P. C.

Consequently, where the suspected person is already undergoing imprisonment at the time an order under S. 118 has to be passed, the proper order is to direct that the period for which the suspect is required to give security shall commence from the date of the expiration of the sentence of imprisonment he is then undergoing. An order detaining him in prison for a certain period on failure to furnish security is not sufficient. (Davis, J. C. and Dadiba C. Mehta, A. J. C.) Emperor v. Hussein Allahadino. **A I R 1937 Sind 204 : 10 R S 86 : 38 Cr L J 1014 : 31 Sind L R 412 : 171 I C 61.**

——Ss. 123, 397—Penal Code (Act XLV of 1860), S. 64—Order for detention under S. 123— Subsequent conviction for previous offence—Sentence under subsequent conviction, whether runs from expiry of order of detention—'Sentence', meaning of.

The word "sentence" in S. 397, Cr. P. C. and its provisos includes an order of committal or detention in prison under S. 123 of that Code; therefore, where a person who is sentenced to imprisonment in default of furnishing security under S. 123, Cr. P. C., is subsequently convicted of an offence committed prior to the order under S. 123 and sentenced to a fine or imprisonment in default, the period of imprisonment in default must run from the expiry of the order of detention passed under S. 123 (Baguley, J.) Emperor v. Nane. **A I R 1932 Rang 50 : 9 Rang 612 : 33 Cr L J 174 : Ind Rul (1932) Rang 52 : 135 I C 644.**

——Ss. 123, 397, proviso—"Sentence", whether includes order of detention under S. 123.

The word "sentence" in S. 397, Cr. P. C. and its proviso includes an order of committal to, or detention in prison within the meaning of S. 123 of the Code. (Otter, Das and Page, JJ.) In re Nga Pye. **A I R 1931 Rang 127 : 32 Cr L J 714 : Ind Rul (1931) Rang 133 : 9 Rang 110 : 131 I C 501 (FB).**

——Ss. 123 and 397—Failure to furnish Security—Imprisonment—Nature of sentence— Subsequent sentence for an offence—How to take effect.

An order detaining a person who has failed to furnish security under Chapter VIII, Cr. P. C. is not a sentence of imprisonment and therefore S. 397 does not authorise a magistrate to direct that a subsequent sentence for an offence should take effect on the expiry of the previous detention. (Kennedy, J. C. and Madgoankar, A. J. C.) Sukhal

CRIMINAL P. C. (V of 1898), S. 123—15. Subsequent sentence of imprisonment—Commencement of

Singh v. Emperor...**15 S L R 205 : 66 I C 191 : 23 Cr L J 255 : A I R 1921 Sind 96.**

——Ss .123 and 397—Sentence of imprisonment for not furnishing security.

Imprisonment under S. 123 on failure to furnish security for good behaviour is not a 'sentence of imprisonment" as required by S. 397 of the Code. Term of imprisonment under S. 397 cannot be made to commence on the expiry of the imprisonment under S. 123. (Chamier, C. J. and Jwala Prasad, J.) Markandar Genda v. Emperor. **1 P L J 212 : 1917 P H C C 32 : 2 P L W 369 : 36 I C 496 : 17 Cr L J 528 : A I R 1916 Pat 182.**

——Ss. 123 and 397— Imprisonment— Sentence in continuation.

A Magistrate is not competent to impose a sentence of imprisonment to take effect in continuation of a period which the accused is undergoing in default of furnishing security. 27 M. 525 Ref. (Ayling, J.) Gandella Ramudu In re. **(1914) M W N 509 : 27 I C 201 : 16 Cr L J 137 : A I R 1915 Mad 587.**

——Ss. 123 and 397—Imprisonment in default of security.

A person committed to prison under S. 123 is not under a sentence of imprisonment within S. 397, (37 B, 178 F) (Crouch and Boyd, A. J. Cs.) Emperor v. Ghulam Ali. **7 S L R 203 : 25 I C 344 : 15 Cr L J 592 : A I R 1914 Sind 22.**

——Ss. 123 and 397— Accused in detention— Default of giving security—Subsequent sentence of imprisonment for substantive offence—Commencement of punishment.

A person in prison under S. 123 (1) cannot be said to be undergoing a sentence of imprisonment and hence, where such a man is sentenced to imprisonment for substantive offence, the sentence will begin to run from the date of the order and not from the expiry of the order of the detention for default in furnishing security. 14 P. R. 1895 : 31 M 515 Foll. 30 A. 334 dist. (Batten, A. J. C.) Emperor v. Lekria. **8 N L R 20 : 13 Cr L J 189 : 13 I C 1005.**

——Ss. 123, 397—Detention under—Subsequent sentence of imprisonment for substantive offence—Latter sentence to run concurrently—Imprisonment for substantive offence, when should commence.

A person in prison, under S. 123, is not "undergoing a sentence of imprisonment" within the meaning of S. 397. If such a man so committed or detained is convicted and sentenced to imprisonment for a substantive offence, the sentence should run concurrently with the period of detention imposed under S. 123. (Lucas and Crouch, J. Cs.) Emperor v. Pandhi Walad Bakas. **4 Ind Cas 603 : 11 Cr L J 15 : 3 S L R 114 Cr.**

——Ss. 123 and 397— Imprisonment under S. 123—Subsequent sentence for offence under S. 176, I. P. C.

CRIMINAL P. C. (V of 1898), S. 123—15. Subsequent sentence of imprisonment—Commencement of ...

A person committed to prison under S. 123, Cr. P. Code, is not undergoing a sentence of imprisonment. It is not for the commission of any offence that he is committed to prison under S. 123 and S. 397 therefore does not apply. The sentence of imprisonment for the offence under S. 176 Penal Code should be ordered to commence from the date of the order. (Sankaran Nair, J.) In re Joghi Kannigan. **4 M L T 223 : 8 Cr L J 402 : 31 M 515.**

——Failure to give security—Sentence

The words "committed to prison", used in S. 123 (1), are equivalent to a sentence of imprisonment, and do not merely mean committed to custody. The words, "be detained in prison", in sub-s. 2 seem necessarily to mean that the imprisonment which the party is already undergoing shall be continued. A person failing to give security for his good behaviour is liable to imprisonment, and in a case to which S. 123 (2) applies the imprisonment takes effect pending the order of the Sessions Judge from the day, on which the warrant of the Magistrate directing detention in prison has been executed. Where a person failing to give security was convicted for another offence it was held that the former sentence for failure to give security should be carried out first. (Stanley, C. J. Knox, Banerji, Aikman, and Richards, JJ.) King-Emperor v. Tula Khan. **5 A L J 318 : 30 A 334 : A W N 1908, 133 : 7 Cr L J 427 : 4 M L T 41 (FB).**

——Imprisonment for failure to give security—Subsequent conviction — Commencement for sentence.

Where a person, who was committed to prison under S. 123, Cr. P. Code, for failure to give security to be of good behaviour, was sentenced to imprisonment on conviction of an offence under S. 225 B, I. P. C.

Held that the term of imprisonment could not be deferred but must commence with effect from the date on which it was passed. (Russell and Aston, JJ.) Emperor v. Durga Bahirav. **6 Bom L R 1098 : 1 Cr L J 1114.**

——Ss. 123, 397—Committal to prison for failure to give security.

When a person is committed to prison under Section 123, for failure to give security to be of good behaviour he is not undergoing a sentence of imprisonment within the meaning of section 397. (Benson and Russell, JJ.) Emperor v. Muthukomaran. **1 Cr L J 1090 : 27 Mad 525.**

——Ss. 123, 396, 397—Imprisonment in default of security, not punishment for offence.

Imprisonment in default of security, not being a sentence of imprisonment within the meaning of Ss. 396 and 397 is not a punishment for an offence. A sentence of imprisonment for a substantive offence must commence at once, and cannot be postponed to take effect at the expiration of the sentence of imprisonment which the convicted person is, at the date of the conviction, undergoing in default of giving security for good behaviour. (Tirkell White, C. J., Fox and Birks, JJ.) King-Emperor v. Nga Po Thin. **2 L B R 72.**

CRIMINAL P. C. (V of 1898), S. 123—15. Subsequent sentence of imprisonment—Commencement of ...

16. Term of imprisonment.

——Order under S. 106.

Where the accused is found guilty of disorderly and riotous behaviour, the order should be 'in default the accused should undergo simple imprisonment for one year or until such date within that year as the required security be furnished'. (Owen Beasley, C. J. and Bardswell, J.) District Magistrate of Coimbatore v. Dasappa Naicken. **1933 M W N 548.**

——Imprisonment.

According to S. 123 a person who is ordered to furnish security for good behaviour but fails to do so shall be detained in prison for the period for which security was demanded. The order of imprisonment for a shorter period is, therefore, bad in law. (Zafar Ali, J.) Emperor v. Khushi Muhammad. **123 I C 835 : 1930 Cr C 1 : 31 Cr L J 583 : A I R 1930 Lah 49.**

——Detention.

It is by no means clear that an order directing on accused's failure to produce the required sureties, that the accused be detained in prison for a period to be specified hereafter is a legal order. (Kennedy, J. C.) Allah Ditto v. Emperor. **87 I C 961 : 19 S L R 101 : 26 Cr L J 1041 : A I R 1925 Sind 321.**

——Bond executed after the date of security.

Where a bond is executed after the date on which the period of security commences, it should state the date on which it expires. (Shaw, J. C.) Emperor v. Nga Po Sin. **4 Bur L T 270 : 13 I C 398 : 13 Cr L J 62.**

——Security for good behaviour—Imprisonment in default.

See Cr. P. Code (Act V of 1898) Ss. 109, 110, 123. **9 Cr L J 350 (Mysore).**

——S. 123A (U. P.)

——Scope—Has the section been adapted by R. 28 Adaptation of Laws Order, 1950 to bring it in accord with constitution—Does that Rule help in determining validity of the section.

See Adaptation of Laws Order (1950), R. 28. **A I R 1950 All 562 : 52 Cr L J 1282.**

——Scope.

Is the section ultra vires of U.P. Legislature in view of S. 18 (3), Indian Independence Order. See Indian Independence Order (1947) (10 and 11 Geo VI Ch. 30), S. 18 (3). **A I R 1950 All 562 : 52 Cr L J 1282.**

——Section 123A if void as being inconsistent with Art. 22 (5) — Constitution of India, Arts. 13 (1) and 22 (5).

Per Raghubar Dayal J.—Article 22 (5) provides for the furnishing of grounds for arrest to the

CRIMINAL P. C. (V of 1898), S. 123A (U. P.)

person who is detained under any law providing for preventive detention and does not provide that such law should have a provision to that effect. If grounds are not furnished to a person detained under S. 123A within a reasonable time, that may lead to his detention being held illegal, but should not make the detention illegal from the beginning or the law providing for such detention illegal. Hence S. 123A cannot be said to be bad as being inconsistent with Art. 22 (5).

Per P. L. Bhargava J. —Provisions of S. 123A are inconsistent with Art. 22 (5) in so far as they make no provision for affording any opportunity to the person detained for making a representation against the order. Consequently they became void under Art. 13 (1) of the Constitution. (Raghubar Dayal and P. L. Bhargava, JJ.) Harpal Singh v. State. **A I R 1950 All 562 : 52 Cr L J 1282 : I L R (1952) 1 All 8.**

——Section is ultra vires of U. P. Legislature — Government of India Act (1935), Sch. VII, List II, item 1.

Per Raghubar Dayal J.- Section 123A, Cr. P. C., cannot be held to provide for preventive detention for reasons connected with the maintenance of public order within the meaning of Sch. VII, List II, item 1, Government of India Act. It is, therefore, ultra vires of the U. P. Legislature even if it be considered to be a law for preventive detention.

The mere fact that imprisonment under S. 123A, relates back, in cases where security was demanded under S. 3 (3), U. P. Act (IV of 1947), to the initial order under S. 3 (1) (d) and (f) which order is passed in order to prevent a person from acting in any manner prejudicial to public safety or the maintenance of public order, will not make the detention under S. 123A, preventive detention for the purposes of maintenance of public order. Failure to furnish security which is primarily responsible for the imprisonment under S. 123A, is not directly connected with the question of the maintenance of public order: (Raghubar Dayal and P. L. Bhargava JJ.) Harpal Singh v. State. **A I R 1950 All 562 : 52 Cr L J 1282 : I L R (1952) 1 All 8.**

——Validity — Detention under — Legality — Constitution of India, Arts. 13 (1), 21 and 22 (1), (2) and (4), Cr. P. Code (1898), S. 491—Public Safety— Preventive Detention (Extension of Duration) Order, 1950.

Per Raghubar Dayal J.— Though it is possible to argue that S. 123A, Cr. P. C., provides for furnishing the grounds for the arrest of the person concerned it does not give the person right to consult or be defended by a legal practitioner of his choice as contemplated by Art. 22 (1) of the Constitution. Moreover, the authority of the Magistrate contemplated in Art. 22 (2) of the Constitution is of the Court of a Magistrate and not of a Magistrate acting in any other capacity.

CRIMINAL P. C. (V of 1898), S. 123A (U. P.)

Orders under S. 123A are passed by a District Magistrate not as a Magistrate but as a persona designata exercising powers under U. P. Act IV (4) of 1947 as a delegate of the Provincial Government under that Act. Consequently detention of a person under S. 123A, Cr. P. C., would be illegal as being in contravention of Arts. 21 and 22 of the Constitution.

Per P. L. Bhargava J.— The provisions of S. 123A being inconsistent with the provisions of Art. 22, Cls. (1) and (2) of the Constitution became void under Art. 13 (1) of the Constitution when the Constitution came into force on the midnight of 25th January 1950. The Preventive Detention (Extension of Duration) Order, 1950, made by the President on 26th January 1950, could not save the provisions of S. 123A from becoming void. The President's Order was made with special reference to sub-cl. (a) of Cl. (4) of Art. 22 of the Constitution and has reference to preventive detention only.

Per Raghubar Dayal and P. L. Bhargava JJ.— Even if S. 123A, Cr. P. Code, be considered to be a provision for preventive detention for the maintenance of public order it would be void with respect to its providing for detention in excess of three months by reason of Art. 13 (1) read with Art. 22 (4) of the Constitution of India inasmuch as S. 123A does not provide for any Advisory Board as contemplated by Art. 22 (4) (a) of the Constitution.

Consequently S. 123A became void with respect to its authorising detention for over three months on the midnight of 25th/26th January 1950, when the Constitution came into force. The Preventive Detention (Extension of Duration) Order, 1950, passed by the President under Art. 22 (7) read with Art. 373 after assumption of the office at 10-15 a.m. on 26th January 1950 could not validate those provisions. (Raghubar Dayal and P. L. Bhargava, JJ.) Harpal Singh v. State. **AIR 1950 All 562 : 52 Cr L J 1282 : I L R (1952) 1 All 8.**

——S. 123A (U. P. Amendment)—Scope— Section does not deal with preventive detention.

Section 123A, Cr. P. Code, is not a law for preventive detention. There is nothing in the section to suggest that the person who is ordered to be committed to custody was so committed in order to prevent him from doing something. Preventive detention must mean detention for the sake of preventing a person from doing something which the Legislature does not want him to do, irrespective of the fact whether the doing of such thing amounts to an offence or not.

Even though a person committed to prison under S. 123A is not undergoing imprisonment for having committed an offence, his undergoing this imprisonment amounts to punishment.

The enactments to which S. 123A would have application are not mentioned in the section, and

CRIMINAL P. C. (V of 1898), S. 123A (U. P.)

it cannot really be said as to which particular enactments it can have application at any time.

There is no justification for interpreting the nature of the orders under S. 123A by reading it with the provisions of U. P. Act IV of 1947. Section 123A is to be interpreted on its own provisions. The very fact that S. 123A is expressed in such general and wide terms which can make it applicable to all types of facts which can answer the conditions laid down in S. 123A shows that the Legislature did not intend it to be in operation with respect to the orders under S. 3 (3), U. P. Act IV (4) of 1947. If the Legislature had so intended the proper place for it would have been in U. P. Act IV (4) of 1947.

Even if the provisions of S. 123A be read along with the provisions of U. P. Act IV (4) of 1947 it cannot be said that these provisions relate to preventive detention.

It is incorrect to say that the imprisonment ordered under S. 123A amounts to preventive detention because it is ordered by an authority other than the Court. The essence of preventive detention may be that detention is ordered by an executive authority, but it does not follow that every detention ordered by an executive authority amounts to preventive detention. It is true that the conception of preventive detention does not include detention ordered judicially by a Court of law. (Raghubar Dayal and P. L. Bhargava, JJ.) Harpal Singh v. State. **A I R 1950 All 562 : 52 Cr L J 1282 : I L R (1952) 1 All 8.**

——S. 123A (U. P.) as amended by U. P. Act 46 of 1948 —Failure to furnish security —Detention in jail—Order under S. 3 (3), U. P. Maintenance of Public Order (Temporary) Act (4 of 1947) illegal on ground of it having been made against a person not within jurisdiction of Magistrate—Legality of detention in jail for failure to furnish the security.

See U. P. Maintenance of Public Order (Temporary) Act (IV of 1947), S. 3. **A I R 1950 All 500 : 51 Cr L J 1342.**

——S. 124.

——Ss. 124, 125 and 126—Security for good behaviour—Order of Deputy Magistrate accepting security for good behaviour passed without notice to parties cancelling—Cancellation of order by Deputy Commissioner—Procedure.

The applicant was directed by a Deputy Magistrate to furnish two securities, for good behaviour. The securities offered were accepted by the Deputy Magistrate. Somehow, the matter came before the Deputy Commissioner, who, on the ground that the securities were not sufficient, cancelled the order and ordered issue of warrants for the applicant's arrest. Held, that the order of the Deputy Commissioner was inconsistent with the spirit of s. 125, read with ss. 124 and 126, and was

CRIMINAL P. C. (V of 1898), S. 124

illegal. If he was dissatisfied with his subordinate's inquiry as to the insufficiency of the security, he should have held such inquiry as he thought necessary, after notice to the parties concerned, and reported the matter to the Court of the Judicial Commissioner. The law gave him no power to deal with it himself. (Mr. Wells) Mahabir v. King-Emperor. **8 O C 245 : 2 Cr L J 507.**

——S. 125.

SYNOPSIS.

1. Cancellation of surety bond.
2. Jurisdiction of High Court.
3. Nature of District Magistrate's jurisdiction.
4. Power to alter terms of bond.
5. Power to demand fresh security.
6. Power to remand.
7. Right to be heard.
8. Sufficient reasons for cancellation of bond.

See also Note 3. Nature of District Magistrate's jurisdiction.

1. Cancellation of surety bond.

——Security to keep the peace— Cancellation of the surety bond—Power of District magistrate to send accused to jail.

Under S. 125, a District Magistrate may cancel a bond given by an accused for keeping peace but he is not competent to cancel the bond of the surety and to send the accused so bound to jail. (Tudball, J.) Fakhar Uddin Khan v. King-Emperor. **8 A L J 658 : 12 Cr L J 480 (2) : 33 All 624 : 12 Ind Cas 88.**

2. Jurisdiction of High Court.

——Ss. 125, 435 and 438—Revision—High Court — Concurrent power—Practice.

Where the High Court has concurrent revisional powers with the Sessions Court and the District Magistrate, the aggrieved party should in the first instance seek his remedy in the subordinate court. The revisional powers of a Sessions Judge or of a District Magistrate are not in any way limited by S. 125 of the Code. (Jwala Prasad and Imam, JJ.) Bipin Bihary v. Emperor. **3 Pat LJ 302 : 4 Pat L W 327 : 45 I C 397 : 19 Cr L J 589 : A I R 1918 Pat 588.**

——Ss. 125, 107, 439—District Magistrate not moved under S. 125—Refusal of the High Court to interfere.

The High Court will not interfere in revision with an order under S. 107 calling upon certain persons to furnish security, to keep peace, passed by a first class Magistrate, unless the District Magistrate has been moved under S. 125 to cancel the security bonds. (Knox, J.) Emperor v. Abdur Rahim. **A W N 1905, 143 : 2 Cr L J 335.**

CRIMINAL P. C. (V of 1898), S. 125

3. Nature of District Magistrate's jurisdiction.

——District Magistrate — Cannot act as an appellate Court.

An application under S. 125 is not an appeal and does not give power to the District Magistrate to review an order passed by a Deputy Magistrate on the ground that it was improperly passed. (35 A. 103; A. I. R. 1917 All 428 and A. I. R. 1919 All 205 Ref.) If he on such evidence as may be laid before him, finds that the danger of a breach of the peace no longer exists he may set aside the bonds on this ground. (Daniels, J.) Ram Din v. Naujadak Singh. **71 I C 668 : 24 Cr L J 204 : A I R 1923 All 484 (1).**

——District Magistrate cannot act as an appellate Court.

The District Magistrate can cancel a bond for keeping the peace and to be of good behaviour under S. 125 on the only ground that something has supervened since the date of the first court's order which satisfies him that there is no longer any necessity for keeping the accused person under bond. The District Magistrate has no authority to use S. 125 as if he were sitting as a Court of appeal. If the order of the first Court is not maintainable in his opinion on the evidence presented, he cannot pass an order under S. 125: he should refer the case to the High Court on its revisional side. (Lindsay, J.) Nizamuddin Khan v. Md Ziaul Nabi. **44 All 614 : 20 A L J 521 : 67 I C 350 : 23 Cr L J 398 : A I R 1922 All 191.**

——District Magistrate—Powers of.

The parties to this case were ordered to furnish security for good behaviour. An application was made to the Dt. Magistrate who cancelled the order; Held, that the District Magistrate could only consider the appliction as one for revision and could only recommend the cancellation of the order to the High Court. (Rafique, J.) Shankar Lal v. Emperor. **41 All 651 : 17 A L J 830 : 1 U P L R (H. C.) 125 : 51 I C 473 : 20 Cr L J 489 : A I R 1919 All 205.**

——Ss. 125, 438 and 439 — Security to keep the peace— Dt. Magistrate—High Court—Powers of.

A Magistrate of the first class ordered certain persons to execute a bond to keep the peace but the Sessions Judge on revision was of opinion that the applicants should not have been bound over. He made a reference to the High Court. Held, that the order was passed by a Magistrate subordinate to the Dt. Magistrate and the record should under S. 125 of the Cr. P. C., be laid before the Magistrate to deal with the matter. Where a code gives a particular court jurisdiction to act in certain matters it is that court which should be applied to and not the High Court. (Knox, J.) Lalji v. Emperor. **40 All 140 : 16 A L J 39 : 43 I C 604 : 19 Cr L J 188 : A I R 1918 All 343.**

CRIMINAL P. C. (V of 1898), S. 125 — 3. Nature of District Magistrate's jurisdiction

——Ss. 125 and 439—Scope of Procedure.

S. 125 does not give a right of appeal against an order directing security to be given to keep the peace. The accused is however entitled under this section to ask the Dt. Magistrate by petition to cancel the bond. Such an application should not be dismissed without giving the applicant or his pleader an opportunity of being heard. If it is dismissed by the Magistrate without giving reasonable facility to the person to represent his case, the order is liable to be set aside in revision. (Richards, C. J. and Banerjee, J.) Sita Ram v. Emperor. **39 All 466 : 15 A L J 469 : 39 I C 998 : 18 Cr L J 630 : A I R 1917 All 428.**

——Ss. 125 and 107 — Security to keep peace — Order of First Class Magistrate—Appeal.

An order of the First Class Magistrate ordering a person to keep the peace is not appealable to the Dt. Magistrate who can, if he thinks the order improper, only submit the case to the High Court for exercise of its revisional jurisdiction. The cancellation of the bonds is contemplated by S. 125 only on the ground of their being no longer necessary. (Tudball, J.) Banarsi Dass v. Partab Singh. **35 All 103 : 11 A L J 16 : 18 I C 351 : 14 Cr L J 63.**

——Ss. 125 and 476—Proceedings under —Nature of.

The District Magistrate proceeding under S. 125 cancelled the bail bond taken against a person in the proceedings under S. 107. He further ordered under S. 476 the prosecution of the person at whose instigation the proceedings under S. 107 were initiated in respect of certain rent receipts filed by him there on the ground that they were forged.

Held that the rent receipts did not come up before the District Magistrate in any judicial proceeding and therefore his order on that ground must be set aside. (Caspersz and Ryves, JJ.) Daya Nath Thakur v. Emperor. **14 C W N 306 : 37 C 72 : 5 Ind Cas 555 : 11 Cr L J 147.**

——Cancellation of bond—Grounds for—32 Cal 948 : 2 Cr. L. J. 550 (Cal), Overruled.

A District Magistrate has power under S. 125 of the Cr. P. Code to direct the cancellation of a bond to keep the peace executed on an order by a subordinate Magistrate, for any sufficient reason. He is not restricted to grounds which may have arisen subsequent to the execution of the bond and which may render the continuance of the bond unnecessary; he may cancel the bond on the ground that it should never have been required. 32 Cal. 946: 2 Cr L J 550 (Cal), Overruled. (Francis Maclean. C. J., Ghose, Rampini, Geidt, and Holmwood. JJ.) Nabu Sardar v. Emperor. **4 C L J 428 : 11 C W N 25 : 1 Cr L J 399 : 1 M L T 368 : 34 C 1 (F.B.).**

——Power to cancel a bond—District's Magistrate's power.

An order for cancelling a bond cannot be made before it has been executed. The jurisdiction con-

CRIMINAL P. C. (V of 1898), S. 125 — 3. Nature of District Magistrate's jurisdiction

ferred by s. 125 is not an appellate or revisional, but an original, jurisdiction. If after a bond has been executed, and it appears that, by reason of the circumstances subsequent to the date of the execution of the bond, the continuance of the latter is no longer necessary, the District Magistrate may cancel it. Jurisdiction of the District Magistrate commences, after the execution and not before the execution of the bond. Therefore, while a District Magistrate may, in a case of an executed bond, hold, for sufficient reasons, that it is no longer necessary and accordingly cancel it, he has no power to declare that it was never necessary. If he considers that the bond should not be executed in pursuance of the orders of the Magistrate, he should make a reference to the High Court under S. 438. (Pargiter and Woodroffe, JJ.) Barpa Chandra Dey v. Janmejoy Dutt. **32 C 948 : 9 C W N 860 : 2 Cr L J 550.**

(Overruled in 34 Cal 1 : 4 Cr L J 399)

——Ss. 125, 107 and 118.

District Magistrate can cancel bond on the ground of Lower Court acting on insufficient evidence. (White, C. J., and Sankaran Nair and Tyabji, JJ.) Mare Gowd v. Emperor. **37 Mad 125 : (1913) M W N 715 : 14 M L T 328 : 25 M L J 459 : 21 I C 146 : A I R 1914 Mad 613 : 14 Cr L J 546 (F. B.)**

——Ss. 125, 406—Order to execute a bond for keeping the peace—District Magistrate, if can cancel the bond.

The terms of S. 125, are sufficiently wide to cover a case where the District Magistrate finds that the materials before the Subordinate Magistrate were not sufficient to justify an order for taking security. S. 406 gives an appeal to the District Magistrate from an order to furnish security for good behaviour while S. 125 relates to orders for keeping the peace as well as to those from which S. 406 allows an appeal (Drake Brockman, J. C.) Emperor v. Dalli. **11 N L R 98 : 29 I C 827 : 16 Cr L J 555 (a) : A I R 1915 Nag 113.**

——Powers of District Magistrate— Not an appellate jurisdiction—Reference to High Court, in the absence of appeal to District Magistrate.

The jurisdiction of a District Magistrate under S. 125 Cr. P. C. is neither appellate nor revisional and its power is merely confined to examining the record to satisfy himself whether it was any longer necessary to keep the parties under the bond. The act is not a judicial act which he is called upon to exercise; even before proceedings are submitted to him, a reference can be made to the High Court as to the propriety of the proceedings. (Dalal, A. J. C). Emperor v. Balwant Singh. **73 I C 504 : 24 Cr L J 616 : 9 O and A L R 344 : A I R 1924 Oudh 241.**

——Ss. 125 and 107— District Magistrate is not an appellate authority.

CRIMINAL P. C. (V of 1898), S. 125 — 3. Nature of District Magistrate's jurisdiction

S. 125 does not confer any appellate or revisional powers on a District Magistrate but confers an original jurisdiction for binding down persons to keep the peace. A person so bound down has to apply by way of revision to the Sessions Judge and has no remedy by way of appeal to the District Magistrate. 32 C. 948 Foll. (Lindsay, J. C.) Sheo Singh v. Emperor. **1 O L J 541 : 26 I C 169 : 15 Cr L J 721 : A I R 1914 Oudh 305.**

——Deputy Commissioner cancelling order of Deputy Magistrate accepting security for good behaviour on ground of insufficiency—Propriety—Procedure.

See Cr. P. Code, Ss. 124, 125 and 126. **2 Cr L J 507 (Oudh).**

——Ss. 125 and 107— District Magistrate can discharge security and cancel bond.

Though no appeal lies from an order under Section 107 the District Magistrate can order the discharge of the appellants from the necessity of giving security for their future behaviour, setting aside the order of the lower court, in his executive capacity as well as cancel the bond for keeping peace or for good behaviour. (Adami, J.) Monmohan Dass v. Babu Lall. **73 I C 515 : 24 Cr L J 627 : A I R 1922 Pat 420.**

——District Magistrate— No jurisdiction to quash proceedings.

Under S. 125, Cr. P. Code the District Magistrate or the Deputy Commissioner has jurisdiction to cancel the bond ordered to be executed by a Sub-Divisional Magistrate under S. 107 of the Code. But as his jurisdiction is executive and neither appellate nor revisional he cannot vacate the order passed by the latter as ultra vires and quash the proceedings. In such a case he ought to refer it to the High Court. The High Court has power to set aside his order as being without jurisdiction, when the District Magistrate sets aside the order under S. 107 as ultra vires and does not merely order the cancellation of the bond. (Adami, J.) Durga Singh v. Amar Dayal Singh. **3 Pat L T 103 : 66 I C 425 : 23 Cr L J 281 : A I R 1922 Pat 334.**

——Ss. 125, 439 —District Magistrate's power under S. 125.

The power conferred on a District Magistrate by S. 125 is not limited to cases in which the District Magistrate finds that a bond is no longer necessary but extends to those in which the District Magistrate thinks that bond ought not to have been required. The District Magistrate is therefore not strictly limited to action prescribed for revision though the applicant is not entitled to an appeal. The District Magistrate has full discretion to consider the evidence or not and can set aside the order of security on the merits. (Reid, J.) Audittia Nand v. Crown. **12 P W R 1908 Cr : 7 Cr L J 348.**

CRIMINAL P. C. (V of 1898), S. 125

4. Power to alter terms of bond.

——District Magistrate's power to modify or alter a bond for keeping the peace—His power to cancel.

A District Magistrate can cancel at any time a bond under S. 107, Cr. P. C., for keeping the peace or leave the bond alone; he cannot alter or modify it. He can however under sections 406 and 423 alter a bond for good behaviour. (Hallifax, A. J. C.) Baines v. Emperor. **6 N L J 274 : 23 Cr L J 394 : 67 I C 346 : A I R 1922 Nag 180.**

5. Power to demand fresh security.

——Ss. 110, 122 and 125— District Magistrate cannot order fresh security after the Subordinate Court has accepted security furnished.

See Cr. P. C., S. 110. **2 Cr L J 278 (Lah).**

6. Power to remand.

——Ss. 125 and 428—Nature of proceedings—Remand by Appellate Court.

A proceeding under S. 124 of the Cr. P. Code is neither appellate nor revisional. S. 428 of the Code dealing with remand has no application to an order under S. 125. Where a District Magistrate finds that an order directing the furnishing of security is irregular he should set it aside. He has no jurisdiction to remand the case to the Magistrate for further enquiry. (Jwala Prasad, J.) Nasiban v. Emperor. **49 I C 781 : 20 Cr L J 221 : A I R 1919 Pat 171.**

7. Right to be heard.

——Cancellation of bond—Right of audience.

A District Magistrate dealing with an application under S. 125 of the Cr. P. Code, is exercising neither appellate nor revisional jurisdiction and it is not incumbent upon him to hear the muktear of the petitioner before disposing of the application. (Jwala Prasad, J,) Khetrabasi Sahu v. Emperor. **44 I C 38 : 19 Cr L J 246 : A I R 1918 Pat 183.**

——District Magistrate— Giving date for hearing but dismissing petition without hearing petitioner —Legality of order.

An order of dismissal of a petition for the cancellation of a bond under S. 125 of the Cr. P. C., by the District Magistrate without hearing the petitioner after having given a date for his appearance is not a proper order and is liable to be set aside. (Shah Din, J.) Mehr. Baksh v. Emperor. **53 P L R 1914 : 22 I C 495 : 15 Cr L J 143 : A I R 1914 Lah 73.**

8. Sufficient reasons for cancellation of bond.

See also Note 3. Nature of District Magistrate's jurisdiction.

——S. 126.

——Deputy commissioner cancelling order of Deputy Magistrate accepting security for good behaviour on ground of insufficiency—Propriety—Procedure.

See Cr. P. C. Ss. 124, 125 and 126. **2 Cr L J 507 (Oudh).**

CRIMINAL P. C. (V of 1898)

——S. 127.

——Procession.

A police officer is justified in issuing an order to a procession to go back when there is an apprehension of a serious disturbance of peace. (Blacker, J.) Sikandar Khan v. Emperor. **42 P L R 477.**

——Penal Code (Act XLV of 1860), S. 151—Assembly to exercise lawful rights in peaceful manners—Others determined to attack and cause riot—Duty of Police— Order commanding peaceful assembly to disperse, legality of—Disobedience of order, whether offence.

In order that a Police Officer may lawfully command an assembly to disperse in the exercise of his powers under S. 127, Cr. P. C., the assembly must either be an unlawful assembly or must be one likely to cause a disturbance of the breach of the peace. Whether an assembly is likely to cause a disturbance of the public peace has to be judged from its own acts and behaviour. A peaceful and lawful procession cannot be regarded as likely to cause a breach of the peace within the meaning of the section merely because some other body of persons are bent upon attacking them and causing a riot. It is the duty of the Police in such cases to use sufficient force to prevent the riot and not to disperse those who exercise their legal rights.

In the absence of the requisite conditions contained in S. 127, Cr. P. C., a command to disperse under the section would not be lawful and disobedience cannot be punished under S. 151, I.P.C. Although the Police Officer's opinion is relevant and may be of great weight, it is impossible to hold that the Criminal Courts have no jurisdiction to determine the legality of the command. (Niyogi, A. J. C.) Yeshwant v. Emperor. **A I R 1933 Nag 277 : Ind Rul (1933) Nag 215 : 34 Cr L J 705 : 144 I C 232.**

——Ss. 127 to 132—Per Madgavkar J.—With regard to the introduction of martial law it is settled law that firstly a state of war and armed rebellion or insurrection must exist and not merely a state of riot which could be put down with the aid of the military and other citizens. Secondly, neither the military nor the citizens can refuse or impose conditions on such aid. Thirdly the necessity must be proved not merely of recourse to the military, but also of the impossibility of functioning of the ordinary civil laws and the necessity of their abolition for the time being and the Courts have power to go into the question whether such necessity existed. Fourthly it is only when the existence of war, whether against foreigners or rebels, and necessity are established, that the jurisdiction of the Courts ceases. Fifthly, the powers exercised by the military commonly but incorrectly known as "Martial Law" in fact are no law at all and would be, if the fact of necessity for a war is not established, illegal and therefore,

CRIMINAL P. C. (V of 1898), S. 127

need acts of indemnity, if they are not to be questioned.

An officer of the Government has no right, because of a certain number of evil-doers who break the peace, to declare war against every other person in a large area as a rebel, abolish at one stroke the ordinary laws and tribunals and place the military in possession free to deal and to punish as they will and restore tranquillity so called through terror. It is only when practically the entire population of a certain area is so widely and so deeply disaffected and so armed that it is able to enforce its own law; and the King's law and writ do not run that an armed rebellion or insurrection as distinguished from riot can be said to exist and necessity to arise.

The military have no right to refuse to aid the civil authorities unless the ordinary laws and tribunals are abolished. It is the right of the civil authorities to demand and the duty of the military to furnish all the armed aid that may be necessary in the suppression of disorders and breaches of peace and this duty is cast only not upon the military but also upon all loyal citizens and subjects of the Crown actively, to aid in the suppression of disorders.

The justification for the acts of the military lies not merely in their bona fides but in the existence of the necessity, i. e., in the proof of such a state of war, insurrection or armed resistance as to justify the cessation of the ordinary law and its replacement by military force pure and simple. The question of necessity or whether the proved facts amount to necessity is a question of fact for the Courts. If necessity is proved, as in the cases referred to above, then the acts of military are not justiciable by the ordinary Courts, unless it is proved, they are so justiciable and "the Courts have at any rate in time of peace jurisdiction in respect of acts which have been done by military authorities and others during a state of war." (Beaumont, C. J. and Madgavkar and Blackwell, JJ.) Chanappa Shantirappa v. Emperor. **A I R 1931 Bom 57 : 32 Bom L R 1613 : 32 Cr L J 403 : Ind Rul (1931) Bom 196 : 55 Bom 263 : 129 I C 596 (SB).**

——Ss. 127 and 128—Penal Code, Ss. 149, 304 and 326—Charge against police—Defence.

Where in a charge under Ss. 149, 304 and 326 Penal Code for which no sanction is necessary the accused, some constables, stated they acted under orders of the officer in charge of the police station under Ss. 127, and 128, Cr. P. C. The jury should be told to consider the facts and if they find in favour of the accused, the prosecution cannot be continued except with the sanction of the Governor General, and the accused are entitled to acquittal. If the Jury find in favour of neither, then they should consider whether the accused exercised the right of private defence and whether they exceeded the right. (Teunon and

CRIMINAL P. C. (V of 1898), S. 127

Ghose, JJ.) Abdul Rahim Mir v. Emperor. **25 C W N 623 : 33 C L J 340 : 62 I C 878 : 22 Cr L J 606 : A I R 1921 Cal 697.**

——S. 128.

——Ss. 46 and 128—Unlawful assembly—Dispersing of—Use of force to the extent of causing death.

See Cr. P. Code (Act V of 1898) S. 46. **1 Cr L J 920 (Kathiawar).**

——S. 131.

——Ss. 131 and 137—Order under S. 131.

A Magistrate cannot make an order, under S. 131, absolute without complying with the provisions of S. 137 which are mandatory and which cannot be disregarded by the Magistrate. (Atkinson, J.) Balbhadra Prasad v. Emperor. **1 P L W 292 : 38 I C 1008 : 18 Cr L J 448 : A I R 1917 Pat 509.**

—S. 132.

——Chap. X, Ss. 133, 140—Nature of proceedings under Chap. X.

In a case where the flour mills have been working for ten years and that too, under a licence from the Municipal Board, it would not be proper to have recourse to the provisions of Chap. 10, Criminal P. C. The proceedings under the Chapter are of a summary nature and intended to enable Magistrates to deal with cases of emergency and not intended to enable a complainant to obtain, by having recourse to this Chapter, relief which he should seek in the Civil Court. (Radha Krishna, J.) Kedar Nath v. Satish Chandra. **A I R 1940 Oudh 75 : 41 Cr L J 99 : 15 Luck 140 : 1939 O W N 966 : 1939 A W R 252 : 12 R O 143 : 184 IC 754.**

——Penal Code (Act XLV of 1860), S. 79—Protection afforded under the two sections—Difference between—S. 132, applicability of.

Section 79, I. P. C., can only be applied when all the facts are known, i. e., when the trial is over; S. 132 Cr. P. C., can only operate before the trial begins. Protection given by S. 79, I. P. C., is protection against conviction, while the protection given by S. 132, Cr. P. C., is a protection against trial. These provisions cannot, therefore, be held to be identical.

The proposition that in order to decide whether a prosecution is barred under S. 132, Cr. P. C., for want of the sanction of the Local Government only, the complaint and the sworn statement should be referred to, is not a correct one.

Section 132, Cr. P. C., is framed in very wide terms and the object of S. 132 as of S. 197 (1) is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them, while they were acting or purporting to act as public servants. The policy of the Legislature in enacting the section is to afford adequate protection to public servants, to ensure that they are not prosecuted for anything done by them in the discharge of their official duties with-

CRIMINAL P. C. (V of 1898), S. 132

out reasonable cause and, if sanction is granted to confer on the Local Government, if they choose to exercise it, complete control of the prosecution and there in nothing in these precautions to which the public at large can legitimately take exception. (Burn, J.) Schamnad v. Rama Rao. **A I R 1933 Mad 268 : 34 Cr L J 528 : 1932 M W N 1225 : Ind Rul (1933) Mad 271 (2) : 143 I C 115.**

——Scope—Police officer in charge of patrol boat has no power to disperse unlawful assembly by force.

The power to disperse an unlawful assembly by force is not given by the Code to any police officer below the rank of an officer-in-charge of a police station. An examination of the Police Manual shows that the powers of an officer-in-charge of a patrol boat are no higher than those of an officer in charge of an outpost. From such an officer the power to investigate cognizable cases has been withheld and this is a power which he would necessarily have under S. 156 if he were in charge of a police station. (Newbould and Suhrawardy, JJ.) Mahommed Yunus v. Emperor. **77 I C 819 : 50 Cal 318 : 25 Cr L J 467 : A I R 1923 Cal 517.**

——Want of sanction— Effect on conviction after trial.

See ibid, S. 537. **6 Cr L J 382 (Mad).**

——Prospective fine.

The sentence directing the payment of certain amount per diem after the date of conviction for every day that the default continued held illegal. (Rattigan, J.) Emperor v. Miran Bakhsh. **1 Cr L J 1093 : 19 P R Cr of 1904.**

——S. 133.

SYNOPSIS.

1. **Scope and object of the section.**
2. **Action against anticipated obstruction, nuisance, etc.**
3. **Long standing nuisances, etc.**
4. **Sections 133 and 142.**
5. **Sections 133 and 144.**
6. **Sections 133 and 145.**
7. **Sections 133 and 147.**
8. **Right of private person.**
9. **Police report or other information.**
10. **"On taking such evidence".**
11. **Complainant to lead evidence.**
12. **Magistrate shall question as to existence of public right**—See also under **S. 139-A.**
13. **Stay of proceedings.**
14. **Unlawful obstruction.**
15. **Nuisance.**
16. **Channel.**
17. **"Used by the public".**
18. **Public place.**
19. **Conduct of trade or occupation.**
20. **Community.**
21. **Building, tent, structure or tree.**

CRIMINAL P. C. (V of 1898), S. 133

22. **Form of order.**
23. **Directions in the order.**
24. **"Appear before himself or some other Magistrate".**
25. **"Move to have the order set aside or modified".**
26. **Jury**—See also under S. 135.
27. **Reference to arbitration.**
28. **Final order**—See also under Ss. 136, 137, 139 and 141.
29. **Inquiry.**
30. **Bona fide claim.**
31. **Method of inquiry.**
32. **Enquiry to be as in summons case.**
33. **Failure to hold enquiry.**
34. **Parties to order.**
35. **Disobedience of order**—See also under Ss 136 and 140.
36. **Bar to jurisdiction of civil court.**
37. **Costs.**
38. **Fresh proceedings.**
39. **De novo proceeding.**
40. **Appeal.**
41. **Revision.**

1. Scope and object of the section.

——Proceedings under S. 133 are held by a Magistrate in the interests of the public and not in the interests of any particular person. They should not be used for the purpose of establishing the title of a particular individual. (Sen, J.) Sushil Chandra v. Tushar Kanti. **I L R (1951) 1 Cal 126.**

——Ss. 133 and 205—Exemption from personal appearance.

The Court has inherent power to dispense with personal attendance and to permit parties to appear by lawyer in quasi criminal proceedings like the proceedings under S. 133. (Sen, J.) Sushil Chandra v. Tushar Kanti. **I L R (1951) 1 Cal 126.**

——S. 133 (1)—The provisions of S. 133 (1) should be complied with as strictly as possible because the parties very often take recourse to criminal Courts in order to have their rights settled quickly rather than to have their rights settled by the lengthier though surer process of a civil Court. (Varma. C. J. and Sharma. J.) Ram Singji of Bhadu v. Superintendent Court of Wards. **1947 J L R 186.**

——Long user of a public way ousts jurisdiction of Criminal Court.

Long user by a person of what is claimed to be a part of public way may be taken as a bona fide assertion of claim ousting the jurisdiction of the Criminal Court to pass a summary order under S. 133. But the evidence brought forward in denial of the public right must be taken as a whole and if the statements of the witnesses on the point in themselves also contain a refutation of

CRIMINAL P. C. (V of 1898), S. 133 — 1. Scope and object of the section

the claim made, then the suggested inference does not follow and the jurisdiction is not ousted. (Agarwala and Meredith, JJ.) Ram Kirpal Singh v. Superintendent, Way and Works, E. I. Railway. **A I R 1945 Pat 309 : 24 Pat 104 : 26 P L T 208.**

——Powers to abate nuisance under S. 133, if curtailed by S. 44, Madras Public Health Act (III of 1939) and S. 195, Madras Local Boards Act (XIV of 1920).

The powers of a Magistrate to abate a nuisance under S. 133, Cr. P. C., have not been curtailed by the powers conferred on local authorities to abate nuisance under S. 44, Madras Public Health Act and S. 195, Madras Local Boards Act. It is clear from a comparison of these several provisions that there is nothing in conflict between them, the only differences between them being in the remedies provided. Further, the Cr. P. C., being an Act of the Indian Legislature, its provisions cannot be, in any way affected by a local Act. (Byers, J.) Rajagopala Chettiar v. Samdum Begum. **A I R 1943 Mad 357 : 56 M L W 152 : (1943) 1 M L J 237 : 44 Cr L J 533 : 1943 M W N 177 : 16 R M 18 : I L R (1944) Mad 64 : 206 I C 546.**

——Not intended to settle private disputes.

Criminal cases and cases under the Cr. P. C. are not contests between private persons. The proceedings under S. 133, Cr. P. C. are not intended to settle private dispute between two members of the public. They are not originated by the filing of complaint or something of that kind. Any person naturally can give a Magistrate information of the existence of any state of affairs but when the Magistrate acts on that information, he is acting suo motu. The person who gives the information has no rights in the matter and is not a person who may be described as a party to the proceedings. If the Magistrate issues a preliminary order under S. 133, for the removal of an obstruction or something of that kind, the question which arises is one between the Magistrate on the one side on behalf of the public at large and the person, on the other, to whom notice has been issued. (Allsop, J.) Ramu v. Murli Das. **A I R 1943 All 19 : 1942 A L J 584 : 44 Cr L J 205 : 1942 A W R H C 325 (2) : I L R (1943) All 22 : 15 R A 339 : 204 I C 326.**

——Proceedings under S. 133, scope of—Not intended to settle private disputes.

The proceedings under S. 133, Cr. P. C. are not intended to settle private disputes between different members of the public. They are, in fact, intended to protect the public as a whole against inconvenience. If a person has any private right which he wishes to enforce, he should take his trouble to the Civil Court. (Allsop, J.) Ram Dayal v. Mt. Jagdamba Debi. **A I R 1942 All 443 : 1942 A L J 558 : 44 Cr L J 76 : 15 R A 284 : 1942 A W R H C 312 : 203 I C 495.**

CRIMINAL P. C. (V of 1898), S. 133 — 1. Scope and object of the section

——Gairmazrua-am nali claimed as part of public way—Its long user by other party, if bona fide assertion of claim—Criminal Court's jurisdiction.

Long user by a person of what is claimed to be a part of the public way may be taken as a bona fide assertion of claim ousting the jurisdiction of the Criminal Court to pass a summary order. (Dhavle, J.) Bhajoo Gope v. Gholam Haider. **193 I C 336 : 21 P L T 1028 : 7 B R 504 : 42 Cr L J 401 : 13 R P 589.**

——Section 142, Cr. P. C. is not an independent section but is controlled in its effects by S. 133, Cr. P. C. A reference to S. 133, Cr. P. C. shows that the section is confined to certain matters which are specifically mentioned therein, and cannot be brought into play or govern or control other matters, which are quite extraneous to it. (Din Mohammad, J.) Mirza Mohammad Ashraf v. Emperor. **A I R 1937 Lah 101 : I L R (1937) Lah 303 : 10 R L 250 : 39 P L R 863 : 39 Cr L J 13 : 171 I C 941.**

——Magistrate, whether can continue with two proceedings under S. 133, side by side with regard practically to same subject-matter.

Quaere.—It is doubtful if a Magistrate can continue with two proceedings under S. 133 Cr. P. C. side by side with regard to practically the same subject-matter, because the danger is that by this procedure, a Magistrate may get a chance of reviewing an order which he had already passed (Varma, J.) Kalyan Mal v. Emperor. **AIR 1936 Pat 577 : 3 B R 69 : 9 R P 186 : 37 Cr L J 1159 : 165 I C 542.**

——Causing overflow of water into other lands by raising level of one's own low land —S. 133, if applies—Remedy.

Where a proceeding under S. 133, Cr. P. C., was started against a person alleged to have caused an overflow of surplus rain water into other lands by raising the level of his low land:

Held, that S. 133 was not applicable and that the persons who were damnified by the tortious act might have their remedy by way of civil proceedings. (Mallik and Remfry, JJ.) B. S. Corbet v. Sohaulla Basunia. **A I R 1933 Cal 150 (151) : Ind Rul (1933) Cal 496 : 34 Cr L J 679 (1) : 144 I C 75.**

——When a Magistrate commences proceedings under S. 133, he is not at liberty to proceed otherwise than in conformity with the rule laid down in Ch. 10. 8 W. R. 37 Cr., Foll. (Shadi Lal, C. J.) Brahman Water Mills Co. v. Mangladha Mal. **109 I C 354 : 9 L L J 522 : 29 Cr L J 530 : A I R 1928 Lah 95.**

——S. 133 is not intended to be employed to avoid the necessity of filing a civil suit in regard to a construction which has been in existence for a number of years. (Daniels, J.) Ghurahu Das v. Shakalraj Das. **24 A L J 112 : 6 L R A Cr 190 : 27 Cr L J 27 : 91 I C 59 : A I R 1926 All 157.**

CRIMINAL P. C. (V of 1898), S. 133 — 1. Scope and object of the section

——Ss. 133 and 137 (3)—Applicability—Chap. X—Object of—Civil Court.

The Chap. X aims at enabling the Magistrate to make speedy orders in cases of public nuisance and for this reason the jurisdiction of Civil Courts is barred by S. 133 (2). (Pratt and Fawcett, JJ.) Rangubai Gururao. In re. **23 Bom L R 844 : 62 I C 877 : 22 Cr L J 605 : A I R 1921 Bom 29.**

——Claim of right—Findings necessary to confer jurisdiction.

In proceedings under S. 133 of the Cr. P. C., it is necessary to establish, first that the act complained of is a nuisance or an obstruction and secondly that it was committed in a public place or in a place which may be lawfully used by the public. The question of the bona fides of a claim is a question of fact and has to be inquired into like any other question of fact. 1 C L J 434, Foll. (Das, J.) Teni Prasad Singh v. Sarjoo Singh. **51 I C 844 : 20 Cr L J 556 : A I R 1919 Pat 528.**

——Applicability.

S. 133 can be applied by a Magistrate only if there is an obstruction situated on a way which may be lawfully used by the public or on a public place. (Piggott, J.) Churaman v. Emperor. **12 A L J 1024 : 26 I C 172 : 15 Cr L J 724 :A I R 1914 All 214.**

——Applicability — Magistrate's power to take action.

A Magistrate can take action under S. 133 if on inquiry and information he finds that some nuisance should be removed from any river way or channel which is used by the public. (Tudball, J.) Bharosa v. Emperor. **34 All 345 : 9 A L J 355 : 13 I C 999 : 13 Cr L J 183.**

——Section 133 and the following sections of the Cr. P. C., confer on the person called on to submit to it, the right to claim a jury, and generally provides for the ascertainment of right, as well as for the actual removal of the obstruction. (Batty and Heaton JJ.) Emperor v. Abdul. **9 Bom L R 30 : 5 Cr L J 97.**

——Nature of proceedings under—Person against whom proceedings under S. 133, are taken whether accused person — Examination on oath — Penal Code, S. 193.

Proceedings under S. 133, are more of the nature of civil than of criminal proceedings, and a party to such a proceeding is not an "accused person" within the meaning of S. 342. He can therefore be examined on oath, and if he gives false evidence, he may be prosecuted for an offence under S. 193 I. P. C. (Rampini and Mookerji JJ.) Hira Nandaojha v. Emperor. **9 C W N 983 : 2 C L J 149 : 2 Cr L J 575.**

2. Action against anticipated obstruction, nuisance, etc.

——Applicability to nuisance likely to arise—Nulsance ceasing to exist—Order should not be made absolute.

CRIMINAL P. C. (V of 1898), S. 133 — 2. Action against anticipated obstruction, nuisance, etc.

Section 133, Cr. P. C., applies to an existing nulsance and not to a nuisance that is likely to arise in future. So where the nuisance has abated an order under S. 133 should not be made absolute. (Varma, J.) Kalyan Mal v. Emperor. **A I R 1936 Pat 577 : 3 B R 69 : 37 Cr L J 1159 : 9 R P 186 : 165 I C 542.**

——Nuisance only potential — S. 133, if applies.

Section 133, Cr. P. C., can have no application to something which may become a nuisance that is a potential nuisance, but applies only where the nuisance is in existence in a way, river or channel which is or may be lawfully used by the public and which is in existene in a public place. (Harries, J.) Shri Ram v. Emperor. **A I R 1935 All 926 : 1935 A W R 1004 : 8 R A 407 : 37 Cr L J 347 (2) : 159 I C 198.**

——Applicability—Section does not relate to possibilities but to existing affairs—Nuisance— Order on grounds different from those set out in notice—Order relating to mode of carrying on trade.

The objection was to the mode in which petitioners carried on their occupation of manufacturing bricks not against the occupation itself and this was not sufficient to bring the case within S. 133 of the Code. S. 133 relates to an existing state of affairs and not to the possibility of future results. Cl. 3 of the section deals with trades which are injurious to health and physical comfort, and it cannot be used to interfere with lawful trade, or free right of enjoyment of every individual unless it causes nuisance. An order under S. 133 proceeding on the grounds not covered by the notice to the accused is illegal. (Bevan Petman, J.) Gokalchand v. Emperor. **1 Lah 163 : 55 I C 446 : 21 Cr L J 462 : A I R 1920 Lah 258.**

3. Long standing nuisances, etc.

——Long-standing obstruction.

Section 133 can be applied equally to long-standing obstructions and to unlawful obstructions recently built in a public place. (Manohar Lall, J.) Jadunandan Lal v. Rampeyare Sao. **A I R 1943 Pat 32 : 9 B R 55 : 15 R P 155 : 202 I C 783 : 43 Cr L J 903.**

——Proceedings under S. 133 are valid only if encroachment is recent.

If the encroachment is held by the Magistrate to be a recent one, proceedings under Ch. X, Cr. P. C., would be perfectly valid. If, however, it is discovered that the obstruction is an old one, proceedings under Ch. X, Cr. P. C., would not be justified. (Abdul Rashid, J.) Nanu Mal v. Emperor. **A I R 1939 Lah 452 : 41 P L R 515 : 12 R L 211 : 40 Cr L J 933 : 184 I C 352.**

——Scope of.

Section 133, Cr. P. C. is not intended for the removal of long standing obstructions but for unlawful obstructions lately built on public places.

Where a road has been recently constructed, the obstruction to it caused by the branch of the trees

CRIMINAL P. C. (V of 1898), S. 133—3. Long standing nuisances, etc.

alongside can be held to be a recent one even if the trees have been in existence for a number of years. If, however, the road was constructed several years ago, then it cannot be said that the trees that have stood alongside the road for a number of years constitute a new obstruction. (Abdul Rashid, J.) Consolidation Co-operative Society v. Har Gobind. **A I R 1939 Lah 276 : 12 R L 106 : 40 Cr L J 758 : 42 P L R 219 : 183 I C 292.**

——Section 133, Cr. P. C., is not intended for long standing obstructions but for an unlawful obstruction lately built in a public place. It is only on proof of urgency or imminent danger to the public interest that action under S. 133 et seq can be taken, and these provisions should not be allowed to be used as a substitute for litigation in Civil Courts. Chapter X of the Code deals with "public nuisances" and provides a speedy and summary method for dealing with them, in cases of great emergency and where there is imminent danger to the public interest. The fact that an obstruction has been allowed to stand, without objection, in a public place for many years itself indicates that there is no such emergency or imminent danger to the public interest. The existence of a long-standing obstruction cannot, therefore, without proof of something having recently happened, be considered to be a "public nuisance." A I R 1931 Lah 159 (1) : 32 Cr L J 1234 overruled. (Young C. J. and Tekchand, J.) Emperor v. Tulsi Ram. **A I R 1938 Lah 523 : 40 P L R 492 : 11 R L 225 : 39 Cr L J 775 : I L R (1939) Lah 381 : 176 I C 669.**

——If applies to removal of long standing obstructions.

Section 133, Cr. P. C., is not intended for the removal of long-standing obstructions, but for unlawful obstructions lately built on public places. (Addison, J.) Khair Din v. Wasan Singh. **A I R 1935 Lah 28 : 37 Cr L J 70 : 8 R L 381 : 159 I C 374.**

——Section 133 is not intended for long-standing obstructions, but for an unlawful obstruction lately built in a public place. A I R 1926 All 157 (1), Foll. (Addison, J.) Baisakhi Ram v. Emperor. **120 I C 796 : 31 Cr L J 167 : 1930 Cr C 965 : A I R 1930 Lah 361.**

4. Sections 133 and 142.

——Order under S. 142 must be limited to nuisance sought to be checked by conditional order under S. 133.

See ibid, S. 142. **53 C W N 907.**

——Ss. 133, 142—S. 133, whether governs cases where imminent breach of peace is apprehended.

It is nowhere contemplated by S. 133, Cr. P. C., that it would govern cases where an imminent breach of the peace is apprehended. The serious injury or the "imminent danger" contemplated by S. 142, Cr. P. C., refers to the injury or danger emanating from those things themselves which

CRIMINAL P. C. (V of 1898), S. 133—4. Sections 133 142

are specified in S. 133, and consequently, S. 142 is limited in its scope. An order under S. 142, can, therefore, be passed only if an injury or danger specified in S. 133, was apprehended and not otherwise. (Din Mohammad, J.) Mirza Mohammad Ashraf v. Emperor. **A I R 1937 Lah 101 : 10 R L 250 : I L R (1937) Lah 303 : 39 P L R 863 : 39 Cr L J 13 : 171 I C 941.**

——A Magistrate, passing an order under S. 142, Cr. P. C., not only is not precluded from making a final order under S. 137, but Ss. 133, 137 and 142, taken together mean that the Magistrate, in spite of making an order under S. 142, is entitled to proceed with the case and make a final order under S. 137. (Lort-Williams and Cunliffe, JJ.) Rebati Mohan v. Chhottal Chandra. **A I R 1936 Cal 692 : 63 C L J 5 : 9 R C 490 (1) : 38 Cr L J 173 : 166 I C 221.**

5. Sections 133 and 144.

——Ss. 133 and 144—Procedure—S. 283, I. P. C.—Petition of complaint —Non-examination of complaint before local enquiry.

An order issuing notice under S. 144 of the Cr. P. Code with respect to another land made in the same order sheet in which the proceedings for obstruction under S. 283, I. P. C. are instituted is improper. A prosecution under S. 283, I. P. C., cannot be instituted simultaneously with a proceeding under S. 133 of the Cr. P. Code. (Jwala Prasad, J.) Jitan v. Emperor. **1 Pat L T 564.**

6. Sections 133 and 145.

——Dispute as to obstruction to use of land by public—Appropriate proceedings if under S. 133 or S. 145.

See ibid, S. 107. **A I R 1950 Pat 502.**

7. Sections 133 and 147.

——Petition under Chaps. 11 and 12—Magistrate can proceed under S. 133.

Though the petitions are presented under Chaps. 11 and 12, it is perfectly competent for a Magistrate to proceed under S. 133. Section 133 does not oust the jurisdiction of a Magistrate to proceed under S. 147 and vice versa. The only restriction naturally is that when proceedings are instituted and action taken under S. 133, orders under S. 147 cannot be passed since the two sets of proceedings are under entirely different chapters, governed by different procedures in detail, and orders are made for entirely different purposes. (Ramaswami, J.) Annamalai Reddi v. Abdul Sathar Sahib. **A I R 1953 Mad 674 : 1953 Mad W N 24 : 1953 Mad W N (Cr.) 16 : 1953-1 Mad L J 160 : 1953 Cr L J 1201.**

——Conversion of proceeding under S. 133 into one under S. 147.

Where in a proceeding initiated under S. 133, the Magistrate after hearing the parties and perusing the cause shown is satisfied that the real dispute between the parties is as to the right of

CRIMINAL P. C. (V of 1898), S. 133—7. Sections 133 and 147

user of certain public pathway in respect of which there is an apprehension of the breach of peace and the Magistrate orders the drawing up of proceedings under S. 147 and directs the parties to file their written statements the order is perfectly within jurisdiction. A. I. R. 1916 Cal 151 and 9 I C 262 (Cal.), Disting. (S. K. Das, J.) Panchan J. Rathore v. Mohan Mogha. **51 Cr L J 1188 : A I R 1950 Pat 315.**

——Procedure.

An order under S. 147 is without jurisdiction if it is made in proceedings under S. 133. (Holmwood and Sharfuddin, JJ.) Abdul Rackman Mia v. Safar Ali. **15 C W N 667 : 9 I C 262 : 12 Cr L J 43.**

8. Right of private person.

——Private person, if can insist that Magistrate shall pass orders under S. 133.

No private person has a right to insist that a Magistrate shall pass orders under S. 133, Criminal P. C. Whether such orders should be passed is a matter of discretion for the Magistrate. If he does not choose to interfere, the party aggrieved has his normal remedy in the civil Court. (Allsop, J.) Emperor v. Sibte Husain. **A I R 1937 All 785 : 10 R A 406 : 1937 A L J 903 : 39 Cr L J 148 : 1937 A W R 866 : 172 I C 642.**

9. Police report or other information.

——Ss. 133, 192 (1), 556— Magistrate acting under S. 133 on information received by him in other capacity—Legality.

Per Wali Ullah J. (Wanchoo J. contra).—When a Magistrate acts under S. 133, and issues a preliminary order calling upon a party to do a particular act, he does a judicial act. A judicial act done by a Magistrate who, prior to the stage at which he came to act judicially, had already formed an opinion against a party on the basis of information received by him in another capacity cannot be justified. It is incumbent on the Magistrate in such circumstances to stay his hands and not pass a preliminary order. The Magistrate, therefore, acts improperly when he passes a preliminary order.

Per Wanchoo J.—A Magistrate can act under S. 133 (1) either on a police report or other information. The words are very wide and permit a Magistrate to take action under S. 133 on information derived from any source. Hence, an order passed by the Magistrate under S. 133 (1) cannot be considered illegal on the ground that part of the information was derived by him in another capacity (e. g. as Chairman of the Notified Area Committee).

Section 556 has no application to the passing of a preliminary order under S. 133, for that section recognises that a Magistrate can pass a preliminary order on any information that might come to him. If, of course, the Magistrate after passing this preliminary order, continues to hear the case, his action would be improper.

CRIMINAL P. C. (V of 1898), S. 133—9. Police report or other information

No doubt, it is possible to the Magistrate to transfer proceedings under S. 133 even without passing a preliminary order. But even if he fails to do so, his action is not improper. (Wali Ullah and Wanchoo, JJ.) Mohl. Ayub v. State. **A I R 1952 All 215 : I L R (1951) 2 All 609 : 1952 Cr L J 407.**

——Ss. 133 and 137—Personal knowledge— Magistrate cannot rely upon.

A Magistrate is not entitled to rely on the result of his own enquiries or substitute it for the evidence given by parties in making the conditional order absolute under S. 133, Cr. P. C. (Richardson and Shamsul Huda, JJ.) Kalisady Ghoshal v. Siddheswara Bannerjee. **23 C W N 1054 : 50 I C 658 : 20 Cr L J 322 : A I R 1919 Cal 153.**

——Personal knowledge—Local inquiry with the consent of parties—Should not be the basis of an order under S. 133.

Information or report on which the Magistrate acts is no evidence under S. 133. Necessary opportunity ought to be given to show cause and adduce evidence under S. 133 (b). Orders must be definite and unambiguous directing persons clearly how they are to comply with it. In an order against various persons it was alleged that various unlawful obstructions were caused on public way. The order is vague; unless it is made definite, all persons mentioned therein are responsible for all the obstructions. (Mukerjee and Sheepshanks, JJ.) Rai Mohan Karmokar v. Emperor. **44 Cal 61 : 20 C W N 1171 : 35 I C 969 : 17 Cr L J 409 : A I R 1917 Cal 207.**

——Ss. 133, 137— Personal knowledge— Order on inspection— Existence of hayricks in premises—Conditional order.

Where on a mere representation by a person that the existence of a hayrick in petitioner's premises is a nuisance and likely to cause conflagration, the Magistrate on personal inspection made an order absolute that the hayricks were a nuisance, held, that the Magistrate should not have made the order on his own opinion formed by inspection but should have called on the informant to adduce evidence that the hayricks were a nuisance. The order was therefore illegal. (Spencer, J.) Doraiswamy v. Sudarsana Chariar. **17 M L T 142 : 27 I C 767 : 16 Cr L J 207 : A I R 1916 Mad 304.**

——Ss. 133, 137— Order made without evidence—Consent cannot make it legal.

An order under S. 133, Cr. P. Code, made when there is no legal evidence an order under S. 133 based upon information collected at a local enquiry, is illegal. The fact that the parties have consented to such an irregular procedure cannot make it otherwise. The provisions of S. 137 are mandatory. Waiver on the part of the peti-

CRIMINAL P. C. (V of 1898), S. 133 — 9. Police report or other information

tioners cannot confer on the Magistrate authority to act in a manner not prescribed by the Legislature. (Mookerjee and Chatterjee, JJ.) Upendra Nath Mandal v. Rampal. **10 C L J 482 : 11 Cr L J 1 : 4 Ind Cas 436.**

10. "On taking such evidence"

——Order under S. 133 cannot be made absolute without taking evidence of witnesses produced by party.

An order under S. 133, Cr. P. Code cannot be made absolute without taking evidence of witnesses produced by the party against whom it is passed. (Varma, J.) Kalyan Mal Mathur v. Emperor. **A I R 1936 Pat 577 : 3 B R 69 : 9 R P 186 : 37 Cr L J 1159 : 165 I C 542.**

——Ss. 133, 137 (3)—Order under S. 133, if can be passed on personal opinion of Magistrate.

An order under S. 133, Cr. P. C., cannot be passed merely on the personal opinion of the Magistrate. He must take evidence as in a summons case and it is only when this has been done that the Magistrate can make the conditional order absolute. (Addison, J.) Khair Din v. Wasan Singh. **A I R 1935 Lah 28 : 37 Cr L J 70 : 8 R L 381 : 159 I C 374.**

——Where the petition prayed to take proceedings under S. 133, Cr. P. C., for the removal of the obstruction and the opposite party denied the title of the petitioner and claimed that it was entirely his and in support of this, produced extracts from Record of Rights and partition proceedings:

Held, that this was enough for the disposal of the case under S. 139-A, Cr. P. C., and the Magistrate need not have taken any further evidence. (James, J.) Sita Ram Ray v. Badri Ray. **A I R 1935 Pat 218 (2) : 16 P L T 179 : 8 R P 55 : 1 B R 678 : 36 Cr L J 1051 : 156 I C 1006.**

——Notice to show cause— Appearance of accused —Procedure— Duty of Magistrate to record evidence and examine accused— Omission to do so— Effect.

When the accused appears to show cause against a notice under S. 133, Cr. P. C., the Magistrate should take evidence as in a summons case.

Where he omitted to do so and did not even record the statement of the accused or question him as required by S. 139-A of the Code and passed a confirmatory order on a mere inspection of the locality:

Held, that the order was wholly illegal and could not be upheld. (Srivastava, J.) Emperor v. Mul Chand. **A I R 1931 Oudh 397 : 8 O W N 651 : Ind Rul (1931) Oudh 352 : 32 Cr L J 1165 : 132 I C 800.**

——Ss. 133, 135 (b)— Proceeding for removal of obstruction— Preliminary inquiry, whether necessary—Application for trial by jury— Waiver of right to claim that matter is of civil nature.

The expression 'on taking such evidence, if any, as he thinks fit' in S. 133 (1), Criminal P. C., does

CRIMINAL P. C. (V of 1898), S. 133—10. "On taking such evidence"

not make it incumbent on the Magistrate to hold such an inquiry.

A member of the District Board who is appointed to carry out certain public functions is not an unsuitable person to be nominated by the District Board to serve on a Jury for purposes of seeing whether there is an encroachment on the public property under the control of the District Board.

If a party against whom proceedings under S. 133, Cr. P. C., have been initiated, applies to have the case tried by a Jury under S. 135 (b), Cr. P. C., without contending that the matter is one for the Civil Court to decide, he must be deemed to have waived the right to claim that the matter is of a civil nature. (Bennet, J.) Abdul-Shakur Khan v. Emperor. **A I R 1931 All 257 : 1930 A L J 1335 : 32 Cr L J 565 : Ind Rul (1931) All 291 : 1931 Cri Cas 417 : 130 I C 627.**

——In the absence of any specific opportunity to adduce evidence under S. 137, order must be set aside.

A conditional order was made under S. 133. The opposite party denied the claim. He was asked to adduce evidence.

Held, that the contention that the party understood that he was to adduce evidence in support of his case relevant to an enquiry under S. 139-A, had force and inasmuch as no specific opportunity was given to him to adduce evidence under S. 137, the order complained of should be set aside. (C. C. Ghose and Jack, JJ.) Etraj Mandal v. Emperor. **116 I C 384 : 49 C L J 49 : 30 Cr L J 622 : 13 A I Cr R 69 : 33 C W N 201 : A I R 1928 Cal 879.**

——Order without giving party opportunity to prove his claim is bad.

Where an order under S. 133 was made without the first party being required to adduce evidence in support of their claim, but the second party was called upon to show cause and they were required to adduce evidence in support of their denial of the right claimed by the first party.

Held, that the order was made without the first party being called upon to give evidence to prove their claim, and it cannot stand. (C. C. Ghose and Cammiade, JJ.) Akhoy Sardar v. Lalchand Sardar. **104 I C 635 : 31 C W N 963 : 28 Cr L J 859 : 9 A I Cr R 41 : A I R 1928 Cal 96.**

——A Magistrate cannot make an order under S. 133 absolute without recording evidence and simply on the basis of a local inspection made by him. AIR 1922 All 265; AIR 1917 Cal 207, Foll. (Iqbal Ahmad, J.) Tirkha v. Nanak. **100 I C 371 : 49 All 475 : 25 A L J 377 : 28 Cr L J 291 : 8 L R A Cr 59 : 7 A I Cr R 391 : A I R 1927 All 350.**

——Enquiry under S. 133 should be like that in a summons case.

Where on a complaint, notice under S. 133 has been served and the person complained against appears and shows cause against the order passed to remove the obstruction, the Magistrate should

CRIMINAL P. C. (V of 1898), S. 133—10. "On taking such evidence"

take evidence as in a summons case. Referring the matter to a Naib Tahsildar for enquiry and deciding it on his report is an irregularity vitiating the order. (Stuart, C. J.) Ran Bahadur Singh v. Bhagwati Prasad. **98 I C 102 : 3 O W N 844 : 27 Cr L J 1254 : 7 A I Cr R 34 : A I R 1927 Oudh 26.**

——Evidence must be recorded in a proceeding under the section.

Where the accused was served with a notice under S. 133 to remove a shed and the Magistrate without recording any evidence for the prosecution made the order absolute and directed the shed to be removed.

Held, that the procedure to be followed in such cases is as in a summons case and that evidence must be recorded. 32 P. R. 1917 Cr.; 31 A. 453: 24 C. 395, Ref. (Moti Sagar, J:) Man Chand v. Emperor. **73 I C 503 : 24 Cr L J 615 : A I R 1924 Lah 392.**

11. Complainant to lead evidence.

——Ss. 133, 140—Procedure —Nuisance— Removal of—Evidence.

In a proceeding under S. 133 before any order can be passed under S. 140, the complainant must lead evidence and until this has been done, the opposite party is not bound to adduce any evidence. (Ryves, J.) Inder v. Emperor. **11 ALJ 931 : 22 I C 167 : 15 Cr L J 23.**

12. Magistrate shall question as to existence of public right.

—See also under S. 139-A.

——Mere existence of reliable evidence in support of denial of right, whether sufficient to stop hands of Magistrate in proceedings under S. 133.

In a proceeding under S. 133, Criminal P. C., what S. 139-A requires is that the Magistrate should be satisfied that there is reliable evidence in support of the denial of the public right. The moment he finds that, he has to stop his hands and leave the matter for the civil Court to decide. As to what is reliable evidence, it will depend upon the circumstances of each case. But a good test is that if the evidence adduced stands unrebutted, the public nature of the right will be demolished. (Mohamad Noor and Varma, JJ.) Harnandan Lal v. Rampalak Mahato. **A I R 1939 Pat 460 : 6 B R 6 : 12 R P 212 : 18 Pat 76 : 40 Cr LJ 837 : 20 P L T 748 : 184 I C 47.**

——Ss. 133, 139-A—Application that certain person blocked public right of way by erecting building—Such person producing evidence under S. 139-A to prove that no right of way existed.

Where an application is made to a Magistrate that a certain person has erected a building and thereby blocked a public right of way, and such a person produces certain evidence under the provisions of S. 139-A, Cr. P. C., to prove that no right of way existed, it cannot be said that the contention of such person is frivolous or that it is entirely unsupported by evidence and the matter is

CRIMINAL P. C. (V of 1898), S. 133—12. Magistrate shall question as to existence of public right

one which can only properly be decided by a competent Civil Court. The Magistrate must stay proceedings under S. 139-A and has no jurisdiction to proceed with the case until the decision of a competent Civil Court. (Allsop, J.) Kundan Lal v. Emperor. **A I R 1939 All 187 : 11 R A 465 : 40 Cr LJ 375 (1) : 1939 A W R 71 : 180 I C 495.**

——Where a conditional order under S. 133 for the removal of an encroachment on a public way is passed by the Magistrate, and a person who was served with a notice of this order appeals before the Magistrate under S. 139-A of the Code, and produces evidence to show that he has not committed any encroachment, the Magistrate cannot proceed to make his order absolute but must either stay the proceedings or proceed under S. 137 or S. 138, according as he finds the evidence reliable or unreliable. (Bajpai, J.) Chhedi Lal v. Emperor. **A I R 1939 All 116 : 1938 A L J 1145 : 40 Cr L J 286 : 11 R A399 : 1938 A W R 841 : 179 I C 970.**

——Provisional order to remove obstruction from public way—Party denying public way at place of obstruction — Map showing place belonged to his wife produced—On previous occasion under similar proceeding, Magistrate holding no public way existed—Stay of proceeding.

The Magistrate passed a provisional order that one B should remove an unlawful obstruction from a public way, B appeared to oppose this order and put in a written statement in which he said, among other things, that there was no public way at the place where the alleged obstruction had been put up and produced copies of the village records which showed that the alleged obstruction was in certain plots which were recorded as being the property of B's wife obtained by her as a result of a partition. There was also an order passed by a Magistrate on a previous occasion in similar proceedings under S. 133, Criminal P. C., that no public way existed :

Held, that it was the duty of the Magistrate to stay the proceedings until the matter of the existence of the right of way had been decided by competent civil Court. (Allsop, J.) Emperor v. Batuk. **A I R 1936 All 142 : 1936 A L J 76 : 8 R A 670 (1) : 37 Cr L J 365 : 1936 A W R 195 (2) : 160 I C 889.**

——Ss. 133, 139-A, 137—Police report—Notice under S. 133—Production of evidence—Finding as to absence of evidence of denial— Procedure under S. 137—Necessity of Civil suit for declaration—Application for stay of criminal proceedings—Whether can be allowed— Civil Procedure Code (Act V of 1908), S. 10—Principle of, if applies.

Where there is a definite provision for a certain course of procedure laid down in a Code and that procedure requires a definite condition precedent before it is put in force, it is not the function of

CRIMINAL P. C. (V of 1898), S. 133—12. Magistrate shall question as to existence of public right

the High Court to ignore the existence of the condition precedent and to adopt the procedure as if that provision did not exist.

A proceeding under Chap. X, Cr. P. C., began with a report of the Police and on that, the Magistrate issued notices under S. 133, Cr. P. C., against K and others for having constructed a dam across a public channel. The applicants, K and others asserted that this was a private channel. Evidence was produced before the Magistrate under S. 139-A on this point as to whether the channel was public or private, and the Magistrate found that there was no reliable evidence in support of such denial. Before the Magistrate could proceed under S. 137, an application was made to the Magistrate asking that he should stay his proceedings till the decision of the civil suit which the applicants had filed in the Civil Court, for a declaration that the channel in question was not a pubic natural channel and that the dam was an old one and was not an obstruction in the channel. The Magistrate refused the application and the Sessions Judge considered that the Magistrate was wrong and referred the question of the stay of the criminal proceedings to the High Court for orders:

Held, that as the criminal proceeding was first instituted, the proceeding to be stayed would not be the criminal proceeding but it would be the civil suit. Although the stay asked for in the present case does not come under S. 10, Civil P. C., because the stay is asked in a criminal proceeding, yet as the stay is asked because of a civil suit, the principle of S. 10 might be applied.

Held, further, the Magistrate having found that there was no reliable evidence in support of the denial was bound to proceed under S. 137 and that the stay was rightly refused. (Bennet, J.) Kalika Prasad v. Shiam Kishore Singh. **A I R 1934 All 131 : 1934 A L J 342 : 7 R A 236 : 35 Cr L J 1445 (2) : 4 A W R 561 : 151 I C 897.**

——Under S. 139-A, Cr. P. C. what has to be seen is whether the denial of public right by the second party is supported by any reliable evidence. If it is, the Magistrate has to stay his hands until the matter of the existence of such right has been decided by a competent Civil Court. Under the law, as it is at present, it is the party moving for proceedings under S. 133, or somebody interested in asserting such right, who has got to go to the Civil Court to establish its existence. (Mukerjee and Bartley, JJ.) Kusha Mondal v. Emperor. **A I R 1934 Cal 545 : 38 C W N 391 : 61 Cal 390 : 59 C L J 290 : 7 R C 161 : 35 Cr L J 1374 : 151 I C 691 (2).**

——Ss. 133, 137, 138, 139-A— Proceedings under S. 133—Finding that there is no reliable evidence in support of denial of right of way— Magistrate not proceeding under S. 137 or 138—Legality of—Stay of.

CRIMINAL P. C. (V of 1898), S. 133—12. Magistrate shall question as to existence of public right

Where in a proceeding under S. 133, Cr. P. C., the Magistrate, after finding under S. 139-A that there was no reliable evidence in support of the petitioner's denial of right ot way, made the rule against the petitioner absolute without proceeding under S. 137 or 138:

Held, (i) that the Magistrate erred in making the order and that he must take up the matter further and proceed as laid down in S. 137 or 138;

(ii) that he would be competent to stay the proceedings only if he found affirmatively that there was reliable evidence in support of the petitioner's denial. (Macpherson, J.) Nirsu Pande v. Emperor. **A I R 1934 Pat 145 (1) : 14 P L T 778 : 6 R P 382 : 35 Cr L J 488 : 147 I C 804.**

——When proceedings are taken under S. 133 relating to the obstruction of an encroachment over a public drain, the Magistrate ought to stay the proceedings under S. 139-A (2) and relegate the parties to the remedies open to them in the Civil Court, in a case where the person against whom the proceedings under S. 133 are taken produces the settlement record evidencing his title to the land in dispute. (Greaves and Panton, JJ.) Debendra Nath Chowdhury v. Chairman, Local Board, Asansol. **81 I C 904 : 25 Cr L J 1080 : A I R 1925 Cal 268.**

——Ss. 133, 137—Bona fide dispute as to ownership. —In the course of proceedings under Ss. 133 and 137, a claim of ownership was set up by the petitioner. Held that the Magistrate had to decide whether it was a bona fide claim or a mere pretence to oust his jurisdiction. In the latter case, the jurisdiction of the Magistrate was not ousted; but in the former case the Magistrate had to stay his hands and to allow the dispute to be settled in the Civil Courts. The question in such a case is not whether the claim is established to the satisfaction of the Magistrate but whether it is advanced in good faith and supported by prima facie respectable evidence. (Batchelor and Heaton, JJ.) In re Muse Bagas Abheram. **10 Bom L R 563 : 8 Cr L J 33.**

13. Stay of proceedings.

——Ss. 133, 137 and 139-A—Enquiry under S. 137 to be undertaken only when denial of public right is not well founded—Magistrate neither questioning party as to whether he denied existence of public right nor coming to definite finding in support of his denial—Order under S. 133 is bad. (Harries, C. J. and J. P. Mitter, J.) Kalipada Das v. The King. **A I R 1949 Cal 583 : 51 Cr L J 125.**

——Ss. 133, 139-A, 137, 439— Notice under S. 133, issued— Magistrate's failure to question accused under S. 139-A, on date of hearing—Effect— Way encroached upon admitted to be public way— Failure to question, held no irregularity—No interference.

It is the duty of the Magistrate after issuing notice under S. 133, Cr. P. C., on the date of hear-

CRIMINAL P. C. (V of 1898), S. 133 — 13. Stay of proceedings

ing to question the accused under S. 139-A, as to whether he denied the existence of any public right in respect of the way alleged to have been obstructed. Where the Magistrate does not so question, his order may be set aside and he may be directed to re-hear the proceedings from the stage where the accused should have been questioned.

But when the way alleged to have been encroached on is admitted to be public way, if the Magistrate had remembered to put the question contemplated by S. 139-A, the answer must necessarily have been that that party did not deny the existence of a public right of way. Hence the procedure of the Magistrate in taking up forthwith the enquiry under S. 137 as to whether the public way had been encroached on or not, must be regarded as an irregularity not affecting the merits. In such a case, the High Court will not interfere in revision. (Rowland, J.) Bansidhar Marwari v. P. W. D., Bihar. **A I R 1943 Pat 3 : 9 B R 56 : 15 R P 160 : 43 Cr L J 923 : 203 I C 70.**

——Ss. 133, 137, 138, 139-A—Encroachment.

Where an accused is hauled up under S. 133, the Magistrate shall question him whether he denies the existence of the public right. If he does so, the Magistrate shall, before proceeding under S. 137 or S. 138, enquire into the matter and if he finds any reliable evidence in support of such denial, he shall stay the proceedings.

Where the provisions of S. 139-A are ignored the proceedings that follow thereafter are ultra vires. (Abdul Rashid, J.) Emperor v. Sain Shah. **42 P L R 80.**

——Ss. 133, 137, 139-A—Proceedings under S. 133—Procedure to be followed —Duty to ask question under S. 139-A before proceeding under S. 137—Omission to do so—Validity—Object of S. 139-A.

In a proceeding under S. 133, Criminal P. C., upon the opposite party's appearance, the Magistrate should forthwith ask him as to whether he denies the existence of any public right in respect of the way etc., and it is only after the question contained in S. 139-A has been decided that the Magistrate should, if he decides to go on with the case at all, proceed under S. 137, to take evidence.

Where an enquiry is held under S. 137 before the Magistrate decides the question contained in S. 139-A, this irregularity is not immaterial; for while dealing with the matter as if he was acting under S. 137, the Magistrate would direct his mind to arriving at a final determination of a question, while if he had considered the terms of S. 139-A, he would have only had to consider whether there was any reliable evidence in support of the opposite party's denial that there was any public right of way.

The object of S. 139-A was to substitute a test of whether there was any reliable evidence in support of the opposite party's claim for the test

CRIMINAL P. C. (V of 1898), S. 133 — 13. Stay of proceedings

which the Courts had gradually come to impose, whether the accused's claim was bona fide.

(The unfortunate position in which S. 139-A, Criminal P. C., has been placed, commented upon.) (Boys, J.) Raghunandan v. Sheo Nandan. **A I R 1932 All 366 : 1932 A L J 339 : Ind Rul (1932) All 443 : 33 Cr L J 618 : 138 I C 556.**

——Ss. 133, 139-A— Obstruction of public way — Procedure to be followed.

Under S. 139-A, Criminal P. C., when an order is made under S. 133 for the purpose of preventing obstruction to the public in the use of a way, the Magistrate shall question the respondent as to whether he denies the existence of a public right in respect of the way. And if the respondent does so, the Magistrate shall, before proceeding under S. 137 or S. 138, enquire into the matter and if in such enquiry, the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court. (Coldstream, J.) Manohar Lal v. Emperor. **A I R 1931 Lah 62 : 32 P L R 11 : 32 Cr L J 621 : 130 I C 834.**

14. Unlawful obstruction.

——Public nuisance—Shops walled from outside—This is both an obstruction and public nuisance, since it affects unascertained members of public whose ordinary avocation may take them to neighbourhood of the shops. (Ramaswami, J.) Annamalai Reddi v. Abdul Sathar Sahib. **A I R 1953 Mad 674 : 1953 Mad W N 24 : 1953 Mad W N (Cr) 16 : 1953- 1 Mad L J 160 : 1953 Cr L J 1201.**

——Obstruction in respect of water channel.

Obiter—Obstruction in respect of a water channel where only some people claim a right of irrigation does not attract the operation of S. 133. (Sarjoo Prosad, J.) Sukhlal Gope v. Satyadeo Prasad. **A I R 1951 Pat 311.**

——Ss. 133, 137, 139-A—Scope of—Power of Court.

Sections 133, 137 and 139-A relate to the abatement of public nuisances. They are only attracted when there exists in respect of the subject-matter a public right. Therefore, the fundamental position is that there must be a public right. If that right is denied, then the Magistrate is forbidden to proceed under this Chapter until the existence of the right claimed has been determined by a Civil Court. But the right denied must clearly be the right which is said to have been obstructed and not any and every right which has no bearing on the matter at issue.

In cases of obstruction, the obstruction complained of must lie on the public way in respect of which right is claimed. Of course, the sections do not apply if the obstruction is on a private land and not on public road. But when the obstruction is caused on the public road by a

CRIMINAL P. C. (V of 1898), S. 133 — 14. Unlawful obstruction

dam erected on private land S. 133 will apply. (Bose, J.) Sadashiv Chintaman v. Chintaman Khushalrao. **A I R 1945 Nag 226 : 1945 N L J 243 : I L R (1945) Nag 461 : 47 Cr L J 217 : 1946 Nag Rul 52 (C. N. 16) : 221 I C 581.**

——Ss. 133, 139—Proceeding under—Duty of Court —Applicability of S. 133, to long standing obstructions—Opposite party claiming by adverse possession—His remedy.

In a case under S. 133, Cr. P. C., for removal of obstruction, all that the Courts have to see is whether the encroachment has in fact been made upon a public place and not that the encroachment causes or does not cause any inconvenience to the public.

In such a proceeding, Court is precluded from considering the question whether the opposite party has acquired by adverse possession a right in the plot wherein the alleged obstruction to the public right existed. The only question to be seen into is whether the obstruction is such that it attracts the provisions of S. 133 and other relevant sections in Chap. X of the Code. Section 133 can be applied equally to long-standing obstructions and to unlawful obstructions recently built in a public place. Where the opposite party claims that by adverse possession, the public have lost their right to use the plot as public place, the obvious remedy of the opposite party is to deny the existence of any public right in respect of this plot in a proceeding under S. 139-A. (Manohar Lall. J.) Jadunandan Lal v. Rampeyare Sao. **A I R 1943 Pat 32 : 43 Cr L J 903 : 9 B R 55 : 15 R P 155 : 202 I C 783.**

——When there is a chabutra obstructing a public way the fact that in a particular case the public may have lot of room to go along the road, without needing to walk upon that particular site of the chabutra, has nothing to do with the case, and the public road authorities can secure its removal. (Boys, J.) Sallu Mal v. Emperor. **128 I C 604 : 32 Cr L J 160 : 1930 Cr C 1007 : A I R 1930 All 751.**

——Obstruction must be of public use of public river, way or channel. 22 Bom. 988, Rel. on. (Dalal, J.) Munna Tiwari v. Chandarbali. **110 I C 213 : 50 All 871 : 26 A L J 1285 : 29 Cr L J 661 : 9 L R A Cr 118 : 10 A I Cr R 201 : A I R 1928 All 627.**

——Encroachment on public way is itself nuisance.

Encroachment upon a public road is an obstruction to the public path, and it is a nuisance in itself under S. 268 of the Penal Code. No length of user can justify an encroachment upon a public way. The question of a sufficient width of the road being left in support of the encroachment, for public use is no ground for allowing the encroachment or obstruction to continue. It is the duty of the Magistrate to come to a finding, whether the claim of the person complained of, to such encroachment is bona fide or not,

CRIMINAL P. C. (V of 1898), S. 133 — 14. Unlawful obstruction

and question of possession is relevant for this purpose. (Jwala Prasad, J.) Jagroshan Bharthi v. Madan Pande. **6 Pat 428 : 8 P L T 452 : 8 A I Cr R 306 : 28 Cr L J 910 : 105 I C 238 : A I R 1927 Pat 265.**

——An obstruction at 15 1/2 feet over country road, having regard to the normal traffic was held to be not an unlawful obstruction within the meaning of the section. (Ryves, J.) Gokul v. Emperor. **83 I C 664 : 22 A L J 436 : 5 L R A Cr 84 : 26 Cr L J 104 : A I R 1924 All 667.**

——Sec. 133 deals with only public nuisances and not with private nuisances. So an application for removal of obstruction of a private path-way does not lie under the section. (Kendall, A. J. C.) Bhaiya Gauri Shankar v. Bhagala Pande. **81 I C 942 : 11 O L J 659 : 25 Cr L J 1118 : A I R 1925 Oudh 130.**

——Claim of right—Does not oust his jurisdiction — Such claim not well founded, in Magistrate's opinion though made in good faith— Magistrate, if can allow objector time to establish his claim in a Civil Court— Failure of objector to go to Civil Court within time allowed— Magistrate can continue proceedings.

Per Teunon J. :—When in proceedings under S. 133 of the Criminal Procedure Code, arising out of an alleged obstruction of a way used by the public, the defendant sets up a claim of right, which is found by the Magistrate to be made in good faith, the Magistrate's jurisdiction is not ousted thereby.

Per Sanderson, C. J.—If the Magistrate does not think the claim well founded, though he considers it to have been made in good faith, he may in his discretion allow the defendant a reasonable time to assert the claim made by him by a Civil Suit, and if he does not go to the Civil Court within such time or fails there, the Magistrate has power to continue the proceedings under S. 133 of the Criminal Procedure Code.

Per Sanderson, C. J. Teunon and Ghose, JJ. With regard to case of Belat Ali v. Abdur Rahim (8 C. W. N. 143), it could not be said, having regard to the facts of that case, that it was wrongly decided.

Per Richardson and Newbould, JJ.—An order giving a defendant, whose claim the Magistrate considers ill-founded, a limited opportunity to go to the Civil Court, is within the Magistrate's jurisdiction, but he also has jurisdiction, and in some cases, it may be his duty, to act himself on his own finding that the claim is ill-founded. It is a matter for his discretion. It would in some sense be within the Magistrate's discretion in such cases to terminate his proceedings leaving it to either party desiring to do so, to seek a remedy in the Civil Court in the usual way.

Per Ghose, J.—If the Magistrate finds that there is a real or substantial question to be tried out between the parties he ought, in exercise of

CRIMINAL P. C. (V of 1898), S. 133 — 14. Unlawful obstruction

his discretion, to stay his hands and not to proceed any further after making the conditional order under S. 133. It is not a case of ouster of jurisdiction and there is no ouster of jurisdiction.

The Magistrate is entitled to continue the proceedings where the objector shows nothing more than a mere belief in the claim of right put forward. The Magistrate is not entitled to direct the objector to go to the Civil Court because in his opinion the claim of right cannot be ultimately maintained. So far as the case of Belat Ali v. Abdur Rahim 8 C. W. N. 143 is not inconsistent with the above view, it was rightly decided. (Sanderson C. J., Teunon, Richardson, Newbould, and C. C. Ghose, JJ.) Ram Sagar Mondal v. Alek Nasker. **49 Cal 682 : 35 Cal L J 247 : 67 I C 177 : 26 Cal W N 442 : 23 Cr L J 353 : A I R 1922 Cal 59 (F. B.)**

——Applicability—Order for removal of obstruction—Public river.

An order directing the removal of a dam constructed across a public river forming an unlawful obstruction to the river course and causing damage to the lower riparian owners is justified. (Kanhaiya Lal, J. C.) Jagannath v. Chandrika Prasad. **6 O L J 616 : 54 I C 407 : 21 Cr L J 55. A I R 1919 Oudh 74.**

——Prescriptive right of public to user of way across a ford— Damming the stream by erection of a bund—Obstruction to right of way only under S. 133—Acquisition of right to erect bund—Desuetude of right—Maxim, sic utere tuo utalienum non laedas—Easement.

The petitioner erected a bund in a fordable stream, and thereby caused obstruction and nuisance to the public in the lawful enjoyment of the right of way through the stream. The magistrate passed an order under S. 133 for removal of the obstruction. It was found that the public had been exercising without obstruction their right of way across the stream for a period of over 20 years : held, that the petitioner's right to obstruct the stream by erecting the bund in question, which could only have been one of easement had been lost by long desuetude, while the public had acquired a prescriptive right of way across the stream. Held, also, that, even if the petitioner had a subsisting right to dam the river, such right should be exercised subject to the maxim sic utere tuo utalenum non laedas and not so as to cause unjustifiable obstruction and nuisance to the public. The magistrate was, therefore, competent to pass the order under S. 133 for the removal of the obstruction. (Pratt and Handley, JJ.) Zaffer Nawab v. Emperor. **32 C 930 : 2 Cr L J 762.**

——Acts amounting to nuisance—Bona fide claim of title—Duty of magistrate.

When the acts complained of amount to a nuisance, it is a prima facie case, which a Magistrate has jurisdiction to deal with. The only limitation on his authority is in the cases of the

CRIMINAL P. C. (V of 1898), S. 133 — 14. Unlawful obstruction

nature of obstruction to a public right of way if Magistrate finds that there is a claim of title, which is bona fide, he should give an opportunity to the person raising that claim to establish it in a Civil Court. Failing his doing so, the Magistrate is bound to proceed with the case. This limitation or restriction does not apply, when the case is one affecting the public health or safety. (Sale and Handley, JJ.) Belat Ali v. Abdur Rahim **8 C W N 143 : 1 Cr L J 70.**

15. Nuisance.

——Defendants had set up two houses away from village abadi and near the Hadwara (a place for skinning dead animals) which was already in existence there for a long time. Question was whether the Hadwara constituted public nuisance.

Held, that the Hadwara did not constitute a public nuisance. (Harnam Singh, J.) Chandgi v. Bhai Ram, **51 P L R 176 (E P).**

——Parking of buses in sheds built upon private land is not prima facie public nuisance, in the absence of evidence.

The parking of buses in sheds built upon private land cannot amount to a public nuisance prima facie when there is no evidence that the act has caused any nuisance to any one and much less to the public at large. (Govinda Menon, J.) In re Sadagopa Naidu. **61 M L W 495 (2) : 1948-1 M L J 414 : 1948 M W N 493 (1) : 49 Cr L J 666 : A I R 1949 Mad. 75.**

——When an application is made for the removal of a privy on the ground that its continuance near a public well would render the water of the well insanitary and unfit for use, and there is no denial of the existence of the public right in the well and the atmosphere surrounding it, an enquiry under S. 139, Cr. P C is not feasible. To such a case S. 133 applies if the Magistrate thinks that the nuisance should be removed from the public place. (Macpherson, J.) Mahabir Prasad Chaudhari v. Dhanushdhari Prasad Singh **A I R 1936 Pat. 409 : 9 R P 24 : 2 B R 619 : 1936 P W N 358 : 163 I C 514.**

——Scope of—Nuisance—Latrine in private place —S. 133, if applies.

The nuisance contemplated in S. 133, Criminal P C is a nuiance in any way, river or channel which is or may be lawfully used by the public or which is in a public place. Where, therefore, a latrine has been constructed upon the applicant's own land, that is, in a private place, the provisions of S. 133, do not apply. Where a latrine has been completed and is a nuisance, the owner should be directed to remove the nuisance and to prevent the user of the latrine amounting to a nuisance rather than to demolish the building which is being so used. (Harries, J.) Shri Ram v. Emperor. **A I R 1935 All 926 : 1935 A W R 1004 : 8 R A 407 : 37 Cr L J 347 (2) : 159 I C 198.**

CRIMINAL P. C. (V of 1898), S. 133—15. Nuisance

——Noise of the mill.

Held, that the noise of the mill caused discomfort to the residents of the locality and amounted to nuisance. (Niyogi, A. J. C.) Munnalal Brahmin v. Shridhar Rao Lele **A I R 1934 Nag. 193 (1) : 17 N L J 54 : 36 Cr L J 591 (1) : 7 R N 163 (1) : 154 I C 365 (1).**

——Ss. 133 to 140—Public nuisance—Encroachment on road—Right to abate nuisance, limits of—English and Indian Law compared.

There is no statutory provision in India justifying a private person or a member of the public in demolishing a building and causing loss to another person by way of abating a nuisance. On the other hand, the scheme of the Legislature indicates that in the case of such a public nuisance, persons aggrieved should not take the law into their own hands, but must resort to the particular procedure laid down therein. Even in England, there is no unconditional right to abate a public nuisance. (Sundaram Chetty and Walsh, JJ.) Narasimhulu v. Nagur Sahib **A I R 1934 Mad. 95 : 57 Mad. 351 : 35 Cr. L J 437 : 1933 M W N 905 : 6 R M 376 : 38 M L W 996 : 147 I C 553.**

——Construction of a latrine on one's land is not a nuisance.

The construction of a latrine by a person on his own land cannot be considered a nuisance. There would be a nuisance if on its construction its use was made in such a way as to lead to a nuisance to neighbours. 25 Cal. 425, Foll. (Dalal, J.) Gauri Shankar v. Shri Krishna. **26 A L J 86 : 9 A I Cr R 12 : 8 L R A Cr 172 : 107 I C 242 : 29 Cr L J 233 : A I R 1928 All 128.**

——Applicability—Throwing of rubbish on common land, is not a ground.

The mere throwing of rubbish on vacant land lying between two houses is not sufficient to justify proceedings under S. 133, Criminal Procedure Code. (Lindsay, J. C.) Emperor v. Sukhdei **24 O C 327 : 64 I C 841 : 23 Cr L J 57 : A I R 1921 Oudh 204.**

——Public nuisance—Killing of cows by Muhammadans.

Acts calculated to offend the sentiments of a class do not necessarily amount to a public nuisance. Under certain limitations, the slaughtering of kine by Muhammadans is not illegal. It is the legal right of every person to make such use of his own property, as he may think fit, provided that, in so doing, he does not cause real injury to others or offend against the law, even though he may thereby hurt the susceptibilities of others. The right of Muhammadans to slaughter kine is one to which they are legally entitled irrespective of custom, and it is only when they abuse the right that its exercise can be interfered with. It is wrong to hold that the onus lies upon them to prove the existence of such a custom. (Stanley C. J. and Burkitt, J.) Shahbaz Khan v. Umrao Puri,

CRIMINAL P. C. (V of 1898), S. 133—15. Nuisance

A W N 1908, 64 : 5 A L J 147 : 30 A 181 : 7 Cr L J 381.

——Public nuisance—Special damage.

No individual or class of individuals can sue in respect of a public right unless the obstruction caused has resulted in special damage. The Bombay District Police Act (IV of 1890) was not intended to confer any right upon any individual or class of His Majesty's subjects which had not been given by the common law. The Act was passed in the interests of public peace and all that S. 44 of that Act contemplates is that where a District Magistrate has passed an order in the interests of peace, it is open to any party to go to a Civil Court and get an adjudication in favour of his right, if any. The legislature merely assumes that there is a right which the District Magistrate's order has opposed and which can be vindicated in a Court of Law. (Chandavarkar and Heaton JJ.) Virupaxappa Fakirappa v. Sherif Sab Mulla Masud Sab. **11 Bom L R 372 : 2 Ind Cas 494.**

16. Channel.

——Catchment area—Channel may include a catchment area with a water course in the centre.

The word "channel" is not defined in the Code but the word is quite wide enough to include a catchment area in the centre of which there is a water course. Where such water course is obstructed and the water which flows into the water course is attempted to be carried away by certain persons to their own village tank by building a bund and cutting a new channel and by cutting down a new portion of the old bund of the catchment area to make the water run away in a direction different to that of the water course and to prevent it falling into the Urani.

Held, that their act can be held to be an obstruction to the water course. (Krishnan, J.) Ramaswami Chettiar v. Ramanathan Chettiar. **91 I C 537 : 22 M L W 470 : 1925 M W N 663 : 27 Cr L J 105 : A I R 1926 Mad 165.**

——Ss. 133, 139 and 141—Claim of right—Inquiry under—Procedure—Removal of nuisance—Order.

A Magistrate, on a complaint that public rights in a channel were interfered with, proceeded to inquire under S. 133 and came to the conclusion that the channel was a public channel and passed order under Ss. 139 (1) and 140 (1), Cr. P. C. Held that the Magistrate was not bound to enquire that the accused had a bona fide claim of right to the channel and refer the matter to the Civil Court. (Fletcher and Teunon, JJ.) Fakir Mullick v. Emperor. **28 C L J 211 : 47 I C 671 : 19 Cr L J 947 : A I R 1918 Cal 40.**

——Applicability — Dispute between two villages as to right of digging and clearing a water course.

Dispute between two villages in respect of the rights of one to dig and clear a water course for irrigation purposes, which is denied by the other,

CRIMINAL P. C. (V of 1898), S. 133 –16. Channel

is expressly appropriate for the application of S. 133 to avoid a breach of the peace. (Rattigan, J.) Budha v. Mohanlal. **25 P W R (Cr) 1912 : 16 I C 162 : 13 Cr L J 594.**

17. "Used by the public."

——S. 133 (1)—Channel used by public—Obstruction.

Where a channel can lawfully be used by the public for 6 months when there is water in it the application of S. 133 is clearly attracted if the people are prevented by the obstruction created by the person proceeded against from plying boats in the channel. (Ram Labhaya, J.) Dhanaram Namasudra v. Kalicharan Namasudra. **51 Cr L J 1177 : A I R 1950 Assam 138 : I L R (1950) 2 Assam 391.**

——Ss. 133, 139—"Public right", what is.

A class or community residing in a particular locality may come within the term "public" and the right enjoyed by them is a public right. The number of persons claiming the right and the nature of right itself will no doubt be the criteria on which conclusions may be arrived. The best criterion will be to see whether the right is vested in such a large number of persons as to make them unascertainable and to make them a community or class. The question has to be decided on the facts of the case. Where, in a village of 200 houses, some persons claim a right to irrigate their fields with the water channel, the right claimed is not a public right. (Mohammad Noor and Varma, JJ.) Harnandan Lal v. Rampalak Mahato. **A I R 1939 Pat 460 : 6 B R 6 : 18 Pat 76 : 12 R P 212 : 40 Cr L J 837 : 20 P L T 748 : 184 I C 47.**

——Ss. 133, 137 (2)— Public pathway— User of land as such not established—Proceedings, if should be dropped— Nature of proof to be adduced by person defending.

If the person who alleges that a public pathway has been obstructed is unable to show that a public pathway exists, the Magistrate is certainly neither required nor entitled to act as if it had been found that a public pathway did exist; and in the absence of evidence of actual dedication, the person defending the case under S. 133, Cr. P. C., has merely to adduce reliable evidence to show that the use of the path by the public has not been sufficiently long to establish a prescriptive right. The fact that the pathway may have been used for 2 1/2 years would not warrant the Magistrate enforcing its use as public path against the wishes of the owner, who is perfectly entitled to close it if he pleases. (James, J.) Harisadhan Chaudhuri v. Teknarain Singh. **A I R 1934 Pat 438 : 15 P L T 386 : 1 B R 199 : 7 R P 344 : 36 Cr L J 367 : 153 I C 471.**

——Claim of right—Civil dispute involved—Magistrate has jurisdiction to refuse to interfere—Public way—Dedication to public must be proved.

CRIMINAL P. C. (V of 1898), S. 133–17. "Used by the public"

S. 133 is quite plain. The Magistrate must deal with an alleged "public" way even though it is disputed. These summary powers were primarily intended to be exercised in cases where there was no question that the way was one vested in the public, and when that question is seriously disputed and its decision becomes a difficult matter of mixed fact and law, a Magistrate clearly has jurisdiction to exercise his discretion by declining to decide it, and sending the parties to a Civil Court. 28 All. 98, diss. 1922 Cal. 59: 49 Cal. 682 (F. B.) Ref.

Private property cannot be converted into public merely because it looks as though it ought to be and because to do so would be convenient to a section of the public who have enjoyed permissible user over it. (Walsh, J.) Abdul Wahid v. Abdullah Khan. **45 All 656 : 21 A L J 529 : L R 4 A (Cr.) 105 : 74 I C 849 : 24 Cr L J 817 : A I R 1924 All 1.**

——Claim of right—Section does not apply.

A bona fide dispute over a public way should be left to be determined by a Civil Court and the provisions of S. 133 of the Code must not be applied to such a case. (Martineau J.) Phalla v. Naiz Ahmad. **63 I C 828 : 22 Cr L J 700 (Lah).**

——Ss. 133 and 135—Procedure— Appointment of jury.

In a proceeding under S. 133 in respect of a way the Magistrate must first decide whether the way in question is or is not a public way and whether the claim to the contrary is put forward in good faith. If he concludes that the way is a public way and that the claim to the contrary is merely a pretext to oust the Magistrate's jurisdiction, he can then appoint a Jury if the claimant still desires the appointment of a Jury. (Teunon and Ghose, JJ.) Durlav Chandra Santra v. Bhuban Chandra Das. **61 I C 843 : 22 Cr L J 459 (Cal.).**

——Claim of right— Public path— Obstruction—Procedure.

The Magistrate should first inquire, in a case of alleged private ownership of a path, that the claim is a bona fide one; if it is bona fide he should refer the parties to a Civil Court, but if not, then only he can take proceedings under S. 133 of the Code. (Beachcroft and Ghose, JJ.) Lakshman Chandra v. Bilash Roy. **61 I C 175 : 22 Cr L J 351 : A I R 1920 Cal 895.**

——Applicability— Obstruction to a channel not used by the public— Whether Magistrate can interfere.

Where the owner of a low field raised its level so as to hold back the surplus water from his neighbour's fields that used to flow across his land, it was held, the Magistrate could not proceed under S. 133 of the Cr. P. Code. (Ryves and Piggot, JJ.) Jagar Nath Sahu v. Parmeshwar

CRIMINAL P. C. (V of 1898), S. 133—17. "Used by the public"

Narain. **36 All 209 : 12 A L J 248 : 23 I C 181 : 15 Cr L J 229 : A I R 1914 All 213.**

——'Which is or may be used lawfully by the public'.

It is not necessary, in order to give jurisdiction to the Magistrate under S. 133 of the Code, that the way should be one which is generally used by the public. All that the section requires is that the way should be one which is or may be lawfully used by the public. (Lawrence Jenkins, C. J. and Caspersz, J.) Hriday Chandra Das v. Shib Chandra Goswami. **10 Cr L J 210 : 3 Ind Cas 7 (Cal.).**

——Claim of public right by defendants over private land of plaintiff—Cause of action—Parties.

The plaintiff claimed a private right upon a certain land, over which a public right or way was claimed by the defendants. The latter initiated proceedings under S. 133, Cr. P. Code, and got an order by Magistrate upon the plaintiff to remove certain structure which the Magistrate found to be an obstruction upon the alleged public right of way : Held, that, a cloud had been thrown upon the title of the plaintiff by the proceedings under S. 133, Cr. P. Code. The plaintiff had therefore a cause of action to bring a suit for declaration of his title. The plaintiff had a right to call upon the court to remedy the injury that he had suffered. Held, also, that the plaintiff had a right to bring the suit against the defendants alone without impleading any other member of the public. (Chatterjee, J.) Sheikh Ekhar Ali v. Anu Manjhi. **6 Ind Cas 46 (Cal.).**

——Public right of way.

The fact that the villagers have a right of way for their cattle to cross a certain field would not make the way in question a way which is or may be lawfully used by the public. (Richards, J.) Jhunnu Singh v. Emperor. **A W N 1906, 190 : 4 Cr L J 65.**

18. Public place.

——Railway land not a public place— Finding as to public way must be specific.

There is no warrant for the view that Railway land is necessarily a public place especially railway land which is outside the railway fencing at a railway station. Where there is a finding of fact that the accused has encroached on the railway land left outside the railway fencing, but there is no finding that the land encroached upon is in a way or that if it is in a way, it is on one which is or may be lawfully used by the public.

Held, that the observation which the Magistrate made when discussing the question why the land is outside the fencing viz. "It is said that it appears to have been done for the sake of the public to use the well" cannot be considered to be a finding that there is a way over the land encroached upon. (Macpherson, J.) Rangi Sah v. B. N. W. Ry. Co. **4 P L T 402 : 74 I C 1047 :**

CRIMINAL P. C. (V of 1898), S. 133 — 18. Public place

24 Cr L J 855 : 1 Pat L R 154 Cr : A I R 1923 P 540.

19. Conduct of trade or occupation.

——Scope.

The Magistrates are not expected to use the power under S. 133 against a person who can easily be prosecuted under the ordinary law for starting a cinema house without a license. (Malik, C. J.) Basanti Devi v. Rex. **1949 A W R H C 440 : 1949 All Cri Cas 104 : 50 Cr L J 991 : A I R 1949 All 650.**

——Magistrate in previous proceedings regulating working of mill—Orders complied with— Further working, whether nuisance for fresh proceedings—Redress in Civil Court.

The law does not contemplate a continued interference with the carrying on of the trade.

The working of flour mills working under a license from a Municipality as regulated by the order of a Magistrate in previous proceedings under S. 133, Cr. P. C., cannot be described in law as a nuisance for the purposes of fresh proceedings under Chap. X of the Cr. P. C. Where, in such a case a fresh complaint is made, the Magistrate should leave the complainant to move either the Municipal Board or to seek his redress in the Civil Court. (Radha Krishna, J.) Kedar Nath v. Satish Chandra. **A I R 1940 Oudh 75 : 12 R O 143 : 41 Cr L J 99 : 1939 A W R 252 : 1939 O W N 966 : 15 Luck 140 : 184 I C 754.**

——Municipal license— Jurisdiction of Magistrate to pass order regulating conduct of trade—Expediency of passing such orders.

A Magistrate has jurisdiction to pass an order under S. 133, Cr. P. C., directing a person to whom a license has been granted by a Municipality, for carrying on a trade to take precautions so as to prevent his trade from being a nuisance to the community, but it is generally inexpedient that a Magistrate should take action in such cases as these matters are left by the Legislature to the control of the Municipal Boards.

Where a person had erected a lime-kiln with the consent of a Municipal Board and had been working the kiln for several years and it appeared that the kiln in question was not a danger to the community and did not cause discomfort to any one except the complainant and his neighbours who had deliberately chosen to reside in a position where they were liable to be inconvenienced by the smoke and smell of the kilns:

Held, there was no justification for passing an order under S. 133, Cr. P. C., directing the licensee to remove the kilns. (Pullan, J.) Lalman v. Bishambhar Nath. **A I R 1932 All 159 : 1932 A L J 49 : 33 Cr L J 524 : Ind Rul (1932) All 349 : 54 All 359 : 137 I C 626.**

——S. 133 deals only with occupations or trades which are in themselves injurious to health and has nothing whatever to do with trades which in

CRIMINAL P. C. (V of 1898), S. 133—19. Conduct of trade or occupation

themselves are harmless but in course of which a public nuisance might be committed. There was rivalry between two steamer companies who vied with each other in attracting passengers. It was alleged that their practices of taking up passengers from the boats and of taking passengers from places other than the recognized jetties caused backwash and involved danger to the public:

Held, that S. 133 did not apply.

Per S. K. Ghose, J.—S. 133 is not confined to trades which are injurious in themselves. It applies on the contrary to the cases of trades which become injurious by reason of conduct of them. (Graham and S. K. Ghose, JJ.) Calcutta Steam Navigation Co., Ltd. v. Emperor. **35 C W N 115 : 129 I C 106 : 32 Cr L J 235 : 1930 Cr C 1157 : A I R 1930 Cal 757.**

——Discharge into river of an effluent from a factory is covered—There must be definite, scientific and convincing evidence against the accused.

The second paragraph of Sub-S. (1) of S. 133 gives ample power to make an order prohibiting the discharge from a factory into a river of an effluent which might be injurious to the health of the community which has rights to the use of the water in such stream. It would be necessary to prove substantially, before an order could be made against any of the parties that the effluent from its factory was noxious. That sources of public water supply polluted by industrial factories, must be convincingly proved, by means of scientific enquiry against a wrong-doer before any order can be passed against him. (Mullick and Bucknill, JJ.) Deshi Sugar Mill v. Tupri Kahar. **8 P L T 302 : 28 Cr L J 317 : 100 I C 541 : A I R 1926 Pat 506.**

——S. 133 (1)— Injurious to physical comfort—Order restraining sale of cattle in a public market.

An order restraining the sale of cattle on the ground that the market is situated in a congested part of the town, approached by narrow lanes and that when the cattle are being carried through such lanes, they cause inconvenience and danger to human life, is a valid order. (Teunon and Suhrawardy, JJ.) Mohendra Narain Roy Chaudhuri v. Emperor. **62 I C 822 : 22 Cr L J 582 (Cal.).**

——Injurious to physical comfort —Nuisance — Notice—Remedies of injured person.

Under S. 133 a licence which is injurious to the physical comfort of the community is a nuisance. The Magistrate does not lose his jurisdiction under S. 133 of the Code of Criminal Procedure though there is an alternative remedy. (Walmsley and Shamsul Huda, JJ.) Krishna Mohan Banerjee v. A. K. Guha. **32 Cal L J 42 : 57 I C 829 : 21 Cr L J 669 : A I R 1920 Cal 550.**

——Trade—Inoculating children—Order to stop—Whether order legal.

CRIMINAL P. C. (V of 1898), S. 133—19. Conduct of trade or occupation

An order of a Magistrate for bidding the inoculation of children during an outbreak of smallpox by their parents and guardians, is not legal, since they were not carrying on a trade under S. 133. (Saunders, A. J. C.) Emperor v. Nga Kyank Lon. **(1913) U B R I 180 : 23 I C 205 : 15 Cr L J 253 : A I R 1914 Upp. Bur. 3.**

——"Injurious to physical comfort".

The interference with public comfort must be considerable and must be caused to a considerable section of the public. (Johnstone, J.) Emperor v. Fazal Din. **117 P L R 1911 : 20 P W R Cr 1911 : 9 I C 891 : 12 Cr L J 146.**

——Old market, existence of — Opening of new market close to it—Order closing new market.

It is not possible to hold that because there is already one market, A who opens another market close to it can be held to be carrying on a trade or occupation that is injurious to the health or physical comfort of the community especially when it is not even alleged that the new market causes any injury to any one's health or comfort. Therefore, the order of the Magistrate closing the new shop should be set aside. (Bhashyam Aiyangar and Moore, JJ.) Moidin Kutti v. Abdulla. **14 M L J 207 : 2 Weir 62.**

20. Community.

——Words "Public", "Community" and "Neighbours" meanings of.

The terms 'public', 'community' and 'neighbours' must be deemed to have been used in S. 133 in different senses, with reference to the particular kind of nuisance complained of. The term 'public' will include both 'community' and 'neighbours' and the word 'community' has been used in the section to include a particular section of the public including neighbours. Nuisance affecting only a few persons in neighbourhood— Order under S. 133 is not justified. (Bhargava, J.) Shri Sansar Kirti Saran v. State through Sahu Shivraj Saran. **1951 All W R (H. C.) 630.**

——S. 133 (1), Para 3—Community— Meaning of —Public nuisance—Penal Code (1860), S. 268.

The word 'community' cannot be taken to mean residents of a particular house. Community means something wider than that. It means the public at large or the residents of an entire locality. Hence a noise of a machinery constituting a nuisance only to residents of adjacent houses is not public nuisance. (A. N. Sen and K. C. Chunder, JJ.) Dwarika Prasad v. Dr. B. K. Roy. **85 C L J 276 : 51 Cr L J 1315 : A I R 1950 Cal 349.**

——'Public' and 'community', meanings of—Trade injurious to neighbours but not to community in general—Jurisdiction to make order.

Though the words 'community' and 'public' are used indiscriminately in S. 133, Criminal P. C., there is no reason for making a distinction between the public and the community and for holding that a man may carry on a trade or occupa-

CRIMINAL P. C. (V of 1898), S. 133 — 20. Community

tion that is injurious to the health or physical comfort of his neighbours or of the public without becoming liable under S. 133, merely on the ground that there may be some part of the community which is not affected. (Kendall, J.) Raghunandan Prasad v. Emperor. **A I R 1931 All 433 : 1931 A L J 912 : 53 All 706 : Ind Rul (1932) All 237 : 33 Cr L J 331 : 136 I C 621.**

21. Building, tent, structure or tree.

——Tree standing on bank of tank forming common boundary of parties—Case held did not fall under S. 133.

A tamarind tree standing for forty years on the bank of the tank forming the common boundary of the petitioner's tank and the opposite party s house cannot constitute a public nuisance within the meaning of S. 133. If the tree falls, it cannot be said that it is likely to cause injury to persons living or carrying on business in the neighbourhood or passers by, merely because if it does fall it is likely to cause damage to the opposite party's boundary wall and cook-shed. In that event, the opposite party would have his remedy otherwise, but the case does not call for an order under S. 133. (Ellis and Amin Ahmed JJ.) Kazi Azizar Rahman v. Manik Uddin Ahmed. **52 C W N 755 : A I R 1949 Dacca 11 : 50 Cr L J 782 : 1949 All W R Sup 4 : P L D 1950 Dacca 43.**

——Future nuisance—Whether contemplated by S. 133.

Section 133, Cr. P. C., does not permit the removal of the construction of a proposed cesspool on the ground that it may prove a nuisance in the future. (Grille, J. C.) Rambharose v. Sudarlal. **A I R 1943 Nag 230 : 17 N L J 158 : 7 R N 65 : 35 Cr L J 1414 : 151 I C 754.**

——Danger must be at the time of injury and not at future indefinite time.

The section deals with the condition of things at the time when the enquiry is held. If at such a time a house or branch of a tree is likely to fall and thereby endanger the life of passers-by, action under the section is justified. The section is not meant to apply to what may happen at some indefinite time in the future or under quite abnormal circumstances. (Ryves, J.) Gokul v. Emperor. **83 I C 664 : 22 A L J 436 : 5 L R A Cr 84 : 26 Cr L J 104 : A I R 1924 All 667.**

——Procedure— Order for removal of obstruction must be based on enquiry.

Evidence must be taken for an order under S. 133, Cr. P. Code for removal of a building on the ground that it obstructs a street. 32 P. R. 1917, Cr. Ref. (Zafar Ali, J.) Bhedu v. Emperor. **5 Lah L J 81 : A I R 1924 Lah 128.**

——Claim of right—Building obstructing view of railway signal— Order for removal— Legality cf.

Where in a proceeding under S. 133 of Cr. P. Code for building a house on one's own land but obstructing a Railway signal, the claimant puts forward his claim to erect the building in good faith, an order for removal of the building ought not to be made. (Teunon and Ghose, JJ.) Surajmull Agarwalla v. Emperor. **61 I C 517 : 22 Cr L J 389 (Cal).**

CRIMINAL P. C. (V of 1898), S. 133—21. Building, tent, structure or tree

——Claim of right—Order under, for removal of encroachment—Extent of encroachment not determined.

In a proceeding under S. 133, Cr. P. C. an order for the removal of a house alleged to be an encroachment or obstruction on a public way but without any finding as to the extent of the encroachment or as to the claim not being made in good faith, is illegal. (Sharfuddin and Teunon, JJ.) Bhagat Pershad v. Ram Rup Karmo Kar. **21 Cr L J 116 : 27 I C 224 : 16 Cr L J 160 : A I R 1915 Cal 402.**

——Building pucca wall on public thoroughfare—Remedy under.

See Bombay District Police Act (VII of 1867), S. 33. **1 Cr L J 328 (Bom).**

22. Form of order.

——The Cr. P. C. calls the order under S. 133 a conditional order and the form in which the conditional order is expressed is such as not to amount to an injunction. (Stone C. J. and Vivian Bose, J.) Hargovind Dullabh v. Kikabhai Rahimatullah **A I R 1938 Nag. 84 : I L R (1938) Nag. 348 : 11 R N 45 : 176 I C 257.**

——The Magistrate's order must specify the obstructions raised by each person.

When, in proceedings under S. 133 instituted against a number of persons, it is alleged that various unlawful obstructions have been caused upon a public way, but it is not alleged that all the persons had jointly raised those obstructions, it is essential that the order should state accurately, with regard to each person, the specific obstructions made by him which he is required to remove. AIR 1917 Cal 207, Foll. (Dalip Singh, J.) Khem Chand v. Emperor. **106 I C 220 : : 9 A I Cr R 202 : 28 Cr L J 1036 : A I R 1928 Lah 187.**

——Vague and indefinite order.

If the order from its terms is not sufficient to indicate to the person to whom it is directed as to what he should do in order to comply with the order, it is vague and indefinite and should be set aside. The High Court refused to send the case back on the ground that no useful purpose would be served thereby when the conditional order was bad. (Lawrence Jenkins C. J. and Chatterjee. J.) Kali Mohan Kar v. Nakari Chandra Das. **11 C L J 114 : 5 I C 722 : 11 Cr L J 213 (2).**

23. Directions in the order.

——It is highly improper for any Magistrate or any presiding officer of a Court to invite subscriptions to public or charitable funds from anybody appearing in his Court, either in the capacity of a party or a witness or professionally, or to enter-

CRIMINAL P. C. (V of 1898), S. 133—23. Directions in the order

tain suggestions made by anybody else that donations should be accepted from such. The dropping of a proceeding (in this case proceeding under S. 133, Cr. P. C.) by a Magistrate on one of the parties agreeing to make a donation to the war fund is illegal. (Agarwala, J.) Jadunandan Lal v. Rampeyare Sao. **A I R 1942 Pat. 337 (1) : 23 P L T 40 : 8 B R 659 : 43 Cr L J 633 : 14 RP 663 : 200 I C 301.**

——"Remove" does not include restoring status quo.

It would be manifestly straining the meaning of the word "remove" in para. (2), S. 133, to hold that removal of the trade or occupation includes ordering the person carrying on the trade, to restore the status quo.

A bought some land for the purposes of brick kilns just outside the municipal limits of a town and proceeded to dig pits in the ordinary course of the trade or occupation of brick-making. It was complained that those pits constituted a breeding ground for mosquitoes; and further that the smoke and the sparks from the chimneys constituted a nuisance and a danger. The Magistrate ordered the making of the bricks to cease and the pits to be filled up.

Held, that the portion of the order requiring A to fill up the pits ought to be set aside. (Boys and Banerji, JJ.) Bhagat Ram v. Emperor. **116 I C 21 : 51 All. 489 : 1929 A L J 177 : 10 L R A Cr 44 : 11 A I Cr R 296 : 30 Cr L J 561 : A I R 1929 All. 114.**

——Under S. 133, Cl. (2) it is only the power to order the removal of an obstruction which is given to a Magistrate. There is no provision for re-construction of an obstruction which has once been removed under this section. (Sanderson, C. J. and Chotzner, J.) Rahimaddi Jamadar v. Sher Ali. **85 I C 357 : 40 C L J 597 : 26 Cr L J 517 : A I R 1925 Cal 399.**

——Burial ground, order closing.

An order prohibiting the use of a burial ground cannot come under S. 133. It is not a case of the removal of nuisance from a public place. (Mitra and Fletcher, JJ.) Sheo Saran Lal v. Lal Mohamad Lal. **12 C W N 70.**

——Order prohibiting use of grave-yard.

An order prohibiting the use of a grave-yard is not an order which can come under Section 133, Cr. P. C. (See Criminal Procedure Code (Act V of 1898) S. 133.) **..6 Cr L J 370 (Cal).**

——Sections 133, 137—Procedure to be followed.

On a petition of some villagers, complaining of obstruction to a public way caused by the applicant, the sub-divisional Officer referred the matter to one of his subordinates, suggesting that the applicant might be proceeded against under section 133. The matter was first taken up as a revenue proceeding. Many months afterwards the Township Officer took evidence as to the existence of a public way, and as to the applicant having

CRIMINAL P. C. (V of 1898), S. 133—23. Directions in the order

obstructed it. He submitted this evidence to the Sub-divisional Officer. This Officer then drew up a conditional order under section 133 calling upon the applicant not only to remove the fence complained of, but also his house, which admittedly did not obstruct the footpath. This order was headed as being a proceeding of the sub-divisional Magistrate, but was filed with the previous revenue proceeding. The applicant was called on to show cause before the Township Magistrate why the order should not be set aside. The applicant appeared before this Officer and showed cause. The Magistrate submitted the evidence to the Sub-Divisional Magistrate with a report. The Sub-Divisional Magistrate then made the conditional order absolute.

Held that section 137 contemplates that the order absolute should be made by the Magistrate to whom a case is referred under section 133. Even if the Sub-Divisional Magistrate had jurisdiction to make the order absolute, his order that the applicant should remove his house was ultra vires. The conditional order as to this was not based upon the house being built upon the public way, but it was avowedly made because the applicant, if he was allowed to live there, would be able to interfere with people passing along the way, that is to say, the order was based on the applicant—not his house—being a public nuisance. (Fox, J.) Moung Shwe Ye v. Moung Pyu. **1 Cr L J 669 : 10 Bur L R 130.**

24. "Appear before himself or some other Magistrate"

——Ss. 133, 192 and 529 (f)—Direction to appear before another Magistrate if transfer.

An order directing the person proceeded against to appear before another Magistrate to show cause against the conditional order made by a Magistrate under S. 133 is not an order of transfer of the case under S. 192, Criminal P. C. Hence even if it be taken that the conduct of a Magistrate in directing the person concerned to appear before another Magistrate at a late stage of the proceedings under S. 133, Criminal P. C. Hence even if making the direction at a late stage instead of in the conditional order amounts only to an irregularity, that irregularity cannot be cured under S. 529 (f). (Raghubar Dayal, J.) Bhola v. Lachman. **1950 A L J 363 : 51 Cr L J 1248 : 1950 A W R 609 : 1950 All Cr L J 214 : A I R 1950 All 475.**

——S. 133 (1)—Power to send case to another Magistrate how to be exercised.

A Magistrate will have no jurisdiction to pass an order directing the person concerned to appear before another Magistrate at a later stage after he has passed a conditional order. The other Magistrate would get no jurisdiction to proceed with the case on account of an order so made. (Raghubar Dayal J.) Bhola v. Lachman **1950 A L J 363 : 51 Cr L J 1248 : 1950 A W R 609 : 1950 All Cr C 214 : A I R 1950 All 475.**

CRIMINAL P. C. (V of 1898), S. 133—24. "Appear before himself or some other Magistrate"

——Ss. 133, 139A—Application under S. 133—Magistrate A passing conditional order to remove obstruction or to appear before him—Party appearing before A and denying existence of public right—A transferring case to Magistrate B for proof of public right—B holding enquiry under S. 139A and sending his report to A for orders — A then sending case to Magistrate C for "disposal according to law"—C passing final order—Held, orders of transfer by A were without jurisdiction and vitiated the proceedings—S. 192 did not apply to case nor did S. 529, so as to cure the irregularity. (Sen, J.) Pran Krishna Das v. Shyam Sundar Sarkar. **A I R 1949 Cal 637 : 54 C W N 228 : ILR (1950) 2 Cal 365 : 51 Cr L J 205.**

——Transfer of proceedings.

Where a Magistrate in his preliminary order directs a person to remove an alleged obstruction or to appear before him to show cause or contest the order and the person appears before the Magistrate and files a written statement the Magistrate at that stage has no power to transfer the case to another Magistrate for disposal, and the final order passed by the transferee Magistrate would be without jurisdiction. (Teja Singh, J.) Mohammad Bakhsh v. Emperor. **A I R 1948 Lah 49 : 49 P L R 8 : 48 Cr L J 295 : 229 I C 168.**

——Conditional order — Appearance of party—Transfer of case to competent Subordinate Magistrate—Order under S. 139-A—Validity.

Where a conditional order under S. 133 is made by a Sub-Divisional Magistrate and on appearance of party the case is transferred to a competent Subordinate Magistrate, order under S. 139-A passed by the latter is within jurisdiction and the irregularity caused by the transfer order is curable under Ss. 529 (f) and 537, Cr. P. C. (Chatterji and Shearer JJ.) Tejnarain Singh v. Jagdeo Singh. **A I R 1945 Pat 316 : 24 Pat 23 : 12 B R 134 : 47 Cr L J 179 : 221 I C 418.**

——Ss. 133, 137, 537, 529 (f) — Conditional order by Sub-Divisional Magistrate—Subsequent transfer to Second Class Magistrate—Order of transfer, if without jurisdiction or merely irregular—Applicability of Ss. 529 (f) and 537.

Where a Sub-Divisional Magistrate makes a conditional order requiring the party to appear before himself, he should, strictly speaking, dispose of the case himself. If after the person appears before him, the Sub-Divisional Magistrate transfers the case for disposal to another Magistrate he will not be acting in strict accordance with the provisions of Ss. 133 and 137. But if he does so transfer the case, it cannot be said that he acts without jurisdiction so that all the subsequent proceedings will be rendered void. If he, instead of thus transferring the case by the conditional order itself, transfers it subsequently after the person against whom the order is made appears and shows cause before him, all that can be said is that he is exercising the power of transfer conferred by the section in an irregular manner which irregularity will be cured by Ss. 529 (f) and 537. Want of jurisdiction must be distinguished from irregular exercise of jurisdiction. (Chatterji and Shearer JJ.) Chanderdip Mahton v. Emperor. **A I R 1945 Pat 334 : 24 Pat 16 : 47 Cr L J 29 : 1946 Pat Rul 25 : 221 I C 183.**

——Ss. 133, 139-A, 135, 137—Magistrate passing conditional order can transfer case for enquiry under S. 137—Appointment of jury.

The inquiry under S. 139-A no doubt precedes the stage of inquiry under S. 137 or S. 138, but the Magistrate holding the enquiry under S. 139-A need not himself dispose of the case. There is nothing in the Code to prevent the Magistrate who passed the conditional order under S. 133 from transferring the case to some other Magistrate for making inquiry under S. 137.

But an application for the appointment of a jury must be made to the Magistrate by whom the conditional order under S. 133 was passed and S. 138 shows that the appointment of a jury must be made by the same Magistrate to whom the application for the purpose is made. (Manoharlall and Chatterji, JJ.) Jagdish Singh v. Baijnath Singh. **A I R 1943 Pat 115 : 21 Pat 759 : 9 B R 217 : 44 Cr L J 364 : 15 R P 285 : 205 I C 302.**

——Application under—Magistrate ordering opposite party to remove obstruction or to appear on certain date to show cause against removal—Party appearing—Magistrate, if can send case to other Magistrate.

Where upon an application under S. 133, Cr.P. C., the Magistrate, after recording some evidence orders the opposite party to remove the obstruction by certain date or to appear before him to show cause against the removal of obstruction and the party appears before him, the Magistrate must himself proceed with the case and has no power at such stage to send the case for disposal to another Magistrate. (Blacker, J.) Umrao Singh v. Kanwar Lal. **A I R 1938 Lah 323 : 10 R L 733 : 39 Cr L J 603 : 175 I C 517.**

——The Magistrate making conditional rule can refer the matter for disposal to another Magistrate subordinate to him except when jury is demanded under S. 135. AIR 1915 Cal 168, 17 Cal 562 and 25 Cal 278, Rel. on. (Jwala Prasad, J.) Jogroshan Bharthi v. Madan Pande. **105 I C 238 : 6 Pat 428 : 8 PLT 452 : 8 A I Cr R 306 : 28 Cr L J 910 : A I R 1927 Pat 265.**

——Ss. 133 and 137—Procedure—Conditional order—Evidence taken by one and final decision by another Magistrate is irregular.

A conditional order was made under S. 133, Cr. P. C. by a Magistrate whereby the petitioner was required to appear before the said Magistrate to show cause against the order. After that the parties appeared before him and the papers were forwarded to another Magistrate for inquiry and

CRIMINAL P. C. (V of 1898), S. 133 — 24. "Appear before himself or some other Magistrate"

report. After evidence having been recorded and a report made by that Magistrate, the first Magistrate made his final order. Held, that the procedure followed in this case is irregular and the order should be set aside on that ground. After the conditional order was made, in the terms already stated it was incumbent upon the Magistrate under S. 137 to take evidence as in summons case, if the final order was to be made by him. (Shah, Ag. C. J. and Crump, J.) In re Kariappa Ningappa. **47 Bom 89 : 23 Cr L J 587 : 24 Bom L R 807 : 68 I C 619 : A I R 1922 Bom 384.**

——Ss. 133, 135, 138 and 139—Jurisdiction—Order of First Class Magistrate—Application for jury—Verdict—Power of First Class Magistrate to remit the case to Second Class Magistrate.

Where a first class Magistrate made an order under S. 133 of the Cr. P. C. directing the petitioner not to work a ginning factory at nights or to appear before a Second Class Magistrate on a specified day and move to have the order set aside, the petitioner applied under S. 135 of the Cr. P. C. to the First Class Magistrate to appoint a jury. A jury was empanelled under S. 138 who returned their verdict to the First Class Magistrate who thereupon sent the case for disposal to the Second Class Magistrate. Held, the First Class Magistrate alone was competent to deal with the case further. (Kumaraswamy Sastri, J.) Angappa Mudali v. Perumal Chetty Ramapuram. **37 M L J 313 : 10 L W 297 : (1919) M W N 696 : 53 I C 489 : 20 Cr L J 761 : A I R 1920 Mad 378.**

25. "Move to have the order set aside or modified".

——Magistrate, for good reasons, can at any stage refuse to take further action.

In proceedings under S. 133, Cr. P. C., it is open to the Magistrate at any stage for good reasons shown to refuse to take any further action in the matter. The informant has no rights in these proceedings. (Allsop, J.) Ramu v. Murli Das. **A I R 1943 All 19 : 1942 A L J 584 : 44 Cr L J 205 : 1942 A W R H C 325 (2) : 15 R A 339 : I L R (1943) All 22 : 204 I C 326.**

——Magistrate cannot cancel an order made under S. 133 merely on the written statement by opposite party without taking evidence.

On application by a petitioner, a Magistrate made a conditional order requiring the opposite party to remove the obstruction, or to appear before him and to show cause against the order. The opposite party filed a written statement showing cause against the aforesaid order and alleging that there had been litigation between the parties and ultimately a passage five feet wide had been left for the public. The Magistrate, who succeeded the previous Magistrate, on perusing the statements of the parties, but without taking any evidence, cancelled the order under S. 133, Cr. P. C.

CRIMINAL P. C. (V of 1898), S. 133 — 25. "Move to have the order set aside or modified"

Held, that the Magistrate had not followed the provisions of Part 4, Ch. 10 and that the order could not, therefore, be allowed to stand. (C. C. Ghose and Jack, JJ.) Ganga Prasad v. Khitish Chandra. **118 I C 863 : 30 Cr L J 973 : A I R 1929 Cal 21.**

——Non-service of notice in a proceeding under S. 133 is not a ground giving the Magistrate jurisdiction to cancel his previous order for removal of obstruction. The procedure to be followed is as under S. 140 (2). (Mukerji and G. N. Roy, JJ.) Shahabuddin Ahmad v. Abdul Kadir. **44 C L J 211 : 31 C W N 530 : 28 Cr L J 30 : 7 A I Cr R 218 : 99 I C 62 : A I R 1927 Cal 70.**

——Sec. 133 clearly contemplates that in suitable cases the order initially made may be modified and the modified order may be allowed to stand. (Mukerji, J.) Jhan Lal v. Emperor. **86 I C 219 : 23 A L J 43 : 26 Cr L J 731 : 6 L R A Cr 86 : A I R 1925 All 310.**

——Ss. 133 and 137—Procedure— Applicability of S. 137—Proceedings under.

S. 137 is imperative and before a Magistrate can make an order under S. 137 (2), dropping a proceeding under S. 133, he must take evidence as directed by S. 137 (1). (Chatterji and Cuning, JJ.) Sheo Khelan Ram Kalwar v. Nayan Behari. **60 I C 431 : 22 Cr L J 239 : A I R 1920 Cal 834.**

——Ss. 133 and 137— Procedure— Proceedings under—Dropped without taking evidence— Effect of.

In proceedings under S. 133, Cr. P. Code, the Magistrate made a conditional order but dropped the proceedings on the opposite party taking the objection in showing cause that the Court had no jurisdiction to proceed with inquiry on the ground of the way having been the subject of previous inquiry under S. 133; Held, that the Magistrate was bound to follow S. 137, Cl. (1) before making any final order and that on the facts of the case there was no room for the application of the doctrine of res judicata. (Jenkins, C. J. and Teunon, J.) Sarojebashini Debi v. Sripathi Charan. **42 Cal 702 : 19 C W N 332 : 28 I C 799 : 16 Cr L J 415 : A I R 1916 Cal 151.**

26. Jury—See also under S. 135.

——Ss. 133, 138 and 135—Time to appoint jury.

See ibid, S. 138. **A I R 1954 All 14 : 1953 Cr L J 1876.**

——Ss. 133, 135, 138, 139-A— Order under S. 133 made absolute—Right to trial by jury.

It is open to a person against whom an order under S. 133, Cr. P. C. has been made absolute to elect to have the matter tried by a jury even after the enquiry under S. 139-A has been finished by the Magistrate. (Jack and M. C. Ghose, JJ.) Shamji Tricumdas v. Ram Moye. **A I R 1933 Cal 318 : 56 C L J 249 : 34 Cr L J 532 : Ind Rul (1933) Cal 371 : 143 I C 178.**

——A Magistrate should not accept only a part of the verdict of jury and base his order thereon.

(Sanderson, C. J. and Chotzner, J.) Rahimaddi Jamadar v. Sher Ali. **85 I C 357 : 40 C L J 597 : 26 Cr L J 517 : A I R 1925 Cal 399.**

——Ss. 133 and 135—Jury—Appointment of jury—No verdict—Order under S. 141— Rights of petitioner.

On an application under S. 133 Cr. P. Code for removal of an encroachment the opposite party moved for the appointment of a Jury under S. 135 Cr. P. Code and a Jury was appointed. The foreman of the jury simply returned the papers without the verdict whereupon the Magistrate made the order absolute under S. 141, Cr. P. Code. Held that the magistrate had jurisdiction to pass the order, but he should have done after giving the party an opportunity of showing cause and producing such evidence as he wanted. **13 C. W. N. 367 foll.** (Adami, J.) Jiblal Teli v. Gena Sahu. **4 Pat L T 15 : 72 I C 956 : 1 Pat L R Cr 164 : 24 Cr L J 492 : A I R 1923 P 229.**

——Trial by a jury of three instead of five is not legal.

After the Magistrate makes a conditional order under S. 133 for the removal of an obstruction, he should not refer the matter, on the application of the parties to a jury of three instead of five. If he does, his order if based on the report of the majority of those three, is not a good order. (Teunon and Suhrawardy, JJ.) Ajit Shaikh v. Jamatulla Tarafdar. **62 I C 335 : 22 Cr L J 511 (Cal.)**

——Absence of some jurors at the time of investigation—Effect.

A report of the jurors under S. 133, Cr. P. Code is defective if any four out of five jurors were present at the investigation. Such a report is illegal and should not be relied on. The Magistrate should allow the proceedings to begin with a fresh jury. (Sanderson, C. J. and Walmsley, J.) Srimati Dasya v. Nibaran Chandra Ghose. **24 C W N 928 : 56 I C 240 : 31 Cal L J 371 : 21 Cr L J 448 : A I R 1920 Cal 161.**

——Nomination of jurors —Principle to be observed.

It is highly improper for a Magistrate to appoint friends and supporters of the complainant to serve on the Jury in a case of nuisance though it is not illegal for him to enquire the names of respectable persons of the neighbourhood. A Court should bear in mind the public good and should not use the section as a substitute for civil litigation for the settlement of a private dispute. (Piggott, J.) Farzand Ali v. Hakim Ali. **37 All 26 : 12 A L J 1241 : 26 I C 632 : 16 Cr L J 40 :A I R 1914 All 491.**

——Ss. 133, 138— Jurisdiction of Magistrate and Jury.

When a jury is appointed under S. 138 at the request of the person upon whom a notice under S. 133 is served it is within the competency of the jury to decide as to the validity of an objection that the way alleged to have been obstructed

is not a public way and not for the Magistrate to decide whether such an objection is raised bona fide, before referring it to the jury. (Knox, J.) Emperor v. Ram Bilas. **30 A 364 : A W N 1908, 151 : 8 Cr L J 1 : 5 A L J 488.**

27. Reference to arbitration.

——Proceedings under, cannot be referred to arbitration.

There is no provision in Chapter X for any reference of a public nuisance to arbitration, and no provision for the making of a conditional order absolute as a result of the finding of the arbitration. (Ellis and Ahmad, JJ.) Md. Mohasin Ali v. Abdur Rashid Mirda. **1952 Cr L J 257 (Dacca).**

——Public nuisance—Reference to arbitration.

Under Chap. 10 a conditional order under S. 133 can only be made absolute according to Ss. 136, 137 and 139. There is no provision in the chapter for any reference of a public nuisance to arbitration, and no provision for the making of a conditional order absolute as a result of the finding of the arbitration. (Ellis and Amiruddin Ahmed, JJ.) Md. Mahasin Ali v. Abdur Rashid Mridha. **54 C W N (2 D R) 133.**

——Dispute cannot be referred to arbitration.

A Magistrate has no power to refer a dispute under S. 133 of the Criminal Procedure Code, to arbitration. (Jwala Prasad, J.) Raj Balam Rai v. Nawlakh Singh. **2 P L T 6 : 61 I C 55 : 22 Cr L J 327.**

28. Final order—See also under Ss. 136, 137, 139 and 141.

——Ss. 133, 134 and 369—Preliminary order under S. 133—S. 369, if applies.

If a Magistrate empowered to make an order under S. 133 follows the procedure prescribed by that section and S. 134 and the person against whom the preliminary order was made does not perform within the time and in the manner specified any act directed thereby or appear in accordance with such order and show cause against it or apply to the Magistrate to appoint a jury to try whether the order was reasonable or proper, it would be presumed that the order was correctly made and the provisions of S. 369 of the Code would thereafter come into play. (Misra, J.) Ramcherey v. Baba Ram Priya Dass. **1951 A W R 8 : A I R 1951 All 435.**

——Ss. 133, 136— Preliminary order against Purdanashin lady under S. 133—Confirmation thereof without granting sufficient time to show cause against confirmation—Propriety.

Where a preliminary order under S. 133 was passed against a lady who observes purdah and a notice was served on her agent who promptly applied for time on the ground that the notice was too short, but the application was refused and the preliminary order was made absolute.

Held that the order of confirmation should be set aside. It was essential in a matter like this

CRIMINAL P. C. (V of 1898), S. 133—28. Final order

that the party aggrieved should have sufficient opportunity to meet the charge. (Yahya Ali, J.) In re Narra Padmavathamma. **1946-2 M L J 271 : 59 L W 554 (1) : 228 I C 17 : 1946 M W N 763 : 1947 A W R Sup 20 : 1947 O A Sup 20 : A I R 1947 Mad 243 (2) : 48 Cr L J 4.**

——Ss. 133, 137, 135— Nuisance— In determining whether final order under S. 137 is legal, Court is concerned only with evidence given at enquiry.

A Court in an enquiry on complaint for nuisance is concerned only with the evidence which is given at the inquiry. Any information or ex parte statements on which the conditional orders were passed are not relevant for the purpose of determining whether the final order under S. 137, Cr. P. C., was a legal and proper one. Nor can a final order under S. 137, be legally based on the result of a local inspection by the Magistrate. (Broomfield and Macklin, JJ.) Rameshwar Narayan v. Emperor. **A I R 1939 Bom 92 : 11 R B 301 : 41 Bom L R 84 : 40 Cr L J 444 : 180 I C 511.**

——Proceedings under S. 133— Enquiry under S. 139-A— Local inspection —Jury under S. 135-B— Applicants against whom proceedings started, and their jurors absenting on date fixed and also on adjourned date—Provincial order confirmed without notice to applicants:

Held, there was no obligation on the Court to issue notice, as the applicants had been negligent or obstructive and had wilfully abstained from appearing before the jury. (Collister, J.) Pyare Lal v. Dwarka Prasad. **A I R 1936 All 65 : 8 R A 337 : 1935 A W R 1134 : 1935 A L J 1089 : 36 Cr L J 1472 : 158 I C 759.**

——Ss. 133, 137— Magistrate issuing rule— Party showing cause—Rule made absolute merely on inspection—No opportunity for offering evidence.

When a party had appeared and showed cause against the preliminary order passed under S. 133, this order should not under S. 137 have been made absolute merely on a local inspection in the course of which it does not appear that the party concerned had any opportunity of offering any evidence. (Dhavle, J.) Ramchandra Lal v. Emperor. **A I R 1934 Pat 316 (1) : 15 P L T 288 : 6 R P 667 : 35 Cr L J 1020 : 149 I C 839.**

——Procedure — Can act on report of another Magistrate.

A Magistrate is competent to make a conditional order absolute upon the report of a subordinate magistrate to whom the matter had been referred. (Bucknill, J.) Chandrika Koeri v. Budhu Dusadh. **73 I C 802 : 24 Cr L J 690 : 2 Pat L R Cr 21 : A I R 1924 Pat 418.**

——Claim of right—Pubilc nuisance.

The existence of a genuine dispute as to title suitable for decision by the Civil Court is a sufficient ground for holding that the conditional order is not reasonable and proper. (Dalal, A. J.

CRIMINAL P. C. (V of 1898), S. 133—28. Final order

C.) Bhagwan Das v. Emperor. **9 O and A L R 35 : 24 Cr L J 635 : 73 I C 523 (2) : A I R 1923 Oudh 152 (2).**

——Ss. 133, 135, 137 and 141—Scope.

S. 135, Cr. P. Code, gives the person against whom the conditional order is made the right to show cause against the order or to apply for appointment of jury. An application for both these reliefs cannot be made. If the person proceeded against fails to do either, the consequences prescribed by S. 136 follow. If he adopts the former alternative, the Magistrate is bound to take action under S. 137, and if he adopts the second alternative, then the Magistrate is bound to take action under S. 138. Both Ss. 137 and 138 are imperative in their terms. The Magistrate has no discretion in the matter. Where the petitioners against whom a conditional order under S. 133 Cr. P. Code, was made, applied to the Magistrate for showing cause against the order and also for the appointment of a jury, but in the end elected to proceed with the application for the appointment of a jury, where the jury failed to submit their verdict within the time granted by the Magistrate and the Magistrate proceeded under S. 141 to make the order absolute. Held, the Magistrate was justified in making the order absolute without taking evidence under S. 137. (Sharfuddin and Coxe. JJ.) Kishori Lal Panuri v. Emperor. **13 C W N 367 : 4 Ind Cas 72 : 10 Cr L J 494.**

29. Inquiry.

——Procedure—Enquiry is necessary.

In a case under S. 133 Criminal Procedure Code an enquiry is obligatory. The Magistrate cannot make his conditional order absolute, without taking such evidence as the parties may adduce as in a summons case. (Kanhaya Lal, J. C.) Sant Sahai v. Lachman Singh. **9 O L J 64 : 23 Cr L J 250 : 66 I C 186 : A I R 1922 Oudh 29.**

30. Bona fide claim.

——Proceedings should be stayed until the existence of public right has been decided by a competent civil Court—In such a case order under S. 133 should not be made absolute.

A Magistrate has jurisdiction to take action under S. 133 even where a bona fide claim of right is raised by the defendant, but when the question whether the right rested in the public is seriously disputed, and its decision becomes a difficult matter of mixed fact and law, the proper procedure for a Magistrate to employ is under S. 139-A (2) to stay proceedings until the matter of the existence of such right has been decided by a competent civil Court and the existence of a genuine dispute as to title suitable for decision by the civil Court is a sufficient ground for not making an order absolute under S. 137, A. I. R. 1924 All 1, Foll.; AIR 1923 Oudh 152; AIR 1915 Cal 168 and AIR 1914 All 213, Rel. on. (Dalal, J.) Manna Tiwari v. Chandarbali. **50 All 871 : 26 A L J**

CRIMINAL P. C. (V of 1898), S. 133 — 30. Bona fide claim

1285 : 110 I C 213 : 29 Cr L J 661 : 9 L R A Cr 118 : 10 A I Cr R 201 : A I R 1928 All 627.

——Long user may put an end to both public and private rights.

A long user by person of what is claimed to be a part of the public way may be taken as a bona fide assertion of claim ousting the jurisdiction of the criminal Court to pass a summary order under S. 133 against him. Vice versa a long user by the public of a place as part of a public road or way raises a presumption of relinquishment by the owner thereof of his right over it. (Jwala Prasad. J.) Janki Ram v. Sankhi Panjara. **9 P L T 587 : 108 I C 559 : 29 Cr L J 422 : 10 A I Cr R 127 : A I R 1928 Pat 268.**

——Only when denial of right is a pretence, Magistrate can make an order absolute.

When proceedings are taken under S. 133 against a person who denies the existence of public right and which denial is bona fide, the Magistrate's jurisdiction is ousted, but if the denial is mere pretence, the Magistrate can make his order final. It is sufficient if the evidence produced is not false. The Magistrate has no jurisdiction to weigh the evidence. (Mullick and Ross, JJ.) Thakursao v. Abdul Aziz. **4 Pat 783 : 7 P L T 136 : 27 Cr L J 9 : 91 I C 41 : A I R 1926 Pat 170.**

——A bona fide claim, and not a mere pretence, ousts jurisdiction.

There is no jurisdiction to make an order under the section, where a bona fide question as to the way being public is raised and the question should be left for determination by the civil Court. To have this effect however the claim must be bona fide and not a mere pretence to oust jurisdiction and it is for the Magistrate to say whether the claim is bona fide or not. A Magistrate who issues a conditional rule under S. 133 can make the Rule absolute upon the evidence recorded and report submitted to him by another Magistrate to whom he had referred the matter under the last paragraph of clause (1) of S. 133. (Bucknill, J.) Chandrika Koeri v. Budhu Dusadh. **73 I C 802 : 2 Pat L R Cr 21 : 24 Cr L J 690 : A I R 1924 Pat 418.**

——Claim of right—Bona fides.

Where in a proceeding under S. 133 the opposite party in showing cause alleges that the place alleged by the complainant to be public path is in fact his private property, the Magistrate before appointing a Jury must decide bona fides of the objection. If it is bona fide he has no jurisdiction but if otherwise he must proceed according to law. (Newbould and Suhrawardi, JJ.) Sudhang Shudhar Roy v. Rahim Pramanik. **62 I C 817 : 22 Cr L J 577 (Cal.).**

——Claim of right— Claim based on substantial grounds—Direction to establish a claim in a Civil Court whether legal.

CRIMINAL P. C. (V of 1898), S. 133 — 30. Bona fide claim

When in proceedings under S. 133, Cr. P. C., a magistrate finds that a claim of right set up by a person is based on substantial grounds, he has no jurisdiction to direct the party to establish his claim in the Civil Court. (Shamsul Huda, and Ghose, JJ.) Peary Lal Mullick v. Surendra Kishore Mitter. **24 C W N 247 : 54 I C 487 : 21 Cr L J 87 : A I R 1920 Cal 176.**

——Ss. 133 and 137—Claim of right—Order directing suit in Civil Court within time prescribed — Order without evidence.

Where a claim of right raised in answer to a conditional order under S. 133, was found to be bona fide and it was ordered that unless the party sought to establish his right in the Civil Court within a limited time, his bona fides would not be accepted in a Criminal Court. Held, that the Magistrate should not have made the order without taking evidence adduced by one side or the other. (Richardson and Huda, JJ.) Peary Lal v. Surendra Krishna. **23 C W N 774 : 53 I C 160 : 20 Cr L J 752 : A I R 1919 Cal 182.**

——Question of bona fides cannot be left to jury.

Before any proceedings are taken by a Magistrate under S. 133 or before any reference is made to a Jury the Magistrate himself, when a claim for right is set up, must determine the bona fides of that claim and whether the way or pathway is a public one. He cannot leave the decision of that question to a jury appointed under S. 138, Cr. P. Code. Though there is no express provision of law that the magistrate has to follow the procedure indicated above, it is too late to go back upon a long line of cases in at least three of the High Courts in India which lay down the above procedure. (Chamier, C. J. and Sharfuddin, J.) Imrat Ali v. Amjad Ali. **2 P L J 67 : 3 P L W 404 : 39 I C 292 : 18 Cr L J 452 : A I R 1916 Pat 171.**

——Jurisdiction—Exercise of power under.

Section 133 should be used sparingly as an order passed under it cannot be questioned in any Civil Court. When a person called upon to show cause under S. 133 raises a question of title the Magistrate must decide whether it is raised bona fide or simply to oust his jurisdiction. If it is bona fide he must refer him to the Civil Court and if he does not have recourse to the Civil Court within a reasonable time, he may make his order absolute. (Sharfuddin and Teunon, JJ.) Manipur Dey v. Bidhu Bhushan Sarkar. **42 Cal 158 : 18 C W N 1086 : 26 I C 146 : 15 Cr L J 698 : A I R 1915 Cal 168.**

——Claim of right.

S. 133 contemplates only an inquiry as to the existence of the obstruction complained of and not an inquiry into question of title and if a bona fide claim of private right is raised, the Magistrate should leave the determination of the question to the Civil Court and should not make an order under this section. (Sharfuddin and Holm-

CRIMINAL P. C. (V of 1898), S. 133—30. Bona fide claim

wood, JJ.) Mahomed Ashrafuddin v. Sheikh Karim Buksh. **18 C W N 1148 : 19 C L J 631 : 24 I C 603 : 15 Cr L J 515 : A I R 1915 Cal 113.**

——Ss. 133 and 138—Procedure— Bona fide claim to property—Who should investigate.

When a conditional order under S. 133 is passed and the person aggrieved raises a bona fide claim that the subject of contention is private property the Magistrate is bound to investigate it and cannot leave it to a jury under S. 138; but if once the jury is appointed the Magistrate cannot determine before the jury proceeds with it, Obiter. If it was decided by jury that the order was reasonable and proper the appellant could bring a civil suit to establish his right to exclusive enjoyment of land. (Twomey, J.) Ah. Yway v. Ma Gyi. **7 Bur L T 23 : 23 I C 467 : 15 Cr L J 259 : A I R 1914 Low Bur 31.**

——Procedure— Jurisdiction —Bona fide claim of title—Mode of enquiry.

What is to be considered under S. 133 and in the following sections is whether there is or is not a bona fide private claim to title. If there is such a claim the Magistrate cannot proceed further and if there is not, he is to proceed as indicated in the sections. It is not open to Magistrate to select some and reject other evidence on the ground that even if taken he would not believe it. (Batchelor and Rao, JJ.) In re Dnyanoba. **15 Bom L R 57 : 18 I C 410 : 14 Cr L J 74.**

——Ch. X. Ss. 133, 138 139—Duty of Magistrate.

It is the duty of the Magistrate, before referring the matter to the jury, to decide himself whether or not the claim of right to the land in question is made in good faith, and whether the pathway is a public one or not, and it is only on deciding that there is no such claim that any matter can be referred to the jury. (Stephen and Carnduff, JJ.) Dharam Mandal v. Gossain Das Mondal. **14 C W N 544 : 6 I C 271 : 11 Cr L J 305.**

——Bona fide claim of right—Duty of Magistrate.

The Magistrate should refrain from exercising jurisdiction, when a bona fide claim to the land is raised, and he cannot decide whether the claim is barred by limitation. (Rampini and Sharfuddin, JJ.) Kamini Kumar Biswas v. Emperor. **35 C 283 : 7 C L J 188 : 12 C W N 267 : 7 Cr L J 105.**

——Bona fide question of title.

Where in a proceeding under S. 133 for obstruction to public land (highway) a bona fide question of title is raised, the Magistrate ought not to proceed under S. 133, but should leave the matter to be decided by a Civil Court. But it is not open to person illegally causing obstruction to set up a bogus question of title for the purpose of ousting the magistrate's jurisdiction and, notwithstanding the raising of such a question, the

CRIMINAL P. C. (V of 1898), S. 133 — 30. Bona fide claim

Magistrate is entitled to hear the case sufficiently to make up his mind whether or not a bona fide question of title is raised. (Richards, J.) Emperor v. Dost Muhammad. **28 A 98 : A W N 1905, 202 : 2 A L J 599 : 2 Cr L J 517.**

——Bona fide claim of right.

The fact that, the land over which a right of way is claimed belongs to any particular person, does not mean that that person must necessarily be acting bona fide, when he denies that there is a right of way over his land. The question of bona fides is a matter of fact which has to be inquired into like any other question of fact. The jurisdiction of the magistrate is ousted and he has no power to make an order under S. 133, when there is in fact a bona fide claim of right. (Henderson and Geidt, JJ.) Nundo Gopal Chatterjee v. Kusum Kumar Banerjee. **1 C L J 434 : 2 Cr L J 349.**

——Bona fide question of title—Procedure.

Where instead of first satisfying himself as to the bona fides of the claim, if any and then determining whether the parties should be referred to the Civil Court, the Magistrate proceeded to refer the following question to the jury: "Is there a public right of way at the points where the building, whose removal is ordered, stands?" it was held that the reference was not proper. (Pratt and Handley, JJ.) Matuk Dhari Tewari v. Hari Madhab Das. **31 C 979 : 9 C W N 72 : 2 Cr L J 11.**

31. Method of enquiry.

——Ss. 139-A and 133—Obstruction to public way—Denial of existence of public right of way —Proper procedure is to proceed under S. 139-A.

See ibid, S. 139-A. **A I R 1953 All 466 : 1953 Cr L J 1068.**

——Ss. 133, 137, 139-A—On preliminary order under S. 133, opposite party appearing and denying existence of public right —Proper way for the Magistrate.

Where on a preliminary order being made under S. 133, Criminal P. C., the opposite party appears before the Magistrate and contends that the place in question is in his private possession and thus denies the right of the public in the place, the Magistrate must follow the procedure prescribed in S. 139-A introduced by the amending Act of 1923 and decide whether the evidence put before him by the opposite party supporting the denial of the existence of any public right in the place in question is reliable and sufficient in his opinion to support the case of the opposite party. If he finds that there is any reliable evidence in support of such denial, the Magistrate has no option but to stay his hands and to refer the parties who moved the Magistrate to take action to go to the civil Court. If the Magistrate, in such a case, instead of proceeding as above proceeds to conduct an inquiry straightway under S. 137 and after taking evidence on both the sides passes

CRIMINAL P. C. (V of 1898), S. 133—31. Method of inquiry

an order, such order is totally without jurisdiction and is liable to be set aside. (Pandrang Row, J.) Govinda Goundan v. Ayi Goundhan. **A I R 1939 Mad 465 : 49 M L W 476 : 1939 M W N 409 : 12 R M 316 : (1939) 1 M L J 649 : 40 Cr L J 813 : I L R (1939) Mad 1030 : 183 I C 567.**

——Ss. 133, 139-A—Enquiry under Chap. X—Stages in enquiry— Decision of question of title—Proper procedure.

The law provides for two distinct stages in any enquiry under Chap. X, Criminal P. C. The first stage is prescribed by S. 139-A, Criminal P. C. and it is only when the provisions of that section have been complied with and when the Magistrate finds that there is no reliable evidence in support of the denial of the alleged public right by the persons against whom the conditional order is issued that the Magistrate should commence the second stage of the enquiry as provided by S. 137, Criminal P. C. The law does not contemplate the decision by a Magistrate making a summary enquiry under Chap. X, Criminal P. C., of any question of title upon weighing evidence produced on both sides. All that a Magistrate is required to do under S. 139-A, Criminal P. C., is to hold an enquiry merely to satisfy himself that there is or is not some prima facie evidence in support of the denial of the public right by the person on whom the conditional order is served. In dealing with this part of the enquiry, it is no doubt open to him to allow the witnesses if any, produced by the person denying the public right, to be cross-examined, but he cannot allow the opposite party to produce definite evidence to the contrary and then proceed to weigh the evidence on both sides, in order to decide finally whether the alleged public right does or does not exist. (Mulla, J.) Mt. Chunni v. Emperor **A I R 1938 All 653 : 1938 A L J 1013 : 1938 A W R 640 : 11 R A 335 : 40 Cr L J 143 : 178 I C 742.**

——Where a conditional order under S. 133, Cr. P. C., is passed against a person for obstructing a public way and in an inquiry, such a person denies a public right of way, proceedings under S. 139-A should be taken before the proceedings under S. 137, Criminal P. C. (Blacker, J.) Ata Mohammad v. Abdul Rahman. **A I R 1937 Lah 676 : 39 P L R 484 : 10 R L 181 : 38 Cr L J 1056 : 171 I C 279.**

——Procedure to be followed— In enquiry under these sections, it is for the prosecution to lead evidence.

The procedure in cases under Chap. X, Criminal P. C., is constantly causing difficulty to the Courts. The pitfall which most frequently leads to error is the omission to observe that when an order under S. 133 has been made with reference to an obstruction in a public way and the person to whom the order has been addressed appears before the Magistrate, the Magistrate must, before proceeding to the inquiry contemplated by Ss. 137 and 138, question the person as to whether he denies the existence of any public right in respect of the way or place. At this stage, it is clearly for the person so proceeded against to adduce evidence in support of his denial of a public right of way and the Magistrate ought to make a finding whether the existence of a public right is denied or not, and if it is denied, whether there has been produced or not reliable evidence in support of the denial. If the existence of a right of way is not denied or if there is no reliable evidence in support of the denial, the Magistrate should then proceed to the inquiry under Ss. 137 and 138, and in this inquiry it is for the Crown to lead evidence and the person proceeded against to answer it. (Rowland, J.) Emperor v. Raghunandan Saran Das. **A I R 1936 Pat 639 : 17 P L T 791 : 3 B R 107 : 9 R P 234 : 38 Cr L J 29 : 165 I C 942.**

——Proceedings under—Preliminary enquiry before appointment of jury—Necessity of.

In proceedings under S. 133, Criminal P. C., before the appointment of the jury, there ought to be a preliminary enquiry contemplated by S. 139-A, Criminal P. C. The object of S. 139-A is that before the Criminal Court passes an order which is irrevocable, there must be grounds to believe that the objection against the passing of the order has no substance. Before a serious enquiry is started by the Magistrate or before the Magistrate proceeds to appoint a jury, a summary preliminary enquiry is essential and that is provided in S. 139-A of the Criminal P. C., namely, an enquiry to find out whether there is any substance in the objection. If there is reliable evidence available in support of the denial of existence of public right, etc., the Magistrate must stay his proceedings. (Mohamad Noor, J.) Digambar Ramsingh v. Emperor. **A I R 1933 Pat 676 : 6 R P 261 : 35 Cr L J 54 : 146 I C 406.**

——Where proceedings are taken against a person who sets up a title to land which he is required to vacate, the Court cannot pass a summary order but must proceed in accordance with S. 137. (Banerji. J.) Abdul Karim v. Emperor. **100 I C 374 : 49 All 453 : 25 A L J 424 : 8 L R A Cr 58 : 28 Cr L J 294 : 7 A I Cr R 389 : A I R 1927 All 384.**

——When civil dispute is involved, the Magistrate has jurisdiction to refuse to interfere.

The Magistrate must deal with an alleged "public" way even though it is disputed. These summary powers were primarily intended to be exercised in cases where there was no question that the way was one vested in the public, and when that question is seriously disputed, and its decision becomes a difficult matter of mixed fact and law, a Magistrate clearly has jurisdiction to exercise his discretion by declining to decide it and sending the parties to a civil Court. 28 All. 98. Diss. AIR 1922 Cal. 59 (F.B.), Ref. Private property cannot be converted into public merely because it looks

CRIMINAL P. C. (V of 1898), S. 133 — 13. Method of inquiry

as though it ought to be and because to do so would be convenient to a section of the public who have enjoyed permissible user over it. (Walsh, J. on difference between Lindsay and Daniels, JJ.) Abdul Wahid Khan v. Abdullah Khan. **74 I C 849 : 45 All 656 : 21 A L J 529 : 4 L R A Cr 106 : 24 Cr L J 817 : A I R 1924 All 1.**

——Ss. 133, 138 and 139—Obstruction to a pathway —Duty of Magistrate—Function of jury.

Before any proceedings can be taken by the Magistrate under S. 133, and before any reference can be made to a jury it is incumbent on the Magistrate himself when a claim for right is set up to determine whether the claim is bona fide, and whether the road or pathway is a public pathway and it is not open to him to leave the decision of that question to the jury appointed under S. 138 who are simply persons selected by the parties to determine, in an informal way, whether the order, as passed by the Magistrate, for the removal of an obstruction, is or is not a reasonable order. (Brett and Bodilly, JJ.) Dulalram Deb v. Baishnab Charan Deb. **10 C W N 845 : 4 Cr L J 42.**

——Respective duties of the Magistrate and of the Jury.

A Magistrate, passing an order against a person under S. 139, Cr. P. Code, cannot do so, relying merely upon a conviction of the person under S. 283, I. P. C., in respect of the same matter, but must follow the procedure laid down in S. 133 and the subsequent sections of the Cr. P. Code. Prior to the appointment of a Jury, the Magistrate should himself determine the question, which is the most important question in proceedings under S. 133, Cr. P. Code, and which alone gives him jurisdiction, namely whether the pathway, in which the obstruction is said to have been erected, was in fact a public pathway or not.

Where the Magistrate referred the whole case to the jury and the jury returned a verdict that the order was a proper order, but that the road was a private road. Held, it was incumbent upon the Magistrate to determine the latter point and not leave it to the jury. (Brett and Stephen, JJ.) Rama Nath Laskar v. Jaladhar Shaha. **3 C L J 360 : 3 Cr L J 331.**

32. Enquiry to be as in summons case.

——Ss. 133 and 137—Procedure—Complaint Notice —Enquiry—Order absolute.

Where a person against whom a notice is issued under S. 133 Cr. P. Code appears and objects to the order, the inquiry must proceed as in a summons case. (Stuart, J.) Jassi v. Emperor. **76 I C 826 (2) : L R 3 A 129 (Cr) : 20 A L J 692 : A I R 1922 All 335 (2) : 25 Cr L J 266.**

——Procedure —Order based on oral enquiry — Illegal.

The procedure to be followed in cases regarding public nuisance is as in a summons case and evidence must be recorded. An order based on an oral enquiry is illegal. (Moti Sagar, J.) Mam Chand v. Emperor. **73 I C 503 : 24 Cr L J 615 : A I R 1924 Lah 392.**

CRIMINAL P. C. (V of 1898), S. 133 — 32. Enquiry to be as in summons case

33. Failure to hold inquiry.

——Ss. 133, 139-A—Travancore Criminal P. C., Ss. 130, 137— Written statement denying existence of public right— Petitioner ordered to produce evidence—Ex parte final—Validity.

In pursuance of a preliminary order passed under S. 130, T-C. Criminal P. C. A appeared before the Court and filed a written statement denying the existence of the public right of way claimed by B. Thereafter the case was posted for B's evidence. On that date A being absent was declared ex parte and the Court after recording B's evidence passed a final order.

Held, that the order calling upon B to lead evidence under S. 134 without making the enquiry contemplated by S. 137 was without jurisdiction and the subsequent proceedings would all be void.

Held further, that notwithstanding A's absence on the date of the final order the Magistrate should have given him an opportunity to lead evidence in the enquiry contemplated by S. 134 or 135. The order passed contrary to these provisions could not be sustained and the curative provisions of the Code were of no avail to validate it. (Koshi, J.) Thomas Varkey v. Idicula John. **A I R 1951 Trav. Co. 228 : 1951 Ker L T 51 : ILR (1951) T C 123 : 52 Cr L J 1250.**

——Procedure.

Where the Magistrate has not complied with the provisions of S. 139-A, Cr. P. C., by not holding an inquiry into the correctness of the denial of the public right before proceeding under S. 137 or 138, Cr. P. C., and has not asked the person against whom the proceedings are taken whether he wanted to adduce any evidence in support of his denial, the order under S. 133, for removal of encroachment is illegal and must be set aside. (Abdul Rashid, J.) Nanu Mal v. Emperor. **A I R 1939 Lah 452 : 41 P L R 515 : 13 R L 211 : 40 Cr L J 933 : 184 I C 352.**

——Order under S. 133, without inquiry as to whether obstruction amounts to nuisance.

An order under S. 133, Criminal P. C., without an inquiry as to whether the obstruction in dispute amounted to a nuisance under S. 133, is improper. Before passing any orders under S. 133, an inquiry should be made into these matters. (Abdul Rashid, J.) Consolidation Co-operative Society v. Hargobind. **A I R 1939 Lah 276 : 12 R L 106 : 40 Cr L J 758 : 42 P L R 219 : 183 I C 292.**

——In a proceeding under S. 133, Cr. P. C., an order passed under S. 137, of the Code without inquiry enjoined under S. 139-A, Cr. P. C., could not stand. (Macpherson, J.) Narsingh Narain v. Rameshwar Singh. **A I R 1936 Pat 360 : 17 P L T 399 : 2 B R 595 (2) : 9 R P 1 (2) : 37 Cr L J 846 (1) : 163 I C 402.**

CRIMINAL P. C. (V of 1898), S. 133 — 33. Failure to hold inquiry

——Ss. 133, 137, 139-A— Conditional order passed under S. 133—Opposite party appearing and denying right—Procedure to be followed.

Where a Magistrate passed a conditional order under S. 133 Criminal P. C., requiring the persons against whom a complaint had been made to remove certain wire-fencing from the road, or to show cause, and they appeared and denied the existence of the road and of the right of the public over it by user, and the Magistrate considered the evidence produced by either side and came to the conclusion that the public had acquired a right over the strip of land alleged to be the road and made his conditional order for the removal of the wire-fencing absolute.

Held, that the Magistrate's procedure was irregular. As the persons against whom the conditional order was passed appeared in Court and denied the existence of the road or of the right of the public in respect of it, the Magistrate ought to have proceeded under S. 139-A instead of under S. 137, as he did.

Under S. 139-A, Criminal P. C., the Magistrate has first to determine whether the claim put forward by the persons against whom a conditional order was made is bona fide or a mere pretence, and it is only when the Magistrate is of opinion that the claim is not bona fide, but a pretence, that he should proceed to pass final order. Under the section, all that the Magistrate has to do is to determine whether the evidence put forward is reliable enough to show that the claim is advanced in good faith. Unless the Magistrate comes to a definite finding in this behalf he cannot proceed to act under S. 137 or S. 138, Criminal P. C. All that the Magistrate has to satisfy himself about is that the evidence put forward is not false. It is possible that the Civil Court may not consider the evidence as sufficient to substantiate the existence of the private road in the land, but such a finding can only be delivered by the Civil Court, not by the Magistrate. If he finds any reason to enable him to treat the evidence as false, then alone he has power to continue the proceedings. The Magistrate has, therefore, to consider the evidence solely from the point of view of the person who produces it and find whether the evidence considered ex parte is genuine and tends prima facie to support the existence of the private right or the non-existence of any public right as urged by the party. If the Magistrate finds that the evidence is reliable, it ousts his jurisdiction. (Niyogi, A. J. C.) Mahabirprasad Bhagwandin v. Pitambar Prasad Brahmin. **A I R 1933 Nag 267 : 35 Cr L J 145 : 6 R N 91 : 29 Nag L R 361 : 146 I C 601.**

——Bona fide claim should not be disregarded.

Where the dispute was as to the closing of an old drain, and the accused definitely asserted that the drain was not a public one but the Magistrate instead of proceeding under S. 139 (a) at once

CRIMINAL P. C. (V of 1898), S. 133 — 33. Failure to hold inquiry

took evidence under S. 137 and where the Magistrate also did not find in clear words that the drain was a public one.

Held, that the trial was vitiated by wrong procedure. (Piggott, J.) Raghunath Upadia v. Emperor. **86 I C 809 : 23 A L J 187 : 26 Cr L J 873 : A I R 1925 All 311.**

34. Parties to order.

——An order under S. 133, Criminal P. C. binds the person against whom the order is passed and nobody else. (Bajpai, J.) Ram Sahai v. Uttama Debi. **A I R 1935 All 79 : 7 R A 371 : 36 Cr L J 144 : 1935 A L J 18 : 4 A W R 935 : 152 I C 737.**

35. Disobedience of order—See also under Ss. 133 and 140.

——Ss. 133, and 140—Failure to comply with notice under S. 140.

Whenever the time fixed in the order under S. 133, has been allowed, by the person, against whom the order is made, to pass without compliance or protest against it, the liability to punishment attaches at once. Notice under S. 140 is not necessary before the person can be punished. (Miller, J.) In re Aluvala Guruviah. **18 M L J 216 : 3 M L T 403 : 31 M 280 : 8 Cr L J 151.**

36. Bar to jurisdiction of Civil Court.

——Miscellaneous.

——Jurisdiction of Civil Court is barred only when the order is conditional but not when order is absolute.

The procedure adopted by Magistrate under S. 133 is more or less summary and his decision goes so far as to fix upon the party who must go to the Civil Court to get a civil dispute decided. (Dalal, J.) Duli Chand v. Emperor. **121 I C 560 : 1929 Cr C 358 : 10 L R A Cr 136 : 51 All 1025 : 12 A I Cr R 292 : A I R 1929 All 833 : 31 Cr L J 392.**

37. Costs.

——It is unjust to recover costs from a party who is not served with notice. (Mukerji and G. N. Roy, JJ.) Shahabuddin Ahmad v. Abdul Kadir. **44 C L J 211 : 31 C W N 530 : 7 A I Cr R 218 : 99 I C 62 : 28 Cr L J 30 : A I R 1927 Cal 70.**

——There is no provision in Chapter X for the payment of costs by any party to the proceeding. (Sanderson, C. J. and Chotzner, J.) Rahimaddi Jamadar v. Sher Ali. **85 I C 357 : 40 C L J 597 : 26 Cr L J 517 : A I R 1925 Cal 399.**

38. Fresh proceedings.

——Proceedings under—Order staying proceedings till decision of Civil Court—Magistrate has no jurisdiction to reopen matter on fresh application: A. I. R. 1931 Cal. 2, Disting. (Reuben, J.) Raghubans Das v. Emperor. **A I R 1948 Pat 15 : 48 Cr L J 360 : 13 B R 365 : 229 I C 285.**

——There is nothing in law to prevent a Magistrate drawing up fresh proceedings under S. 133 based on proper materials. (Suhrawardy and

CRIMINAL P. C. (V of 1898), S. 133—38. Fresh proceedings

Costello, JJ.) Satish Chandra Sen v. Krishna Kumar Das. **34 C W N 957 : 128 I C 810 : 32 Cr L J 189 : 1931 Cr C 34 : A I R 1931 Cal 2.**

39. De novo proceeding.

——Inquiry—Proceedings under S. 133— Evidence partly recorded—Tarnsfer of case—Magistrate recalling all witnesses—Validity or order.

See Criminal P. C. (1898), S. 350. **1951 R L W 92.**

——Evidence of previous conviction of petitioner under S. 341, Penal Code is not sufficient.

Where to pass an order for the removal of a building on the ground that it obstructed a village street, the fact that the petitioner had been previously convicted under S. 341, Penal Code, in respect of the same building by a Magistrate of the third class and the conviction had been upheld by the District Magistrate had been relied on.

Held, the Magistrate should have proceeded de novo as in summons cases. 32 P. R. 1917 Cr., Ref. (Zafar Ali. J.) Bhedu v. The Crown. **5 L L J 81 : A I R 1924 Lah 128.**

40. Appeal.

——Ss. 133, 439— Appeal— Order under S. 133— Order in a criminal trial—Letters Patent S. 15— Review by a single Judge—Whether appealable.

Orders passed under chapter X of the Criminal Procedure Code, which chapter deals with public nuisances and prescribes that the procedure shall be that of a summons case, are orders passed in a Criminal trial within the words of S. 15 of the Letters Patent Act, and therefore, in such a case an order in review passed under S. 439, Cr. P. C. by a single Judge, is not appealable. (Spencer and Seshagiri Aiyar. JJ.) Nissankara Rao v. Coola Ramayya. **1915 M W N 240 : 16 Cr L J 349 : 28 I C 733 : 39 M 537 : A I R 1916 Mad 970.**

41. Revision.

——Ss. 133, 439— Order under S. 133— Procedure irregular—Interference in revision by High Court.

The High Court will not in revision interfere with an order under S. 133, Criminal P. C., merely because the procedure of the Magistrate was irregular. The High Court will only interfere if substantial injustice has been done. (Allsop, J.) Ram Dayal v. Mt. Jagdamba Debi. **A I R 1942 All 443 : 1942 A L J 558 : 44 Cr L J 76 : 15 R A 284 : 1942 A W R 312 : 203 I C 495.**

——Proceedings under— Public nuisance by trade —Dispute between parties, whether trade should be stopped or not— Overwhelming evidence proving trade to be nuisance— Magistrate ordering trade to be stopped and giving adequate reasons why its regulation was not proper.

In proceedings under S. 133, Cr. P. C., the only dispute between the parties was whether the trade which was being carried out by the opposite party and which had become a public nuisance should be ordered to be stopped. There was no

CRIMINAL P. C. (V of 1898), S. 133—41. Revision

dispute that it should be regulated in any manner. The opposite party were insisting that they were carrying on their trade in a proper manner and that it was in these circumstances not a nuisance. There was overwhelming evidence which proved the existence of nuisance which was injurious to the health and physical comfort of the public. The Magistrate ordered the trade to be stopped and gave adequate explanation as to why he did not think it proper to pass a conditional order for regulating the trade:

Held, that the Magistrate had complete jurisdiction to adopt either of the courses provided in S. 133 and as he had exercised his discretion in a proper and legal manner, it was not within the province of a Court of Revision to impose some conditions for regulating the trade which the evidence in the case did not justify and to which the minds of the parties were never directed. (Manohar Lall and Chatterji, JJ.) Maksood Ali v. President, Union Board. Garhwa. **A I R 1939 Pat 183 : 17 Pat 669 : 20 P L T 288 : 5 B R 595 : 11 R P 549 (2) : 40 Cr L J 516 : 180 I C 852.**

——Ss. 133 and 137—Jurisdiction—Conditional order under S. 133 (1)— Made absolute under S. 137 (3).

A conditional order passed under S. 133 (1) on 12—2—'16 was made absolute under S. 137 (3) on 11—9—'20. The High Court refused to treat the latter as resting on the former and consequently reversed it. (Pratt and Fawcett, JJ.) Rangubai Gururao, In re. **23 Bom L R 844 : 62 I C 877 : 22 Cr L J 605 : A I R 1921 Bom 29.**

——S. 134.

——Preliminary order under—S. 369, if applies.

See Criminal P. C., S. 133. **A I R 1951 All 435.**

——Ss. 134 and 144— Service of order by affixing copy on bamboo pole near place of dispute— No proof that personal service or service on adult member could not be effected—'Service is no service—Breach of order is no offence —Penal Code (1860), S. 188.

Where there is no evidence that personal service of an order under S. 144 could not be effected and no evidence that service on an adult male member could not be effected the service by affixing the copy of the order on a bamboo pole near the scene of dispute is no service at all. No proceedings under S. 188, Penal Code, can therefore be commenced for the breach of the order when there was nothing to show that the accused was aware of the order before he was charged. (In this case the order was invalidly made ex parte.) (Harries C. J. and Bose. J.) Kalipada Das v. The State. **51 Cr L J 1575 : A I R 1951 Cal 207.**

——Where, as required by S. 134, Cr. P. C., no copy of an order under S. 144, of the Code is stuck up, the irregularity would be immaterial provided the persons whom it was sought to prosecute in respect of any disobedience of the order had knowledge of its contents:

CRIMINAL P. C. (V of 1898), S. 134

Held, that the service of the order which was only a precis of formal order under S. 144, was insufficient, giving no sufficient information regarding prohibited acts, and being inconsistent with main order, no conviction could be sustained. (Edgley, J.) Abu Husain v. Emperor. **A I R 1940 Cal 358 : 44 C W N 641 : 41 Cr L J 864 : 13 R C 157 : I L R (1940) 2 Cal 110 : 190 IC 228.**

——Ss. 134 (2), 70, 71—Procedure under S. 134 (2), when can be resorted to.

It is only if the order cannot be served in the manner provided for service of summons that the publication of a proclamation under sub-s. (2), S. 134, Cr. P. C., may be resorted to. (Patterson, J.) Abdul Jabbar Sarkar v. Emperor. **A I R 1935 Cal. 251 : 39 C W N 141 : 60 C L J 474 : 36 Cr L J 736 : 7 R C 585 : 155 I C 416 (1).**

——Substituted service.

If service of the notice of conditional order under S. 133 is effected in the manner provided by S. 71, regardless of the question whether it could be served in the manner provided by S. 69 or by S. 70 service of notice is defective. (Sanderson, C. J. and Rankin, J.) Beni Madhab Sapni v. Jadunath Sapni. **94 I C 907 : 43 C L J 113 : 27 Cr L J 715 : 31 C W N 148 : A I R 1926 Cal 1208.**

——Ss. 134, 135 and 244—Magistrate passing orders without recording evidence of parties—Effect of.

A Magistrate issued a notice under S. 133 of the Cr. P. Code directing K to demolish a Chabutra. K appeared to show cause against the order. The Magistrate inspected the spot and passed orders on the result of his inspection without giving the parties an opportunity to produce their evidence.

Held, that the Magistrate was bound under Ss. 134 and 135 read with S. 244 to record such evidence as might be produced by the parties. (Daniels, A. J. C.) Emperor v. Kanhaiya Lal. **24 O C 267 : 64 I C 285 : 22 Cr L J 765 : A I R 1921 Oudh 147.**

——S. 135.

——Ss. 138, 133 and 135—Time to appoint jury.

See ibid, S. 138. **A I R 1954 All 14 : 1953 Cr L J 1876.**

——Ss. 135, 139-A— Jury, appointment of—Prayer for if can be entertained after decision under S. 139-A.

After the decision under S. 139-A, Cr. P. C., a Magistrate can entertain an application for the appointment of a jury from the party against whom the decision is made. (Dhavle. J.) Hari Lal Singh v. Deo Narain Singh. **A I R 1941 Pat 370 : 22 P L T 312 : 7 B R 954 : 42 Cr L J 784 : 14 R P 166 : 195 I C 602.**

——Where the persons, against whom an order under S. 133, Cr. P. C., is passed, have chosen to be heard by a jury, on failure of the jury to function, the Magistrate is not required to hold a

CRIMINAL P. C. (V of 1898), S. 135

further enquiry, if he has before him material upon which he can pass a reasonable order under S. 141, Cr. P. C. (Davis J. C. and Lobo, J.) Jetha Nand v. Shikarpur Municipality. **A I R 1940 Sind 24 : I L R (1939) Kar 179 : 41 Cr L J 364 : 12 R S 213 : 186 I C 723.**

——Purpose of S. 135.

The purpose of S. 135, Cr. P. C., is clear. The persons against whom conditional order has been passed under S. 133 must either obey the order or show cause why the order should not have been made. They can be heard once in their defence. But they cannot be heard twice. (Davis J. C. and Lobo, J.) Jetha Nand v. Shikarpur Municipality. **A I R 1940 Sind 24 : I L R (1939) Kar 179 : 41 Cr L J 364 : 12 R S 213 : 186 I C 723.**

——Where a Civil Court peon arrested a judgment-debtor on the identification of the decree-holder in discharge of his duties under a valid warrant and on representation of the judgment-debtor that he was exempted from arrest under S. 135 (3), Cr. P. C., his release was ordered although he had to wait in the Court for some time, as the Court was engaged in another case:

Held, the peon was justified in keeping the judgment-debtor until the Munsif was at leisure to attend to his case, and that as the peon acted in the discharge of his duty in arresting the judgment-debtor, it could not be said that he acted criminally, and he was not guilty of an offence under S. 342, I. P. C. (M. C. Ghose, J.) Kadamali v. Emperor. **A I R 1935 Cal 551 : 39 C W N 318 : 36 Cr L J 1252 : 157 I C 1004.**

——It is open to a person against whom an order under S. 133, Cr P. C., has been made absolute, to elect to have the matter tried by a jury even after the enquiry under S. 139-A has been finished by the Magistrate. (Jack and M. C. Ghose, JJ.) Shamji Tricum Das v. Ram Moye. **A I R 1933 Cal 318 : 56 C L J 249 : Ind Rul (1933) Cal 371 : 34 Cr L J 532 : 143 I C 178.**

——S. 135 (b)—If a party against whom proceedings under S. 133, Cr. P. C., have been initiated applies to have the case tried by a jury under S. 135 (b), Cr. P. C., without contending that the matter is one for the Civil Court to decide, he must be deemed to have waived his right to claim that the matter is of a civil nature. (Bennet, J.) Abdul Shakur Khan v. Emperor. **A I R 1931 All 257 : 1930 A L J 1335 : 32 Cr L J 565 : Ind Rul (1931) All 291 : 130 I C 627.**

——Ss. 133, 135, 137 and 141—Scope.

See ibid, S. 133. **10 Cr L J 494 (Cal).**

——Ss. 135, 138—Verdict of jury binding.

A person applying for jury cannot, after the verdict of the jury, raise a plea that the obstruction was caused in the exercise of a bona fide claim of right, as the verdict of the jury is binding on him. (Knox, J.) Emperor v. Ram Bilas. **30 A 364 : A W N 1908, 151 : 5 A L J 488 : 8 Cr L J 1.**

CRIMINAL P. C. (V of 1898)

——S. 136.

——Ss. 136 and 369—S. 369, if applies to order under S. 136.

The word 'judgment' in S. 369 includes the decision of the Court trying the case and it is not possible to hold that the prohibition does not apply to the final order passed by a Magistrate under S. 136. (Misra, J.) Ramcherey v. Baba Ram Priya Dass. **1951 A W R 8 : A I R 1951 All 435.**

——S. 136—Jurisdiction of successor Magistrate to pass fresh order—Agreement between parties.

Where a Magistrate passes an order under S. 133 a mere agreement between the parties regarding their future mode of conduct cannot confer jurisdiction on his successor to re-open the matter and pass a fresh order. (Misra, J.) Ramcherey v. Baba Ram Priya Dass. **1951 A W R 8 : A I R 1951 All 435.**

——Effect of amendment.

——In view of the amendment of S. 497 of the Cr. P. Code, Courts will be less fettered than before. (Mookerjee and Chatterjee, JJ.) Nagendra Nath Chakrabarthy v. Emperor. **81 I C 220 : 51 Cal 402 : 38 C L J 388 : 25 Cr L J 732 : A I R 1924 Cal 476.**

——Ss. 136 and 137—Ex parte order—Jurisdiction to set aside.

A Magistrate might set aside an order passed by him under S. 133, Cr. P. Code ex parte on the ground that the opposite party was not able to attend on the day fixed. Where an order absolute under S. 136 is set aside, the Magistrate must proceed to record evidence as provided by S. 137, Cr. P. Code. It is only after taking evidence that he can make the order absolute or drop the proceedings. AIR 1916 Cal 151, 31 All. 453, 11 A L J 93 Foll. (Jwala Prasad, J.) Ramsaran Koeri v. Ramlagan Ahir. **4 Pat L W 50 : 43 I C 790 : 19 Cr L J 214 : A I R 1917 Pat 124.**

——S. 137.

SYNOPSIS.

1. Scope.
2. Magistrate.
3. Evidence.
4. "As in a summons case".
5. Burden of proof.
6. "No further proceedings".
7. Order absolute.
8. Abatement of nuisance.
9. Jurisdiction of Civil Court.
10. Revision.

1. Scope.

——Ss. 137, 139-A—No reliable evidence in support of denial of public right under S. 139-A— Magistrate must proceed to take evidence under S. 137 —Failure to take evidence under S. 137 is not mere irregularity curable under S. 537, Criminal P. C.

The law provides for two distinct stages in an inquiry under Chap. 10, Criminal P. C. The first is prescribed by S. 139-A and it is only when the

CRIMINAL P. C. (V of 1898), S. 137—1. Scope

provisions of that section have been complied with and when the Magistrate finds there is no reliable evidence in support of the denial of the public right by the person against whom the conditional order was issued, that the Magistrate should commence the second stage of the inquiry as provided by S. 137, Criminal P. C.

In a case where a conditional order is passed against a person for obstruction of a public way under S. 133, Criminal P. C. and on inquiry such person denies the public right of way, the Magistrate must first take proceedings under S. 139-A, and then proceed to take evidence under S. 137 before making the order absolute. Both the stages must be complied with as the provision is mandatory. It is not a question of mere irregularity which can be cured by S. 537, Criminal P. C. (Thomas, C. J.) Mahabir v. Asharfi. **A I R 1947 Oudh 65 : 1946 O W N 108 : 1946 O A 90 : 1946 A W R (C C) 90 : 47 Cr L J 398 : 223 I C 463.**

——Before passing order under S. 137, Cr. P. C., the Magistrate must make an enquiry under S. 139-A. (Bennett, J.) Pratap Narain v. Ramkumar. **A I R 1941 Oudh 271 : 42 Cr L J 241 : 13 R O 333 : 1941 O W N 54 : 1941 A W R 90 : 192 I C 70.**

——Ss. 137 and 138—Where an accused is hauled up under S. 133, Cr. P. C., the Magistrate shall question him whether he denies the existence of the public right. If he does so, the Magistrate shall, before proceeding under S. 137 or S. 138 enquire in the matter, and if he finds any reliable support of such denial, he shall stay the proceedings. (Abdul Rashid, J.) Crown v. Sain Shah. **42 P L R 80.**

——Where a conditional order under S. 133, Cr. P. C., is passed against a person for obstructing a public way and in an enquiry, such a person denies the public right of way, proceedings under S. 139-A should be taken before the proceedings under S. 137. (Blacker, J.) Ata Mohammad v. Abdul Rahman. **A I R 1937 Lah 676 : 39 P L R 484 : 10 R L 181 : 38 Cr L J 1056 : 171 I C 279.**

——Ss. 137, 139-A (2)—Proceedings under Chap. X —Obstruction to public way alleged and denied—Procedure to be followed.

Under S. 139-A (2), Criminal P. C., which was added by the Amending Act XVIII of 1923, proceedings under Chap. X, Criminal P. C., are to be taken in two distinct stages. Where obstruction to the use by the public of any way is alleged and denied, the question to be decided at the threshold of the case is whether the denial of the existence of the public right claimed is well founded. It is generally desirable that the Magistrate should record a definite finding in terms of S. 139-A (2), though if the record otherwise indicates that he did find that the denial of the public right was well founded, the requirements of S. 139-A (2) would be made out. It is obvious

CRIMINAL P. C. (V of 1898), S. 137—1. Scope

that the Court and the parties should distinctly understand when the case enters on the second stage of the proceedings provided by S. 137, Criminal P. C., so that the evidence, not of the preliminary character contemplated by S. 139-A (2), but such as is contemplated by S. 137, be produced. (Niamatullah, J.) Gangadhar Marwari v. Emperor. **A I R 1936 All 150 : (1936) A L J 116 : 8 R A 723 : 1936 A W R (H C) 127 : 37 Cr L J 422 : 161 I C 309.**

——Ss. 137 and 138—Where, in a proceeding under S. 133, Criminal P. C.. the Magistrate, after finding under S. 139-A, Criminal P. C., that there was no reliable evidence in support of the petitioner's denial of right of way, made the rule against the petitioner absolute, without proceedings under S. 137 or 138:

Held, that the Magistrate erred in making the order and that he must take up the matter further and proceed as laid down in S. 137 or 138. (Macpherson, J.) Nirsu Pande v. Emperor. **AIR 1934 Pat 145 (1) : 14 P L T 778 : 6 R P 382 : 35 Cr L J 488 : 147 I C 804.**

——Ss. 137, 139-A— Where a Magistrate passed a conditional order under S. 133, Criminal P. C., requiring the persons against whom a complaint had been made to remove certain wire fencing from the road or to show cause and they appeared and denied the existence of the road and of the right of the public over it by user, and the Magistrate considered the evidence produced by either side and came to the conclusion that the public had acquired a right over the strip of land alleged to be the road and made his conditional order for the removal of the wire fencing absolute:

Held, that the Magistrate's procedure was irregular as the persons against whom the conditional order was passed appeared in Court and denied the existence of the road or of the right of the public in respect of it; the Magistrate ought to have proceeded under S. 139-A instead of S. 137, as he did. (Niyogi, A. J. C.) Mahabir Prasad v. Pitamber Prasad. **A I R 1933 Nag 267 : 6 R N 91 : 35 Cr L J 145 : 29 N L R 361 : 146 I C 601.**

——Ss. 137, 133, 139-A—Obstruction to public right —Denial of right — Procedure—Enquiry under S. 139-A—Necessity of.

Where in proceedings under S. 133, Cr. P. C., alleging obstruction to a public right, the opposite party denies the existence of any public right in respect of the land, the Magistrate should hold an enquiry under S. 139 A, with a view to ascertaining whether there was any reliable evidence in support of the denial on the part of the opposite party of the existence of any public right in respect of the land in question and to record a clear finding on the point before proceeding further. If his finding is to the effect that there was reliable evidence in support of the denial of the opposite party, he is bound to stay proceedings until the matter of existence of the alleged public right has been decided by a competent Civil Court. If, on the other hand he finds that there was no reliable evidence in support of the denial of such a right, then and then only is he entitled to proceed further and to deal with the matter under the provisions of S. 137, Cr. P. C. The original order should not be made absolute under S. 137 without holding an enquiry and recording a finding under S. 139-A. (Panckridge and Patterson, JJ.) Umakanta v. Kalipada. **A I R 1933 Cal 790 : 37 C W N 823 : 6 R C 232 (2) : 35 Cr L J 89 : 140 I C 558.**

——In a proceeding under S. 133, Cr. P. C. upon the opposite party's appearance, the Magistrate should forthwith ask him as to whether he denies the existence of any public right in respect of the way etc., and it is only after the question contained in S. 139-A of the Code has been decided that the Magistrate should, if he desires to go on with the case at all, proceed under S. 137 to take evidence. (Boys, J.). Raghu Nandan v. Shew Nandan. **A I R 1932 All 366 : (1932) A L J 339 : 33 Cr L J 618 : Ind Rul (1932) All 443 : 138 I C 556.**

——Procedure.

Where the accused is alleged to have obstructed a public pathway, and on receipt of notice of the proceedings under S. 133, he appears in Court, the first duty of the Magistrate is to question him whether he denied the existence of public right in the pathway. If instead of doing so the Magistrate proceeds to enquire into the matter whether there was any obstruction, the procedure is wrong in law. (Pearson and Mallik, JJ.) Matabbar Molla v. Golam Panjaton. **I R 1930 Cal 890 : 32 Cr L J 33 : 127 I C 762 : 1930 Cr C 798 : 57 Cal 368 : AIR 1930 Cal 486.**

——Magistrate cannot act as arbitrator — Claim of right— Bona fides.

In a proceeding under S. 137 the Magistrate must enquire at the outset into bona fides or otherwise of the claim of the petitioners, AIR 1915 Cal 168, 7 CWN 117, Foll. S. 137 is imperative and mandatory and the Magistrate in a proceeding under that section cannot assume the role of an arbitrator simply because both the parties agree to his acting as such; consent or waiver does not vest him with jurisdiction. 10 Cr. L. J. 482 Foll. (Sanderson and Walmsley, JJ.) Chandra Mandal v. Ram Mandal. **25 C L J 349 : 18 Cr L J 738 : 40 I C 738 : 21 C W N 926 : A I R 1917 Cal 800.**

——Ss. 133, 135, 137 and 141—Scope.

See ibid, S. 133. **10 Cr L J 494 (Cal.)**

2. Magistrate.

——Though a Magistrate of the second class is not competent to make a conditional order under S. 133, he may pass the final order under S. 137 if the case is transferred to him by the Magistrate making the conditional order. The jurisdiction

CRIMINAL P. C. (V of 1898), S. 137—2. Magistrate

of the Magistrate of the second class to pass the final order is derived from S. 133 and not from the conditional order which, in effect, does no more than transfer the case to him. His jurisdiction to pass the final order remains the same, whether the case is transferred to him by the conditional order itself or at a later stage. (Chatterjee and Shearer, JJ.) Chanderdip Mahton v. Emperor. **A I R 1945 Pat 334 : 24 Pat 16 : 47 Cr L J 29 : 1946 Pat Rul 25 : 221 I C 183.**

——There is nothing in the Cr. P. C., to prevent a Magistrate, who passed the conditional order under S. 133 of the Code from transferring the case to some other Magistrate for making inquiry under S. 137. (Manoharlall and Chatterji, JJ.) Jadish Singh v. Baij Nath Singh. **A I R 1943 Pat 115 : 21 Pat 729 : 9 B R 217 : 44 Cr L J 364 : 15 R P 285 : 205 I C 302.**

——Conditional order by Magistrate — When can be made absolute.

A conditional order should be made final after taking evidence by the Magistrate who should himself give the decision regarding the final order. (Mr. Shah and Crump, JJ.) In re Kariyappa v. Ningappa. **68 I C 619 : 47 B 89 : 23 Cr L J 587 : 24 Bom L R 807 : A I R 1922 B 384.**

3. Evidence.

——Preliminary order under S. 133 cannot be made absolute unless party aggrieved is given sufficient opportunity to meet the charge. (Yahya Ali J.) In re Padmavathamma. **A I R 1947 Mad 243 (2) : (1946) 2 M L J 271 : 59 M L W 545 (1) : 1946 M W N 763 : 48 Cr L J 4 : 1947 A W R Sup 20 : 1947 O A Sup 20 : 228 I C 17.**

——Ss. 137 and 139 A — Proceedings under S. 133 —Public right denied—Evidence recorded under S. 139 A found unreliable and Magistrate proceeding under S. 137—On request of parties, Court treating evidence recorded under S. 139 A as one recorded under S. 137 — Order is not illegal.

A party on whom a preliminary order under S. 133 was served appeared before the Court and denied the public right. Evidence was recorded under S. 139 A and the Court, finding the evidence not reliable, ordered the parties to produce evidence under S. 137. Parties stated that they did not wish to resummon those witnesses and that the evidence recorded under S. 139-A should be treated as evidence produced under S. 137. Acceding to the request, the Court made the order absolute:

Held, that though the Magistrate wanted to record evidence, the parties did not want to produce any and no Court can force a party to examine or not to examine witnesses. There was nothing illegal in the order of the Magistrate to treat the evidence recorded under S. 139-A as evidence under S. 137. (Thomas, C. J.) Ram Narain v. Emperor. **A I R 1946 Oudh 108 : 1946 O W N 57 : 222 I C 532 : 47 Cr L J 306.**

CRIMINAL P. C. (V of 1898), S. 137—3. Evidence

——Where persons have in good faith chosen a trial by jury, and through no fault of their own, their chosen tribunal fails to hear and try their case, they cannot claim then that they are entitled that their case should be heard by the Magistrate as a summons case under S. 137(1) but the Magistrate would clearly desire in such circumstances that they should be given an opportunity briefly to state their case. (Davis J. C. and Lobo J.). Jethanand v. Shikarpur Municipality. **A I R 1940 Sind 24 : 12 R S 213 : I L R (1939) Kar 179 : 41 Cr L J 364 : 186 I C 723.**

——In determining whether final order under S. 137 is legal, the Court is concerned only with evidence given at enquiry. (Broomfield and Macklin JJ.) Rameshwar Narayan v. Emperor. **A I R 1939 Bom 92 : 41 Bom L R 84 : 11 R B 301 : 40 Cr L J 444 : 180 I C 511.**

——An order under S. 133, Criminal P. C., cannot be passed merely on the personal opinion of the Magistrate. He must take evidence as in a summons case, and it is only when this has been done that the Magistrate can make the conditional order absolute. (Addison, J.) Khair Din v. Wasan Singh. **A I R 1935 Lah 28 : 37 Cr L J 70 : 8 R L 381 : 159 I C 374.**

——When a party had appeared and showed cause against the preliminary order passed under S. 133, Criminal P. C., this order should not under S. 137, have been made absolute merely on a local inspection in the course of which it does not appear that the party concerned had any opportunity of offering any evidence. (Dhavle, J.) Ram Chandra Lal v. Emperor. **A I R 1934 Pat 316 (1) : 15 P L T 288 : 6 R P 667 : 35 Cr L J 1020 : 149 I C 839.**

——The provisions of S. 137(1) are mandatory and before making the conditional order absolute it is imperative that evidence should be taken in the case as in a summons case. The Magistrate cannot, without recording evidence, act on his own opinion. 31 All 453, Foll. (Iqbal Ahmad, J.) Jagan Nath v. Emperor. **101 IC 897 : 7 AI Cr R 439 : 8 LRA Cr 68 : 28 Cr LJ 510 : AIR 1927 All 825.**

——Sec. 137 is imperative and a Magistrate in a case of public nuisance must record evidence as in a summons case. 32 PR Cr. 1917 and AIR 1916 Cal 151, Foll. (Harrison, J.) Attar Singh v. Hari Singh. **99 IC 92 : 8 LLJ 557 : 27 PLR 764 : 28 Cr L J 60.**

——S. 137(1)—Scope.

Where it was complained that the applicant had built a wall and had thereby obstructed a public road and the Court passed the following order:—The Tahsildar has inspected the spot and reports that the wall built is the cause of the trouble. Notice to issue under Section 140, Criminal Procedure Code (More than one notice had been issued by the Court under Section 133.) Held: Court's

CRIMINAL P. C. (V of 1898), S. 137—3. Evidence

order was not a legal and valid order, inasmuch as the provisions of Section 137(1) of the Criminal Procedure Code were not complied with. Section 137(1) of the Criminal Procedure Code lays down that "If the opposite party appears and shows cause against the order the Magistrate shall take evidence in the matter as in a summons case." It was thus clearly intended by the legislature that the Court should itself go into evidence before making the preliminary order final and should give a judicial decision in the matter. (Stuart, J.) Ismail v. Bunda. **20 ALJ 657 : AIR 1922 All 265 (2) : 95 IC 944 : 27 Cr LJ 864.**

——Public nuisance—Procedure.

In an inquiry under Chap. X a Magistrate should proceed to take evidence in support of the order before the counter-petitioner is called on to produce his evidence to meet it. 31 A 453; 27 IC 767, Foll. (Spencer, J.) In re, Dakshina Moorti. **41 IC 672 : 18 Cr LJ 848 : AIR 1918 Mad 984.**

4. "As in a summons case"

——Ss. 137, 135 and 133—Procedure.

Magistrate can only make a notice under section 133, Cr. P. C., absolute if the person against whom the order is made does not appear under section 135 and protest against it. If the person appears and puts in a written statement it is then the duty of the Magistrate to proceed under section 137 as if the case were summons case. (Stuart, J.) Jassi v. Emperor. **20 ALJ 692 : LR 3 A 129 (Cr) : AIR 1922 All 335 (2) : 76 IC 826 : 25 Cr LJ 266.**

——Enquiry—Order on local investigation—Legality of.

Where in a proceeding under S. 133 of the Code the opposite party appears and shows cause, the Magistrate should hold, under S. 137 of the Code, an enquiry as in the case of the trial of summons cases. The consent of the parties to have the case decided upon the local inspection, does not exclude the necessity of holding a regular trial under S. 137 and deciding the case on legal evidence. (Jwala Prasad, J.) Biru Thakur v. Gokhul Raut. **49 IC 777 : 20 Cr LJ 217 : AIR 1919 Pat 172.**

——Ss. 137 (3) and 138 — Procedure.

In proceedings under S. 137 the Magistrate should proceed as in a summons case. 147 PLR 1901; 31 A 453; 24 C 395; 11 B 375. (Leslie Jones, J.) Emperor v. Sitaram. **32 PR Cr 1917 : 43 PWR Cr 1917 : 41 IC 1000 : 18 Cr LJ 888 : AIR 1917 Lah 243.**

——'Shall take evidence in the matter as a summons case'.

When a person ordered to show cause under S. 133 appears to show cause, the Magistrate is bound to take evidence as in a summons case, i.e., the complainant has to start proceedings by adducing evidence, and then the party showing cause may produce his own evidence, if so advised. When this has been done, but not before, the Magistrate can make the conditional order absolute, if he finds sufficient reason for doing so. An order absolute passed without following this procedure is illegal. (Richards and Alston JJ.) Hingu v. King-Emperor. **6 ALJ 685 : 3 Ind Cas 482 : 31 A 453 : 10 Cr LJ 297.**

CRIMINAL P. C. (V of 1898), S. 137—4. "As in a summons case"

5. Burden of proof.

——Conditional order under S. 133 served—Burden of proving nuisance.

A person against whom the conditional order is made and who is required to show cause against the same has only to show cause in respect of the matters complained of, and the complainant has to make out a prima facie case, that is to say, he has to produce before the Court legal evidence as in a summons case which would justify a finding that what is complained of amounts to a public nuisance. The burden of proof is not on the person served with conditional order. (Broomfield and Macklin JJ.) Rameshwar Narayan v. Emperor. **AIR 1939 Bom 92 : 11 RB 301 : 41 Bom LR 84 : 40 Cr LJ 444 : 180 IC 511.**

——S. 137 (2)—If the person who alleges that a public pathway has been obstructed, is unable to show that a public pathway exists, the Magistrate is certainly neither required nor entitled to act as if it had been found that a public pathway did exist; and in the absence of the evidence of actual dedication, the person defending the case under S. 133, Criminal P. C., has merely to adduce reliable evidence to show that the use of the path by the public has not been sufficiently long to establish a prescriptive right. The fact that the pathway may have been used for 2 1/2 years would not warrant the Magistrate enforcing its use as public path against the wishes of the owner who is perfectly entitled to close it if he pleases. (James, J.) Harisadhan Chaudhuri v. Tekanarain Singh. **AIR 1934 Pat 438 : 15 PLT 386 : 1 BR 199 : 7 RP 344 : 36 Cr LJ 367 : 153 IC 471.**

6. "No further proceedings".

——Ss. 137, 138—Where a conditional order under S. 133, Cr. P. C., for the removal of an encroachment on a public way is passed by a Magistrate and a person who was served with a notice of this order appears before the Magistrate under S. 139-A and produces evidence to show that he has not committed any encroachment, the Magistrate cannot proceed to make his order absolute but must either stay the proceedings, or proceed under S. 137 or 138, according as he finds the evidence reliable or unreliable. (Bajpai, J.) Chhedi Lal v. Emperor. **AIR 1939 All 116 : 11 R A 399 : (1938) A L J 1145 : 1938 A W R (HC) 841 : 40 Cr LJ 286 : 179 IC 970.**

——Finding as to the bona fides of claimant necessary.

CRIMINAL P. C. (V of 1898), S. 137—6. "No further proceedings"

In taking evidence under S. 137, in a case where the public nature of the way is disputed, it is incumbent on the Magistrate, even where he has found, that the claim of title to the land in question on the part of the person showing cause is not justified to determine further whether the claim is nevertheless a bona fide claim, and if he finds in the affirmative, to stop proceedings and give such person time to establish his claim in the Civil Court. Where the Sub-Divisional Magistrate failed to find that the petitioner's claim, even though not justified was not bona fide.

Held, that his proceedings cannot be sustained. 15 C 564, 2 PLJ 67, Foll. (Macpherson, J.) Rangi Sah v. B. N. W. Ry. Co. **4 Pat LJ 402 : 1 Pat LR 154 Cr : 74 IC 1047 : 24 Cr LJ 855 : AIR 1923 Pat 540.**

7. Order absolute.

——Power of Magistrate to modify preliminary order.

There is no specific provision in the Act which authorises the Magistrate when passing an order under S. 137 to make the order absolute subject to any modification. Hence, a Magistrate sitting alone without any jury has no power to modify the preliminary order under S. 133 before making it absolute under S. 137. AIR 1943 Mad 335, Rel. on.; 26 Cr LJ (All) 731, Not foll. (Guha J.) Secretary Ratepayer's Committee North Barrackpore Municipality v. Dwip Narayan Singh. **AIR 1952 Cal 127.**

——Magistrate passing an order absolute under S. 137 on a ground not mentioned in the conditional order under S. 133—Order is illegal. 21 Cr LJ 462, Rel. on. (Guha J.) Secretary Ratepayers' Committee, North Barrackpore Municipality v. Dwip Narayan Singh. **AIR 1952 Cal 127.**

——Ss. 137 and 139—Under S. 137, Magistrate sitting alone cannot modify original order—He can do so only when sitting with jury.

A Magistrate sitting alone under S. 137, Cr. P. C., has no jurisdiction to modify the order before making it absolute. It is only when sitting with a jury that he has power to modify the order before making it absolute. (Byers, J.) D'Silva v. D'Silva. **AIR 1943 Mad 335 : (1943) 1 MLJ 165 : 56 LW 108 : 16 RM 33 : 1943 MWN 128 (1) : 44 Cr LJ 545 : 206 IC 573.**

——Flour-mill causing vibrations and inconvenience to two neighbours — Public nuisance—Order under S. 137, held not justified.

A flour-mill caused vibrations to the premises of two neighbours and caused them inconvenience and they alone filed complaint regarding nuisance. There was no evidence to show that similar nuisance or inconvenience or injury to health or physical comfort was caused to anybody else by the mill:

Held, that the working of the mill engine did not amount to a public nuisance. Any damage or inconvenience caused to the complainants' premises by the working of the engine must be regarded as a private nuisance and order under S. 137, Cr. P. C., was not justified:

CRIMINAL P. C. (V of 1898), S. 137—7. Order absolute

Held, further that even if persons other than complainants were injured in their health or physical comfort by this flour mill, still it was not a case for prohibiting the flour mill but for regulating it in some way. (Broomfield and Macklin JJ.) Rameshwar Narayan v. Emperor. **AIR 1939 Bom 92 : 41 Bom LR 84 : 11 RB 301 : 40 Cr LJ 444 : 180 IC 511.**

——A Magistrate passing an order under S. 142, Cr. P. C., not only is not precluded from making a final order under S. 137, but Ss. 133, 137 and 143 taken together mean that the Magistrate in spite of making an order under S. 142, is entitled to proceed with the case and make a final order under S. 137. (Lort-Williams and Cunliffe, JJ.) Rebati Mohan v. Chottal Chandra. **AIR 1936 Cal 692 : 63 CLJ 5 : 9 RC 490 (1) : 38 Cr LJ 173 : 166 IC 221.**

——Ss. 137 and 140 (2)—Jurisdiction—Successor cannot interfere.

A Magistrate is not justified in going behind the order of his predecessor under Ss. 133 and 137, Cr. P. C., and coming to a decision as to its legality. Even though a Magistrate has discretion under S. 140 (2), Cr. P. C., this discretion must be a judicial discretion and no Magistrate has judicial discretion to sit as a Court of appeal and decide whether an order passed by a Magistrate of concurrent jurisdiction was a proper order or not. 10 WR Cr 27 and 25 Cal 425, Ref. (Newbould and Suhrawardy JJ.) Kiran Chandra v. Ramesh Chandra. **27 CWN 459 : 72 IC 77 : 24 Cr LJ 317 : AIR 1923 Cal 589.**

——Finding as to bona fides is condition precedent.

Before making an order for the removal of obstruction under S. 137, the Magistrate should record a clear finding as to the bona fides of the claim set up by the party against whom the order is directed and in absence of such a finding the order cannot be sustained. (Teunon and Suhrawardy, JJ.) Emperor v. Asirunuddin Sarkar. **34 CLJ 172 : 62 IC 412 : 22 Cr LJ 524 : AIR 1921 Cal 118.**

8. Abatement of nuisance.

——Order under S. 137 (3) not good by reason of nuisance having abated—Order must be set aside by appellate authority.

An order under S. 137 (3), Cr. P. C., is not like an order under S. 144 which spends itself in 60 days, and if the order under S. 137 (3) is not good by reason of the nuisance having abated and is allowed to remain in force, then in case of future proceedings, it is apt to be used against the party against whom such order is passed. Such an order, therefore, must be set aside by

CRIMINAL P. C. (V of 1898), S. 137—8. Abatement of nuisance

the appellate authority. (Varma, J.) Kalyan Mal v. Emperor. **AIR 1936 Pat 577 : 3 BR 69 : 9 RP 186 : 37 Cr LJ 1159 : 165 IC 542.**

9. Jurisdiction of Civil Court.

——Absolute order under, by Magistrate can be questioned in Civil Court. (Harnam Singh J.) Chandgi v. Bhai Ram. **51 PLR 176 (EP).**

10. Revision.

——Ss. 137 and 439.

Preliminary order under S. 133 vague and indefinite on ground that extent of encroachment was not defined precisely—Order should not be made absolute under S. 137—Order set aside in revision: 11 Cr LJ 213, Rel. on. (Guha J.) Secretary Ratepayers' Committee, North Barrackpore Municipality v. Dwip Narayan Singh. **AIR 1952 Cal 127.**

——"Shall take evidence in the matter"— No enquiry as to whether party denied public right or any finding in support of such denial—Validity of absolute order passed under such circumstances.

See ibid, Ss. 133, 137 and 139-A. **AIR 1949 Cal 583 : 51 Cr LJ 125.**

——Ss. 137, 139-A, 133—Order under S. 137 passed without inquiry enjoined under S. 139-A (1)—Propriety of.

In an application under S. 133, Cr. P. C., the opposite party claimed the existence of a public right. The Magistrate visited the spot and examined the witnesses for the party who had set the law in motion and then examined the remaining witnesses twelve days later. Then an amin was deputed to examine the alleged encroachment after comparison with the survey map and Record of Rights. The order was made absolute without any further proceedings:

Held, that the order under S. 137 having been passed without making the inquiry enjoined under S. 139-A (1), could not stand. (Macpherson, J.) Narsingh Narain v. Rameshwar Singh. **AIR 1936 Pat 369 : 17 PLT 399 : 2 BR 595 (2) : 9 RP 1 (2) : 37 Cr LJ 846 (1) : 163 IC 402.**

——Recording evidence.

——The provisions of S. 137 are imperative. The complainant has to start proceedings by adducing evidence and then the party showing cause may produce his own evidence if so advised. Hence, where a Magistrate makes his conditional order under S. 133 final without recording statement of the complainant or taking prosecution evidence in the presence of the accused, the whole trial will be vitiated by material irregularity. (Broadway, J.) Achhru v. Emperor. **11 Lah 247 : 31 PLR 503 : IR 1930 Lah 629 : 125 IC 613 : 31 Cr LJ 880 : 1930 Cr C 806 : AIR 1930 Lah 662.**

——Finality of order.

——The High Court which has power to confirm the order under S. 137 has also power to modify that order to such extent as may seem fit. (Boys J.)

CRIMINAL P. C. (V of 1898), S. 137 — 10. Revision

Manohar Singh v. Emperor. **116 IC 786 : 1929 ALJ 385 : 10 LRA (Cr.) 49 : 11 AI Cr R 350 : 30 Cr LJ 670 : AIR 1929 All 220.**

——Failure to follow procedure under S. 137 (1) is not a mere irregularity.

Section 537 applies only to mere errors of procedure arising out of mere inadvertence, and not to substantive errors of law, and that section does not apply to cases of disregard or disobedience of mandatory provisions of the Code. The section has not the effect of curing material irregularities and absolute illegalities.

The failure of a Magistrate to follow the procedure enjoined by S. 137 (1) vitiates his order, and is not a mere irregularity of the nature contemplated by S. 537 (a). 25 Mad. 31, Foll. (Iqbal Ahmad, J.) Tirkha v. Nanak. **100 IC 371 : 49 All 475 : 25 ALJ 377 : 28 Cr LJ 291 : 8 LRA Cr 59 : 7 AI Cr R 391 : AIR 1927 All 350.**

——The provisions of S. 137 are mandatory.

The provisions of S. 137 are imperative and failure to comply with them vitiates the order. When the opposite party appears before the Magistrate, shows cause and alleges that what was claimed as a public pathway was not so, the Magistrate should record evidence on the matter of the complaint as in a summons case. He is not justified in consenting to act, so to say, as an arbitrator and to decide the matter simply after a local inspection. Consent of the parties or waiver does not vest him with a jurisdiction to proceed in such a manner. 21 CWN 926, Rel on. (Iqbal Ahmad, J.) Bhoora v. Tara Singh. **99 IC 415 : 49 All 270 : 55 ALJ 155 : 8 LRA Cr 25 : 28 Cr LJ 159 : 7 AI Cr R 198 : AIR 1927 All 267.**

——Under S. 137, judicial decision is necessary.

Where it was complained that the applicants had built a wall and had thereby obstructed a public road and the Court passed the following order:— "The Tahsildar has inspected the spot and reports that the wall built is the cause of the trouble. Notice to issue under S. 140."

Held, that the order was not legal and valid order, inasmuch as the provisions of S. 137 (1) of the Cr. P. C., were not complied with. Under that section, it was thus clearly intended by the Legislature that the Court should itself go into evidence before making the preliminary order final and should give a judicial decision in the matter. (Stuart, J.) Ismal alias Chotiya v. Bunda. **95 IC 944 : 20 ALJ 657 : 27 Cr LJ 864 : AIR 1922 All 265.**

——When the accused person appears and shows cause why no order should be made against him, the Magistrate should hear evidence in support of the order against him before calling on him for his defence. Where on the day fixed for the production of evidence, neither party produced any evidence and the Magistrate made the order absolute.

CRIMINAL P. C. (V of 1898), S. 137 — 10. Revision

Held, that the order must be quashed. (Daniels, J.) Bechan Teli v. Emperor. **86 IC 969 : 47 All 341 : 26 Cr LJ 905 : 6 LRA Cr 183 : 6 LRA Cr 8 : AIR 1925 All 614.**

——Ss. 137 and 133—Sufficient ground—Bona fide dispute is such.

Where there is a bona fide dispute as to whether an encroachment exists or not, section 133 should not be applied in order to relieve the Government of the necessity of filing a civil suit. The existence of a genuine dispute as to title suitable for decision by the Civil Courts is a sufficient ground within the meaning of Sec. 137 for holding that the order under S. 137, where the alleged encroachment has been in existence for over 20 years, is not reasonable and proper. 15 Cal. 564 foll. (Daniels, J. C.) Ram Lakham v. Emperor. **72 IC 958 : 24 Cr LJ 494 : AIR 1923 Oudh 22.**

——S. 137—Conditional order when vague and indefinite—Refusal by High Court to send case back where the order was defective. (Lawrence-Jenkins, C. J. and Chatterjee, J.) Kali Mohan Kar v. Nakari Chandra Das. **11 CLJ 114 : 5 IC 722 : 11 Cr LJ 213 (2).**

——Scope.

——Provisions are mandatory— Order under S. 133 made without evidence not validated by consent.

See ibid, S. 133. **11 Cr LJ 1 : 4 Ind Cas 436 (Cal).**

——S. 138.

——Ss. 138, 133, 135—Time to appoint a jury.

Under S. 138, a Magistrate would appoint a jury after the party, against whom a notice under S. 133, Cr. P. C., had been issued, appears and asks for a jury. There is no provision that the Magistrate would appoint a jury even after he has come to the conclusion that there was no reliable evidence in support of the contention that there was no public way, after an inquiry. (Randhir Singh, J.) Chandrapal v. State. **AIR 1954 All 14 : 1953 All LJ 476 (2) : 1953 All WR (HC) 462 : 1953 Cr LJ 1876.**

——It is open to a person against whom an order under S. 133, Cr. P. C., has been made absolute to elect to have the matter tried by a jury even after the enquiry under S. 139-A has been finished by the Magistrate. (Jack and M. C. Ghose, JJ.) Shamji Tricum Das v. Ram Moye. **AIR 1933 Cal 318 : 56 CLJ 249 : Ind Rul (1933) Cal 371 : 34 Cr LJ 532 : 143 IC 178.**

——Bar.

The fact that a civil suit has been instituted on the matter in dispute, is no bar to proceedings under S. 138, Cr. P. C. (Jack and M. C. Ghose, JJ.) Shamji Tricum Das v. Ram Moye. **AIR 1933 Cal 318 : 56 CLJ 249 : 34 Cr LJ 532 : Ind Rul (1933) Cal 371 : 143 IC 178.**

——Error.

——The nomination of a Jury is a nomination of the Court which has to try the case and irregularity with regard to that matter is an irregularity which goes to the root of the proceedings. It is doubtful whether in any event the provisions of S. 537, could cure the irregularity in this respect. 3 Cal. 499, Ref. (Wort, J.) Mahadeo Lal v. Hossaini Pandey. **IR 1930 Pat 1 : 120 IC 289 : 31 Cr LJ 53 : 1930 Cr C 335 (2) : AIR 1930 Pat 199.**

CRIMINAL P. C. (V of 1898), S. 138

——Appointment of jury.

——A Magistrate must exercise his own discretion in nominating a proportion of the jury. He cannot accept the names suggested by the original complainant without exercising his own discretion in the matter; otherwise, it is an illegality. 23 Cal. 499 and 26 Cal. 869, Foll. 37 All. 26, Dist. (Mirza and Baker, JJ.) Kothari, In re. **117 IC 333 : 31 Bom LR 79 : 30 Cr LJ 785 : AIR 1929 Bom 79.**

——When the Magistrate appoints only the nominees of the two parties, with a foreman appointed by himself, the jury is not constituted legally and is incapable of making a legally binding award. 23 Cal. 499, Foll. (Dalip Singh, J.) Khem Chand v. Emperor. **9 AI Cr R 202 : 28 Cr LJ 1036 : 106 IC 220 : AIR 1928 Lah 187.**

——"Forthwith".

——The word 'forthwith' merely means that the Magistrate shall appoint a jury as soon as he reasonably can. (Scott-Smith and Fforde, JJ.) Khushi Ram v. The Crown. **72 IC 617 : 24 Cr LJ 457 : 4 Lah 224 : 5 LLJ 420 : AIR 1923 Lah 525.**

——Ss. 138 and 139— Jury— Refusal to give verdict—Power to summon another jury.

Where the majority of the jurors appointed by a Magistrate under S. 138 (1) of the Cr. P. Code perversely refuse to return a verdict for fear of displeasing either party, the Magistrate can discharge them and appoint a fresh Jury and decide the matter before him under S. 139, Cr. P. Code. (Lindsay, J.) Girwar Lal v. Bansidhar. **AIR 1922 All 297 (1) : 44 All 575 : 66 IC 420 : 20 ALJ 472 : LR 3 All 84 (Cr) : 23 Cr LJ 276.**

——Duty to nominate Jury.

If the Magistrate is of opinion that a Jury should be appointed under S. 138 he as well as the party showing cause must nominate the jury. (Newbould and Suhrawardy, JJ.) Sudhag Shuder Roy v. Rahim Pramanic. **62 IC 817 : 22 Cr LJ 577 (Cal).**

——Four out of five jurors only investigating and reporting on case—Validity of conditional order based on that report.

Where four only out of the five named as jurors under S. 138 dealt with the case and reported, the fifth having been ill and unable to attend. Held that the conditional order passed on the basis of the report of the four was not legal because the act of the jury by majority must be by a majority of all the five who had been appointed after an investigation of the case by all of

them. (Harington and Teunon, JJ.) Promotha Nath Bose v. Basanta Kumar Bose. **6 Ind Cas 777 : 11 Cr LJ 402 (Cal).**

—— Duty of Magistrate.

See ibid, S. 133. **11 Cr LJ 305 (Cal).**

——Ss. 138 and 141—Failure of jury to return verdict — Appointment of fresh jury.

In a proceeding under S. 133, the jury, appointed under S. 138 failed to return the verdict. Thereupon the petitioner prayed for the appointment of a fresh jury, but the Magistrate refused the prayer, and proceeded under S. 141. Held, that the Magistrate ought to have, in the exercise of his discretion, appointed a fresh jury in compliance with the prayer of the petitioner. (Brett and Ryves, JJ.) Shib Chandra Gossain v. Hriday Chandra Dass. **12 CWN 1047 : 8 Cr LJ 233.**

——Verdict of jury binding.

See Criminal P. C. (1898), S. 135. **8 Cr LJ 1 (All).**

——Procedure.

No special procedure is laid down under the Code for the jury appointed under this section to be adopted in coming to a finding on the questions submitted to them. (Knox, J.) Emperor v. Ram Bilas. **30 A 364 : AWN 1908, 151 : 5 ALJ 488 : 8 Cr LJ 1.**

——Function of jury. See ibid S. 133. **4 Cr LJ 42 (Cal).**

——S. 139.

——A Magistrate sitting alone under S. 137, Cr. P. C., has no jurisdiction to modify the original order before making it absolute. It is only when sitting with a jury that he has power to modify the order before making it absolute. (Byers, J.) D'Silva v. D'Silva. **AIR 1943 Mad 335 : 56 MLW 108 : 44 Cr LJ 545 : (1943) 1 MLJ 165 : 1943 MWN 128 (1) : 16 RM 33 : 206 IC 573.**

——It is the duty of the Magistrate after issuing notice under S. 133, Cr. P. C., on the date of hearing to question the accused under S. 139-A as to whether he denied the existence of any public right in respect of the way alleged to have been obstructed. Where the Magistrate does not so question, his order may be set aside and he may be directed to rehear the proceedings from the stage where the accused should have been questioned. (Rowland, J.) Bansi Dhar Marwari v. P. W. D. Bihar. **AIR 1943 Pat 3 : 9 BR 56 : 43 Cr LJ 923 : 15 RP 160 : 203 IC 70.**

——In a case under S. 133, Criminal P. C., for removal of obstruction all that the Courts have to see is whether the opposite party has acquired by adverse possession a right in the plot wherein the alleged obstruction to the public right existed. (Manohar Lail, J.). Jadunandan Lal v. Ram Peyare Sao. **A I R 1943 Pat 32 : 43 Cr L J 903 : 9 B R 55 : 15 R P 155 : 202 I C 783.**

——Where the order under S. 133, Cr. P. C., was not made absolute under S. 139 (1) and further proceedings had to be dropped as provided in S. 139(2), S. 140, Cr. P. C., cannot apply to the case. (Lakshmana Rao, J.) Manikavasaga Nadar v. Krishna Swami Iyer. **A I R 1942 Mad 113 : 1941 M W N 813 : 43 Cr L J 314 : 14 R M 413 : 198 I C 131.**

——Before completion of appointment of jury, one juror submitting his report—Report of majority of jury, whether illegal—Duty of Court.

Where one of the jurors had already submitted his report before the completion of the appointment of the jury, he is not a fit person to be on the jury and the constitution of the jury as completed is essentially defective. In such cases, the report of the majority of the jury itself becomes illegal and one that cannot be acted upon. Under the circumstances, the Court can appoint a fresh jury and allow the proceedings to go on with a fresh jury. (Dhavle, J.) Kewal Saran v. Kamala Pati. **AIR 1940 Pat 717 : 21 P L T 793 : 42 Cr L J 202 : 13 RP 361 : 7 BR 239 : 191 IC 595.**

——Ss. 139, 133 — Petition for removal of latrine near public well — No denial of public right — Inquiry under S. 139, if feasible—S. 133, if applies.

Where an application is made for removal of a privy on the ground that its continuance near a public well would render the water of the well insanitary and unfit for use and there is no denial of the existence of the public right in the well and the atmosphere surrounding it, an inquiry under S. 139, Cr. P. C., is not feasible. To such a case, S. 133 applies if the Magistrate thinks that the nuisance should be removed from the public place. (Macpherson, J.) Mahabir v. Dhanushdari. **AIR 1936 Pat 409 : 9 RP 24 : 2 BR 619 : 163 IC 514.**

——Magistrate cannot compel a party to go to Civil Court and specially party in whose favour he is inclined.

The provisions of S. 140 (1) do not apply to a stay under S. 139 (2) and the Magistrate cannot compel either party to go to the civil Court. If the defendant denies the claim and the denial is proved, the Criminal Court holds its hand and it will be the business of the plaintiff to bring a civil suit if he likes. If he does not, the denial is maintained. If he does bring a suit and succeeds, the Magistrate may proceed to pass an order absolute under S. 140 (1). (Dalal, J.) Razan v. Emperor. **1930 ALJ 815 : 125 IC 452 : 1930 Cr C 907 : 31 Cr LJ 839 (1) : AIR 1930 All 658.**

——S. 139 (2)—Jury men refusing to give verdict—Fresh jury to be appointed.

If some three men of the Jury deliberately shirk their duty by not giving any verdict at all, probably because they do not want to offend either party, which amounts to a perverse refusal on the party of the men to decide, then, in accordance with the note in para 9 on page 220 of Sohoni's Criminal Procedure Code, 9th Edition. It is competent on the part of the Court to appoint a fresh

CRIMINAL P. C. (V of 1898), S. 139

jury. (Lindsay, J.) Girawar Lal v. Bansidhar. **44 All 575 : 20 ALJ 472 : 66 IC 420 : 23 Cr L J 276 : AIR 1922 All 297 (1).**

(Note:—This new section provides for enquiry when the existence of public right is denied—Ed.)

——Ss. 139 and 140—Ultra vires order.

The recommendations of a jury directing parties to do a certain thing can only be enforced under Cl. (2) of S. 139. The report of a jury cannot of itself constitute a contract between the parties. An order of a Magistrate cancelling an order previously made absolute is not ultra vires and cannot be called in question in a Civil Court. An order absolute under S. 139 can only be enforced in manner provided by S. 140. (Jwala Prasad J.) Sheonarain Tiwari v. Sakhi Chand Sahu. **38 IC 417 : 18 Cr LJ 305 : AIR 1916 Pat 264.**

——Same transaction—Test of.

It is not necessary that all the accused should have acted together from start to finish to make their acts parts of one single transaction. It is sufficient that each accused as he joined adopted the intention of the principal accused. (Holmwood and Chatterji, JJ.) Jambhai v. Balbhadra Suar. **10 IC 350 : 15 CWN 793.**

——Duty of Magistrate. See ibid S. 139. **11 Cr LJ 305 (Cal).**

——'Magistrate shall make the order absolute'.

Where the jury or the majority of the jurors find that the order of the Magistrate is reasonable and proper the Magistrate is bound to make the order absolute. He cannot refuse to do so on the ground that the verdict is inconsistent. (Jenkins C. J. and Caspersz J.) Hriday Chandra v. Shib Chandra. **10 Cr LJ 210 : 3 IC 7 (Cal).**

——Function of jury appointed under S. 138. See ibid S. 133. **4 Cr LJ 42 (Cal).**

——S. 139-A.

SYNOPSIS.

1. **Applicability and scope.**
2. **Delegation of enquiry.**
3. **Effect of non-compliance.**
4. **Evidence.**
5. **Findings as to existence of public right.** See Note 7. Jurisdiction.
6. **Inquiry.** See also Notes 2. Delegation of enquiry and 4. Evidence.
7. **Jurisdiction.**
8. **Procedure.**
9. **Question of title.**
10. **Reliable evidence in support of denial, existence of.** See Notes 8. Procedure and 12. Stay of proceedings.
11. **Revision.**
12. **Stay of proceedings.** See also Note 9. Question of title.

1. Applicability and scope.

——Ss. 139A and 133.

CRIMINAL P. C. (V of 1898), S. 139A — 1. Applicability and scope

Application for removal of obstruction on public way—Opposite parties denying public right of way—Proper procedure is to proceed under S. 139A. (Agarwala J.) Rekhai Singh v. State. **AIR 1953 All 466 : 1952 All LJ 20 : 1952 RD (HC) 51 : 1952 All WR (HC) 151 : 1952 All Cr R 52 : 1953 Cr LJ 1068.**

——S. 139A(1)—Denial of existence of public right—Meaning.

The denial of the existence of public right contemplated by sub-s. (1), S. 139A includes a denial of such public right in respect of the place or piece of land on which an encroachment is said to have been made. For the application of the section, it is not necessary that denial should be a denial of the existence of the entire public right in respect of the way, river, channel or place at all. The denial of the public right in the piece of land said to have been encroached upon, is denial of the existence of the public right qua the piece of land said to have been encroached upon or obstructed in any way. And that is enough to attract the application of S. 139A. (Waliullah and Wanchoo JJ.) Mohd. Ayub v. State. **AIR 1952 All 215 : ILR (1951) 2 All 609 : 1952 Cr LJ 407.**

——Order under S. 133 wrong—Extending order under S. 139A, is wrong.

In the absence of any material before it, it is wrong for the Court to extend the order under S. 139-A specially when the preliminary order under S. 133 was itself wrong. (Govinda Menon J.) In re Sadagopa Naidu. **1948-1 MLJ 414 : 61 MLW 405 (2) : 1948 MWN 493 (1) : 49 Cr LJ 666 : AIR 1949 Mad 75.**

——Ss. 139A and 133—Proceedings under S. 133.

Order staying proceedings till decision of Civil Court—Magistrate has no jurisdiction to re-open matter on fresh application : See Cr. P. C., S. 133. **AIR 1948 Pat 15 : 48 Cr LJ 360.**

——"Whether he denies the existence of any public right etc.," meaning of.

Section 139-A directs that as soon as the person against whom the preliminary order under S. 133 is made, puts in an appearance, the Magistrate shall question him as to whether he "denies the existence of any public right in respect of the way." If he does, then the Magistrate must enquire into the matter before making any final order.

Sub-section (2) then sets out the scope of the inquiry. The Magistrate cannot try and determine the question. All he can do is to see whether there is any reliable evidence in support of the denial. If there is, then he is bound to stay the proceedings until the matter of the existence of such a right has been determined by a Civil Court.

Section 139-A says nothing about a claim to do what one likes on one's own property. It speaks

CRIMINAL P. C. (V of 1898), S. 139A — 1. Applicability and scope

about a denial of assertion that a public right exists in respect of the way etc. There can be no doubt that this denial must be made in good faith and if it is only made a pretext to oust the jurisdiction of the Magistrate, then S. 139-A will not apply. But a bona fide claim to exercise the right cannot oust the Magistrate's powers once the public character of the way is conceded or is not denied and the obstruction is found to lie in this way.

The words "whether he denies the existence of any public right etc." in S. 139-A relate to the public right which is said to have been obstructed and not to the obstruction or cause of it. (Bose, J.) Sadasheo Chintaman v. Chintaman Khushalrao. **AIR 1945 Nag 226 : 1945 NLJ 243 : ILR (1945) Nag 461 : 47 Cr LJ 217 : 1946 Nag Rul 52 : 221 IC 581.**

——Any person complaining of construction, if can compel Magistrate to hold inquiry into rights of parties.

The provisions that an inquiry should be held under S. 139-A, Cr. P. C., are intended to protect the right of a person against whom it is proposed to pass an order under S. 133, Cr. P. C. They are not intended to enable any person complaining of a construction to compel the Magistrate to hold an inquiry into the rights of the parties concerned. (Allsop, J.) Sibte Hussain v. Emperor. **AIR 1937 All 785 : (1937) ALJ 903 : 10 RA 406 : 39 Cr LJ 148 : 1937 AWR (HC) 866 : 172 IC 642.**

——The object of S. 139-A was to substitute a test of whether there was any reliable evidence in support of the opposite parties' claim for the test which the Courts had gradually come to impose, whether the accused's claim was bona fide. (Boys, J.) Raghu Nandan v. Sheo Nandan. **AIR 1932 All 366 : 1932 ALJ 339 : 33 Cr LJ 618 : 138 IC 556.**

——Object.

The object with which S. 139-A is enacted is to prevent the Magistrate in enquiring into matters under Chapter X arrogating to himself the functions of a Civil Court and instituting an elaborate enquiry with regard to the rights of the parties. (Suhrawardy and Costello, JJ.) Satish Chandra Sen v. Krishna Kumar Das. **128 IC 810 : 32 Cr LJ 189 : 1931 Cr C 34 : 34 CWN 957 : AIR 1931 Cal 2.**

——The section does not say who is to have existence of right decided by Civil Court or what order Magistrate has to pass or ought to have the power of dismissing the application on the right not being decided by a Civil Court on motion by a particular party within a certain time. (Dalal, J.) Ch. Resal Singh v. Baljit Singh. **10 LRA Cr 104 : 1929 Cr C 293 : 12 AI Cr R 102 : 51 All 890 : AIR 1929 All 709 : 126 IC 352 : 31 Cr LJ 1004.**

——The section applies only in a case where a party wants determination of the public character of the river or way obstructed. The object with

CRIMINAL P. C. (V of 1898), S. 139A — 1. Applicability and scope

which the section was enacted seems to be that where the existence of the public right is denied, the Magistrate has to make an enquiry. If it is not denied, then the section hardly seems to apply. (Suhrawardy and Graham, JJ.) Rajani Kanta Roy v. Ibrahim Sarkar. **57 Cal 252 : IR 1930 Cal 701 : 126 IC 205 : 31 Cr LJ 973 : 33 CWN 748 : AIR 1929 Cal 507.**

2. Delegation of enquiry.

——Party appearing in pursuance of order under S. 133 before Magistrate to show cause—Magistrate cannot transfer case to some other Magistrate. See ibid, S. 133. **AIR 1949 Cal 637 : 51 Cr LJ 205.**

Section 139A contemplates an enquiry by the Magistrate himself. A Magistrate in proceedings under S. 133 has no jurisdiction to make over the enquiry under S. 139-A to any Magistrate subordinate to him, and omission to conduct it himself is an irregularity incurable by S. 537. The reason for the above proposition is that the Magistrate has to decide upon either staying the proceedings or further proceedings under S. 137 or 138 and this decision necessitates his considering the reliability of the evidence and proper valuation of it, which he is better fitted to do if he himself undertakes it. Mere reading of the enquiry as made by a Subordinate Magistrate and acting upon it does not enable him to do this work efficiently. (Pearson and Patterson, JJ.) Masaddar Ali v. Isimulla. **IR 1930 Cal 443 : 124 IC 491 : 31 Cr LJ 673 : 50 CLJ 291 : 34 CWN 228 : 1929 Cr C 600 : 57 Cal 666 : AIR 1929 Cal 813.**

3. Effect of non-compliance.

Magistrate shall question as to existence of public right—Party not questioned as to whether he denied the public right—No finding in support of denial—Order absolute passed—Validity of order. See ibid, Ss. 133, 137 and 139A. **AIR 1949 Cal 583 : 51 Cr LJ 125.**

——No reliable evidence in support of denial of public right—Magistrate must proceed to take evidence under S. 137—Failure to take evidence under S. 137 is not mere irregularity curable under S. 537. See Criminal P. C. (5 of 1898), S. 137. **AIR 1947 Oudh 65 : 47 Cr LJ 398.**

——S. 139-A non-complied with by Magistrate—Effect.

In a case in which S. 139-A has not been complied with the order of the Magistrate should be set aside. (Dhavle, J.) Nirsu Raut v. Somar Nonia. **193 IC 371 : 21 PLT 852 : 7 BR 601 : 42 Cr LJ 413 : 13 RP 592.**

——Where the provisions of S. 139-A, Cr. P. C., are ignored, proceedings that follow are ultra vires. (Abdul Rashid J.) Crown v. Sain Shah. **42 PLR 80.**

——Order for removal of encroachment— S. 139-A must be complied with.

CRIMINAL P. C. (V of 1898), S. 139A — 3. Effect of non-compliance

Where the Magistrate has not complied with the provisions of S. 139-A, Cr. P. C., by not holding an inquiry into the correctness of the denial of the public right before proceeding under S. 137 or S. 138, Cr. P. C., and has not asked the person against whom the proceedings are taken whether he wanted to adduce any evidence in support of his denial, the order under S. 133 for removal of encroachment is illegal and must be set aside. (Abdul Rashid, J.) Nanumal v. Emperor. **AIR 1939 Lah 452 : 41 PLR 515 : 12 RL 211 : 40 Cr LJ 933 : 184 IC 352.**

——In a proceeding under S. 133, Cr. P. C., an order passed under S. 137 of the Code, without inquiry enjoined under S. 139-A of the Code, could not stand. (Macpherson, J.) Narsingh Narain v. Rameshwar Singh. **AIR 1936 Pat 360 : 17 PLT 399 : 2 BR 595 (2) : 9 RP 1 (2) : 37 CrLJ 846 (1) : 163 IC 402.**

——Ss. 139-A, 133, 135, 137—Complaint as to obstruction of alleged pathway—Application under S. 133—Procedure.

When an application is filed under S. 133, Cr. P. C. on the ground that a certain person has put up some turnstiles on his property, thus obstructing a route or path that passed over her land to a temple, the Magistrate should first send notice to the counter-petitioner and when he or his representative appears, the Magistrate should question him as to whether he denied the existence of the public way and if he did, the Magistrate has to inquire into the matter and if he finds reliable evidence in support of the denial, he should stay the proceedings until the question is decided by a competent Civil Court. If, on the other hand, he finds that there is no reliable evidence in support of denial he has to proceed under S. 137 Cr. P. C., and pass order accordingly. Where this procedure is not followed, the order of the Magistrate is not according to law, and being ultra vires, should be set aside. (Kendall, J.) Ram Kali v. Kripa Shankar. **AIR 1933 All 615 : 6 RA 288 : 35 CrLJ 4 : 55 All 866 : 146 IC 327.**

——Where an enquiry is held under S. 137, Cr. P. C., before the magistrate decides the question contained in S. 139-A, this irregularity is not immaterial, for, while dealing with the matter as if he was acting under S. 137, the Magistrate would direct his mind to arriving at a final determination of a question while if he had considered the terms of S. 139-A, he would have only had to consider whether there was any reliable evidence in support of the other party's denial that there was any public right of way. (Boys, J.) Raghu Nandan v. Sheo Nandan. **AIR 1932 All 366 : (1932) ALJ 339 : 33 CrLJ 618 : Ind Rul (1932) All 443 : 138 IC 556.**

——Where the accused appears to show cause against a notice under S. 133, Cr. P. C., the Magistrate should take evidence as in a summons case. Where he omitted to do so, and did not even record the statement of the accused or question him as required by S. 139-A, and passed a confirmatory order on a mere inspection of the locality.

Held that the order was wholly illegal and could not be upheld. (Srivastava, J.) Emperor v. Mulchand. **AIR 1931 Oudh 397 : 8 OWN 651 : Ind Rul (1931) Oudh 352 : 32 Cr LJ 1165 : 132 IC 800.**

——Omission in exercise of discretion by Magistrate in following the direction of law does not vitiate the entire proceeding.

Where a Magistrate issued a notice under S. 133 on a person to show cause why he should not remove an obstruction on a public river and the person filed a written statement, admitting the public character of the river but claiming that the obstruction was on his zamindar's khas land and not on the river and the Magistrate proceeding under S. 137 and having come to the conclusion that the obstruction was on the bed of the river, made the order absolute and passed orders for removal of the obstruction.

Held, that S. 139-A ought not to apply to such a case, but the language of the section is so general that even in such a case the Magistrate should exercise a good discretion in following the direction of the law and omission to do it (questioning the opposite party as to the existence of public right) does not vitiate the proceeding but is an irregularity covered by S. 537. (Suhrawardy and Graham, JJ.) Rajani Kanta Roy v. Ibrahim Sarkar. **57 Cal 252 : 126 IC 205 : 31 Cr LJ 973 : 33 CWN 748 : AIR 1929 Cal 507.**

—Waiver.

Whether there can be a waiver of mandatory provision such as is contained in S. 139-A. (Wort, J.) Mahadeo Lal v. Hossaini Pandey. **IR 1930 Pat 1 : 1930 Cr C 335 : 120 IC 289 : 31 Cr LJ 53 : AIR 1930 Pat 199.**

4. Evidence.

——Reliable evidence in support of denial of public right — Patwari's record not mentioning any public right of way — Evidence is reliable — Other public right of way admitted by party, not shown in the patwari's report — Report cannot be considered as reliable evidence — Matter should be decided by Civil Court. (Agarwala and Mukerji JJ.) Kamla v. State. **AIR 1953 All 523 : 1953 All LJ 221 : 1953 All WR (HC) 302 : 1953 Cr LJ 1255.**

—Procedure under.

The procedure laid down in S. 139A requires, first, that the party against whom a provisional order has been made, shall appear before the Magistrate and deny the existence of the public right in question; and, secondly, he shall produce some reliable evidence; and, thirdly, that such evidence shall be legal evidence and shall support the denial. If these three conditions are satisfied, then the Magistrate's jurisdiction to continue the proceeding ceases. He has no jurisdic-

CRIMINAL P. C. (V of 1898), S. 139A — 4. Revision

tion to weigh the evidence and decide on which side the balance leans. The criterion is that the Magistrate should find evidence supporting the denial, which he can pronounce as reliable. Therefore, it is not open to the Magistrate to balance the evidence at the stage of the proceeding under S. 139A. It is only at that stage in the nature of an ex parte prima facie evidence, and if that evidence is per se reliable, then the Magistrate should hold his hands and refer the parties to have their dispute settled in Civil Court. (Sarjoo Prosad, J.) Sukhal Gope v. Satyadeo Prasad. **AIR 1951 Pat 311.**

——Inconvenience to public.

In an inquiry under S. 139-A the Magistrate has to find out whether there is reliable evidence in support of the denial of the existence of any public right. The finding that there is no inconvenience to the public by reason of the encroachment is not material. (Das J.) Nemani Mandal v. Ganesh Bhagat. **1950 AWR Sup 82.**

——Inquiry in two stages essential.

The language of S. 139A is perfectly clear and unambiguous and requires evidence at two stages; once in the enquiry under S. 139A and again in the proceedings under S. 137. If the parties are deprived of their right of producing evidence at either of these stages and the order is made absolute, they are materially prejudiced and the irregularity is not curable under S. 537, Cr. P. C. (Kidwai J.) Chhangu v. Surajpal. **AIR 1948 Oudh 19 : 1947 OWN (CC) 229 : 1947 OACC 132 : 48 Cr LJ 666 : 231 IC 42 : 22 Luck 294 : 1947 AWR CC 132.**

——Ss. 139-A, 133 — Words "enquire into the matter" in S. 139-A, meaning of — Person served with conditional order under S. 133, not tendering any evidence in support of cause shown by him against order — Magistrate finding cause unsatisfactory and complying with request to form jury.

The words, "enquire into the matter" in S. 139-A, Cr. P. C., merely mean that the Magistrate is to hear any evidence that the person on whom a conditional order under S. 133 is served wants him to hear before proceeding further. If there is no evidence, there is nothing for the Magistrate to enquire into.

Where the person neither tendered any evidence in support of the cause which he showed against the conditional order, nor asked the Magistrate to give him an opportunity of producing such evidence and the Magistrate found that the cause shown was not satisfactory and complied with the person's request that the jury should be appointed:

Held, that the provisions of law were substantially complied with. (Agarwala, J.) Rajaram Singh v. Keshari Rai. **AIR 1942 Pat 468 : 43 Cr LJ 423 : 8 BR 462 : 14 RP 510 : 198 IC 724.**

CRIMINAL P. C. (V of 1898), S. 139A — 4. Revision

——"Reliable evidence", does not mean evidence which definitely establishes title.

Reliable evidence, in the sense in which the term is used in S. 139-A, means evidence on which it is possible for a competent Court to place reliance. It does not mean evidence which definitely establishes the title to the land because if that was the meaning of the term, it would be unnecessary in any case to refer the matter to the Civil Court at all. (Allsop, J.) Janardan Sarup v. Emperor. **AIR 1937 All 12 : (1936) ALJ 1285 : 9 RA 405 : 38 Cr LJ 200 : 166 IC 376.**

——Under S. 139-A, Cr. P. C., which was added by the amending Act XVIII of 1923, proceedings under Chap. 10, Cr. P. C., are to be taken in two distinct stages. Where obstruction to the use by the public of any way is alleged and denied, the question to be decided at the threshold of the case is whether the denial of the existence of the public right claimed is well-founded. It is generally desirable that the Magistrate should record a definite finding in terms of S. 139-A (2) though, if the record otherwise indicates that he did find that the denial of the public right was well-founded, the requirements of S. 139-A (2) would be made out. It is obvious that the Court and the parties should distinctly understand when the case enters on the second stage of the proceedings provided by S. 137, Cr. P. C., so that the evidence not of the primary character contemplated by S. 139-A (2), but such as is contemplated by S. 137 be produced. (Niamatullah J.) Ganga Dhar Marwari v. Emperor. **AIR 1936 All 150 : 8 RA 723 : (1936) ALJ 116 : 37 Cr LJ 422 : 1936 AWR (HC) 127 : 161 IC 309.**

——Ss. 139-A, 133 — Prayer for proceedings under S. 133 — Petitioner's title denied and claimed in himself by opposite party — Extract from partition proceedings and Record of Rights, in support of such claim — Whether sufficient

Where the petitioner prayed to take proceedings under S. 133, Cr. P. C., for the removal of the obstruction and the opposite party denied the title of the petitioner and claimed that it was entirely his and in support of this produced extracts from Record of Rights and partition proceeding:

Held, that this was enough for the disposal of the case under S. 139-A, Cr. P. C., and the Magistrate need not have taken any further evidence. (James, J.) Sitaram Ray v. Badri Ray. **AIR 1935 Pat 218 (2) : 16 PLT 179 : 1 BR 678 : 8 RP 55 : 36 Cr LJ 1051 : 156 IC 1006.**

——Ss. 139-A, 540 — Dispute as to public right of way — Proof of private right — Cross-examination of witnesses — Permissibility — Exercise of inherent powers under S. 540, legality of.

Under S. 139-A, Cr. P. C., the second party against whom the provisional order has been made is to appear before the Magistrate and to

state what his case is; if he is inclined to deny the existence of the public right in question, he may say so. If he has denied the existence of the public right, he is to be required to produce reliable evidence in support of his denial and such evidence should be legal evidence. The Magistrate is to find whether there is reliable evidence in support of the second party's denial of the existence of the public right. In doing so, he may allow cross-examination of the witnesses adduced by the second party in support of such denial, for the enquiry being of a summary character, it is not intended that the first party should be required to adduce evidence to contradict the case sought to be made out by the second party.

There is nothing in S. 139-A, Cr. P. C., which excludes the exercise of the Court's inherent powers under S. 540 of the Code. (C. C. Ghose and Patterson JJ.) Kishorimohan Pramanik v. Krishnabihari Basak. **AIR 1931 Cal 527 : 58 Cal 461 : 32 Cr LJ 1187 : Ind Rul (1931) Cal 862 (1) : 134 IC 574.**

What the Magistrate is required to do under S. 139-A is to ask the party required to show cause as to whether he admitted the existence of any public right. On his denying the existence of such right he has to enquire and if he is satisfied that there is any reliable evidence in support of such denial he will stay proceedings. The record-of-rights is a very valuable piece of evidence which raises the presumption of correctness of the entries therein: and if it happens to be in favour of the second party the Magistrate is perfectly justified in considering it as "reliable evidence" in support of the denial. (Suhrawardy and Costello, JJ.) Satischandra Sen v. Krishna Kumar Das. **34 CWN 957 : 128 IC 810 : 32 Cr LJ 189 : 1931 Cr C 34 : AIR 1931 Cal 2.**

——The Court has not to consider whether a denial is bona fide or not but only whether there is reliable evidence in support of it. (Boys, J.) Manohar Singh v. Emperor. **116 IC 786 : 30 Cr LJ 670 : 1929 ALJ 385 : 10 LRA Cr 49 : 11 AI Cr R 350 : AIR 1929 All 220.**

——Powers under.

A Magistrate has absolute discretion to decide whether materials are sufficient for not deciding question in Criminal Court. (Boys, J.) Manohar Singh v. Emperor. **116 IC 786 : 1929 ALJ 385 : 10 LRA Cr 49 : 11 AI Cr R 350 : 30 Cr LJ 670 : AIR 1929 All 220.**

——The Magistrate is not to see the sufficiency but reliability of evidence in support of the denial.

Where an order under S. 133 is made and the person proceeded against denies the existence of any public right, the Magistrate must first look to a finding under S. 139-A, whether there was any reliable evidence in support of such denial. Where there is any reliable evidence the Magistrate must stay proceedings. If he finds, however, that there is no such evidence he can then proceed under S. 137. It is not the duty of the Magistrate to come to a finding whether the evidence is in his opinion sufficient to support the case. All he has to see is whether there is any reliable evidence in support of the denial of any public right. If there is, the Magistrate must stay his hand till the other side has gone to a Civil Court. (Addison, J.) Ude Singh v. Mohamed. **10 AI Cr R 398 : 110 IC 330 : 29 Cr LJ 698 : 30 PLR 687 : 10 Lah 151 : AIR 1928 Lah 856.**

——The Magistrate should only find whether the evidence is reliable as it stands.

Where a right of public way is denied and the person denying as well as the person complaining produce evidence, the Magistrate should take the evidence as it stands and see whether, on the face of it, he could come to the conclusion that the evidence was false and was, therefore, unreliable. It is not a correct procedure that he should weigh the evidence produced by both sides and then come to the conclusion which he believes or which he prefers. AIR 1926 Pat 170, Rel. on. (Dalip Singh, J.) Hari Kishan v. Malik Kanshi. **9 AI Cr R 540 : 29 Cr LJ 254 : 107 IC 485 : AIR 1928 Lah 664.**

5. Findings as to existence of public right.

See Note 7. Jurisdiction.

6. Inquiry.

See also Notes 2. Delegation of enquiry and 4. Evidence.

——Is not so satisfied — Written statement denying existence of public right filed by opposite party — Petitioner ordered to produce evidence — Ex parte final order passed on opposite party being absent on the day when petitioner produced his evidence — Validity of the order. See ibid, S. 133. **AIR 1951 Trav-C 228 : 52 Cr LJ 1250.**

——"Shall enquire into the matter".

All that the Magistrate has to ascertain in the enquiry is whether a person denying the existence of public right of way has reliable evidence in support of such denial. It is not necessary in every case that evidence should be given in support of such denial. ILR (1949) All 735, Rel. on. (Sen, J.) Sushil Chandra v. Tushar Kanti. **ILR (1951) 1 Cal 126.**

——Form of inquiry — Reliable evidence — Cross-examination of witnesses.

Nothing is laid down in the Code as to the form which the inquiry under S. 139A should take, and no restrictions are imposed on the discretion of the Magistrate as to how he should conduct the inquiry except such as can be inferred from the purpose for which inquiry is intended. The duty of the Magistrate is to determine whether there is some reliable evidence, i.e., evidence which he has no reason to think is false, in support of

CRIMINAL P. C. (V of 1898), S. 139A—6. Inquiry

the denial and for that purpose he may allow the witnesses called in support of the denial to be cross-examined: AIR 1935 All 653, Rel. on. (Mootham J.) Badha Rai v. Emperor. **AIR 1948 All 115 : 1947 AWRHC 334 : ILR (1947) All 735 : 1947 ALJ 558 : 49 Cr LJ 23.**

——The inquiry under S. 139-A, no doubt precedes the stage of inquiry under S. 137 or S. 138 of the Code, but the Magistrate holding inquiry under S. 139-A need not himself dispose of the case. (Manoharlall and Chatterji, JJ.) Jagdish Singh v. Baijnath Singh. **AIR 1943 Pat 115 : 21 Pat 759 : 9 BR 217 : 44 Cr LJ 364 : 15 RP 285 : 205 IC 302.**

——Before passing order under S. 137, the Magistrate must proceed under S. 139-A.

Before proceeding under S. 137, Cr. P. C., the Magistrate must make an inquiry under S. 139-A. The mere fact that he considered the written statement of the party, on the question of the denial of the public right, is not sufficient. When provision is made for an enquiry by a Magistrate, it is not contemplated merely that there shall be an examination of such evidence as may be adduced by the parties; a Magistrate is expected to exercise his common sense and call for such further evidence, if any, as may appear necessary. (Bennett, J.) Pratap Narain v. Ram Kumar. **AIR 1941 Oudh 271 : 42 Cr LJ 241 : 13 RO 333 : 1941 OWN (C C) 54 : 1941 AWR (C C) 90 : 192 IC 70.**

——All that a Magistrate is required to do under S. 139-A, Cr. P. C., is to hold an enquiry merely to satisfy himself that there is or is not some prima facie evidence in support of the denial of the public right by the person on whom the conditional order is served. In dealing with this part of the inquiry it is no doubt open to him to allow the witnesses, if any, produced by the person denying the public right to be cross-examined, but he cannot allow the opposite party to produce definite evidence to the contrary, and then proceed to weigh the evidence on both sides, in order to decide finally whether the alleged public right does or does not exist. (Mulla, J.) Chunni v. Emperor. **AIR 1938 All 653 : 11 RA 335 : (1938) ALJ 1013 : 40 Cr LJ 143 : 1933 AWR (H C) 640 : 178 IC 742.**

——Where in a proceeding under S. 133, Cr. P. C., alleging obstruction to a public right the opposite party denies the existence of any public right in respect of the land, the Magistrate should hold an inquiry under S. 139-A, Cr. P. C., with a view to ascertaining whether there was any reliable evidence in support of the denial on the part of the opposite party of the existence of any public right in respect of the land in the question and to record a clear finding on the point before proceeding further. (Panckridge and Patterson JJ.) Umakanta v. Kalipada

CRIMINAL P. C. (V of 1898), S. 139A—6. Inquiry

AIR 1933 Cal 790 : 37 CWN 823 : 6 RC 232 (2) : 35 Cr LJ 89 : 146 IC 558.

——In enquiry under S. 137 provisions of S. 139-A ought to be complied with. The Magistrate's duty is to find whether there is reliable evidence in support of the denial. When the Magistrate does not apply his mind to the question and does not come to any finding on the point, he does not follow the correct course. (Rankin, C. J. and Patterson, J.) Dhananjoy Pal v. Nogendra Shanker Roy. **IR 1930 Cal 480 : 1930 Cr C 144 : 124 IC 832 : 31 Cr LJ 767 : AIR 1930 Cal 144.**

——When there is a denial of the existence of the public right, it is the duty of the Magistrate to inquire into the matter and come to a conclusion under the provisions of S. 139-A and on the result of this conclusion would depend the question whether he should stay proceedings or should proceed under S. 137 or 138. (Suhrawardy and Mukerji, JJ.) Rahanaddy Patwary v. Hasan Ali Jamadar. **96 IC 126 : 30 CWN 648 : 27 Cr LJ 878.**

7. Jurisdiction.

——Inquiry —Finding that public right exists — Subsequent proceedings whether void.

The mere fact that a Magistrate in an inquiry under S. 139-A after finding that there was no reliable evidence in support of the denial, has wrongly recorded a further finding that the public right exists, does not render the whole inquiry and the subsequent order under S. 141 passed by him void: AIR 1945 Nag. 226, Dissent. (Mootham, J.) Bhada Rai v. Emperor. **AIR 1948 All 115 : 49 Cr LJ 23 : 1947 AWR (H C) 334 : ILR (1947) All 735 : 1947 ALJ 558.**

——Ss. 133, 139-A, 529 (f) and 537 —Conditional order—Party appearing and showing cause—Case transferred to Subordinate Magistrate— Order under S. 139-A by such Magistrate, if within jurisdiction—Irregularity, if curable.

Where the conditional order is made by the Sub-Divisional Magistrate requiring the person against whom it is made to appear before himself and he subsequently, when the person appears before him and shows cause, transfers the case for disposal to a competent Magistrate subordinate to him, the latter will have jurisdiction to deal with the case and the order under S. 139-A passed by him will not be without jurisdiction. The transfer order would be a mere irregularity curable under S. 529 (f) and S. 537. (Chatterji and Shearer, JJ.) Tej Narain Singh v. Jagdeb Singh. **AIR 1945 Pat 316 : 24 Pat 23 : 12 BR 134 : 47 Cr LJ 179 : 221 IC 418.**

——Provisions of S. 139-A, Cr. P. C., are designed to ensure that where there is reliable evidence in support of the denial of the existence of the public right, the Magistrate shall have no jurisdiction to pronounce on the cogency of that evidence but must refer the matter to a Civil

CRIMINAL P.C. (V of 1898), S. 139A—7. Jurisdiction

Court. When the Magistrate does not direct his mind at all to ascertaining whether there is any evidence in support of the denial of the existence of the public right and takes upon himself to decide the question whether a public right exists or not, he usurps the function of a Civil Court and deprives the party concerned of the right to have the matter decided by that Court. (Agarwala, J.) Muni Lal Agarwala v. Public of Bhagalpur. **AIR 1941 Pat 38 : 21 PLT 843 : 7 BR 36 : 42 Cr LJ 34 : 13 RP 266 : 190 IC 879.**

——Ss. 139-A, 133, 137— Magistrate taking proceedings under S. 139-A, if should be First Class Magistrate.

The Magistrate mentioned in S. 139-A, Cr. P. C., must 'be the Magistrate before whom a person is ordered to appear under the last sentence of S. 133 (1). He need not be a First Class Magistrate. (Blacker, J.) Ata Mohammad v. Abdul Rahman. **AIR 1937 Lah 676 : 10 RL 181 : 39 PLR 484 : 38 Cr LJ 1056 : 171 IC 279.**

——Jury, if competent to decide the existence of a public highway.

Under S. 139-A, the Jury is not competent to decide the existence of a public highway. (Mohamad Noor, J.) Digamber Ram Singh v. Emperor. **AIR 1933 Pat 676 : 6 RP 261 : 35 Cr LJ 54 : 146 IC 406.**

——It is open to a person, against whom an order under S. 133, Cr. P. C., has been made absolute, to elect to have the matter tried by a jury even after the enquiry under S. 139-A has been finished by the Magistrate. (Jack and M. C. Ghose, JJ.) Shamji Tricum Das v. Ram Moye. **AIR 1933 Cal 318 : 56 CLJ 249 : 34 Cr LJ 532 : Ind Rul (1933) Cal 371 : 143 IC 178.**

8. Procedure.

——Questioning as to existence of public rights.

Where the opposite party in his written statement expressly denied the existence of a public way and his personal appearance had been dispensed with it was quite unnecessary for the Magistrate formally to question the lawyer of the opposite party regarding whether his client denied the existence of the public way. It is a mere technical irregularity, of which no notice need be taken. (Sen, J.) Sushil Chandra v. Tushar Kanti. **ILR (1951) 1 Cal 126.**

——Ss. 139-A and 439—Mode of enquiry.

Section 139-A does not prescribe the mode of enquiry that a Magistrate has to adopt, nor does it require that he should record an order that he is satisfied that there was a case against the person proceeded against.

Where in a proceeding under S. 133, the Magistrate proceeded to take evidence with respect to the denial of public right and after examining some witnesses he discharged one of the persons and then proceeded to take further evidence and ultimately made the preliminary order absolute:

CRIMINAL P. C. (V of 1898), S. 139A— 8. Procedure

Held that there was sufficient compliance with the provisions of S. 139-A and the order could not be challenged in revision. (Panigrahi, J.) Panchanana Mohapatra v. Rex. **16 Cut LT 130 : 51 Cr LJ 1498 : AIR 1950 Orissa 203.**

——Denial of public right — No reliable evidence in enquiry —Magistrate is not entitled to pass final orders in case.

Where the Magistrate, after holding an enquiry under S. 139-A, finds that there is no evidence in support of the denial of the existence of a public right, the Magistrate should proceed under S. 137 or S. 138. He is not entitled merely as a result of the enquiry under S. 139-A to pass final orders in the case. (Lodge, J.) Lal Behari De v. Jatindra Chandra De. **52 CWN 12 : 1948 AWR Sup 2 : 1948 OA Sup 2 : 49 Cr LJ 608 :AIR 1949 Cal 57.**

——Party directly upon appearance denying existence of public right—Magistrate need not question the party about denial.

When a party directly, upon appearance, puts in a statement denying the existence of any public right, it is not necessary for the Magistrate to question the party as to whether he denies the existence of any public right as required by S. 139-A. (Agarwala and Meredith, JJ.) Ram Kripal Singh v. Superintendent, Way and Works E. I. Railway. **AIR 1945 Pat 309 : 24 Pat 104 : 26 PLT 208.**

——After the decision under S. 139-A, Criminal P. C., a Magistrate can entertain an application for the appointment of a jury from the party against whom the decision is made. (Dhavle, J.) Hari Lal Singh v. Deo Narain Singh. **AIR 1941 Pat 370 : 22 PLT 312 : 7 BR 954 : 42 Cr LJ 784 : 14 RP 166 : 195 IC 602.**

——Conditional order under S. 133—Person served with notice under S. 139-A, appearing and producing evidence to show that there was no encroachment— Magistrate, if can proceed to make order absolute without either staying case or following procedure under S. 137 or S. 138.

A Magistrate under Chap. X, Criminal P. C., makes only a summary enquiry into the matter in dispute and does not determine any question of title and indeed such a determination is to be deprecated. All that he has got to see under S. 139-A (2), Criminal P. C., is whether there is any reliable evidence in support of the denial of the person against whom the notice has been issued or whether his denial is only frivolous, and if there is any reliable evidence in support of such denial, the Magistrate shall stay the proceedings until a matter of existence of such right has been decided by a competent Civil Court, but if he finds that there is no such reliable evidence, he shall proceed as laid down in S. 137 or S. 138 as the case may require. Where, therefore, a conditional order under S. 133, for the

CRIMINAL P. C. (V of 1898), S. 139A— 8. Procedure

removal of an encroachment on a public way is passed by a Magistrate and a person who was served with a notice of this order appears before the Magistrate under S. 139-A, and produces evidence to show that he has not committed any encroachment, the Magistrate cannot proceed to make his order absolute but must either stay the proceedings or proceed under S. 137 or S. 138 according as he finds the evidence reliable or unreliable. (Bajpai, J.) Chhedi Lal v. Emperor. **AIR 1939 All 116 : (1938) ALJ 1145 : 11 RA 399 : 40 Cr LJ 286 : 1938 AWR (H C) 841 : 179 IC 970.**

——Where a conditional order under S. 133 is passed against a person for obstructing a public way, and in an enquiry such a person denies the public right of way, proceedings under S. 139-A should be taken before the proceedings under S. 137. (Blacker, J.) Ata Mohammad v. Abdul Rahman. **AIR 1937 Lah 676 : 39 PLR 484 : 10 RL 131 : 38 Cr LJ 1056 : 171 IC 279.**

——Where, in a proceeding under S. 133, Criminal P. C., the Magistrate, after finding under S. 139-A, Criminal P. C., that there was no reliable evidence in support of the petitioner's denial of right of way made the rule against the petitioner absolute without proceeding under S. 137 or 138 of the Code:

Held, that the Magistrate erred in making the order and that he must take up the matter further and proceed as laid down in S. 137 or 138.

That he would be competent to stay the proceedings only if he found affirmatively that there was reliable evidence in support of the petitioner's denial. (Macpherson, J.) Nirsu Pande v. Emperor. **AIR 1934 Pat 145 (1) : 14 PLT 778 : 6 RP 382 : 35 Cr LJ 488 : 147 IC 804.**

——Under S. 139-A, Cr. P. C., the Magistrate has first to determine whether the claim put forward by the persons against whom a conditional order was made is bona fide or a mere pretence and it is only when the Magistrate is of opinion that the claim is not bona fide but a pretence, that he should proceed to pass final order. (Niyogi, A. J. C.) Mahabir Prasad v. Pitambar Prasad. **AIR 1933 Nag 267 : 6 RN 91 : 35 Cr LJ 145 : 29 NLR 361 : 146 IC 601.**

——Under S. 139-A, Criminal P. C., when an order is made under S. 133, Criminal P. C., for the purpose of preventing obstruction to the public in the use of the way, the Magistrate shall question the respondent as to whether he denies the existence of a public right in respect of the way. And if the respondent does so, the Magistrate shall, before proceeding under S. 137 or 138 of the Code, enquire into the matter, and if in such enquiry, the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court. (Coldstream, J.) Manohar Lal v. Emperor. **AIR 1931 Lah 62 : 32 PLR 11 : 32 Cr LJ 621 : 130 IC 834.**

CRIMINAL P. C. (V of 1898), S. 139A— 8. Procedure

——The Magistrate must proceed according to the section without waiting for objection.

It is the duty of a Magistrate to proceed in accordance with the provisions of S. 139-A without waiting for the objection to be raised by one of the parties to the proceeding. Under that section on the appearance before him of the person against whom the order is made, the Magistrate is bound to question him as to whether he denies the existence of any public right in respect of the way, river, channel or place and if he does so the Magistrate shall before proceeding under S. 137 or S. 138 inquire into the matter. The Magistrate cannot refuse to inquire into the matter because the objection was not taken until a late stage of the case. (Newbould and Ghose, JJ.) Sheikh Sadir v. Sabarali. **88 IC 528 : 29 CWN 649 : 26 CrLJ 1168 : AIR 1925 Cal 736.**

9. Question of title.

——S. 139-A (2)—Finding that there is no reliable evidence—Title of party can be established in Civil Court.

The finding of the Magistrate under S. 139-A (2) that there is no reliable evidence in support of the denial of the public right does not affect the title of the party which he will be at liberty to establish in a Civil Court. (Thomas, C. J.) Ram Narain v. Emperor. **AIR 1946 Oudh 108 : 1946 OWN (CC) 57 : 222 IC 532 : 47 Cr LJ 306.**

——Per Wali Ullah J. — Consideration of the bona fides of the claim set up has become irrelevant after introduction of S. 139-A, Per Wanchoo J.— Section 139-A was introduced in 1923 with the object that questions of title in relation to rights of way and the like should not be finally decided by the Magistrate, but that the Magistrate must stay proceedings, if he is satisfied that the question has been raised bona fide. (Wali Ullah and Wanchoo, JJ.) Mohd. Ayub v. State. **AIR 1952 All 215 : ILR (1951) 2 All 609 : 1952 Cr LJ 407.**

——Question of title—Duty of Magistrate in proceedings under Chap. X.

It is not the duty of a Magistrate when acting in accordance with the provisions of Chap. X. Criminal P. C., to decide questions of title. Under the provisions of S. 139-A, it is his duty merely to see that any claim to a piece of land alleged to be a public place or a public way is not frivolous. (Allsop, J.) Janardhan Sarup v. Emperor. **AIR 1937 All 12 : (1936) ALJ 1285 : 9 RA 405 : 38 Cr LJ 200 : 166 IC 376.**

——Enquiry under— Decision on question of title, whether can be given—Scope.

Questions of title are not intended to be decided in summary enquiries under S. 139-A, Cri-

minal P. C., before a Magistrate. These are matters which should be left to the decision of the Civil Court where the case can be properly fought out. The duty of a Magistrate under S. 139-A, Criminal P. C., is merely to see whether the denial of the right is frivolous or not. If the person who denies that right is able to produce some evidence which, prima facie, there is no reason to disbelieve, it is not for the Magistrate to examine evidence on the other side by way of rebuttal and so forth and attempt to arrive at some final decision. (Allsop, J.) Mohammad Khalil v. Emperor. **AIR 1936 All 356 : 8 RA 657 (1) : (1936) ALJ 75 : 37 Cr LJ 343 : 1936 AWR (H C) 182 : 58 All 739 : 160 IC 854.**

——Case under Chap. X—Denial of existence of public right—Production of reliable evidence—Reference to Civil Court—Duty of Magistrate.

In a case under Chap. X, Criminal P. C., where the defendant denies the existence of the disputed public rights and it is impossible to say that there was no bona fide claim put forward by the defendant or that there was no reliable evidence in support of his denial, the Magistrate should not proceed to decide intricate questions of title and easement but should stay proceedings until the matter is decided by the Civil Court as required by the provisions of S. 139-A (2), Criminal P. C. (Raza, J.) Bishnath Singh v. Khurshed Ahmad. **AIR 1932 Oudh 118 : 9 OWN (C C) 141 : 33 Cr LJ 809 : 7 Luck 583 : Ind Rul (1932) Oudh 380 : 139 IC 737.**

——Proceedings for removal of public nuisance—Question of title involved—Reliable evidence adduced—Duty to stay proceedings.

Where, in a proceeding for removal of a dwelling house from the land in dispute, it appeared that a question of title was involved and there was reliable evidence to support the title of the person against whom the proceedings were instituted:

Held, that the proceedings should be stayed under S. 139-A, Criminal P. C., until the matter of the existence of the right in question was decided by a competent Civil Court. (Raza, J.) Sohan Lal v. District Board, Lucknow. **AIR 1932 Oudh 129 : 9 OWN (C C) 115 : 33 Cr LJ 384 : Ind Rul (1932) Oudh 204 (2) : 136 IC 839 (2).**

——Section 139-A is imperative. It does not authorize a Magistrate to look into the question of title and decide for himself whether the accused's case is or is not true. All that the Magistrate is to see is whether there is any reliable evidence in support of such denial. If there is some reliable evidence in support of denial then the proceedings under the Code have to be stayed. In such a case no order under S. 140 can be passed without first proceeding under S. 139-A. (Sulaiman, J.) Mannalal v. Emperor. **24 ALJ 361 : 7 LRA Cr 73 : 27 Cr LJ 473 : 93 IC 697 : AIR 1926 All 390.**

10. Reliable evidence in support of denial, existence of.

See Note (8) Procedure and Note (12) Stay of proceedings.

11. Revision.

——Ss. 139-A and 435 —Denial of public right — Reliable evidence—Decision as to—Interference in revision.

It is open to the High Court under S. 435 to interfere in cases where the Magistrate has not correctly appreciated the evidence that was produced in denial of the existence of the public right under S. 139-A (2). (Wali Ullah and Wanchoo, JJ.) Mohd. Ayub v. State. **AIR 1952 All 215 : ILR (1951) 2 All 609 : 1952 Cr LJ 407.**

——Ss. 139-A (2), 438 and 439—Evidence produced under S. 139-A— The question of reliability has initially to be decided by Magistrate himself before staying proceedings— Finding of Magistrate not perverse—High Court will not interfere.

The question of reliability of the evidence in support of the denial of public right in a proceeding under S. 139-A has initially to be decided by the Magistrate himself before he stays the proceedings until the matter is decided by a competent Civil Court.

Where in such a case it cannot be said that the Magistrate has taken a perverse view of the evidence, the High Court will not interfere under S. 438. (Thomas, C. J.) Ram Narain v. Emperor. **AIR 1946 Oudh 108 : 1946 OWN (C C) 57 : 222 IC 532 : 47 Cr LJ 306.**

——A District Magistrate has no jurisdiction to revise or set aside an order of the Taluq Magistrate passed under S. 139-A. He can only submit the records to the High Court. (Burn, J.) N. Tulasamma v. Q. Hussain Sahib. **1933 MWN 735.**

——S. 139-A (2)— Encroachment on public way—Old encroachment—Order for removal, legality of.

When a Magistrate hears evidence as to an alleged encroachment on a public way in accordance with the provisions of S. 139-A (2), Criminal P. C., and orders the removal, his order is in accordance with the law and cannot be set aside merely because the encroachment was in existence for some years. (Coldstream, J.) Barkhandi v. Emperor. **AIR 1931 Lah 159 (1) : Ind Rul (1931) Lah 991 : 32 Cr LJ 1234 : 134 IC 783. (Overruled in AIR 1938 Lah 523 : 39 Cr LJ 775).**

12. Stay of proceedings.

See also Note 9. Question of title.

——"Shall stay proceedings."

There is no provision in the Code for dropping proceedings. The proceedings should be stayed until the matter of the existence of a public right has been decided by a competent Civil Court. (Sen,

CRIMINAL P. C. (V of 1898), S. 139A—12. Stay of proceedings

J.) Sushil Chandra v. Tushar Kanti. **ILR (1951) 1 Cal 126.**

——Application that certain person blocked public right of way by creating building—Such person producing evidence under S. 139-A to prove that no right of way existed—Magistrate cannot proceed with the case but must leave matter to decision of competent Civil Court. (Allsop, J.) Kundan Lal v. Emperor. **AIR 1939 All 187 : 11 RA 465 : 40 CrLJ 375 (1) : 1939 AWR (HC) 71 : 180 IC 495.**

——S. 139-A (2) —Non-applicant's denial of existence of public right proved—Magistrate, if can order either side to bring civil suit.

If the Magistrate, on enquiry, finds that there is any reliable evidence in support of the non-applicant's denial of the existence of a public right, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court. The Magistrate is not empowered to order either side to bring a civil suit. (Gruer, J.) Behari Gayaprashad In re, **AIR 1938 Nag 512 : 1938 NLJ 295 : 39 Cr LJ 791 (1) : 11 RN 77 : ILR (1939) Nag 600 :176 IC 755.**

——Procedure under S. 139-A (2) —When permissible — Magistrate not stating whether evidence of one party is reliable—Absence of finding as to existence of public right—Jurisdiction to make order absolute.

It is only in cases where the Magistrate finds that there is no reliable evidence in support of the denial of the evidence of the public right, that he is empowered by S. 139-A, Sub-S. (2), Cr. P. C., to proceed further in the matter. Where the Magistrate's order, while stating that certain witnesses were examined on behalf of one party does not state whether such evidence is reliable, and does not contain a finding as to the existence of the alleged public right:

Held, that without finding either that a public right existed, or that there was no evidence in support of the denial of existence of such a right, the Magistrate had no jurisdiction to make the order. (Agarwala, J.) Abdul Sayeed v. Damodar Prasad Tewari, **AIR 1935 Pat 138 : 1 BR 354 : 7 RP 499 : 16 PLT 218 : 36 Cr LJ 588 : 154 IC 871.**

——Ss. 139 (a) 133, 143—Magistrate, if can direct particular party to go to Civil Court to establish right—Order under S. 133—Whether binds a person not party to proceedings—Subsequent proceedings against that person under S. 143, if can be taken.

There is no direction in S. 139 (a), Cr. P. C., as to which of the parties is to be directed to go to the Civil Court. There is no obligation on the Magistrate to force the opposite party or any particular party into the Civil Court. It is clearly within its inherent jurisdiction to stay proceedings until the matter has been decided by a competent Civil Court on such conditions as may, to it, seem fit in the varing circumstances of each case. It is not within the competence of the Magistrate to direct any particular party to obtain a declaration from the Civil Court. (Bajpai, J.) Ram Sahai v. Uttama Debi. **AIR 1935 All 79 : 7 RA 371 : 36 Cr LJ 144 : (1935) ALJ 18 : 4 AWR (H C) 935 : 152 IC 737.**

——Ss. 139-A, 133 — Matters to be considered under S. 139-A — Order directing second party to go to the Civil Court.

Under S. 139-A, Cr. P. C., what has to be seen is whether the denial of public right by the second party is supported by any reliable evidence. If it is, the Magistrate has to stay his hands until the matter of the existence of such right has been decided by a competent Civil Court. Under the law as it is at present, it is the party moving for proceedings under S. 133, or somebody interested in asserting such right, who has got to go to the Civil Court to establish its existence. The Magistrate's order directing the second party to go to the Civil Court is not one which can any longer be made under the law. (Mukerji and Bartley, JJ.) Kusha Mondal v. Emperor. **AIR 1934 Cal 545 : 61 C 390 : 59 CLJ 290 : 7 RC 161 : 38 CWN 391 : 35 Cr LJ 1374 : 151 IC 691 (2).**

——Where accused is alleged to have obstructed a public pathway and there is some evidence on record indicating that the path was private, it is incumbent on a Magistarte under S. 139-A to stay his hands immediately until the matter of the existence of the public right was decided by a competent Civil Court. (Pearson and Mallik, JJ.) Mattabbar Molla v. Golam Panjaton. **57 Cal 368 : IR 1930 Cal 890 : 127 IC 762 : 32 Cr LJ 33 : 1930 Cr C 798 : AIR 1930 Cal 486.**

——Dismissal of application.

Where in proceedings under S. 133 there is evidence to support the plea that the road is a private road, the most that the Magistrate can do is to stay proceedings under the provisions of S. 139-A of the Code and, if the Magistrate dismisses the application and refers the complainant to Civil Court, the course taken by the Magistrate would be correct. 42 Cal 158, Rel. on. (Stuart, C. J.) Ram Chetan Dass v. Jasbir Singh. **5 OWN 1131 : 30 Cr LJ 360 : 114 IC 782 : AIR 1929 Oudh 85.**

——Where there is a question of the existence of public right to the place over which nuisance is sought, the best method in the case to follow is that under the provisions of S. 139-A (2) the proceedings should be stayed until the matter of existence of the right has been decided by a competent Civil Court. (Stuart, C. J.) Debi Dayal v. Manoo. **107 IC 333 (1) : 29 Cr LJ 244 (1) : 9 AI Cr R 532 : 5 OWN 78 : AIR 1927 Oudh 632.**

——If under S. 139-A (ii) the Magistrate stays his proceedings, those proceedings remain stayed un-

CRIMINAL P. C. (V of 1898), S. 139A—12. Stay of proceedings

til there is a decision by a competent Civil Court, and there is nothing in the new section which entitles the Magistrate to say which party should file suit. (Campbell, J.) Hari Chand v. Durga Datt. **28 Cr LJ 363 : 100 IC 971 : 7 AI Cr R 561 : AIR 1927 Lah 227.**

——When the public right of way is limited the case falls under S. 139A.

Where a right of way over an uncultivated field was in dispute between villagers and the owner closed that way on bringing the field under cultivation, relying on the revenue records which made no mention of any public path.

Held, in proceedings against the owner under S. 133, Cr. P. C., that this case was exactly one which S. 139-A was designed to meet. Rights of way are obviously matters to be decided by the Civil Courts. It is in the interest of public policy that Criminal Courts should not deal with matters which it is compulsory to leave to Civil Courts. (Campbell, J.) Nur Ali Shah v. Natha. **28 Cr LJ 247 : 100 IC 119 : AIR 1927 Lah 745.**

The intent of S. 139-A (2) is that the Magistrate should neither encroach on the jurisdiction of the Civil Court which alone can determine the existence of such a public right as is referred to, nor fail to exercise his own jurisdiction. The criterion is that he should find evidence to support the denial which he can pronounce reliable. That is necessary and it is sufficient to oust his jurisdiction. (Mullick and Ross, JJ.) Thakur Sao v. Abdul Aziz. **4 Pat 783 : 7 PLT 136 : 27 Cr LJ 9 : 91 IC 41 : AIR 1926 Pat 170.**

——S. 140.

——S. 140(3) — Bar of suit in respect of acts done under section — (Civil P. C. (1908), S. 9)

There is no bar to the institution of a suit to establish proprietary rights by reason of any order under S. 140, Criminal P. C.: 15 Cal 460; ILR 51 All 1025, Rel. on; 1939 OWN 966, Dissent from.

Chapter X, Criminal P. C., only provides a summary remedy for the abatement of public nuisances and it is not meant to give a final adjudication on questions of title. The proceedings are concerned only to a very limited extent with private rights and these must be determined by civil Courts. In determining these rights, however, if it is found that the order of the Magistrate is in derogation of those rights and has caused injury or loss to the owner, no person acting under the Magistrate's order will be liable to compensate the injury or loss. This is the effect of S. 140(3), Criminal P. C.

Hence, a suit for a declaration that a certain room and chabutra, belonging to plaintiff in respect of which an order for demolition has been passed at the instance of the defendant, is not liable to be demolished and does not obstruct any public way and for a perpetual injunction against the defendant from getting them demolished, is maintainable in Civil Court. (Ghulam Husain and Kidwai JJ.) Mukhtar Husain v. Ganga Prasad. **ILR (1951) 1 All 719.**

CRIMINAL P. C. (V of 1898), S. 140

——S. 140 (3)—Absolute order under S. 137 by Magistrate can be questioned in Civil Court. See ibid, S. 137. **51 PLR 176 (EP).**

——Ss. 140, 139, 133 — Order under S. 133 not made absolute under S. 139 (1) — Further proceedings dropped under S. 139 (2) — S. 140 does not apply.

Where the order under S. 133, Cr. P. C., was not made absolute under S. 139 (1) and further proceedings had to be dropped as provided in S. 139 (2), S. 140 cannot apply to the case. (Lakshmanarao J.) Manickavasaga Nadar v. Krishnaswami Iyer. **AIR 1942 Mad 113 : 1941 MWN 813 : 43 Cr LJ 314 : 14 RM 413 : 198 IC 131.**

——Removal of obstruction, order of — Cannot be passed against person not party to proceedings.

An order to remove an obstruction cannot be issued against a person who is not a party to the proceedings though it is found to be an obstruction to the clear right of user of the petitioner of the water. (Lakshmana Rao J.) Mahalakshmi Naidu v. Satyam. **AIR 1941 Mad 939 : 43 Cr LJ 136 : 1941 MWN 764 : 14 RM 356 (1) : 197 IC 134.**

——Order under S. 140 — Suit in Civil Court to prevent Magistrate from carrying his order into effect if maintainable.

If a Magistrate causes the act ordered to be performed, then that order cannot be questioned in the Civil Court, and no suit can be maintained in the Civil Court to prevent the Magistrate from carrying his order into effect. It would be mere trifling with the Act to hold that the Civil Court can give relief to the petitioners against the order of the Magistrate when the Act says that no suit in respect of anything done by him shall lie. (Radha Krishna, J.) Kedar Nath v. Satish Chandra. **AIR 1940 Oudh 75 : 1939 AWR (CC) 252 : 12 RO 143 : 41 Cr LJ 99 : 15 Luck 140 : 1939 OWN 966: 184 IC 754.**

A question as to the validity of the final order made in proceedings under S. 133, Cr. P. C., cannot be raised at the trial of the accused for an offence under S. 188, I. P. C., for disobedience of the order. Where in the proceedings, no objection has been raised that a co-sharer was not made a party, it cannot be raised in subsequent proceedings under S. 188, I. P. C. (Guha and Bartley, JJ.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Khoda Baksha Shah. **AIR 1934 Cal 242 (1) : 60 Cal 1336 : 35 Cr LJ 778 : 6 RC 484 : 148 IC 808.**

——Conditional order — Jury holding same to be reasonable — Duty of Magistrate — Notice under S. 140 (1) — Powers under S. 140 (2) — Institution of civil suit, effect of.

Where a conditional order is made under S. 133, Cr. P. C., directing the removal of a certain

CRIMINAL P. C. (V of 1898), S. 140

obstruction and the opposite party having shown cause, the Jury is empanelled and they report that the order is reasonable and proper and the order is made absolute, the Magistrate is bound to issue notice under S. 140 (1) even though a civil suit has been instituted, provided no further proceedings are taken under S. 140 (2).

Under S. 140 (2), the Magistrate is given a discretion whether he should give directions to someone else to carry the order under S. 140 into execution and whether he should make the opposite party pay the costs of the proceedings. The Magistrate can take into consideration the whole of the circumstances and decide whether he ought to give the direction referred to in sub-s. (2) or whether he thinks it expedient to leave the matter where it is until the conclusion of the civil suit. It is, however, open to the opposite party to come to the High Court and say that such an order is not expedient and proper. (Lort-Williams and S. K. Ghose JJ.) Bankubehari Ray v. Emperor. **AIR 1931 Cal 787 : 58 Cal 1088 : Ind Rul (1931) Cal 918 : 35 CWN 571 : 32 Cr LJ 1240 : 134 IC 918.**

—Effect of death.

As soon as a person against whom an order has been made under Ch. X, Cr. P. C., dies, the order ceases to have further effect and a Magistrate is not entitled to act under S. 140 (2). (Asworth, J.) Jugal Kishore v. Emperor. **26 ALJ 405 : 9 LRA Cr 64 : 108 IC 565 : 29 Cr LJ 445 : 9 AI Cr R 434 : AIR 1928 All 300.**

—Procedure.

——Magistrate is not authorised to decide question of title.

Section 139-A is imperative. It does not authorize a Magistrate to look into the question of title and decide for himself whether the accused's case is or is not true. All that the Magistrate is to see is whether there is any reliable evidence in support of such denial. If there is some reliable evidence in support of the denial then the proceedings under the Code have to be stayed. In such a case no order under S. 140 can be passed without first proceeding under S. 139-A. (Sulaiman, J.) Munna Lal v. Emperor. **24 ALJ 361 : 7 LRA Cr 73 : 27 Cr LJ 473 : 93 IC 697 : AIR 1926 All 390.**

——Conditional order under S. 133 vague and indefinite — Refusal by High Court to send case back. (Lawrence Jenkins C. J. and Chatterjee J.) Kali Mohan Kar v. Nakari Chandra Das. **5 Ind Cas 722: 11 CLJ 114 : 11 Cr LJ 213 (2).**

——Failure to comply with order under S. 133 — Punishment—Notice under S. 140.

See Cr. P. C., Ss. 133, 140. **8 Cr LJ 151 (Mad).**

——S. 141.

——Verdict of four out of five jurors is no verdict of jury—In such case, Magistrate can pass order provided by S. 141—Limitation on powers of Magistrate.

CRIMINAL P. C. (V of 1898), S. 141

The verdict of four out of five jurors is not the verdict of the jury. The jury, by law, consist of five persons and although it is not necessary that the jurors shall return a unanimous verdict, they must all take part in the deliberations of the jury and unless they do so, there can be no verdict of the jury. Where, therefore, there is no verdict of the jury, the Magistrate is entitled to pass such order as he thinks fit, as provided by S. 141. He may proceed to appoint a fresh jury or, to hear the evidence and, on that evidence, come to a decision whether the conditional order should be made absolute. The only limitation on his power is that he should hear the parties. (Agarwala, J.) Rajaram Singh v. Keshari Rai. **AIR 1942 Pat 468 : 8 BR 462 : 43 Cr LJ 423 : 14 RP 510 : 198 IC 724.**

——Ss. 141, 135—Persons choosing to be heard by jury—Failure of Jury to function—Further inquiry is not necessary if there is material for passing reasonable order under S. 141—Failure of jury to try case through no fault of persons choosing jury trial—If can claim that their case should be heard as summons case under S. 137 (1).

In S. 141, Cr. P. C., the word "discretion" is used in relation to the extension of time within which the jury is to give their verdict. It is not used in relation to the order passed by the Magistrate. The Magistrate has a discretion under S. 141 as to the order he should pass and that discretion means a judicial discretion. The Magistrate cannot, under that section, pass an arbitrary or capricious or whimsical order. The order passed must be reasoned order. Where the persons against whom an order under S. 133 is passed have chosen to be heard by a jury, on failure of the jury to function, the Magistrate is not required to hold a further inquiry if he has before him material upon which he can pass a reasonable order under S. 141.

Where persons have in good faith chosen a trial by jury, and through no fault of their own, their chosen tribunal fails to hear and try their case, they cannot claim, then, that they are entitled that their case should be heard by the Magistrate as a summons case under S. 137 (1) but the Magistrate would clearly desire in such circumstances that they should be given an opportunity briefly to state their case. (Davis J. C. and Lobo, J.) Jethanand v. Shikarpur Municipality. **AIR 1940 Sind 24 : ILR (1939) Kar 179 : 41 Cr LJ 364 : 12 RS 213 : 186 IC 723.**

——Ss. 141 133, 139-A, 135-B — Proceedings under S. 133 — Enquiry under S. 139-A — Local inspection — Jury under S. 135-B — Applicants against whom proceedings started and their jurors absenting on date fixed and also on adjourned date — Provisional order confirmed without notice to applicants — Legality of.

Where during the proceedings under S. 133, Criminal P. C., the City Magistrate made two local

inspections and started an enquiry under S. 139-A, Criminal P. Code, and a jury was appointed by him in accordance with S. 135-B, Criminal P. C., but the applicants against whom the proceedings were started and their jurors absented themselves, both on the date fixed, and on adjourned date, and the Magistrate without issuing notice to the applicants, confirmed his provisional order passed under S. 133, Criminal P. C.:

Held, that the applicants had been negligent or obstructive and had wilfully abstained from appearing before the jury, which had been appointed at their instance to settle the dispute, and hence there was no obligation whatsoever on the Court to issue notice to them before confirming the provisional order which had been passed under S. 133. (Collister, J.) Pyare Lal v. Dwarka Prasad. **AIR 1936 All 65 : (1935) ALJ 1089 : 8 RA 337 : 36 Cr LJ 1472 : 1935 AWR (HC) 1134 : 158 IC 759.**

——Verdict, omission of.

A jury was appointed at the instance of defendant, but jury failed to return a verdict as required by S. 139. The Court then inspected the locality and fixed a date for parties, to adduce evidence, who however, adduced no evidence on the date , and the Court made the order against the defendant absolute.

Held, the procedure not illegal. 6 ALJ 685; 20 ALJ 657, Not. foll. (Daniels, J.) Shiam Sundar v. King Emperor. **24 ALJ 165 : 7 LRA Cr 5 : 27 Cr LJ 981 : 96 IC 645 : AIR 1926 All 658.**

——Failure of Jury — Order can be made absolute.

If the jury failed to return their verdict within the time fixed, the Magistrate has jurisdiction to make the order absolute. Where the jury fails to perform its duty through no fault of the person against whom a conditional order has been passed the person should be allowed to revert to the other alternative given him by S. 135. (Adami, J.) Jiblal Teli v. Gena Sahu. **4 Pat LT 15 : 72 IC 956 : 1 Pat LR Cr 164 : 24 Cr LJ 492 : AIR 1923 Pat 229.**

——Ss. 133, 135, 137 and 141 — Scope. See ibid, S. 133. **10 Cr LJ 494 (Cal).**

——Failure of jury to return verdict—Appointment of fresh jury. See Criminal P. C. (1898), Ss. 138, 141. **8 Cr LJ 233 (Cal).**

—S. 142.

——Order under must be limited to nuisance sought to be checked by conditional order under S. 133.

Where the conditional order under S. 133 related to the checking of discharge of lead dust from the factory and to nothing more, the injunction under S. 142 must be restricted to the checking of the particular nuisance which was prohibited by the order under S. 133. Where the Magistrate went beyond the scope of that particular

nuisance by passing an order under S. 142 by stopping the factory he has travelled beyond the scope of his jurisdiction. (Sen J.) Panchanan Mallik v. R. Chatterjee. **53 CWN 907.**

——S. 142 (2) — There must be disobedience of injunction issued under sub-s. (1) of S. 142.

Under S. 142 (1), if the Magistrate making an order under S. 133 considers that immediate measures are necessary he may issue an injunction to the person against whom the order was made as may be required to obviate or prevent immediate danger or injury pending determination of the matter. It is only when the injunction is disobeyed, that the Magistrate can proceed to take action under S. 142 (2). (Ellis and Amin Ahmed JJ.) Jobed Ali Sarkar v. The Crown. **52 CWN 757 (Dacca).**

——Ss. 142, 133 — S. 142, whether controlled by S. 133 — Order under S. 142, when can be passed.

An order under S. 142 can be passed only if an injury or danger specified under S. 133 of the Code was apprehended and not otherwise. Section 142, Criminal P. C., is not an independent section, but is controlled in its effects by S. 133, Criminal P. C. A reference to S. 133, Criminal P. C., shows that the section is confined to certain matters which are specifically mentioned therein and cannot be brought into play to govern or control other matters which are quite extraneous to it. (Din Mohammad, J.) Mirza Mohammad Ashraf v. Emperor. **AIR 1937 Lah 101 : ILR (1937) Lah 303 : 10 RL 250 : 39 PLR 863 : 39 Cr LJ 13 : 171 IC 941.**

——Ss. 142, 133, 137 — Magistrate making order under S. 142 — Whether can proceed with case and make final order under S. 137.

A Magistrate passing an order under S. 142, Criminal P. C., not only is not precluded from making a final order under S. 137, but Ss. 133, 137 and 142 taken together mean that the Magistrate, in spite of making an order under S. 142, is entitled to proceed with the case and make a final order under S. 137. (Lort-Williams and Cunliffe, JJ.) Rebati Mohan v. Chottal Chandra. **AIR 1936 Cal 692 : 63 CLJ 5 : 9 RC 490 (1) : 38 Cr LJ 173 : 166 IC 221.**

——Evidence — Absence of — No order can be made.

A Magistrate has no jurisdiction to make an order under S. 145, Cr. P. C., without any evidence being adduced before him. (C. C. Ghose and Cuming. JJ.) Hatemali Chaprasi v. Osimaddi. **73 IC 814 : 24 Cr LJ 702 : AIR 1924 Cal 544.**

——S. 143.

——Ss. 143, 133 — S. 143 is supplementary to sections preceding it — It applies to proceedings subsequent to actions under S. 133 and to "original proceedings".

In order that action can be taken under S. 143, Criminal P. C., the nuisance must be "a public

CRIMINAL P. C. (V of 1898), S. 143

nuisance, as defined in the I. P. C., or any special or local law", but that does not exclude the conclusion that the nuisance, repetition of which may be forbidden under S. 143, Criminal P. C., must be a nuisance which has been made a subject of action under S. 133 and the following sections. In short, S. 143, Criminal P. C., does not apply, to what may be called "original proceedings", but applies only to subsequent proceedings when a nuisance has been made the subject of inquiry and adjudication under the sections which precede it. Therefore, S. 143, Criminal P. C., does not stand alone but is supplementary to the sections which precede it. (Davis, J. C. and Weston J.) Emperor v. Sulleman Yusif. **AIR 1940 Sind 124 : 41 Cr LJ 727 : 13 RS 27 : ILR (1940) Kar 425 : 189 IC 353.**

——Order without drawing up proceedings, without taking evidence, etc., is illegal.

The order passed by the Magistrate under S. 143, Criminal P. C., without drawing up a proceeding, without taking evidence, and without giving an opportunity to the petitioners to substantiate their case is wholly without jurisdiction and illegal; and further the order made by the Magistrate under S. 143, Criminal P. C., without an adjudication about the existence of public nuisance as contemplated in the section by a competent Court is bad in law and illegal. (Guha and Bartley, JJ.) Jogendra Lal v. Sheikh Anju. **AIR 1935 Cal 108 (2) : 36 Cr LJ 591 (2) : 7 RC 517 (2) : 38 CWN 1070 : 154 IC 663.**

CRIMINAL P. C. (V of 1898), S. 143

——Scope — Party complained against must have a right of defence on merits.

The object of S. 143, Criminal P. C., is to give the Magistrate summary powers to issue an order against a person who is repeating or continuing a public nuisance, that is to say, who has repeated an act which has already been forbidden by a competent tribunal. It is not for original use. Party who is alleged to have committed the nuisance must have the right to set up a defence on the merits and the summary order should not be made without giving him an opportunity of being heard under the other sections of Chap. X of the Criminal P. C., which provides the procedure for that purpose. (Courtney-Terrell, C. J. and Saunders, J.) Jagdish Narain v. Dhanushdhari Prasad. **AIR 1934 Pat 305 : 15 PLT 253 : 36 Cr LJ 187 : 7 RP 232 (2) : 152 IC 708.**

——Section 143, Criminal P. C., contemplates the prevention of a repetition, or the continuance of a public nuisance by the party against whom an order under S. 133, Criminal P. C., has already been passed. An order under S. 133, binds the person against whom the order is passed and no body else. Therefore, no order can be passed under S. 143, Criminal P. C., against a person who was not a party in any earlier proceedings when orders under S. 133, Criminal P. C., were passed. (Bajpai, J.) Ram Sahai v. Uttama Debi. **AIR 1935 All 79 : 7 RA 371 : 36 Cr LJ 144 : 4 AWR 935 : (1935) ALJ 18 : 152 IC 737.**

P. N. Das
Advocate High Court
Jammu & Kashmir
Srinagar.

Printed by
Lala Mela Ram Khanna at the All India Reporter Press, Nagpur
and Published by D. V. Chitaley for the All India Reporter Ltd.,
at Congress Nagar, Nagpur.

P. N. Dar
Advo
Court
Jammu & Kashmir
Srinagar.

[redacted]

Title [redacted]

Author [redacted]

Accession No. [redacted]

Call No. [redacted]

BORROWER'S NO.	ISSUE DATE	BORROWER'S NO.	ISSUE DAT
[redacted]			

K19ah

A. I. R. Commentaries Judicially Noticed.

CONSTITUTION OF INDIA.

(S) A. I. R. 1956 All. 341 (345) (C. 126 Pr. 33) (DB). — *Desai J.*—"Shri Jagdish Sahai could not cite any authority in support of his contention that the right given to the Court to draw an adverse inference is equal to compelling the accused to be a witness against himself. We notice that Chitaley in his Commentary on Constitution, Vol. I, pp. 497-498, does not see any conflict between the provisions of Art. 20 (3) and those of S. 342, Cr. P. C."

(S) A. I. R. 1956 J. & K. 1 (10) (C. 1 Pr. 34) (F. B.) — *Kilam J.* — "The learned author Chitaley in his luminous commentary on the Constitution has, after discussing almost the whole case law on the subject, enunciated some principles which I might give more or less in his own language. According to the learned author . . . ." (Points from Note 8 (g) to Art. 21, p. 533 quoted.)

A. I. R. 1956 Mad. 541 (560) (C. 172 Pr. 49) (D. B.) — *Ramaswami J.* — "For a lucid and exhaustive discussion of the scope of Arts. 25 and 26 see the Encyclopædic A. I. R. Commentaries on the Constitution of India, Vol. I, pp. 642-669."

(S) A. I. R. 1956 Manipur 13 (16) (C. 6 Pr. 17) — *Brij Narayan J. C.* — "It is thus clear that the mandamus may be issued to a party to do a particular thing or to abstain from doing a particular thing and so the argument advanced on behalf of the respondents cannot be accepted as correct. Vide also Chitaley's Constitution of India, pp. 1758 and 1766 and A. I. R. 1950 S. C. 163 and A. I. R. 1951 S. C. 118."

A. I. R. 1956 Saurashtra 100 (101) (C. 33 Pr. 6) — *Chhatpar J.*—"On the second point whether the High Court should exercise its discretion in issuing a prerogative writ under Art. 226 of the Constitution, I am of the opinion that this is not a fit case in which I should issue a writ. Chitaley and Rao, in their Commentary on the Constitution of India, Vol. 2 (1954 Edition) at p. 2032 observe : ....."

(S) A. I. R. 1955 Mysore 81 (C. 27 Pr. 22)— *Vasudevamurthy J.*—"Interference by the Court will be warranted by the law when even an executive authority is not exercising its powers bona fide for the purpose contemplated by the law or influenced by extraneous and irrelevant considerations and where injustice has resulted —*See* the Constitution of India by V. V. Chitaley 1954 Edn. Vol. 2 pp. 1799-1800."

CIVIL PROCEDURE CODE, 1908.

A. I. R. 1953 S. C. 23 (27) (C. 7) — [Touching the revisional jurisdiction of the High Court set out in S. 115, Civil P. C.] "A large number of cases have been collected in Edn. 4 of Chitaley & Rao's Code of Civil Procedure (Vol. I) which only serve to show that the High Courts have not always appreciated the limits of the jurisdiction conferred by this section."

A. I. R. 1949 P. C. 156 (158) (C. 47) — *Sir John Beaumont.* — "There have been no doubt, decisions in some High Courts in India which lend support to the view upon which the Judges acted. The cases are collected in Edn. 4 of Chitaley and Rao on the Code of Civil Procedure, Vol. I, page 1105."

(1949) 15 Malayan L. Jour. 134 (135). — *Per Storr J.* — "On the point relating to section 127, Civil Procedure Code (corresponding to O. 9, R. 13 in Indian Civil P. C.), raised in this appeal . . . . A. I. R. Commentaries, Code of Civil Procedure (4th Edition, 1944) at page 1755 states : 'But a person who is not a party though he may be interested in the suit is not entitled to apply under this rule' . . . . Agreeing with the views expressed above, I am of the opinion that section 127, Civil Procedure Code, is not available to a person who is not a party to the suit . . . . "

A. I. R. 1957 J. and K. 17 (17) (C 14 Pr. 2)—*Shahmiri J.*—"On behalf of the respondent an objection is taken that the revision application is not competent inasmuch as another remedy is open to the applicant and he can bring a suit against the respondent. In this connection Note 8 under S. 115 of Chitaley's Code of the Civil Procedure, 1950 Edition, at pages 1212 to 1216 is relied upon. It is clear

therefrom that an order under O. 21, R. 58, Civil P. C. will not be interfered with in revision as a general rule as it can be challenged by a separate suit." (Application is dismissed.)

A. I. R. 1956 Madras 388 (C. 119 Pr. 4).—*Ramaswami J.*—"The rule has been succinctly stated in the A. I. R. Commentaries on the Civil Procedure Code, 5th (1951) Edition, p. 142." (A. I. R. Commentary on Civil P. C., S. 9 N. 53 Relied on.)

A. I. R. 1956 Punjab 190 (192) (C. 74 Pr. 15)—*Falshaw J.*—"The opening words of O. 8, R. 6, Civil P. C. are 'where in a suit for the recovery of money', and there are a number of authorities summarised at page 1857 of Vol. 2 of Chitaley's Civil Procedure Code to the effect that . . . . "

A. I. R. 1956 Trav. Co. 127 (C. 52 Pr. 12) — *Varadaraja Iyengar J.*— "The error may be one of fact but is not limited to matters of fact and include also errors of law. But the law must be definite and capable of ascertainment. An erroneous view of law on a debatable point or a wrong exposition of the law or a wrong application of the law or a failure to apply the appropriate law cannot be considered a mistake or error apparent on the face of the record. See Chitaley's Civil P. C. Vol. III, pp. 3549-50, 5th Edn."

COURT-FEES ACT, 1870 & SUITS VALUATION ACT, 1887.

(S) A. I. R. 1956 Madhya Bharat 132 (132) (C. 60 Pr. 2) (DB).—*Chaturvedi J.*—"There is a great divergence of opinion on this point and the following account at page 234 of Chitaley's Commentaries on the Court-fees Act (1949 Edition) succinctly summarises the conflict of opinions on this point."

A. I. R. 1956 Madras 593 (595) (C. 187 Pr. 8) — *Ramaswami J.*—"The permutations and combinations which arise in regard to the procedure to be followed has been comprehensively and accurately summarised in the well-known A. I. R. Commentaries on the Court-fees Act and Suits Valuation Act, (2nd Edn.) at page 871 as follows : —" [Quoted and Relied upon]

CRIMINAL PROCEDURE CODE, 1898.

A. I. R. 1956 Madhya Bharat 161 (163) (C. 68 Pr. 7) — *Chaturvedi J.*— "It follows that of Mr. . . . . .'s order, though not illegal, was nonetheless improper. A perusal of certain rulings cited in Note 2 to S. 369 at page 2033 in Chitaley's Commentary on the Criminal Procedure Code, 3rd Edition also supports me in this view."

A. I. R. 1956 Saurashtra 80 (81) (C. 26 Pr. 3)—*Chhatpar J.* — "Mr. Joshi has contended that non-compliance of provisions of S. 256 amounted to an illegality which vitiated the entire trial . . . . . The question has been discussed at length in Chitaley and Rao's Commentary on Criminal Procedure Code under S. 256 and also under S. 537. In their Note 4 on S. 256 the learned Commentators state that . . . . They also quote the contrary view in some cases . . . They however express their opinion that this latter view is not correct." (Former view accepted and the plea is rejected.)

(S) A. I. R. 1956 Trav-Co 29 (31) (C. 8 Pr. 4) (DB). — *Koshi C. J.* — "Chitaley in his Commentaries to S. 531 refers to the conflicting views of various High Courts as to what should be done under such circumstances — See the Code of Criminal Procedure by Chitaley and Annaji Rao, 4th (1950) Edition, Vol. 3 pp. 2942-43. The relevant portion may usefully be quoted here : . . . . . "

(S) A. I. R. 1955 J. & K. 1 (C. 1 Pr. 5), — *Shahmiri J.* — "As stated in Chitaley's Code of Criminal Procedure (1950) Edition) a valid divorce of the wife by the husband where it is sanctioned by personal law, puts an end to the marital relation and the status of husband and wife, and no order for maintenance can be made subsequent to the date of such divorce."

LIMITATION ACT, 1908.

A. I. R. 1956 Madhya Bharat 166 (168) (C. 70 Pr. 4). — *Dixit J.* — "The meaning of the terms 'dispossession' and 'discontinuance' for the purposes of Art. 142 has been adopted in numerous cases which have been noted in Note 9 to Art. 142 in Chitaley's Limitation Act, Vol. 3, (Edn. 3) at p. 2150."

Advocate High Court
Jammu & Kashmir
Srinagar

UNIVERSITY LIB.
K. DEVI
76125

A. I. R. 1956 Madras 210 (C. 66 Pr. 3). — *Ramaswami J.*—"In Chitaley's Limitation Act, Note 3, p. 1440, the distinguishing characteristics of mutual account have been summarised as follows : —"

A. I. R. 1956 Orissa 142 (C. 42 Pr. 4).—*Narasimham J.*—"There is a sharp conflict in the judicial decisions on this question and these have been summarised at page 2771 of Chitaley's Limitation Act, 3rd Edition . . . . "

REGISTRATION ACT, 1908.

A. I. R. 1956 J. & K. 24 (24) (C. 3 Pr. 2) (DB). — *Shahmiri J.* — "In our view this purpose is certainly a collateral one. As stated in N. 14 to S. 49, Registration Act by Chitaley, proof as to the nature. . . . . An unregistered document, is therefore held to be admissible as evidence of the nature or character of a person's possession."

TRANSFER OF PROPERTY ACT, 1882.

A. I. R. 1957 Jammu & Kashmir 16 (C. 13 Pr. 2) — *Shahmiri J.* — "In this connexion reference may also be invited to Note 9 under S. 114 of Chitaley's Transfer of Property Act, 3rd Edition at page 1898 which reads as follows : — . . . . ."

A. I. R. 1957 Madhya Bharat 151 (C. 59 Pr. 4) — *Dixit J.* — "There is overwhelming authority in support of the proposition that . . . . The authorities on the point have been noted in Chitaley's Transfer of Property Act Vol. 3 (3rd Edition) at pages 1752, 1753 and 1754 in Note 49 to S. 106, Transfer of Property Act."

(S) A. I. R. 1956 Tripura 9 (15) (C. 5 Pr. 29). — *Brij Narain J. C.*—"In the present case . . . . the lessor has not brought forward any suit against the petitioner on the ground of forfeiture under S. 111 (g), T. P. Act, uptill now and so it cannot be urged with any force that the sale deed in favour of the petitioner which is for valuable consideration is void as this right will be deemed to have been waived under S. 112, T. P. Act, vide Chitaley's Transfer of Property Act, 1943 Edition Vol. 3 page 2251 (now (1950) edition S. 112 N. 1 Vol. 3 p. 1885)."

Overlooking of Precedents leads to Erroneous Decisions

S. N. Dar
Advocate, High Court
Jammu & Kashmir
Srinagar.

A. I. R. 1957 Orissa 90 (91) C. 26 Pr. 5). — *Narasimham C. J.*— "It is sufficient to say that the decision of the Division Bench in I. L. R. 1953 Cut. 739: (A. I. R. 1954 Orissa 101) . . . . . must be taken to be no longer correct in view of the observations of the Supreme Court in 1952 S. C. J. 427: (A. I. R. 1952 S. C. 252). That decision of the Supreme Court was given prior to the said Division Bench decision of this High Court and if the attention of the learned Judges, constituting that Division Bench, had been drawn to the Supreme Court decision, it is likely that the decision in that case would have been otherwise."

(S) A. I. R. 1955 Andhra 49 (C. 21 Pr. 27). — *Umamaheswaram J.* — "I am really surprised that the Courts below summarily dealt with the question of estoppel and regarded the matter so simple that they did not even refer to the decision of the Privy Council or the Full Benches of the Allahabad, Bombay and Madras High Courts or even the passages from the leading Text books. I wish to condemn the practice of the Subordinate Judiciary in not referring to the decisions which are binding upon them. By a casual reference to the leading text books, the Courts below should have discovered that the Full Bench case in 1929 Mad. 502 (A I R V 16) has at least an important bearing in deciding the question of estoppel. It is the bounden duty of the members of the Bar and the Judges who administer the law to keep themselves informed of the march and progress of law, i. e. statutory and case law. If every illiterate man is presumed to know law and ignorance of law is no excuse, it is all the more important that those who are concerned in the administration of law, namely the members of the Bar and the Judges should read the Law Reports regularly and be aware not only of the latest reports, but also decisions of the Supreme Court and the High Courts."

S. B. T.